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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-1803-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAMON D. RUIZ-PEREZ,
a/k/a RAMON PEREZ,
PEREZ RAMON,
RAMIN RUIZPEREZ,
RAMON RUIZ-PEREZ,
RAMON RUIZ, RAMON
D. PEREZ and RAMON D.
RUIZ,

Defendant-Appellant.

Submitted April 26, 2023 – Decided May 3, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Cape May County, Indictment No. 13-01-
0043.

Joseph E. Krakora, Public Defender, attorney for
appellant (Kisha M. Hebbon, Designated Counsel, on
the brief).

Jeffrey H. Sutherland, Cape May County Prosecutor,
attorney for respondent (Gretchen A. Pickering, Senior
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Ramon D. Ruiz-Perez appeals from the Law Division's March 4, 2020 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

The underlying facts concerning the offenses involved in this matter are set forth in our prior opinion on defendant's direct appeal from his convictions for armed robbery, unlawful possession of a weapon, and other offenses. See State v. Ruiz-[Perez], Nos. A-1993-14, A-2903-14, and A-5473-14 (App. Div. Mar. 10, 2017) (slip op. at 1-4), certif. denied, 231 N.J. 118 (2017). Therefore, those facts will not be repeated here. In that decision, we affirmed defendant's convictions, but remanded for resentencing. Id. at 24-25. On remand, the trial court sentenced defendant to a thirty-five-year aggregate term, which was subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

Defendant thereafter filed a timely petition for PCR. Among other things, defendant asserted his trial attorney provided him with ineffective assistance because he did not investigate whether defendant had a history of mental health issues, which would have enabled defendant to raise a defense of diminished

capacity. This allegation was based entirely upon defendant's PCR attorney's summary of statements defendant made to a probation officer after the trial during the preparation of defendant's presentence report (PSR). During that interview, defendant told the probation officer that he had previously attempted suicide three times. His last attempt was in 2010, two years before the robbery that was the subject of the trial. Defendant also alleged he suffered from "auditory hallucinations" when he was fifteen years old, and was hospitalized for three months for evaluation in 2007. According to the PSR, defendant "was diagnosed with a Mood Disorder NOS (not otherwise specified)[,]" and was prescribed medication.

Significantly, defendant did not provide a certification indicating that he advised his trial attorney of any of these allegations at any point prior to the trial. Defendant also did not submit any expert reports or medical records documenting a mental illness, and he presented no evidence that he was unable to recall events or understand the nature of his actions.

Following oral argument, the PCR judge rendered a thorough written decision denying defendant's petition. The judge concluded that defendant failed to satisfy the first prong of the two-prong test of Strickland v. Washington, 466 U.S. 668, 687 (1984), which requires a showing that trial counsel's

performance was deficient and that, but for the deficient performance, the result would have been different. The judge rejected defendant's argument that "[t]rial [c]ounsel failed to investigate [his] mental health concerns . . . because it would not have been apparent to [t]rial [c]ounsel that [defendant] had mental health concerns." Indeed, defendant failed to present any evidence that he advised his attorney of these concerns or exhibited any behavior that would have sparked a possible investigation. Therefore, the judge determined that defense counsel was not ineffective. Because defendant raised only bald assertions that he could have mounted a viable diminished capacity defense, the judge concluded that an evidentiary hearing was unnecessary.

On appeal, defendant raises the same arguments he unsuccessfully presented to the Law Division. Defendant contends:

POINT I

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S PETITION FOR [PCR] WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO DETERMINE THE MERITS OF HIS CONTENTION THAT HE WAS DENIED THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL DUE TO TRIAL COUNSEL'S FAILURE TO HAVE DEFENDANT EVALUATED BY AN EXPERT TO DETERMINE IF HE SUFFERED FROM DIMINISHED CAPACITY AND TRIAL COUNSEL'S FAILURE TO FILE AND LITIGATE A DIMINISHED CAPACITY DEFENSE.

- A. The Prevailing Legal Principles Regarding Claims Of Ineffective Assistance of Counsel, Evidentiary Hearings And Petitions for [PCR].
- B. Trial Counsel Rendered Ineffective Legal Representation By Virtue Of His Failure To Have Defendant Evaluated By An Expert To Determine If Defendant Suffered From Diminished Capacity And His Failure To File And Litigate A Diminished Capacity Defense.
- C. Defendant Is Entitled To A Remand To The Trial Court To Afford Him An Evidentiary Hearing To Determine The Merits Of His Contention That He Was Denied The Effective Assistance Of Trial Counsel.

When petitioning for PCR, the defendant must establish, by a preponderance of the credible evidence, that he is entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013); State v. Preciose, 129 N.J. 451, 459 (1992). To sustain that burden, the defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing and the defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant

evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance, material issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. R. 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland, 466 U.S. at 687; State v. Fritz, 105 N.J. 42, 58 (1987). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

Applying these standards, we are satisfied that defendant's claim that his trial attorney should have raised a diminished capacity defense lacks merit. The court must consider a defendant's "contentions indulgently and view the facts

asserted by him in the light most favorable to him." Cummings, 321 N.J. Super. at 170. However, a defendant must present facts "supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Ibid.

Here, the PCR judge correctly found that defendant's petition was unsupported by cognizable evidence. Defendant presented no first-hand certification attesting to the post-trial allegations he made to the probation officer for his PSR. He never alleged he told his trial attorney that he had any mental health concerns during pre-trial preparations, and he provided no documentation to support any of his belated claims. Defendant also failed to present any expert medical reports to the PCR court supporting his contention that he "suffered from a mental disease or defect" that would "prove that [he] did not have a state of mind which [was] an element of the offense[s]" that were the subject of the trial. See R. 2C:4-2 (setting forth the requirements for the admission of evidence supporting a diminished capacity defense).

Further, defendant's primary defense during trial, by way of extensive cross-examination of the State's two primary witnesses, was that he and his co-defendants were not at the scene of the robbery. A diminished capacity defense, however, is based on the factual predicate that the defendant committed the


offense but did not possess the requisite mens rea to establish his guilt. State v. Reyes, 140 N.J. 344, 354 (1995). Here, defendant failed to explain how his trial counsel was deficient for pursuing one defense over the other. It is well settled that "purely speculative deficiencies in representation are insufficient to justify reversal." Fritz, 105 N.J. at 64.

The PCR judge also correctly determined that an evidentiary hearing was not required. As stated above, a hearing on a PCR petition must be held when a defendant presents a prima facie case for relief, the existing record is not sufficient to resolve the claims, and the court decides that a hearing is required. Porter, 216 N.J. at 354-55. In this case, the existing record was sufficient to resolve defendant's claims. Moreover, as we have concluded, defendant failed to present a prima facie case for relief.

In sum, we discern no abuse of discretion in the PCR judge's consideration of the issues, or in his decision to deny the petition without an evidentiary hearing. We are satisfied that the trial attorney's performance was not deficient, and defendant provided nothing more than bald assertions to the contrary.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION