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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-1585-21**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

EDWIN ESTRADA,

Defendant-Respondent.

Submitted September 11, 2023 – Decided September 20, 2023

Before Judges Sabatino and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 11-03-0444.

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

Mark Musella, Bergen County Prosecutor, attorney for respondent (William P. Miller, Assistant Prosecutor, of counsel and on the brief; Catherine A. Foddai, Legal Assistant, on the brief).

PER CURIAM

Defendant Edwin Estrada appeals the trial court's November 19, 2021 order denying his petition for post-conviction relief (PCR). Defendant, who was convicted of aggravated manslaughter, claims his trial attorney failed to provide him with effective assistance of counsel at sentencing. We affirm, substantially for the reasons set forth in the PCR judge's written decision accompanying his order.

The background of this case already been stated in this court's previous opinions and need not be repeated in detail here. In summary, the State's proofs showed that in July 2010 defendant, who was then age eighteen, killed an eighty-eight-year-old man by repeatedly striking him with a metal pot during a home invasion. An ensuing indictment charged defendant with murder and other offenses. The State and defendant's counsel negotiated a plea agreement for defendant to plead guilty to a reduced charge of aggravated manslaughter, with the State recommending a twenty-seven-year custodial sentence subject to a parole disqualifier under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

The trial court vacated the plea agreement and ordered defendant to stand trial. At trial, a jury found defendant guilty of murder and the other counts of

the indictment. However, this court reversed the trial court's plea nullification, and eventually defendant was sentenced on the manslaughter conviction.

The trial court imposed a twenty-seven-year NERA sentence, consistent with the terms of the plea agreement. Defendant moved for reconsideration, prompting the trial court to add mitigating factor six (compensation to the victim/community service), N.J.S.A. 2C:44-1(b)(6), to the sentencing analysis. Notwithstanding that added factor, the trial court did not reduce the twenty-seven-year sentence.

Defendant appealed the sentence. This court's Excessive Sentencing Oral Argument panel affirmed it by order in January 2020.

Defendant then filed a PCR petition, alleging his trial counsel was ineffective in the sentencing process in various respects and that his sentence was illegal because the non-statutory mitigating factor of youth was not considered. The PCR judge found defendant's claims, although timely filed, lacked merit and that no evidentiary hearing was warranted.

In his present appeal, defendant argues:

POINT I

THIS MATTER SHOULD BE REMANDED FOR
RESENTENCING BASED ON THE
INEFFECTIVENESS OF COUNSEL, AND THE

SENTENCING COURT MUST CONSIDER
MITIGATING FACTOR N.J.S.A. 44-1(B)(14).

POINT II

IN THE ALTERNATIVE, THIS MATTER MUST BE
REMANDED FOR AN EVIDENTIARY HEARING
ON MR. ESTRADA'S CLAIMS THAT COUNSEL
RENDERED INEFFECTIVE ASSISTANCE AT
SENTENCING.

Having duly considered these arguments, we affirm the denial of defendant's PCR petition. The PCR court correctly found that defendant has not met his burden under Strickland v. Washington, 466 U.S. 668, 687 (1984) to establish the two prongs of counsel's deficient performance and actual prejudice flowing from that alleged deficiency. There is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

The PCR judge carefully explained in his written decision why each of defendant's sentencing-based arguments of ineffectiveness are unavailing. The PCR judge rejected as factually inaccurate defendant's claims that his former counsel failed to challenge the sentencing court's alleged "double counting" of aggravating factors. The PCR judge also reasonably dispelled defendant's argument that his counsel should have retained a psychiatric expert at sentencing, noting that the sentencing court did find pertinent mitigating factor

four, N.J.S.A. 2C:44-1(b)(4) (substantial grounds tending to excuse or justify the defendant's conduct, through failing to establish a defense), although it gave it little weight. The PCR judge also sensibly rejected defendant's claim that his counsel should have argued his sentence was disparate from his co-defendant's lighter sentence; such an argument would have been unsuccessful given that the co-defendant was merely convicted of burglary offenses.

There was no need for an evidentiary hearing since defendant did not present a *prima facie* claim of a Sixth Amendment violation. State v. Preciose, 129 N.J. 451, 459 (1992).

Lastly, defendant's contention of an illegal sentence based on his youth likewise lacks merit. The new mitigating factor for offenders under the age of twenty-six adopted in N.J.S.A. 2C:44-1(b)(14) does not apply retroactively, State v. Lane, 251 N.J. 84, 97 (2022). The sentence manifestly was not illegal and was clearly appropriate, given the magnitude of this brutal killing.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION