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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-1651-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

OSCAR A. HERNANDEZ,

Defendant-Appellant.

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Submitted December 7, 2022 – Decided January 19, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 16-07-1814.

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

William Reynolds, Atlantic County Prosecutor, attorney for respondent (Mario C. Formica, Deputy First Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Oscar A. Hernandez appeals from the November 15, 2021 order of the Law Division denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

In 2017, a jury found defendant guilty of the following crimes arising from a fight on the boardwalk in Atlantic City, during which he repeatedly stabbed a man: second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); and fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d). The trial court sentenced defendant to an aggregate five-year term of imprisonment, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

We affirmed defendant's convictions and sentence, but remanded for amendment of the judgment of conviction. State v. Hernandez, No A-3020-17 (App. Div. Oct. 28, 2019). The Supreme Court denied certification. State v. Hernandez, 241 N.J. 61 (2020).

Defendant thereafter filed a PCR petition. He alleged he was denied effective assistance of trial counsel because his attorney did not inform him that he could have accepted an offer by the State to plead guilty in exchange for a three-year term of imprisonment with no period of parole ineligibility, and

because his counsel told him that if he proceeded to trial an acquittal was guaranteed. In support of his petition, defendant submitted only his certification.

The trial court denied defendant's petition without an evidentiary hearing. In an oral opinion, the court found defendant's "self-serving" allegations to be nothing more than "bald assertions" that are too conclusory or speculative to warrant an evidentiary hearing. The court found there was no support in the record for the alleged three-year plea offer. To the contrary, the court noted that during a pretrial conference, the trial court made clear the State offered to recommend a six-year term of imprisonment, subject to NERA, in exchange for a guilty plea, which defendant rejected after confirming that he had consulted with his attorney. A November 15, 2021 order memorializes the trial court's decision.

This appeal followed. Defendant makes the following argument.

DEFENDANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN CONTRADICTION OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS, AS WELL AS HIS RIGHTS PURSUANT TO ARTICLE I, SECTION 10 OF THE NEW JERSEY CONSTITUTION BECAUSE TRIAL DEFENSE COUNSEL FAILED TO ADEQUATELY EXPLAIN THE TERMS OF THE PLEA OFFER WHICH THE STATE HAD MADE.

## II.

We defer to the trial court's factual findings made after an evidentiary hearing on a petition for PCR. State v. Nash, 212 N.J. 518, 540 (2013). "However, where the court does not hold an evidentiary hearing, we may exercise de novo review over the factual inferences the trial court has drawn from the documentary record." State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014). We also review de novo the court's legal conclusions. Ibid. Thus, it is within this court's authority "to conduct a de novo review of both the factual findings and legal conclusions of the PCR court." State v. Harris, 181 N.J. 391, 421 (2004).

The Court has adopted the standard created in Strickland v. Washington, 466 U.S. 668, 687 (1984) to evaluate prima facie claims of ineffective assistance of counsel. State v. Fritz, 105 N.J. 42, 58 (1987). The two-prong test requires courts to determine "whether counsel's performance 'fell below an objective standard of reasonableness,'" and "whether there exists a 'reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different.'" State v. Castagna, 187 N.J. 293, 313-14 (2006) (quoting Strickland, 466 U.S. at 688, 694).

Evidentiary hearings should be granted by the trial court "if a defendant has presented a prima facie claim in support of post-conviction relief." State v. Preciose, 129 N.J. 451, 462 (1992). However, the defendant must "do more than make bald assertions that he was denied the effective assistance of counsel. He must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). "If the court perceives that holding an evidentiary hearing will not aid the court's analysis of whether the defendant is entitled to post-conviction relief, or that the defendant's allegations are too vague, conclusory, or speculative to warrant an evidentiary hearing, then an evidentiary hearing need not be granted." State v. Marshall, 148 N.J. 89, 158 (1997) (citations omitted).

After carefully reviewing the record, we agree with the trial court's conclusion that defendant failed to present a prima facie case of ineffective assistance of counsel. Defendant failed to present evidence beyond his self-serving certification that his counsel did not advise him of a plea offer of three-years imprisonment with no parole ineligibility period and informed him that he was guaranteed an acquittal if he went to trial. The record plainly establishes that at defendant's pre-trial conference, the State offered to recommend a six-year term of imprisonment, subject to NERA, in exchange for a guilty plea.

During that conference, the trial court confirmed that defendant had been advised by counsel of the terms of the plea offer and that he could be sentenced to sixteen and a half years if found guilty at trial of the counts in the indictment. Defendant stated on the record that he understood the terms of the plea offer, as well as the risk he faced by going to trial, and rejected the plea offer. The record provides no support for defendant's claim that the State offered to recommend a three-year prison term with no period of parole ineligibility in exchange for a guilty plea or that his attorney guaranteed that he would be acquitted if he decided to go to trial. We agree with the trial court that defendant's certification is insufficient to warrant an evidentiary hearing on his claims. See State v. Porter, 216 N.J. 343, 357 (2013).

To the extent we have not otherwise addressed defendant's remaining arguments, we conclude they lack sufficient merit to discuss in a written opinion. Rule 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