

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3004-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HUGO AGUILAR, a/k/a
HUGO AGUILAR URREA,

Defendant-Appellant.

Submitted December 12, 2022 – Decided December 27, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law
Division, Morris County, Indictment No. 16-03-0245.

Joseph E. Krakora, Public Defender, attorney for
appellant (Craig S. Leeds, Designated Counsel, on the
brief).

Robert J. Carroll, Morris County Prosecutor, attorney
for respondent (Paula Jordao, Assistant Prosecutor, on
the brief).

PER CURIAM

Petitioner Hugo Aguilar appeals the Law Division's March 16, 2021 order denying his second petition for post-conviction relief (PCR). We affirm, substantially for the reasons set forth in Judge Stephen J. Taylor's written opinion. We add the following brief comments.

On April 26, 2016, petitioner was charged with second-degree sexual assault, contrary to N.J.S.A. 2C:14-2b (counts one, two, four, five and seven); second-degree endangering the welfare of a child, contrary to N.J.S.A. 2C:24-4a (counts three and six); and third-degree aggravated criminal sexual contact, contrary to N.J.S.A. 2C: 14-3a (count eight).¹

On May 30, 2017, petitioner pled guilty to count six of the indictment, as amended to third-degree endangering the welfare of a child. The arrangement negotiated between petitioner's counsel, Joel Harris, Esq.,² and the state included: time served at the time of sentencing; Megan's Law registration and oversight; no contact with the child; and petitioner would be subject to an evaluation under the Sex Offender Act, N.J.S.A. 2C:47-1. The arrangement was reflected in a standardized plea form in Spanish. Petitioner was sentenced in

¹ Morris County indictment number 16-03-0245-I.

² Petitioner was also represented during plea negotiations by immigration attorney, Ludovico Aprigliano, Esq.

accordance with the plea agreement on September 22, 2017. He did not file a direct appeal of his conviction.³

Petitioner filed his first PCR application on March 22, 2018, pro se. Notably, petitioner's first PCR petition did not raise the claim currently under review—that he was not advised that he would be deported if he plead guilty to third-degree endangering the welfare of a child. Rather, petitioner focused on an alleged misuse of evidence by his counsel. Following argument on December 5, 2018, the judge denied the PCR petition without an evidentiary hearing.

Petitioner timely appealed. In a September 28, 2020, per curiam opinion, we reversed and remanded for an evidentiary hearing "to develop facts" regarding the legal effect of petitioner's plea on his immigration status. State v. Aguilar, No. A-3440-18 (App. Div. Sept. 28, 2020) (slip op. at 5). Following evidentiary hearings on January 8, 2021 and February 5, 2021, the judge denied petitioner's petition for PCR by order and statement of reasons entered on March 16, 2021.

On appeal, petitioner raises the following argument for our review:

³ On advice of immigration counsel, petitioner filed an application in immigration court for cancellation of removal, which was denied.

POINT I

MR. AGUILAR WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE NEITHER OF HIS ATTORNEYS COMPETENTLY ADVISED HIM, PRIOR TO ENTERING A GUILTY PLEA, THAT HE WAS SUBJECT TO MANDATORY DEPORTATION AS A RESULT THEREOF (Da 99-112)

A petitioner seeking PCR must establish "by a preponderance of the credible evidence" that he is entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). The petitioner must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

Ineffective assistance of counsel claims must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), which was also adopted by the New Jersey Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987).

The Strickland two-part test applies to challenges to guilty pleas based on ineffective assistance of counsel. Hill v. Lockhart, 474 U.S. 52, 58 (1985). In order to satisfy the first part of the Strickland test in the context of a guilty plea, petitioner must demonstrate that the advice of counsel was not "'within the range

of competence demanded of attorneys in criminal cases.'" Id. at 56 (quoting McMann v. Richardson, 397 U.S. 759, 771 (1990)). The second part, or "prejudice" requirement, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 59. To establish "prejudice," petitioner must therefore "show that there [was] a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Ibid.

Having considered petitioner's contentions in light of the record and the applicable law, we affirm the denial of petitioner's PCR petition substantially for the reasons detailed at length in the PCR judge's written opinion. An attorney owes a duty to provide accurate information concerning the deportation consequences of a plea. State v. Nunez-Valdez, 200 N.J. 129, 143 (2009) (focusing on false or misleading information from counsel as establishing the violation of the petitioner's constitutional rights). Here, as Judge Taylor noted, petitioner's argument that he was misinformed is based upon allegations "refuted by the detailed, consistent, and highly credible testimony of both of his attorneys." In his written opinion, the judge elaborates:

Based on the credible testimony of Harris and Aprigliano, petitioner was fully advised of the immigration consequences of a conviction for third-degree child endangerment well before entry of the

plea. Both attorneys testified that petitioner was advised that he would be deported based on the facts of his case and that he had no defenses to deportation. There is no evidence petitioner was provided with incorrect or misleading immigration information, and petitioner has failed to establish counsel provided deficient representation under the first prong of the Strickland/Fritz standard. Strickland v. Washington, 466 U.S. 668 (1984); State v. Fritz, 105 N.J. 42, 58 (1987).

We reject petitioner's additional bald assertion that he was not informed of the decision, content, or consequence of his plea before its entry on May 30, 2017. His assertion "is refuted by the testimony of both counsel, as well as court orders and transcripts documenting the status conference discussions about the plea which were held in the presence of petitioner."

We discern no abuse of discretion in the judge's consideration of the issues. We are satisfied that the trial attorneys' performance was not deficient, and petitioner provided nothing more than bald assertions to the contrary.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION