

# 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-0334-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JIMMIE MOULTRIE, a/k/a  
JAMAR MOUL, and JIMMY  
MOULTRIE,

Defendant-Appellant.

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Submitted October 23, 2023 – Decided November 9, 2023

Before Judges Sabatino and Vinci.

On appeal from the Superior Court of New Jersey, Law  
Division, Passaic County, Indictment No. 19-05-0375.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Susan Brody, Designated Counsel, on the  
brief).

Camelia M. Valdes, Passaic County Prosecutor,  
attorney for respondent (Leandra Cilindrello, Assistant  
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jimmie Moultrie appeals from the trial court's August 23, 2022 order denying his petition for post-conviction relief ("PCR") without an evidentiary hearing. Upon careful review of the record and applicable legal standards, we affirm substantially for the reasons set forth in Judge Sohail Mohammed's thorough and well-reasoned written opinion.

We summarize the facts developed in the record. The State alleged that, on March 17, 2019, defendant forced his entry into the home of his former girlfriend where he repeatedly punched her in the face with his fists resulting in her hospitalization. He was indicted for first-degree attempted murder, N.J.S.A. 2C:5-1 and 2C:11-3(a)(1); first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1) and (2); second-degree burglary, N.J.S.A. 2C:18-2(a)(1); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d); third-degree terroristic threats, N.J.S.A. 2C:12-3(a) and 3(b); and fourth-degree contempt of court, N.J.S.A. 2C:29-9(b)(1).

On September 23, 2019, defendant pleaded guilty to second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1), and second-degree burglary, N.J.S.A. 2C:18-2(a)(1), and agreed to the imposition of a discretionary extended term of imprisonment as a persistent offender pursuant to N.J.S.A. 2C:44-3(a).

In exchange, the State agreed to recommend a sentence of twenty years imprisonment subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, for aggravated assault concurrent to ten years imprisonment for burglary. The State agreed to dismiss all other charges.

At the plea hearing before Judge Mohammed, defendant testified he understood every aspect of the plea agreement and was satisfied with the services of defense counsel. Defendant testified that he entered the victim's room through her window and punched her repeatedly in the face with his fists causing her to be hospitalized. The judge accepted the plea, finding that defendant entered the plea freely and voluntarily, was satisfied with the services of his counsel, and provided an adequate factual basis.

On November 1, 2019, the court sentenced defendant in accordance with the plea agreement. We affirmed the sentence on the sentencing oral argument calendar. State v. Moultrie, No. A-1445-19 (App. Div. Feb. 2021).

On May 10, 2021, defendant filed a pro se petition for PCR. After PCR counsel was appointed, defendant filed a supplemental brief contending he was denied effective assistance of counsel because trial counsel failed to undertake any investigation and, as a result, his plea was not made voluntarily, willingly and knowingly. Specifically, defendant argued trial counsel: (1) failed "to file

various motions, including but not limit[ed] to motions to exclude certain evidence including statements from the victim and witnesses;" (2) failed to "investigate these hearsay and inadmissible statements;" and (3) failed "to provide any discovery" to defendant. Defendant also argued cumulative error.

The court heard oral argument on the petition for PCR. On August 23, 2022, the court entered an order denying defendant's petition for PCR supported by a written decision. The court found defendant failed to set forth a prima facie claim of ineffective assistance of counsel because his petition was based on nothing more than bald assertions that counsel failed to investigate and file motions. The court also rejected defendant's claim that the plea was not voluntary, willing or knowing because he reviewed every aspect of the plea with defendant at the plea hearing, and defendant acknowledged he understood the plea and was satisfied with defense counsel. This appeal followed.

On appeal, defendant presents the following contention:

[DEFENDANT] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIMS THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO INVESTIGATE CHARGES AGAINST HIM OR PROVIDE HIM WITH COPIES OF DISCOVERY.

"Where, as here, the PCR court has not conducted an evidentiary hearing, we review its legal and factual determinations de novo." State v. Aburoumi, 464

N.J. Super. 326, 338 (App. Div. 2020) (citing State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018)).

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Afanador, 151 N.J. 41, 49 (1997) (citing State v. Preciose, 129 N.J. 451, 459 (1992)). "It is a safeguard to ensure that a defendant was not unjustly convicted." Ibid. (citing State v. McQuaid, 147 N.J. 464, 482 (1997)). It provides a final opportunity for a defendant to raise a legal error or constitutional issue, including a violation of the right to effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution. "Ordinarily, PCR enables a defendant to challenge the legality of a sentence or final judgment of conviction by presenting contentions that could not have been raised on direct appeal." Afanador, 151 N.J. at 49 (citing McQuaid, 147 N.J. at 482-83).

In addressing an ineffective assistance claim, we follow the two-pronged standard formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show that counsel's performance was deficient." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland, 466 U.S. at 687). The test is whether "counsel's representation fell

below an objective standard of reasonableness." Strickland, 466 U.S. at 688. "Second, the defendant must have been prejudiced by counsel's deficient performance." Gideon, 244 N.J. at 550 (citing Strickland, 466 U.S. at 687). To prove this element, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. Failure to meet either prong of the Strickland/Fritz test results in the denial of a petition for PCR. State v. Parker, 212 N.J. 269, 280 (2012).

"To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits." R. 3:22-10(b). The defendant 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); Preciose, 129 N.J. at 459. To sustain that burden, the defendant 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). Defendants must do more than make "bald assertions" of ineffective assistance. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999).

There is 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 690. Further, because prejudice is not presumed, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984); see also Fritz, 105 N.J. at 52 ("[P]rejudice must be proved . . . it is not presumed."). "The test is not whether defense counsel could have done better, but whether [they] met the constitutional threshold for effectiveness." Nash, 212 N.J. at 543. The court should review counsel's performance in the context of the evidence against defendant at the time of the plea or trial. State v. Castagna, 187 N.J. 293, 314-15 (2006).

To demonstrate "prejudice after having entered a guilty plea, a defendant must prove 'that there is a reasonable probability that, but for counsel's errors, [he or she] would not have pled guilty and would have insisted on going to trial.'" State v. Gaitain, 209 N.J. 339, 351 (2012) (quoting State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009)). A defendant must show that, "had he been properly advised, it would have been rational for him to decline the plea offer and insist on going to trial and, in fact, that he probably would have done so." State v. Maldon, 422 N.J. Super. 475, 486 (App. Div. 2011).

A court reviewing a PCR petition based on claims of ineffective assistance has the discretion to grant an evidentiary hearing only if a defendant establishes a prima facie showing in support of the requested relief. Preciose, 129 N.J. at 462-63. The mere raising of a claim for PCR does not entitle a defendant to an evidentiary hearing. Cummings, 321 N.J. Super. at 170.

Judge Mohammed determined correctly that defendant's petition for PCR was based on nothing more than bald assertions of ineffective assistance. Defendant did not identify a single non-frivolous motion that should have been filed and did not set forth any basis for his contention that statements of the victim and witnesses were inadmissible. Nor did defendant identify anything he did not receive in discovery or that would have been discovered through further investigation that would have led him to reject the State's plea offer and insist on going to trial.

We are satisfied that defendant did not establish a prima facie case of ineffective assistance. The trial court did not abuse its discretion by denying defendant's request for an evidentiary hearing and correctly denied his petition for PCR.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION