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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-3262-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

YEFRI A. CASTRO, a/k/a  
YEFRI CASTRO and  
YEFRI A. CASTRO-MONTERO,

Defendant-Appellant.

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Submitted April 24, 2023 – Decided May 8, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey,  
Law Division, Bergen County, Indictment No. 19-04-  
0460.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Andrew R. Burroughs, 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

In this appeal from the February 7, 2022, denial of defendant's post-conviction relief (PCR) petition, defendant faced criminal charges in both Bergen and Essex counties. He pled guilty to both sets of charges in quick succession, separated only by a few days.

On May 28, 2019, defendant pled guilty to a single count of third-degree receiving stolen property, N.J.S.A. 2C:20-7, in Bergen County. He offered a sufficient factual basis for the plea. The court sentenced him to one year of probation.

On June 3, 2019, defendant pled guilty to second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1), and third-degree hindering, N.J.S.A. 2C:29-3(a)(7), in Essex County. He was sentenced to three years' probation concurrent to his Bergen charge.

Defendant was born in the Dominican Republic; he is not a U.S. citizen, though he did lawfully enter the country and obtain permanent resident status. On his initial plea forms, he indicated he understood that deportation was a potential consequence of pleading guilty. During his plea hearing on May 28, 2019, the following relevant exchange occurred:

[The court]: Do you understand that as a result of this guilty plea you will be subject to deportation and removal from this country? Do you understand that?

[Defendant]: Yeah.

[The court]: Yes or no?

[Defendant]: Yes.

[The court]: Did [counsel] explain to you that you would be deported as a result of this guilty plea?

[Defendant]: Just a question.

[The court]: Yes.

[Counsel]: If I may, [j]udge?

[The court]: Yes.

[Counsel]: [Defendant], I discussed with [you] the immigration consequences, correct, as part of your case; and as I told you last time in court I was forwarding your file to the immigration counsel that is retained or used by the Public Defender's Office. Correct?

[Defendant]: Yes.

[Counsel]: And I discussed with you what their analysis of your case[,] in regards to [what] the immigration consequences are. Correct?

[Defendant]: Yes.

[Counsel]: And it's your understanding that if it were just this charge alone, then your immigration

consequences would be different than it being this case and the Essex County case.

[Defendant]: Yes.

[Counsel]: And not so much this case, but because as a result of the Essex case your ability to stay in the country is going to be – you're going to be deported. Correct, you understand that?

[Defendant]: Yes.

[Counsel]: And knowing that, you're still intending to enter in this plea, as well as the plea in Essex County to resolve your cases. Right?

[Defendant]: Yes.

[The court]: Okay, so you want to move forward with your guilty plea?

[Defendant]: Yes.

After sentencing, defendant filed for PCR and moved to withdraw his guilty plea under State v. Slater, 198 N.J. 145, 156 (2009). He certified his trial counsel advised him to plead guilty, because the Essex County charges already rendered him automatically deportable. Defendant also certified he pled guilty to the Bergen County receipt of stolen property charges with this understanding.

Now, however, defendant has been advised the Essex County handgun charge does not render him automatically deportable.<sup>1</sup> This theory is incorrect; defendant has been misadvised. Nevertheless, defendant now contends he would not have pled guilty to the Bergen charge, because he now believes the Essex charge is non-deportable. Defendant also certifies he was never read his plea agreement form, and instead trial counsel filled out the form, circling all given answers, prior to obtaining defendant's signature.

The PCR court rejected defendant's arguments. Applying the two-pronged test from Strickland v. Washington,<sup>2</sup> the court reasoned defendant had failed to make a prima-facie claim of ineffective assistance of counsel. In the PCR court's opinion, defendant's testimony during his plea hearing belied his present assertion he did not knowingly fill out the plea form. The court also opined defendant had framed the issue incorrectly: while he may have been misinformed by counsel as to the effect of his handgun conviction, in the PCR court's view, he was not misinformed as to the immigration consequences of pleading guilty to the theft offense. Finally, the court analyzed the relevant

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<sup>1</sup> This claim is made by present PCR counsel, who claims a weapon possession offense is not an aggravated felony resulting in automatic deportation.

<sup>2</sup> 466 U.S. 668, 687 (1984).

immigration law, and concluded contrary to defendant's present assertions, the Essex County offenses did render defendant deportable, regardless of the outcome of the present matter.

Regarding defendant's right to withdraw his guilty plea, the court similarly concluded defendant was merely providing a "bare" assertion of innocence, without alleging specific facts in support of his contentions. Defendant "has not offered any colorable claim of innocence, merely stated that he can do so." This appeal followed.

"[PCR] is New Jersey's analogue to the federal writ of habeas corpus." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). PCR provides a "built-in 'safeguard that ensures that a defendant was not unjustly convicted.'" State v. Nash, 212 N.J. 518, 540 (2013) (quoting State v. McQuaid, 147 N.J. 464, 482 (1997)). Our review is deferential to a PCR court's factual findings supported by sufficient credible evidence. State v. Gideon, 244 N.J. 538, 540 (2021) (quoting Nash, 212 N.J. at 546).

Claims of ineffective assistance of counsel are evaluated under the test delineated in Strickland, 466 U.S. at 687; see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland standard). That test has two prongs. "First

the defendant must show that counsel's performance was deficient." Gideon, 244 N.J. at 550 (quoting Strickland, 466 U.S. at 687). "Second, the defendant must have been prejudiced by counsel's deficient performance." Ibid. Prejudice in this context means the "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

Deficient performance occurs when counsel's acts or omissions fall "outside the wide range of professionally competent assistance" given the circumstances of the particular case. State v. Gaitan, 209 N.J. 339, 350 (2012) (quoting State v. Castagna, 187 N.J. 293, 314 (2006)). Essentially, this is a reasonableness test, and the evaluation is to be "viewed as of the time of counsel's conduct." Ibid. (quoting Castagna, 187 N.J. at 314). In the context of deportation and guilty pleas, "failure to advise a noncitizen client that a guilty plea will lead to mandatory deportation deprives the client of the effective assistance of counsel guaranteed by the Sixth Amendment." State v. Barros, 425 N.J. Super. 329, 331 (App. Div. 2012) (citing Padilla v. Kentucky, 559 U.S. 356, 368-69 (2010)).

Here, counsel told defendant on the record the Essex County handgun charge—but not the Bergen County receipt of stolen property charge—rendered him deportable. The specific language is important:

[Counsel]: And it's your understanding that if it were just this charge alone, then your immigration consequences would be different than it being this case and the Essex County case.

[Defendant]: Yes.

[Counsel]: And not so much this case, but because as a result of the Essex case your ability to stay in the country is going to be – you're going to be deported. Correct, you understand that?

[Defendant]: Yes.

Counsel stated defendant's receipt of stolen property plea would not result in deportation, but made clear that he would, in fact, be deported. Strictly speaking, this was incorrect. The Bergen offense is deportable because it is a theft offense, and therefore a crime involving moral turpitude. 8 U.S.C. §1227(a)(2)(A)(i)(I).

However, under the second prong of Strickland, the issue is whether any false information about the deportation consequences of the Bergen plea fueled defendant's decision to plead guilty. We agree with the PCR court defendant has not made this showing. Defendant was counseled about the deportation



consequences of both charges prior to pleading, and understood deportation was a consequence of choosing to plead guilty to the charges before him. This, coupled with the fact he asserts no colorable claim of innocence, means he cannot show counsel's error prejudiced him—he pled guilty to both sets of offenses understanding that deportation was a clear consequence of the Essex and Bergen charges in their totality.

We have not been provided with the plea transcript for the Essex County matter, so we do not know what transpired when the Essex County judge questioned defendant. However, the Essex County firearms possession charge, N.J.S.A. 2C:39-5(b), is a deportable offense under 8 U.S.C. §1227(a)(2)(C). The record before us clearly shows defendant knew he was facing deportation. Any error was nonprejudicial.

We also reject any arguments the denial of defendant's Slater motion was erroneous. Defendant asserted no colorable claims of innocence or established any manifest injustice entitling him to such relief. "[A] petitioner 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); State v. Jones, 219 N.J. 298, 311-12 (2014).

To the extent we have not addressed defendant's other arguments, we are satisfied they are without 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.



CLERK OF THE APPELLATE DIVISION