

# RECORD IMPOUNDED

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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-1863-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANTE PICOTT,

Defendant-Appellant.

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Submitted March 13, 2023 – Decided April 13, 2023

Before Judges Whipple and Smith.

On appeal from the Superior Court of New Jersey,  
Law Division, Mercer County, Indictment No.  
13-04-0441.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Karen A. Lodeserto, Designated Counsel,  
on the brief).

Angelo J. Onofri, Mercer County Prosecutor, attorney  
for respondent (Laura Sunyak, Assistant Prosecutor,  
of counsel and on the brief).

PER CURIAM

Defendant Dante Picott appeals from the January 14, 2022 denial of his petition for post-conviction relief (PCR) after an evidentiary hearing. Judge Adam Hughes conducted an evidentiary hearing limited to the issue of whether defendant requested trial counsel to appeal his conviction or otherwise failed to provide effective assistance of counsel in securing a plea deal. We affirm.

Defendant raises the following issues on appeal:

POINT ONE

THE PCR COURT ERRED IN DENYING [DEFENDANT]'S PETITION FOR [PCR] AS PRIOR COUNSEL WAS INEFFECTIVE IN FAILING TO FILE [DEFENDANT]'S APPEAL PAPERWORK, OR ASSISTING HIM WITH FILING THE APPEAL, AS COUNSEL KNEW [DEFENDANT] WAS LIMITED IN HIS READING ABILITIES AND WAS DISABLED AND WOULD HAVE NEEDED ASSISTANCE.

POINT TWO

THE PCR COURT ERRED IN DENYING [DEFENDANT]'S PETITION FOR [PCR] AS PRIOR COUNSEL WAS INEFFECTIVE IN PRESSURING HIM TO PLEAD GUILTY KNOWING THAT [DEFENDANT] SUFFERED FROM LEARNING DISABILITIES.

Defendant was charged with two counts of first-degree aggravated sexual assault during the commission or attempted commission of a robbery, N.J.S.A. 2C:14-2(a)(3); second-degree robbery, N.J.S.A. 2C:15-1; third-degree criminal attempt to commit theft by unlawful taking, N.J.S.A. 2C:20-3(a) and

N.J.S.A. 2C:5-1; third-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a); two counts of first-degree aggravated sexual assault during the commission or attempted commission of a kidnapping, N.J.S.A. 2C:14-2(a)(3); first-degree kidnapping, N.J.S.A. 2C:13-1(b); and two counts of second-degree sexual assault, N.J.S.A. 2C:14-2(c)(1). On January 13, 2014, defendant pled guilty to all ten counts of the indictment. Because he agreed to an open plea, the State made no recommendation as to the length of his sentence. The judge advised defendant he would limit the maximum sentencing exposure to thirty years, subject to a twenty-five-and-a-half-year period of parole ineligibility under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

At sentencing, the judge imposed an aggregate term of twenty-eight years subject to NERA. He also advised defendant he would be subject to Megan's Law and would be under parole supervision for life when his prison sentence concluded. The judge ordered defendant not to have contact with the victim or any family members of the victim. Defendant did not appeal his conviction or sentence.

On December 15, 2017, defendant filed a pro se PCR petition asserting after sentencing he asked his attorney to file an appeal and his attorney did not do so. He also argued his sentence was excessive.

The PCR court held an evidentiary hearing, at which one witness testified: defendant's plea and sentence counsel, Rob Rogers. Rogers testified he remembered defendant's case because it was one of the strongest cases—from the State's perspective—he had ever seen. There was ample evidence against defendant, including a recorded admission, DNA, and video evidence. Rogers also told the court he was disappointed with the ultimate sentence and thought it was excessive.

Rogers explained he never handled an appeal during his approximate twenty-five-year career as a defense attorney. If defendant had asked him to file an appeal, he would have followed his standard practice, which included explaining to the client he does not handle appeals and the client would have to consult the Public Defender or another private attorney to file one.

Judge Hughes issued a thorough and comprehensive written decision on January 14, 2022. He carefully summarized Roger's testimony—who the judge found "testified in a direct, candid, and logical manner and had a basis of knowledge for his testimony"—and addressed each of defendant's arguments.

The court found defendant knowingly and voluntarily entered the plea, reviewed and understood the plea forms, and was sentenced in accordance with the plea agreement. At the time of the plea, the record showed defendant

understood: he would plead guilty to all counts; the State would make no recommendation; and the court would limit the maximum exposure to thirty years in prison.

Judge Hughes further noted the court reviewed defendant's appeal rights with him and defendant indicated he reviewed the appeal rights form with his attorney. Therefore, defendant knowingly and intelligently executed the form and understood his appeal rights.

Judge Hughes observed defendant offered no proof he requested Rogers to file an appeal other than a second certification filed April 13, 2020. The certification lacked "detail concerning the nature, specific timing, location[,] or method of the request or the basis for [defendant]'s belief [Rogers] would file an appeal." Judge Hughes found the record, along with the plea transcript and Roger's testimony, showed defendant could not establish he requested an appeal or could have reasonably expected Rogers to file one.

Regarding defendant's arguments Rogers failed to investigate his case and seek dismissal of charges, Judge Hughes found defendant did not specify any basis for dismissal. Additionally, the record established defendant knowingly and voluntarily pleaded guilty to all ten counts. Thus, defendant

could not articulate how Rogers was ineffective for not filing a motion to dismiss or what specifically he did not investigate.

Further, the court found, Rogers argued for a more favorable plea agreement, advocated for a reduced sentence, and submitted an extensive sentencing memorandum. In arguing for a lesser sentence, Rogers drew attention to defendant's family support and community ties; the Adult Diagnostic Treatment Center's report favoring defendant's rehabilitation; defendant's lack of parental support growing up and the failure of the juvenile system to help him; and the defendant's poor mental health.

Consequently, the judge found defendant did not meet the standards outlined in Strickland v. Washington, 466 U.S. 668, 687 (1984), and State v. Fritz, 105 N.J. 42, 52 (1987). This appeal followed.

The scope of our review of an order granting or denying PCR is de novo in all respects except credibility determinations, for which we defer to the PCR judge's evaluation of the demeanor of the witnesses and other factors affecting credibility. State v. Harris, 181 N.J. 391, 420-21 (2004), cert. denied, 545 U.S. 1145 (2005).

We have carefully considered the written arguments made by defendant and affirm substantially for the reasons expressed by Judge Hughes in his thoughtful opinion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION