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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-0432-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ABRAHAM ROMAN, a/k/a  
JOSE RODRIGUEZ, and  
TORRES ABRAHAM,

Defendant-Appellant.

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Submitted March 28, 2023 – Decided July 24, 2023

Before Judges Messano, Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law  
Division, Union County, Indictment No. 13-07-0651.

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

William A. Daniel, Union County Prosecutor, attorney  
for respondent (Joseph M. Nielsen, Assistant  
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Abraham Roman appeals from the July 28, 2021 order that denied his petition for post-conviction relief (PCR). A jury had convicted defendant of the lesser-included offense of reckless manslaughter and theft. State v. Abraham Roman, No. A-5498-15 (App. Div. June 12, 2018) (slip op. at 1–2). Essentially, defendant and another man were involved in a fight with the victim, Victor Vasquez, the night before Thanksgiving 2012. Id. at 2–3. Vasquez's family, who urged him to seek medical attention, and his supervisor at work, saw him over the ensuing two weeks, noticed his physical condition and heard his complaints of dizziness and pain in his neck, back and head. Id. at 3–4. On December 11, 2012, Vasquez was found dead in his apartment. Id. at 4. Defendant gave two statements to law enforcement in which he admitted punching and possibly kicking Vasquez during the altercation. Id. at 5–6.

The following trial evidence was critical to defendant's PCR claims before the Law Division and now reiterated before us:

Junaid Shaikh, M.D., the Union County medical examiner, performed an autopsy. Vasquez had contusions on his forehead, abrasions and contusions on his knees, and abrasions on his right hand. The abrasions had started to heal, indicating that Vasquez did not suffer the injuries immediately prior to death. The injury to his forehead "was sustained some time ago."

Vasquez had a subdural hemorrhage on the right side and base of his brain and bruising on the right lobe of his brain. The doctor also saw a fresh hemorrhage, which could have been caused in one of two ways; either a new injury or a "re-bleed." Shaikh believed, to a reasonable degree of medical certainty, that Vasquez suffered a re-bleed of the initial hemorrhage because there was no evidence of another serious injury. The doctor explained that a rebleed was not unusual if the individual did not seek medical attention after the initial injury, and concluded the cause of Vasquez's death was "subdural hemorrhage due to blunt head trauma."

Shaikh also testified that based on "decompositional changes" to the body, he believed that Vasquez had died two or three days before his body was found. He testified that Vasquez died as a result of injuries sustained approximately fourteen days prior to his death, "plus or minus[] a couple of days."

Defendant did not testify or call any witnesses. Defense counsel had retained an expert to counter Shaikh, but the expert was "not prepared to go to trial," and defendant, in consultation with counsel, chose not to call the expert.

[Id. at 6–7 (alteration in original) (emphasis added).]

Following trial, the judge sentenced defendant to the minimum five-year term of imprisonment on the manslaughter conviction, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and a concurrent three-year term on the theft conviction. Id. at 1–2. We affirmed those convictions and the sentence imposed

on direct appeal, id. at 2, and the Supreme Court denied defendant's petition for certification. 236 N.J. 101 (2018).

Defendant filed a timely PCR petition alleging the ineffective assistance of trial counsel (IAC). Appointed PCR counsel filed a brief in which he argued that trial counsel was ineffective for failing to retain an expert to specifically challenge the State's proofs regarding causation vis-à-vis the victim's death, and appellate counsel was ineffective for failing to raise the issue on direct appeal. In support, counsel supplied the October 2019 report of Dr. Mark L. Taff, a forensic pathologist.

In a cogent written decision, the PCR judge, Candido Rodriguez, Jr., who was not the trial judge, reasoned that defendant presented a prima facie IAC claim regarding trial counsel. Citing Dr. Taff's report, the judge noted that "had the [d]efense utilized independent medical examination of the case and/or called an expert witness, testimony on the issue of causation could have been significantly more favorable to the defense." Judge Rodriguez, however, also determined that defendant had failed to present a prima facie IAC claim as to appellate counsel.

At the evidentiary hearing, the judge heard the testimony of Dr. Taff, trial counsel and defendant. In another comprehensive written decision, which we

discuss in more detail below, Judge Rodriguez concluded defendant had failed to demonstrate trial counsel rendered deficient performance and denied defendant's petition. The judge entered a conforming order on July 28, 2021, and this appeal followed.

Before us, defendant reiterates his IAC claim against trial counsel, contending counsel's delay in retaining a forensic expert to challenge the State's proofs on causation reflected deficient performance that affected the outcome of the trial.<sup>1</sup> We have considered the arguments in light of the record and applicable legal standards and affirm substantially for the reasons expressed by Judge Rodriguez.

## I.

To succeed on an IAC claim, a defendant must satisfy both prongs of the test enunciated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and applied by our Court to similar claims brought under the New Jersey Constitution in State v. Fritz, 105 N.J. 42, 58 (1987). First, a defendant must

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<sup>1</sup> Defendant's brief also argues in cursory fashion that appellate counsel's performance was deficient. However, defendant acknowledges that "the errors complained of herein could not have been properly raised on direct appeal because they require information outside of the appellate record." We reject any IAC claim regarding appellate counsel's performance without further discussion. R. 2:11-3(e)(2).

show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Fritz, 105 N.J. at 52 (quoting Strickland, 466 U.S. at 687). "To satisfy prong one, [a defendant] ha[s] to '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)).

Second, a defendant must show a "reasonable probability" that the deficient performance affected the outcome. Fritz, 105 N.J. at 52. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." State v. Pierre, 223 N.J. 560, 583 (2015) (quoting Strickland, 466 U.S. at 694; Fritz, 105 N.J. at 52). "That 'is an exacting standard.'" State v. Gideon, 244 N.J. 538, 551 (2021) (quoting State v. Allegro, 193 N.J. 352, 367 (2008)). "Important to the prejudice analysis is the strength of the evidence that was before that fact-finder at trial." Pierre, 223 N.J. at 583. Judge Rodriguez understood and appropriately applied these standards.

When the judge conducts an evidentiary hearing, "we will defer to the PCR court's factual findings, given its opportunity to hear live witness testimony, and 'we will uphold the PCR court's findings that are supported by

sufficient credible evidence in the record.'" Gideon, 244 N.J. at 551 (quoting Nash, 212 N.J. at 540). "But, we review de novo the PCR court's conclusions of law." State v. L.G.-M., 462 N.J. Super. 357, 365 (App. Div. 2020) (citing Nash, 212 N.J. at 541).

## II.

At the evidentiary hearing, trial counsel, an assistant public defender in the Union Region at the time of trial but since retired, testified he had been assigned to represent defendant in 2013. He spoke with defendant about hiring a defense expert medical examiner, which would delay the trial, or going to trial sooner without an expert. Counsel said defendant "chose to go to trial as soon as possible."

Nonetheless, two weeks after the first trial call in March 2015, counsel completed a request for approval to retain an expert. He called "everyone" on a list of approved experts from the Office of the Public Defender, and only one, Dr. Zhongxue Hua, was willing to take the case. When asked why after speaking with Dr. Hua "two or three times" he did not call Dr. Hua as a witness at trial, counsel explained there were "a number of factors" in reaching the decision: (1) he did not think Dr. Hua would "be the best witness"; (2) defendant "did not want to delay the trial one bit further"; and (3) he "had interviewed the State's

medical examiner and felt that the information [he] received . . . would work in [the defense's] favor."

Defendant testified he had spoken with trial counsel about retaining an expert from the case's inception and had sent counsel a letter on February 23, 2015, referencing Dr. Hua. Counsel informed defendant that going forward with Dr. Hua could delay the start of trial between twelve and eighteen months because of the additional time needed for Dr. Hua's formal review of the evidence. Defendant also said counsel had expressed concerns about calling Dr. Hua as a witness because of his heavy accent and the difficulty jurors would have understanding him. Defendant explained he was worried about the additional delay because counsel was set to retire in three months, defendant had already been in custody for more than twenty-four months, and he feared counsel's estimated timeline before the case was ready for trial could be longer. Ultimately, defendant made the decision to go to trial without an expert.

Dr. Taff criticized Dr. Shaikh's opinions generally, saying they were the product of "inferior preparation." He noted that Dr. Shaikh had failed to adequately test Vasquez's subdural hematoma until shortly before trial and only after he spoke with the prosecutor's investigators. Dr. Taff said, "[T]here was a rush to judgment with the death certificate" listing Vasquez's cause of death as



a homicide. Dr. Taff recognized, however, that when the medical examiner testified, "He didn't know if [Vasquez's death] was [the result of] a fall or an assault." Dr. Taff found "problems with [Dr. Shaikh's] interpretation and performance in this case." Nevertheless, Dr. Taff opined that a rebleed of Vasquez's pre-existing "subacute or chronic subdural hematoma of undetermined origin and undetermined time of onset" was the likely cause of his death. In other words, the rebleed may or may not have been related to the assault, or the assault may have exaggerated an existing subdural hematoma that Vasquez had without symptoms for some undetermined time.

In his written decision that followed the evidentiary hearing, Judge Rodriguez characterized defendant's IAC claims as twofold: counsel's delay in hiring an expert witness forced defendant to go to trial without one; and counsel's failure to properly prepare to adequately cross-examine Dr. Shaikh through consultation with a defense expert. Judge Rodriguez concluded "both arguments . . . fail as they do not satisfy either prong of the Strickland/Fritz test."

Judge Rodriguez found that counsel's statements regarding the delay occasioned if Dr. Hua were to be used as a witness at trial "did not mislead [d]efendant." The judge referenced an April 2015 note from Dr. Hua requesting

additional "reports and documents for his review." Judge Rodriguez rejected defendant's claim that "he felt he really did not have a choice because he had already been incarcerated for about two[-]and[-one-]half years and did not desire to remain as such for possibly another year or so." The judge found instead that "the choice was ultimately [defendant's] to proceed to trial without the use of Dr. Hua's testimony."

Judge Rodriguez credited trial counsel's testimony regarding his reasons for not using Dr. Hua as a witness. See State v. Arthur, 184 N.J. 307, 320 (2005) (noting that deciding which witnesses to call at trial is "one of the most difficult strategic decisions that any trial attorney must confront[,] and "a court's review of such a decision should be 'highly deferential,'" id. at 321 (quoting Strickland, 466 U.S. at 693)). In particular, Judge Rodriguez considered trial counsel's testimony that "based on the information received from Dr. Hua, . . . [counsel] could effectively cross-examine the State's expert witness." The judge concluded "trial transcripts and the examination and testimony of . . . Dr. Taff confirm[ed]" trial counsel's belief.

Supported by extensive citation to the trial transcript, Judge Rodriguez found that Dr. Taff's testimony at the hearing "essentially confirmed the same findings as Dr. Shaikh . . . in his cross examination during trial." The judge

concluded defendant had "failed to show that trial counsel was ineffective both in preparing for Dr. Shaikh's cross-examination or that retaining an independent expert would have revealed materially different information that would affect the outcome of the trial." See State v. Marshall, 148 N.J. 89, 211 (1997) (rejecting IAC claim "relating to the cross-examination of witnesses . . . and counsel's failure to retain experts to rebut their testimony" because the defendant failed to show "independent experts would have reached materially different conclusions").

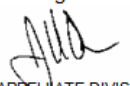
Finally, Judge Rodriguez cited extensively to trial counsel's summation, in which he stressed the difference between aggravated manslaughter, for which defendant was indicted, and reckless manslaughter, for which he was found guilty. Judge Rodriguez concluded: "There is nothing before the [c]ourt that suggests trial counsel fell below an objective standard of reasonableness such that he did not meet the constitutional threshold for effectiveness" (citing Nash, 212 N.J. at 543). We agree.

To the extent we have failed to discuss other contentions raised by defendant, 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