

# RECORD IMPOUNDED

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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0874-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LONNIE E. SWARNES,  
a/k/a SILVERBACK,

Defendant-Appellant.

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Submitted April 26, 2023 – Decided June 21, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law  
Division, Sussex County, Indictment No. 11-08-0298.

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

Annmarie Taggart, Acting Sussex County Prosecutor,  
attorney for respondent (Shaina Brenner, Special  
Deputy Attorney General/Acting Assistant Prosecutor,  
of counsel and on the brief).

PER CURIAM

Defendant Lonnie E. Swarnes appeals from an order denying his post-conviction relief (PCR) petition without an evidentiary hearing. Having considered the record and the parties' arguments, we are convinced the court correctly determined defendant failed to sustain his burden of establishing any prima facie claims of ineffective assistance of counsel and therefore properly denied the petition without an evidentiary hearing. Accordingly, we affirm.

I.

A grand jury returned an indictment charging defendant with sixteen offenses, including conspiracy to commit murder, conspiracy to commit kidnapping, kidnapping, conspiracy to commit robbery, robbery, attempted theft by extortion, theft by extortion, various possessory weapons offenses, and other offenses. The charges are founded on defendant's participation in a plan to kidnap a designated individual in New Jersey for the purpose of gaining access to the individual's financial accounts for members of the "Hells Angels Club" in Missouri.

While armed with a firearm, defendant traveled with his co-defendants from Missouri to New Jersey; assaulted an individual who had the same name as the plan's intended target; forced that individual into a vehicle against his will; and transported him to Missouri. When defendant and his co-defendants

learned they kidnapped the wrong individual, they released him and were then arrested.

Defendant's trial counsel moved to compel the production of records and information from the Missouri Highway Patrol (MHP) and other Missouri law enforcement agencies. The motion was based on defendant's claim he had served as a confidential informant for the MHP and the records and information would show he participated in the charged offenses in his role, or as a result of his role, as a confidential informant who had infiltrated the Hells Angels Club and was providing information concerning its alleged criminal activities. The court granted defendant's motion and ordered various Missouri law enforcement agencies, including the MHP, to turn over specified records and information concerning defendant to the court, the State, and defendant.

Three months later, on October 6, 2015, defendant pleaded guilty to first-degree kidnapping and second-degree attempted theft by extortion pursuant to a plea agreement with the State. The State agreed to dismiss the remaining charges and recommend a sentence not to exceed twenty-five years subject to the requirements of the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The plea agreement included a provision stating, "[t]he court has indicated it will consider and take into account evidence defendant seeks to present regarding his

cooperation with law enforcement as may be presented at sentencing, including any statement of . . . defendant[,] in fashioning an appropriate sentence."

On January 6, 2016, at the conclusion of a sentencing proceeding that took place on three separate days, the court imposed a fifteen-year sentence subject to NERA on the first-degree kidnapping charge and a consecutive ten-year sentence on the second-degree attempted theft by extortion charge. The court entered defendant's judgment of conviction that day.

Defendant subsequently requested his assigned counsel "appeal [his] entire case[,] including the sentence received." We heard defendant's appeal on a sentencing calendar pursuant to Rule 2:9-11 and affirmed defendant's sentence. State v. Swarnes, No. A-2187-15 (App. Div. May 4, 2016). We found the sentence was not "manifestly excessive or unduly punitive and [did] not constitute an abuse of [the court's] discretion." Ibid.

In a verified PCR petition dated December 3, 2017, defendant claimed he was denied due process during the criminal proceeding because, following the court's order directing the production of information and records from various Missouri law enforcement agencies concerning his service as a confidential informant, the Missouri Attorney General "covered up" evidence defendant

claimed is exculpatory in his case.<sup>1</sup> Following the assignment of counsel on the PCR petition, defendant submitted two supplemental certifications supporting his claims.

In his first certification, defendant asserted trial counsel was ineffective because the Missouri law enforcement agencies "kept" "a lot of exculpatory evidence . . . from" counsel and the prosecution. More particularly, defendant asserted that in 2020, five years after entry of his 2015 plea, he was transferred from custody in New Jersey to custody in Missouri. He claimed that in 2020 he discovered the Missouri Attorney General had not turned over to trial counsel and the State computer and phone records defendant claimed were "exculpatory" as required by the trial court's order compelling production of such information.

Defendant further claimed trial counsel knew the records had been "covered up and he made no objections and just went along with the flow of things."<sup>2</sup> Defendant also asserted the Missouri Attorney General did not turn over the records because he previously represented one of defendant's co-

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<sup>1</sup> The record on appeal does not include the filing date of defendant's PCR petition.

<sup>2</sup> Defendant's certification does not support this conclusory assertion with any competent evidence establishing its truth.

defendants and wanted to obtain a dismissal of charges in Missouri against the co-defendant.

In his certification, defendant also claimed trial counsel did not object to the State's reliance at sentencing on statements that "had been suppressed."<sup>3</sup> Defendant further averred trial counsel did not adequately argue at sentencing in support of mitigating factor four, N.J.S.A. 2C:44-1(b)(4) — "[t]here were substantial grounds tending to excuse or justify [his] conduct" — because counsel failed to demonstrate defendant was acting as a confidential informant for MHP at the time he committed the offenses to which he pleaded.

Defendant also claimed appellate counsel provided ineffective assistance by not "look[ing] into any of [defendant's] issues" and by failing to have contact with defendant "to make use of [his] knowledge of the matter."

In his second certification, defendant disputed factual assertions in the State's brief in opposition to the PCR petition and challenged the State's version of some of the facts concerning the actions of individuals in Missouri. Defendant also claimed "the state [of Missouri]" suppressed the purported exculpatory evidence on certain computers by failing to maintain the computers' hard drives.

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<sup>3</sup> Defendant's certification does not identify the purported statements.

Following argument on the petition, the court rendered a decision from the bench. The court rejected defendant's claim trial counsel was ineffective by failing to obtain the allegedly exculpatory evidence from Missouri concerning his involvement as a confidential informant because his assertion the evidence is exculpatory was supported only by conclusory assertions. The court noted defendant argued the purported exculpatory evidence he claims was wrongfully withheld by the Missouri Attorney General would establish he had served as a confidential informant for the MHP. The court found this argument unpersuasive because other evidence provided by Missouri law enforcement agencies in response to the trial court's discovery order established defendant served as a confidential informant for the MHP.

The court further found the evidence showed defendant's involvement as a confidential informant ended prior to his commission of the crimes in this State. The court found defendant's commission of the crimes in New Jersey was outside the scope of his duties as confidential informant because it violated his agreement with the MHP. The court noted defendant's agreement with the MHP prohibited him from engaging in any criminal activity while serving in his role as a confidential informant, and defendant admitted to kidnapping and extorting money from the victim in New Jersey. The court concluded defendant's

admitted actions breached his agreement with the MHP and therefore trial counsel's purported failure to obtain other information establishing his status as a confidential informant did not result in any prejudice to his defense.

The court concluded defendant failed to present evidence establishing trial counsel's performance was deficient by failing to obtain the purportedly exculpatory evidence or that defendant suffered any prejudice from the alleged failure. The court therefore found defendant was not entitled to an evidentiary hearing on his claim trial counsel was ineffective. The court did not address defendant's claim appellate counsel was ineffective by limiting the arguments on appeal to those related to sentencing.

The court entered an order denying defendant's PCR petition without an evidentiary hearing. In an annexed written statement of reasons, the court amplified its findings, expressly rejecting defendant's claims trial counsel was ineffective by failing to obtain exculpatory evidence establishing defendant's association with the MHP. The court noted the State did not dispute that association. The court also explained the association was not exculpatory because defendant's agreement with the MHP prohibited him from possessing a firearm and committing crimes during his service as a confidential informant,



and defendant violated both prohibitions during his admitted commission of the crimes to which he pleaded guilty.

The court further found defendant's "claims are all too vague and speculative to establish a prima faci[e] case of ineffective assistance of counsel or that any Brady violation occurred or would in any way exculpate[] him."<sup>4</sup> The court found defendant failed to present any evidence counsel's performance at sentencing was constitutionally deficient. The court's written statement of reasons did not address defendant's claim appellate counsel was ineffective.

Defendant appealed from the court's order. He presents the following arguments for our consideration:

#### POINT I

THIS MATTER MUST BE REMANDED FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW ON SOME OF [DEFENDANT'S] INEFFECTIVENESS CLAIMS THAT WERE NEVER ADDRESSED BY THE PCR COURT.

#### POINT II

[DEFENDANT] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIMS THAT

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<sup>4</sup> Brady v. Maryland, 373 U.S. 83 (1963). A Brady violation occurs when the State suppresses "evidence favorable to an accused . . . where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." State v. Brown, 236 N.J. 497, 518 (2019) (quoting Brady, 373 U.S. at 87).

HIS TRIAL ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO INVESTIGATE AND PROVIDE DISCOVERY, THEREBY PRESSURING HIM INTO AN UNKNOWING GUILTY PLEA, AND HIS APPELLATE ATTORNEY RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO FILE A MERITS BRIEF ON DIRECT APPEAL.

## II.

We review the legal conclusions of a PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004) (citing Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995)). The de novo standard of review also applies to mixed questions of fact and law. Id. at 420. Where, as here, an evidentiary hearing has not been held, it is within our authority "to conduct a de novo review of both the factual findings and legal conclusions of the PCR court." Id. at 421.

We consider defendant's ineffective-assistance-of-counsel claims under the two-part standard established by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984), and later adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987), as applicable under the New Jersey Constitution. Under the first prong of the Strickland standard, a petitioner must show counsel's performance was deficient. 466 U.S. at 687. A petitioner must demonstrate counsel's handling of the matter "fell below an

objective standard of reasonableness" and "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687-88.

Under Strickland's second prong, a defendant must "affirmatively prove" "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Strickland, 466 U.S. at 693-94). A petitioner must demonstrate "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland, 466 U.S. at 687. "The error committed must be so serious as to undermine the court's confidence in the jury's verdict or result reached." State v. Chew, 179 N.J. 186, 204 (2004) (citing Strickland, 466 U.S. at 694).

To sustain the burden imposed under the Strickland standard, a defendant "must do more than make bald assertions that [they were] denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). "[A] defendant must allege specific facts and evidence supporting [their] allegations." State v. Porter, 216 N.J. 343, 355 (2013). The facts upon which a PCR claim is based must be "supported by affidavits or certifications based upon

the personal knowledge of the affiant or the person making the certification." Cummings, 321 N.J. Super. at 170.

"The right to effective assistance includes the right to the effective assistance of appellate counsel on direct appeal." State v. O'Neil, 219 N.J. 598, 610-11 (2014); accord State v. Guzman, 313 N.J. Super. 363, 374 (App. Div. 1998); see also State v. Morrison, 215 N.J. Super. 540, 545 (App. Div. 1987) (citing Evitts v. Lucey, 469 U.S. 387 (1985)) ("[D]ue process guarantees a criminal defendant effective assistance of counsel on a first appeal as of right"). We apply the Strickland standard to determine an ineffective assistance of appellate counsel claim. Harris, 181 N.J. at 518; Morrison, 215 N.J. Super. at 546.

Our Supreme Court has explained that "[a]lthough a demonstration of prejudice constitutes the second part of the Strickland analysis, courts are permitted leeway to choose to examine first whether a defendant has been prejudiced, and if not, to dismiss the claim without determining whether counsel's performance was constitutionally deficient." State v. Gaitan, 209 N.J. 339, 350 (2012) (internal citation omitted). We apply that principle in our consideration of defendant's claim the PCR court erred by rejecting his claim

trial counsel was ineffective by failing to pursue and obtain the purported exculpatory evidence.

Defendant's various claims his trial counsel was ineffective are founded on a singular premise. He argues Missouri law enforcement agencies possessed "exculpatory evidence" that would have provided leverage for a better plea offer and would have otherwise supported a reduced sentence. He claims trial counsel's performance was deficient because he did not pursue and obtain the exculpatory evidence prior to allowing defendant to plead guilty, counsel failed to move to withdraw defendant's plea after some evidence from Missouri was obtained following his plea, and counsel was ineffective, at least in part, by failing to obtain the exculpatory evidence and argue it should mitigate his sentence.

As described by defendant, the exculpatory evidence would have shown that when he traveled to New Jersey, kidnapped at gunpoint and assaulted an individual, and transported the individual to Missouri against his will, defendant was acting in his capacity as a confidential informant for the MHP. Defendant also suggests that because his role as a confidential informant resulted in his involvement with allegedly violent individuals, his participation in the kidnapping, assault, and robbery of the victim was the product of duress — that

is, his fear of violent retribution if he did not participate in the crime at the request of the alleged criminals with whom he was in contact solely in his role as a confidential informant.

Defendant's argument on appeal that the purported exculpatory evidence would support a duress claim, either as a defense to the charges or in mitigation of his sentence, is not supported by competent evidence. Defendant's initial verified petition and two supplemental certifications do not include any facts supporting the duress-based claim, and the PCR petition and certifications do not even assert defendant was under duress or that the purported exculpatory evidence would establish he was. As a result, the PCR record is bereft of competent evidence supporting the claim and we therefore reject it. See Cummings, 321 N.J. Super. at 170 (explaining a PCR petitioner must support factual assertions with affidavits or certifications based on personal knowledge); see also R. 3:22-10(c) (providing "[a]ny factual assertion that provides the predicate for a [PCR] claim . . . must be made by an affidavit or certification pursuant to Rule 1:4-4 and based upon personal knowledge of the declarant").

We note only that the purported duress claim was made before the trial court, and presented in the record before the PCR court, exclusively in trial counsel's detailed sentencing memorandum to the sentencing court, defendant's

unsworn written submission to the sentencing court, and trial counsel's July 8, 2021 certification to the PCR court. None of these documents constitute competent evidence establishing a factual basis for a PCR claim. Counsel's certification does not constitute competent evidence because it is not based on counsel's personal knowledge, R. 3:22-10(c), and the arguments of counsel in the submission to the sentencing court do not otherwise constitute competent evidence, see Baidya v. Oldman, 261 N.J. Super. 259, 265 (App. Div. 1993) (finding unsworn statements of counsel in briefs and oral arguments are not competent evidence establishing facts). Defendant's written submission to the sentencing court is not competent evidence because it is not in the form of an affidavit or certification. R. 3:22-10(c).

We recognize we must accept defendant's version of the events as true for the purpose of determining whether he established a prima facie ineffective-assistance-of-counsel claim, State v. Preciose, 129 N.J. 451, 462-63 (1992), but that rule applies only to facts supported by competent evidence, R. 3:22-10(c). As noted, defendant's claim he committed the offenses to which he pleaded guilty as the result of some purported duress is supported solely by the unsworn arguments of his counsel and his unsworn and uncertified submission to the sentencing court. Those assertions do not establish facts cognizable in the

analysis of a PCR claim and they therefore do not clear the "hurdle" presented by the requirements of Rule 3:22-10(c). State v. Jones, 219 N.J. 298, 312 (2014).

Thus, missing from defendant's submission to the PCR court is any evidence establishing a reasonable probability that the purported exculpatory evidence trial counsel did not obtain would have established a defense to the serious crimes he committed or supported a mitigation of his sentence. Defendant does not cite to any legal authority for his apparent belief an individual acting as a confidential informant has either immunity for, or a defense to, the crimes to which he pleaded — kidnapping and attempted extortion — or any of the other numerous serious offenses charged in the indictment. In other words, defendant's oft-repeated claim there is evidence in Missouri that will "exculpate" him in some manner from his admitted participation in very serious crimes in New Jersey constitutes nothing more than a conclusory assertion that does not support a prima facie PCR claim. See *ibid.*; Cummings, 321 N.J. Super. at 170.

Moreover, the evidence obtained from Missouri undermines defendant's conclusory assertions. Defendant's agreement with the MHP to serve as a confidential informant expressly prohibited him from carrying a firearm and



violating any laws during his role as a confidential informant. Yet, in clear violation of those contractual prohibitions, defendant traveled to New Jersey, kidnapped and attempted to extort the victim, and transported him against his will to Missouri. Ignoring those facts, and based on nothing more than conclusory assertions, defendant illogically argues that allegedly missing records showing he was a confidential informant for the MHP would have been exculpatory in some undefined manner such that the result of his criminal proceeding, including his sentence, would have been different.

In our view, the court correctly determined defendant failed to satisfy Strickland's second prong on his claim trial counsel was ineffective by failing to obtain the allegedly exculpatory evidence. Defendant simply makes no showing — he presents no competent evidence — establishing there is a reasonable probability that but for counsel's claimed error, the result of the criminal proceeding would have been different.<sup>5</sup> Strickland, 466 U.S. at 693-

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<sup>5</sup> Defendant's failure to sustain his burden under Strickland's second prong renders it unnecessary to determine whether trial "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" under Strickland's first prong. 466 U.S. at 687-88; see also Gaitan, 209 N.J. at 350. We observe, however, that counsel's performance is not constitutionally deficient by failing to investigate or pursue evidence where there is no showing the evidence would have a bearing on the disposition of the matter. See Fritz, 105 N.J. at 64 (noting, in reference to a PCR claim counsel

94. For that reason alone, we affirm the court's order denying defendant's PCR claim trial counsel was ineffective by failing to obtain purported exculpatory information from Missouri. See Gaitan, 209 N.J. at 350.

Defendant also generally asserts trial counsel's alleged error in failing to obtain the information and records from Missouri caused him to plead guilty. We reject the claim for the reasons we have explained. That is, the argument is based on the conclusory assertion the documents and information would have in some manner either supported a defense to the numerous charges, would have altered the State's plea offer, or would have favorably affected his sentence. Again, those assertions are conclusory and speculative and therefore do not provide the requisite support for an ineffective-assistance-of-counsel claim.

Moreover, in the context of a PCR petition challenging a guilty plea based on the ineffective assistance of counsel, Strickland's second prong is satisfied when the defendant demonstrates a "reasonable probability that, but for

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was ineffective by failing to investigate a defendant's case, "purely speculative deficiencies in representation are insufficient to justify reversal"); State v. Russo, 333 N.J. Super. 119 (App. Div. 2000) (emphasis added) (citing United States v. Baynes, 687 F.2d 659, 668 (3d Cir. 1982)) ("a defendant is entitled to a complete and vigorous defense, requiring counsel . . . to investigate all substantial defenses available to a defendant.").

counsel's errors, [the defendant] would not have [pleaded] guilty and would have insisted on going to trial." State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (first alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)); see also State v. McDonald, 211 N.J. 4, 30 (2012). Additionally, the defendant must establish that a "decision to reject the plea bargain would have been rational under the circumstances." State v. Maldon, 422 N.J. Super. 475, 486 (App. Div. 2011) (quoting Padilla v. Kentucky, 559 U.S. 356, 372 (2010)).

Defendant presented neither competent evidence nor argument to the PCR court establishing he sustained that burden here. As such, we affirm the court's rejection of defendant's claim trial counsel was constitutionally ineffective in connection with his representation of defendant concerning defendant's plea.

Similarly, we affirm the court's denial of defendant's claim he is entitled to PCR because after trial counsel obtained information from Missouri law enforcement agencies after defendant pleaded, counsel failed to move to withdraw defendant's plea and failed to present the alleged exculpatory evidence from Missouri at sentencing. The claims fail because, as we have explained, defendant makes no showing there is a reasonable probability that had counsel obtained the information or records and presented in support of a request to withdraw defendant's plea, or presented the information or records at sentencing,

the results of the proceeding would have been different. See Gideon, 244 N.J. at 551 (quoting Strickland, 466 U.S. at 693-94).

Additionally, at sentencing counsel presented the information and records that were obtained from Missouri and established defendant's service as a confidential informant for the MHP. Counsel relied on the information and records in the detailed and thorough written and oral arguments he presented in mitigation of defendant's sentence.

Contrary to defendant's claim, trial counsel argued at sentencing the records and information obtained from Missouri established defendant's role as a confidential informant for the MHP and supported a finding of mitigating factor four, that there are substantial grounds tending to excuse or justify his conduct, N.J.S.A. 2C:44-1(b)(4). Counsel expressly relied on information gleaned from records produced by and obtained from Missouri to argue defendant was pressured into his participation into committing the crimes as a result of his involvement with the individuals with whom he dealt exclusively in his role as a confidential informant.

Defendant therefore was not prejudiced by any claimed failure of trial counsel to obtain additional information from Missouri establishing defendant's service as a confidential informant. That is because the evidence his counsel

did obtain and present otherwise established that was the case. Defendant also made no showing based on competent evidence presented to the PCR court that the additional claimed exculpatory evidence he asserted trial counsel failed to obtain would have made any difference in the court's sentencing decision. Thus, defendant failed to satisfy Strickland's second prong on his claim counsel was ineffective at sentencing and, for that reason, the PCR court correctly rejected the claim. See Gaitan, 209 N.J. at 350.

For those reasons, we affirm the PCR court's order denying defendant's PCR claims he was denied the effective assistance of trial counsel. Because defendant failed to present competent evidence satisfying the second prong of the Strickland standard as to each of those claims, we affirm the court's order rejecting them. See Strickland, 466 U.S. at 700 (explaining a failure to satisfy either prong of the Strickland standard requires the denial of a PCR petition).

We also affirm the court's order denying defendant's claim appellate counsel was ineffective by failing to raise on appeal issues beyond those related to his sentencing. We recognize defendant requested an appeal of his "whole case" and appellate counsel only challenged his sentence. However, an attorney's performance is not deficient by failing to assert meritless arguments. State v. Worlock, 117 N.J. 596, 625 (1990). Defendant makes no showing there

were any meritorious arguments appellate counsel failed to make on his behalf and therefore failed to demonstrate that appellate counsel's performance was deficient or that he suffered any prejudice under Strickland's second prong as a result of any purported error by his appellate counsel.

Defendant also claims the PCR court erred by denying his petition without an evidentiary hearing. A PCR petitioner is not automatically entitled to an evidentiary hearing. Porter, 216 N.J. at 355. A court should conduct an evidentiary hearing on a PCR petition only if the petitioner establishes a prima facie case in support of PCR, material issues of disputed fact cannot be resolved by reference to the existing record, and an evidentiary hearing is necessary to resolve the claims for relief. Id. at 354 (citing R. 3:22-10(b)); see also Preciose, 129 N.J. at 462 (a PCR court should grant an evidentiary hearing "if a defendant has presented a prima facie claim in support of [PCR]."). Defendant failed to establish a prima facie claim of ineffective assistance of counsel, and therefore the PCR court did not err by finding an evidentiary hearing was not warranted.

We agree with defendant's claim the court failed to make adequate findings supporting its denial of the PCR petition. A trial court is required to "state separately its findings of fact and conclusions of law" in its disposition of a PCR petition. R. 3:22-11. Moreover, Rule 1:7-4(a) requires that a court render

a "decision, either written or oral, find[ing] the facts and stat[ing] its conclusions of law thereon in all actions . . . decided by a written order that is appealable as of right," including a PCR petition. A failure to make appropriate findings of fact and conclusions of law "constitutes a disservice to the litigants, the attorneys[,] and the appellate court." Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adj. of Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976)).

We are not persuaded the court's failure to make the required findings as to each of defendant's claims requires a remand. Because we conduct a de novo review of a court's denial of a PCR petition without an evidentiary hearing, Harris, 181 N.J. at 419, we have exercised original jurisdiction to determine the issues unaddressed directly by the PCR court "to avoid unnecessary further litigation" and because "the record is adequate to terminate the dispute and no further fact[ ]finding" is required and "a remand would be pointless because the issue to be decided is one of law . . . ." Vas v. Roberts, 418 N.J. Super. 509, 523-24 (App. Div. 2011); see also R. 2:10-5. Our exercise of original jurisdiction is also warranted "as a way to achieve the judicial system's goals of efficiency, finality, and fairness." Price v. Himeji, LLC, 214 N.J. 263, 283 (2013).

To the extent we have not expressly addressed any other arguments made on defendant's behalf, we have determined they are without 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