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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0086-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAVID CORREA, a/k/a  
ALEX MALDONADO,  
ALEX SANTANA, DAVID A.  
MALDNALDO, and RAYMOND  
CASTRO,

Defendant-Appellant.

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Submitted November 28, 2022 – Decided January 11, 2023

Before Judges Bishop-Thompson and Puglisi.

On appeal from the Superior Court of New Jersey, Law  
Division, Passaic County, Indictment No. 14-01-0021.

Joseph E. Krakora, Public Defender, attorney for  
appellant (John J. Bannan, Designated Counsel, on the  
brief).

Matthew J. Platkin, Attorney General, attorney for  
respondent (Sarah C. Hunt, Deputy Attorney General,  
of counsel and on the brief).

## PER CURIAM

Defendant David Correa appeals the Law Division's April 30, 2021 denial of his first petition for post-conviction relief (PCR) without an evidentiary hearing. Having reviewed the facts in light of the applicable law, we affirm the denial of PCR but remand for the court to resentence defendant to comply with State v. Torres, 246 N.J. 268 (2021).

### I.

On January 13, 2014, a Passaic County grand jury indicted defendant for second-degree attempted kidnapping, N.J.S.A. 2C:5-1 and 13-1(b)(1) (count one); second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count two); third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(2) (count three); and third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count four). Jury trial commenced in January 2016.

Trial testimony established defendant and A.G.<sup>1</sup> were in an on-and-off dating relationship for approximately seven years, having met at their place of employment. In 2009, the two had an altercation at work which turned physical. A.G.'s employment was terminated based upon her conduct, but reinstated five months later. Defendant and A.G. broke up after this incident but reconciled in

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<sup>1</sup> We use initials to protect the victim's privacy. See R. 1:38-3(c)(12).

December 2009, and were again on-and-off until their final breakup in June 2012.

At that time, defendant was renting an apartment from A.G., in a home she owned in Hackensack, and she was living in a home she owned in Paterson. A.G. asked defendant to vacate the apartment, which he was set to do in the end of September 2012. In the interim, he refused to pay her rent and demanded she reimburse him \$5,000 for the money he had spent on her during their relationship. Ultimately, she paid him \$3,000 and he vacated the apartment. Outside of work, A.G. did not have any further contact with defendant until July 2013.

A.G. testified that on July 8, 2013, as she exited the front door of her residence, a man grabbed her, hit her on the head and began dragging her towards her car, which was parked in her driveway. While A.G. was screaming, the man was telling her to shut up, punching her in the back and shoving her towards the driver's side door of her car. As the two fell to the ground, A.G. turned around and recognized defendant. A.G. continued to scream and defendant tried to put her wig in her mouth. She asked him why he was doing this, to which he responded she had "ratted him out."

A.G.'s neighbors, Joseph and Sandra Purnell, heard her screaming and Joseph rushed outside to help.<sup>2</sup> Joseph testified at trial he saw the shadow of a person who appeared to be a man leaned over in A.G.'s driveway, but he could not see what the man was doing. Sandra, who was on her front porch, yelled that she was calling 911, and defendant said, "don't do that." Joseph went back to his house to calm Sandra down. She called 911 and defendant ran from the scene before police arrived. Although A.G. was in shock, she told police she had been attacked by her ex-boyfriend, whom she did not name but provided a physical description and the name of his employer. She explained at trial she did not tell the police defendant's name at that time because she feared retribution.

A.G. was transported to the hospital for treatment. According to the treating physician, A.G. had profuse arterial bleeding from her head injury, which required sutures. She also sustained black eyes, bruises on her face and a bruise on her shoulder. Two days after the incident, A.G. met with detectives, named defendant as her attacker and identified him in a photograph.

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<sup>2</sup> We refer to the Purnells by their first names to avoid any confusion caused by their common last name. No disrespect is intended.

At the scene of the attack, police found a mini baseball bat, black knapsack with men's personal effects in it, a cell phone, and two pairs of handcuffs. The bat had blood on it and blood spatter was located in other areas. The cell phone was registered to defendant's employer and had been issued to him.

At trial, defendant's counsel called three witnesses. Gary Scarborough, a co-worker, testified about the 2009 incident between A.G. and defendant. Another co-worker, Jacqueline Bailey, testified A.G. told her she was upset because defendant had gotten her fired, as well as about defendant's moving out of the apartment in September 2012. Investigator David Young testified as to his interviews with Sandra Purnell.

The trial judge granted the State's motion to use defendant's prior convictions on cross-examination, if he were to testify. At that point in trial, defense counsel advised the court he had "discussed this long and hard with [defendant], we've discussed it this morning, I went over it with my colleagues at lunch, and spoken again to [defendant] now, and it's his – it's our decision that he's electing not to testify." Defense counsel questioned defendant on the record, confirming they had discussed his right to testify and had reviewed potential cross-examination during trial preparation and again that morning and

afternoon during trial. Defendant stated he understood his rights and had freely and voluntarily exercised his right not to testify.

Following counsel's questioning, the judge also confirmed with defendant he had enough time to discuss the issue with his attorney, he understood what was happening, he was not going to testify, and he did not have any questions. The jury returned a guilty verdict on February 8, 2016.

On April 29, 2016, the court sentenced defendant to eight years each on counts one and two with an 85% parole ineligibility term pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to run consecutively. Count three merged into count two and count four merged into count three.

Defendant appealed his conviction and sentence. We affirmed the conviction but remanded the case for resentencing, with instructions for the trial court to explain its reasons for imposing the consecutive sentence. State v. Correa, No. A-4485-15 (App. Div. May 18, 2018) (slip op.). Following remand, the trial court sentenced defendant to the same sentence and explained its reasons for doing so. Defendant appealed the resentence and we affirmed. State v. Correa, No. A-1476-18 (App. Div. June 3, 2019).

Defendant filed a pro se PCR petition alleging ineffective assistance of trial counsel. Defendant asserts trial counsel failed to adequately cross-examine

witnesses, failed to call material witnesses, did not adequately discuss defendant's right to testify at trial, and did not adequately represent him during plea negotiations. The court ordered the appointment of counsel, who filed an amended PCR petition, brief and supplemental certification.

The PCR judge heard oral argument on two dates and issued a written decision and order denying the petition on April 30, 2021. This appeal followed.

Defendant presents the following issues for our consideration:

#### POINT I

BECAUSE [DEFENDANT] RECEIVED  
INEFFECTIVE ASSISTANCE OF COUNSEL, THE  
PCR COURT ERRED IN DENYING  
[DEFENDANT]'S PETITION FOR PCR.

(A) Legal Standards Governing Applications for  
Post-Conviction Relief.

(B) Defense Counsel was Ineffective, for Among  
Other Reasons, Pressuring Defendant into Not  
Testifying at Trial and Failing to Properly  
Explain to Him His Right to Testify on his Own  
Behalf.

(C) Defense Counsel was Ineffective for Failing  
to Call Maria Logrono at Trial, who was a  
Material Witness to Important Events Preceding  
the Altercation.

(D) Defense Counsel was Ineffective for Failing  
to Explain at Plea Cutoff that Defendant could be  
Exposed to Consecutive Sentencing.

## POINT II

IN THE ALTERNATIVE, BECAUSE THERE ARE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE, THE PCR COURT ERRED IN DENYING AN EVIDENTIARY HEARING.

(A) Legal Standards Governing Post-Conviction Relief Evidentiary Hearings.

(B) In the Alternative, [Defendant] is Entitled to an Evidentiary Hearing.

## POINT III

DEFENDANT IS DESERVING OF A RE-SENTENCING UNDER TORRES.

We review the legal conclusions of a PCR judge de novo. State v. Harris, 181 N.J. 391, 420-21 (2004) (citing Mickens-Thomas v. Vaughn, 355 F.3d 294, 303 (3d Cir. 2004)). Additionally, where no evidentiary hearing has been held, we "may exercise de novo review over the factual inferences drawn from the documentary record by the [PCR judge]." Id. at 421 (citing Zettlemoyer v. Fulcomer, 923 F.2d 284, 291 n.5 (3d Cir. 1991)).

We affirm the denial of PCR substantially for the reasons stated by the court in its written opinion but remand for reconsideration of the fairness of the consecutive sentence under Torres.



## II.

A defendant must prove two elements to establish a PCR claim that trial counsel was constitutionally ineffective: first, that "counsel's performance was deficient[,]" that is, "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment[;]" second, that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 667-68, 694 (1984); accord State v. Fritz, 105 N.J. 42, 52, 61 (1987).

Under the first prong, a defendant must demonstrate "counsel's representation fell below an objective standard of reasonableness." Strickland 466 U.S. at 688. Thus, "th[e] test requires [a] defendant to identify specific acts or omissions that are outside the wide range of reasonable professional assistance . . . ." State v. Jack, 144 N.J. 240, 249 (1996) (citation and internal quotation marks omitted). "Reasonable competence does not require the best of attorneys, but certainly not one so ineffective as to make the idea of a fair trial meaningless." State v. Davis, 116 N.J. 341, 351 (1989). A defendant must "overcome a 'strong presumption' that counsel exercised 'reasonable professional judgment' and 'sound trial strategy' in fulfilling his

responsibilities." State v. Nash, 212 N.J. 518, 542 (2013) (quoting State v. Hess, 207 N.J. 123, 147 (2011)).

To meet the second prong, "[a] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Defendant must demonstrate "how specific errors of counsel undermined the reliability of the finding of guilt." United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

"A petitioner must establish the right to [post-conviction] relief by a preponderance of the credible evidence." Preciose, 129 N.J. 451, 459 (1992) (citing State v. Mitchell, 126 N.J. 565, 579 (1992)). To sustain that burden, the petitioner must set forth specific facts that "provide the court with an adequate basis on which to rest its decision." Mitchell, 126 N.J. at 579.

PCR courts are not required to conduct evidentiary hearings unless the defendant establishes a prima facie case and "there are material issues of disputed fact that cannot be resolved by reference to the existing record . . . ." R. 3:22-10(b). "To establish such a prima facie case, the defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed

on the merits." State v. Marshall, 148 N.J. 89, 158 (1997). Speculative assertions are insufficient to establish a prima facie case of ineffective assistance of counsel. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999).

Defendant also argues he was denied effective assistance of trial counsel because his attorney pressured him into not testifying at trial and failed to explain his right to testify on his own behalf. Defendant states he wanted to testify to explain his side of the story: he was at A.G.'s house to collect his belongings, he did not ambush or hit A.G., she ambushed him but then fell and hit her head, and A.G. had been violent towards him in the past.

The PCR judge, who had also presided over the trial, noted three events during trial that undermined defendant's claims. First, when the court ruled the State was permitted to use defendant's prior convictions on cross-examination, defense counsel stated he had discussed the issue of defendant's testifying "long and hard" with him, reviewed the issue with his colleagues over lunch and then discussed it again with defendant, and both he and defendant made the decision he would not testify.

Later, the court permitted defense counsel to question defendant on the record about his right to testify. Defendant acknowledged he and counsel had discussed his right to testify or not, spoke about it again at the jail and reviewed

potential cross-examination questions. He further confirmed that during trial preparation and again during trial, he discussed the issue with counsel in the morning and afternoon, and they both concluded defendant would not testify.

Further the court also questioned defendant on the record, confirming he had enough time to discuss the issue with his attorney, he understood what was happening, and he was not going to testify. Defendant advised the court he did not have any further questions about the issue.

On appeal, defendant argues the judge's colloquy failed to reveal "off the record" conversations defendant had with counsel, where defendant told his trial counsel he wanted to testify but counsel pressured him into remaining silent. As the PCR judge found, this claim contrasts sharply with defendant's statements during trial, where he had ample opportunities to ask questions of the court and counsel and did not raise any issues or give any indication he wanted to testify.

Defendant also contends trial counsel was ineffective because he failed to call Maria Logrono, a former co-worker. Logrono's certification dated July 23, 2020 states that "years ago," A.G. called the union's office and spoke with Logrono. A.G. asked her if she was still with defendant, if he had ever hit her, how long they had been together and why they broke up. A.G. then asked Logrono to tell defendant to go to her house and pick up his furniture. Defendant

argues Logrono's testimony about this conversation is critical because it "clearly shows" A.G. was trying to set up defendant.

The PCR judge found Logrono's certification failed to provide any specific information that would have assisted defendant at trial and was vague as to when the phone call occurred. The PCR judge noted that defense counsel's cross-examination of A.G. brought out any points to which Logrono would have testified if her testimony had been permitted. The judge further found defendant failed to show the information contained in Logrono's certification would have affected the outcome of the trial.

We next turn to defendant's claim that trial counsel was ineffective because he failed to explain his sentencing exposure. Defendant states during plea negotiations he was offered a seven-year term subject to NERA, and counsel did not explain "at plea cutoff that that he could and/or would be exposed to [consecutive] sentencing if, he were to be convicted, or convicted on multiple counts" Defendant further claims the lack of "proper advice" during the plea process prejudiced him "because, he rejected a more favorable plea offer, proceeded to a trial where he was convicted on multiple counts of the indictment and imposed consecutive sentences." Defendant contends the PCR judge did not address this claim.

In his decision, the PCR judge did consider and reject defendant's contention. The court found that defendant failed to assert "any facts related to the alleged lack of advice" regarding sentencing, either in his initial pro se petition or in the amended petition.

To establish ineffective assistance of counsel in this context, defendant is required to demonstrate that he would have accepted the plea offer if he had been aware of his sentencing exposure, and that his guilty plea would have been accepted by the trial judge. Lafler v. Cooper, 566 U.S. 156, 163 (2012).

In State v. Taccetta, 200 N.J. 183, 195 (2009), the Supreme Court held that "[t]he notion that a defendant can enter a plea of guilty, while maintaining his innocence, is foreign to our state jurisprudence" and does not provide a basis for PCR based on ineffective assistance of counsel. "Even if a defendant wished to plead guilty to a crime he or she did not commit, he or she may not do so. No court may accept such a plea." State v. Smullen, 118 N.J. 408, 415 (1990). A guilty plea should not be accepted unless, among other things, "there is a factual basis for the plea and that the plea is made voluntarily." R. 3:9-2.

Defendant merely makes a "bald assertion" that he would have accepted the plea offer if defense counsel had explained he could be subject to consecutive sentencing following a jury conviction. Cummings, 321 N.J. Super.

at 170. However, his certifications submitted in support of PCR deny he committed any crime against A.G. His pro se petition certifies A.G. "decided to 'get even' with [him] by orchestrating false claims against [him]." His supplemental certification states that he "did not hit [A.G.] with a bat or any other weapon," but instead, "it was [A.G.] who attacked" him, and when he "attempted to deflect her assault, she fell and hit her head." Because defendant cannot maintain his innocence and simultaneously claim he would have pleaded guilty but for counsel's ineffective assistance, we find this claim to be without merit.

Furthermore, defendant's argument is unsupported by the record. The plea colloquy with the trial judge belies defendant's claims that his guilty plea was not knowingly entered. On the contrary, the PCR judge's findings are fully supported by the record in view of defendant's plea admissions.


Because the PCR judge determined defendant had not established a prima facie case of ineffective assistance of counsel, he found that defendant was not entitled to an evidentiary hearing. See Preciose, 129 N.J. at 462. We find no reason to disturb the court's decision.

Lastly, defendant argues that he is entitled to resentencing because the trial court failed to articulate the consecutive sentence imposed was "fair," which is required under Torres, 246 N.J. at 268.

Having reviewed the record on the resentencing, we are constrained to remand for a new proceeding. We do this for one limited reason. In October 2020, the judge did not consider the overall fairness of the consecutive sentence being imposed. In 2021, the Supreme Court clarified that sentencing courts must consider the overall fairness in imposing a lengthy consecutive sentence. See id. at 272. In Torres, the Court held that "an explanation for the overall fairness of a sentence by the sentencing court is required" when imposing consecutive sentences. Ibid. Therefore, we remand for the court to consider the overall fairness of the consecutive sentence.

Affirmed in part, vacated in part and remanded for proceedings in accordance with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION