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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-1828-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL M. WINTERS,
a/k/a KINGNAZIM ALLAH,
KING N. ALLAH,
NAZIM A. KING,
MICHAEL WINTERS,
DARNELL JON, DAVIS SMITH,
MIKE WINTERS,
WINTERS M. MICHAEL,
MICHAEL WINTERSMARVIN,

Defendant-Appellant.

Submitted March 28, 2023 – Decided June 29, 2023

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Indictment No. 13-09-2933.

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

Grace C. MacAulay, Camden County Prosecutor,
attorney for respondent (Natalie A. Schmid
Drummond, Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

A jury found defendant Michael M. Winters guilty of first-degree kidnapping and conspiracy to commit that crime, and robbery and conspiracy to commit that crime. State v. Winters, No. A-2111-15 (Aug. 3, 2017) (slip op. at 2). The same indictment charged Matilda Marshall as a co-defendant, but she pled guilty before trial and did not testify at defendant's trial. After appropriate mergers, the judge imposed an extended forty-five-year term of imprisonment on the kidnapping conviction and a concurrent ten-year term of imprisonment on the robbery conviction, both subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. Ibid. We affirmed defendant's convictions and the sentence imposed on direct appeal. Id. at 18. The Supreme Court denied certification. 232 N.J. 483 (2018).

Defendant filed a timely pro se petition for post-conviction relief (PCR) alleging the ineffective assistance of trial counsel (IAC) and identifying ten specific claims. Appointed PCR counsel's brief focused on three of these IAC allegations, specifically: trial counsel failed to interview Marshall; trial counsel

failed to obtain full discovery, in particular, a statement from Marshall and video surveillance footage, both of which defendant claimed would have exculpated him; and trial counsel failed to confer with defendant. Assigned counsel also filed a supplemental statement that set forth and clarified all of defendant's specific pro se IAC claims. Nevertheless, defendant continued to send supplemental pro se submissions to the PCR judge.

At the hearing on defendant's petition, PCR counsel reiterated all of defendant's pro se IAC claims and argued the three he had raised in his brief. The judge, who was not the trial judge, also provided defendant with an opportunity to speak. Noting the lack of any statements or certifications regarding what Marshall might have testified to if called as a witness and confirming the existence of any surveillance footage, the judge adjourned the hearing for two weeks to allow defendant to obtain a statement from Marshall and otherwise supplement the record.

When the hearing reconvened, PCR counsel indicated that he and defendant had "conducted our investigation . . . and . . . we have the results. We're not moving forward with any investigation — well, not given the results offered to the [c]ourt or to my adversary." Defendant spoke to the judge and

indicated he had furnished the court with additional supplemental material — as he put it, "a lot of new stuff" — since the last hearing,

The judge rendered an oral decision at the third and final hearing on the petition. After recounting the IAC claims raised by PCR counsel, the judge sorted through defendant's pro se points, which he noted were often "repetitive" and "incoherent," and he identified "[thirteen] cognizable bases for post-conviction relief . . . actually raised." He addressed all the pro se IAC claims and those raised by PCR counsel and denied the petition.

On appeal, defendant argues he was entitled to an evidentiary hearing because trial counsel was ineffective "by failing to investigate, provide discovery, or discuss [defendant's] case, and on [defendant's] other claims raised and ruled on by the PCR court." We disagree and affirm primarily for the reasons expressed by Judge Mark K. Chase in his oral opinion. We add only the following brief comments.

To succeed on an IAC claim, a defendant must meet the two-prong test enunciated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and applied by our Court in State v. Fritz, 105 N.J. 42, 58 (1987). We need not fully restate the standard here, except to say that even if a defendant "overcome[s] a 'strong presumption' that counsel exercised 'reasonable professional judgment' and

'sound trial strategy' in fulfilling his responsibilities," State v. Hess, 207 N.J. 123, 147 (2011) (quoting Strickland, 466 U.S. at 689–90), he must also demonstrate a "reasonable probability" that the deficient performance affected the outcome. Fritz, 105 N.J. at 58. "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).

Our rules anticipate the need to hold an evidentiary hearing on a PCR petition, "only upon the establishment of a prima facie case in support of post-conviction relief." R. 3:22-10(b). "A prima facie case is established when a defendant demonstrates 'a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.'" State v. Porter, 216 N.J. 343, 355 (2013) (quoting R. 3:22-10(b)). We review the PCR court's decision to grant or deny a request for an evidentiary hearing under an abuse of discretion standard. State v. L.G.-M., 462 N.J. Super. 357, 365 (App. Div. 2020) (citing State v. Russo, 333 N.J. Super. 119, 140 (App. Div. 2000)).

Here, Judge Chase concluded defendant's assertion that had counsel taken a statement from Marshall, she would have exonerated him was a "bald assertion" unsupported by any "affidavit or certification, or . . . investigative

report." See, e.g., State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) ("[W]hen a petitioner claims his trial attorney inadequately investigated his case, he must assert the facts that an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." (citing R. 1:6-6)).

Defendant claimed surveillance footage would have shown that contrary to the trial evidence, the kidnapping victim was not alone, nor was she forced into defendant's car. However, Judge Chase properly found that defendant "cannot show what the surveillance would have revealed because he has not provided the surveillance. Defendant['s] belief of what the surveillance would have shown does not assert facts . . . as he is required to do" Moreover, the judge found defendant admitted that trial counsel "sent a private investigator to obtain these tapes," and he provided no "certification . . . that the footage even exists." Judge Chase also rejected any claim that trial counsel failed to adequately confer with defendant, noting defendant "report[ed] several instances where he and his attorney discussed trial strategy," and concluding defendant's "entire petition . . . belies his claim."

Our review demonstrates that these factual findings are supported by the record. See L.G.-M., 462 N.J. Super. at 361 (when the PCR court does not hold

an evidentiary hearing, we may review de novo the factual inferences the trial judge drew from the documentary record (citing State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014))). Judge Chase did not mistakenly exercise his discretion by not holding an evidentiary hearing.

To the extent we have not otherwise addressed defendant's IAC claims, 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.



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