

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-0406-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

E.G.T.,

Defendant-Appellant.

Argued January 18, 2023 – Decided March 23, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 15-09-1712.

Michael Confusione argued the cause for appellant (Hegge & Confusione, LLC, attorneys; Michael Confusione, of counsel and on the brief).

Alecia Woodard, Assistant Prosecutor, argued the cause for respondent (Raymond S. Santiago, Monmouth County Prosecutor, attorney; Monica do Outeiro, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from an order denying his petition for post-conviction relief (PCR) based on ineffective assistance of counsel and denial of an evidentiary hearing. We affirm for the reasons expressed by Judge Guadagno in his thorough and well-reasoned opinion. We add the following comments.

Defendant was convicted of second-degree sexual assault, N.J.S.A. 2C:14-2(c)(1), of a family member and directly appealed evidentiary issues relating to whether the sex was consensual, and the victim was involuntarily drugged. The conviction was affirmed on appeal and the Supreme Court denied certification. Defendant now claims ineffective assistance of counsel, alleging trial counsel failed to have defendant's parents testify, seek witnesses at the bar where defendant and the victim had been drinking on the night of the event, seek the victim's therapy notes to determine whether she had discussed the matter, and call an expert witness to testify as to whether the victim was in fact drugged.

In denying the petition, Judge Guadagno noted defendant did not establish a prima facie case of ineffective assistance of counsel, pursuant to Strickland v. Washington, 466 U.S. 668, 689-690 (1984), to be entitled to an evidentiary hearing. State v. Preciose, 129 N.J. 451, 462 (1992). Specifically, Judge

Guadagno noted defendant successfully moved in limine to exclude all testimony to suggest the victim had been drugged.

The judge also noted defendant's parents were not present and did not witness any of the incidents and the allegations about exculpatory witnesses was tantamount to insufficient speculation. See State v. Bey, 161 N.J. 233, 255 (1999).

Defendant does not know if the victim's mental health records exist but asserts counsel should have investigated because they may have been able to impeach the victim as to the non-consensual nature of the sex or the allegation of being drugged. As aptly stated by Judge Guadagno, “[m]ere speculation that some exculpatory material may have been withheld is unlikely to establish good cause for a discovery request on collateral review.” Strickler v. Greene, 527 U.S. 263, 286 (1999); see also State v. Marshall, 148 N.J. 89, 157 (1997). Finally, merely bringing a petition for PCR does not necessitate an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Defendant has not presented a prima facie claim of ineffective assistance of counsel. Preciose, 129 N.J. at 462.

We affirm substantially for the reasons expressed by Judge Guadagno in his thorough statement of reasons.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION