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APPROVAL OF THE APPELLATE DIVISION**

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-3374-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL J. SIRIANI, a/k/a
MIKE SIRIANI, MICHAEL J.
SIRIANO, MIKE MOORE,
and MICHAEL J. GREEN,

Defendant-Appellant.

Submitted August 16, 2022 – Decided November 14, 2022

Before Judges Accurso and Smith.

On appeal from the Superior Court of New Jersey,
Law Division, Burlington County, Indictment No. 18-
02-0121.

Joseph E. Krakora, Public Defender, attorney for
appellant (Abby P. Schwartz, Designated Counsel, on
the brief).

LaChia L. Bradshaw, Burlington County Prosecutor,
attorney for respondent (Alexis R. Agre, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Michael J. Siriani pled guilty to a charge of second-degree robbery in exchange for a recommended discretionary extended term sentence of twenty-years, subject to the No Early Release Act. We affirmed the sentence on direct appeal. Defendant now appeals from an order denying his application for post-conviction relief (PCR) without a hearing. We affirm.

We summarize the pertinent facts. Defendant testified at his plea colloquy that he entered a Wawa convenience store, brandished a handgun, threatened a store employee, and demanded the store employee give him money from a cash register. Defendant fled the store after the robbery, but he was apprehended ten days later. He was indicted on one count of first-degree robbery. After defendant's motion to suppress was denied by the trial court, he pled to second-degree robbery with discretionary extended term eligibility. There was a clear and unambiguous colloquy between defendant and the court concerning his understanding of the terms and conditions of the plea bargain.

THE COURT: [Y]ou've entered into a plea agreement calling for a [twenty]-year sentence of which you would have to serve [seventeen]-years pursuant to the No Early Release Act.

DEFENDANT: Yes, sir.

. . . .

THE COURT: Have you had enough time to discuss this matter with Mr. Zeitz?

DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with his services and advice?

DEFENDANT: Extremely.

The sentencing court imposed the twenty-year sentence. We heard defendant's excessive sentence appeal and affirmed. State v. Siriani, No. A-0378-18 (App. Div. Jan. 8, 2020). Defendant filed a petition for PCR pro se, and assigned counsel filed a supplemental certification and brief.

The PCR court denied the application without a hearing. The court rejected defendant's main argument that trial counsel was ineffective in failing to negotiate and argue for a lower sentence. The court also rejected defendant's pro se arguments. On appeal defendant reprises his main argument.

We recognize that a PCR petition is neither "a substitute for direct appeal . . . nor an opportunity to relitigate cases already decided on the merits" State v. Preciose, 129 N.J. 451, 459 (1992) (citation omitted). We employ a de novo standard of review when a PCR court does not conduct an evidentiary hearing. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016) (citing State v. Harris,

181 N.J. 391, 420-21 (2004)). To succeed on an application, a defendant must establish they are entitled to "PCR by a preponderance of the evidence." State v. O'Donnell, 435 N.J. Super. 351, 370 (App. Div. 2014) (quoting Preciose, 129 N.J. at 459 (1992)).

We analyze ineffective assistance of counsel claims using the two-prong test established by the Supreme Court in Strickland.¹ See Preciose, 129 N.J. at 463; see also State v. Fritz, 105 N.J. 42, 58 (1987). The first prong of the Strickland test requires a showing that trial counsel's performance was deficient. Preciose, 129 N.J. at 463. "The second, and far more difficult, prong . . . is whether there exists 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id. at 463-64 (quoting Strickland, 466 U.S. at 694).

There exists a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Further, because prejudice is not presumed, defendant must demonstrate how specific errors by counsel undermined the reliability of the proceeding. State v. Drisco, 355 N.J. Super. 283, 289-90 (App. Div. 2002) (citing United States v. Cronin, 466 U.S. 648, 659 n.26 (1984)).

¹ Strickland v. Washington, 466 U.S. 668, 693-94 (1989).

We affirm substantially for the reasons set forth in Judge Mark P. Tarantino's written statement of reasons. We add the following brief comments.

The record does not support defendant's argument that defense counsel was ineffective in negotiating a lower sentence. Defendant was charged with first degree robbery. On that charge alone, defendant faced a maximum sentence of twenty-years before consideration of his criminal history. Accounting for defendant's lengthy and substantive criminal history, which included nineteen indictable convictions, his potential exposure on the first-degree robbery charge included a mandatory extended term sentence of life in prison. After defendant's motion to suppress his statement was denied, trial counsel negotiated the robbery charge down from first to second-degree.

Defendant next contends that trial counsel was ineffective in failing to argue for the lower end of the second-degree range, closer to ten-years. We disagree. The twenty-year sentence imposed, a sentence within the range defendant expressly agreed to during the plea colloquy, was clearly less than his original exposure, a potential life sentence.

Defendant next argues that counsel was ineffective in failing to address and argue against imposition of the twenty-year term before sentencing. After careful review of the record, we disagree. Trial counsel argued for leniency but was

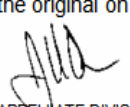
ultimately unsuccessful. The sentencing court had more than the counsel's argument, it had other evidence, including defendant's incriminating statement and his pre-sentence report, which detailed his extensive criminal history. The record contained more than ample evidence to support imposition of the agreed upon sentence. We do not find defense counsel's performance ineffective.

Even if we found trial counsel ineffective in failing to adequately argue for the lower end of the second-degree range, prejudice is not presumed. Drisco, 355 N.J. Super. at 289. Our next inquiry becomes whether the second prong of Strickland had been met. On this record we find defendant did not meet his burden to show that "there exists 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Preciose, 129 N.J. at 463-64. Absent this showing, defendant's PCR claim must fail.

To the extent we have not addressed any remaining arguments by defendant, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION