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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-0253-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ARTIC ROGERS, a/k/a
ARTIC ROBERTS,

Defendant-Appellant.

Submitted January 18, 2023 – Decided January 31, 2023

Before Judges Berdote Byrne and Fisher.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Indictment No.
11-03-0401.

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

Yolanda Ciccone, Middlesex County Prosecutor,
attorney for respondent (David M. Liston, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant was charged in two indictments; in December 2017, he entered into a negotiated plea agreement and pleaded guilty to one count of third-degree theft in one indictment and to a fourth-degree weapons offense in the other. He was sentenced in January 2018 to a three-year prison term on the theft conviction and an eighteen-month prison term on the weapons offense, both to run concurrently to each other and concurrently to an eleven-year prison term defendant began serving in New York in November 2016.

In the original judgments of conviction, defendant was afforded 135 days of jail credit, but in amended judgments entered a month later, 132 days of jail credit were removed. Defendant appealed the loss of the jail credits; we rejected his arguments and affirmed the amended judgments of conviction. State v. Rogers, No. A-3289-17 (App. Div. Apr. 22, 2019).

After we decided his direct appeal, defendant filed a timely pro se post-conviction relief (PCR) petition. His later-appointed counsel filed a brief, in which defendant contended he was denied the effective assistance of counsel promised by the Sixth Amendment because he was misadvised about the jail credits to which he was entitled. The PCR judge denied relief without conducting an evidentiary hearing, and defendant appeals that ruling, arguing in a single point that he:

DID NOT UNDERSTAND HIS CREDITS STATUS WHEN HE ENTERED HIS GUILTY PLEA, RENDERING HIS PLEA UNKNOWING AND INVOLUNTARY. FOR THIS REASON, HIS PLEA MUST BE VACATED OR REMANDED FOR AN EVIDENTIARY HEARING AS INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATED HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL.

We find insufficient merit in this argument to warrant further discussion in a written opinion, R. 2:11-3(e)(2), adding only the following brief comments.

To obtain relief, defendant was required to show that his attorney failed to meet professional norms and that this failure caused prejudice. Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987). To obtain an evidentiary hearing, a defendant must provide the fundament of an ineffectiveness claim through the submission of sworn information. See State v. Porter, 216 N.J. 343, 353 (2013) (citing State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)). Defendant's sworn pro se PCR petition did not allege, as he argues now, that he would not have pleaded guilty but for his receipt of the 132 days of jail credit ultimately denied him. That allegation did not arise until defendant's appointed counsel made that argument in the brief submitted to the PCR judge on defendant's behalf; defendant did not, however, support that

assertion with an affidavit or certification or any other sworn material.¹ Consequently, defendant was not entitled to an evidentiary hearing or the PCR judge's assumption that a critical aspect of defendant's decision to plead guilty did not turn out to be accurate.

Moreover, as noted above, defendant began serving an eleven-year prison term in New York in November 2016. The aggregate three-year prison term imposed here in January 2018 was ordered to run concurrently with that New York prison term, so it is not clear to us how defendant was prejudiced by the loss of the jail credits. Without some explanation to the contrary, and that explanation does not appear in defendant's appellate submissions, it would seem defendant would undoubtedly still be incarcerated by way of the New York prison term regardless of whether he received the jail credits against the aggregate term imposed here. So, even if we assume defendant misunderstood or was misadvised, it seems highly unlikely that this alleged jail-credit confusion had any impact since defendant must have understood that the three-year

¹ We examined the transcript of the plea hearing and found nothing there to suggest or support defendant's contention that he would not have pleaded guilty but for the jail credits. While the judge stated, in explaining the real-time consequences of the guilty plea, that defendant would receive "all the credits" he was "entitled to," there was then no mention of the amount of jail credits nor was there any statement from defendant or his attorney about the importance of the later-contested jail credits.

concurrent prison term imposed here would terminate prior to completion of the eleven-year New York prison term. In short, defendant has failed to demonstrate that the loss of 132 days of jail credit had any real-time consequence and, therefore, there is nothing to support the second prong of defendant's ineffectiveness claim.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION