

FILED

May 14, 2025

MICHAEL A. GUADAGNO,
J.A.D. (ret. & t/a)

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRYAN A. CORDERO-CASTRO,

Defendant-Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL PART
MONMOUTH COUNTY

Indictment No. 18-12-01540

Case No. 18-3894

OPINION

Argued May 12, 2025 – Decided May 14, 2025

Howard W. Bailey, Esq., (Bailey & Toraya, LLP) for defendant,

Melinda A. Harrigan, Assistant Prosecutor; Olivia Christy, Legal Assistant, argued; Alexander S. Karn, Legal Assistant, on the brief, for the State (Raymond S. Santiago, Monmouth County Prosecutor).

GUADAGNO, J.A.D. (retired and temporarily assigned on recall)

In September 2018, Madison Wells was scheduled to begin her junior year at Long Branch High School. Madison had been dating defendant Bryan Cordero-Castro for about a year but decided to end their relationship. After failing several times to get Madison to change her mind, defendant confronted her outside her aunt's home on September 8, 2018, and plunged a knife into her heart, killing her. Madison was sixteen.

Defendant was indicted, pled guilty and was sentenced. He appealed, and his conviction was affirmed. Defendant now seeks post-conviction relief (PCR) claiming that he received ineffective assistance from all three attorneys who represented him, including plea counsel, sentencing counsel, and appellate counsel. Because defendant has failed to establish that any of these attorneys provided ineffective assistance, his petition is denied without a hearing.

I.

The facts here are simple yet tragic. Defendant began a relationship with Madison Wells sometime in 2017. When Madison ended their relationship, defendant became angry and pursued Madison relentlessly. On September 8, 2018, defendant confronted Madison at her home and took her cell phone, accusing her of cheating on him. Madison's sister Tina, intervened and retrieved Madison's phone, but defendant continued to lurk near Madison's home. Madison planned to visit her aunt that day and defendant went to the aunt's home looking for her, but Madison was not there. Defendant called and texted Madison over 200 times that day. Madison's father warned defendant not to call or text Madison.

Later that day, Madison's aunt drove to pick Madison up at her home. Because defendant was still lurking near Madison's home, her aunt went to the rear of the home to get her. They both returned to the aunt's home. When defendant learned Madison was at her aunt's home, he went there again, but this time he was carrying

a blade from a steak knife that had been in his kitchen.

Defendant convinced Madison to come outside. When Madison told defendant that she did not want to see him anymore, he became angry and stabbed Madison with the blade twice in the chest, with one of the wounds piercing her heart. Defendant dropped the blade and fled. Madison stumbled back into her aunt's home, telling her aunt, "He stabbed me." Those were her last words. Police and EMT's responded but Madison died from the stab wound.

On September 9, 2018, Long Branch police arrested defendant and transported him to the police station. While he was being processed, defendant told the officers "Bye," and ran toward the door. The officers caught and restrained him.

Defendant then agreed to speak with police. At first, defendant claimed he was at Madison's aunt's house with his friend "Angel," and Angel killed Madison because she was cheating on defendant. Eventually, defendant admitted that he was angry that Madison broke up with him and he tried to contact her all day, but she didn't respond to him. Defendant then admitted that, after he convinced Madison to come out of her aunt's home, Madison told him she wanted nothing to do with him. This angered defendant and he stabbed Madison with a knife. He told detectives that if he couldn't have Madison, no one could.

On December 3, 2018, a Monmouth County grand jury returned a five-count indictment charging defendant with first-degree murder, N.J.S.A. 2C:11-3a(1) and

(2); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5d; third degree attempted escape, N.J.S.A. 2C:5-1 and 2C-29-5a, and fourth-degree stalking, N.J.S.A. 2C:12-10.

Defendant was initially represented by Adam Jon Weisberg, Esq. Mr. Weisberg filed several motions including a motion to dismiss the indictment. That motion was scheduled to be heard on November 22, 2019, before Judge Marc C. Lemieux. However, defendant withdrew the motion because Mr. Weisberg had negotiated a plea agreement with the State. The agreement provided that defendant would plead guilty to a reduced charge of aggravated manslaughter and attempted escape. In return, the State would recommend a 30-year term on the manslaughter charge under the No Early Release Act (NERA), and a consecutive five-year term on the attempted escape.

Judge Lemieux engaged in an extensive allocution with defendant exceeding twenty-five transcript pages. At the conclusion of defendant's plea, Judge Lemieux found that defendant had presented an adequate factual basis and fully understood the nature of the charges and the consequences of his plea.

Sentencing was scheduled for February 7, 2019. However, on December 21, 2019, defendant filed a pro se motion to vacate his guilty plea claiming Mr. Weisberg provided ineffective assistance. I repeat the allegations in defendant's petition as

they mirror some of his current claims and, as such, have been previously adjudicated:

1. Failing to advise defendant about the possibility of any defenses;
2. Failing to provide defendant with complete discovery;
3. Failing to conduct any investigation;
4. Failing to “modify” defendant’s suppression motion;
5. “Pressuring” defendant into accepting the plea agreement;
6. Defendant’s guilty plea was not “voluntary and intelligently entered;”
7. Defendant did not understand the nature of the charges and the maximum possible punishment;
8. Defendant did not understand the “terms and conditions statutory range and special conditions;
9. Mr. Weisberg “violated many rules of professional conduct;”
10. Defendant asserted his innocence;
11. There was “misrepresentation” and a “total breakdown in communication and trust.”

Mr. Weisberg was relieved as defendant’s counsel and Assistant Deputy Public Defender Adam Mitchell was assigned to represent him. Mr. Mitchell submitted a brief in support of defendant’s motion to withdraw his guilty plea.

On March 17, 2020, Judge Lemieux heard oral argument and entered an order

denying defendant's motion. Judge Lemieux considered the four factors outlined in State v. Slater, 198 N.J. 145, 150 (2009), including defendant's failure to assert a colorable claim of innocence. Judge Lemieux noted that defendant's newly asserted alibi defense was completely unsupported, and such a defense would be clearly contradicted by the State's proofs, including defendant's confession to the police. Next, Judge Lemieux found that defendant received competent assistance from Mr. Weisberg and "there was zero probability . . . that defendant would not have pled guilty if he had any further information." Judge Lemieux noted Mr. Weisberg's thoroughness in requesting additional time for the purpose of conducting his investigation and interviewing witnesses. The judge also observed that Mr. Weisberg was successful in suppressing a portion of defendant's statements and when he filed the motion to dismiss the indictment, he stated that he had discussed the proofs in the case at length with defendant. Although it was unlikely that a passion/provocation defense would have succeeded, Mr. Weisberg still consulted with an expert for the purpose of determining defendant's mental state. As for defendant's claim that Mr. Weisberg did not sufficiently communicate about discovery with defendant, Judge Lemieux noted that defendant made statements to police in both English and Spanish and maintained a year-long relationship with the victim, who only spoke English. In addition, Mr. Weisberg was able to negotiate a very favorable plea bargain thereby avoiding a first-degree murder conviction. The agreed-upon sentence was

significantly less than the sentence defendant would have received if convicted of first-degree murder, which satisfied the third Slater factor. Judge Lemieux did not consider the fourth Slater factor, prejudice to the State, as the first three Slater factors weighed heavily in the State's favor.

On October 23, 2020, defendant appeared before Judge Lemieux for sentencing. When given an opportunity to speak, defendant said he had nothing to say. This prompted Judge Lemieux to remark:

I find that this defendant even as he stands before me here today and I look at him in his eyes that I see zero amount of remorse. And I am extremely concerned that this defendant doesn't get the magnitude of what he has done.

Judge Lemieux found aggravating factors one, three, and nine, giving each one significant weight, as well as mitigating factor seven (no history of prior delinquency or criminal activity), which he did not give an "enormous" amount of weight.

Judge Lemieux noted that defendant came to this country from Guatemala at the age of 13 and was not a United State citizen:

[He] was given the opportunity of being in our world to live a productive life and the defendant took the ability to be here and he took the innocence of a person who did nothing but love him and cared for him.

Judge Lemieux found that Madison had an entire life ahead of her and defendant "took her innocence . . . took her love that she had for [him] and [he] trampled on it."

The judge found that the aggravated manslaughter and the attempted escape

were separate and distinct crimes and determined that the sentences for each should be imposed consecutively. Defendant was sentenced in accordance with the plea agreement to a 30-year term of incarceration for first-degree aggravated manslaughter, subject to NERA, to be served consecutively to a five-year term for third-degree attempted escape, as well as restitution, fines and penalties. Judge Lemieux dismissed the remaining charges and advised defendant of his right to appeal.

On January 29, 2021, the Office of the Public Defender (OPD) filed a notice of appeal on defendant's behalf.¹ On February 5, 2021, the Appellate Division notified OPD that "because the only issue on appeal involves the sentence" the matter will be placed on the Sentencing Oral Argument (SOA) calendar pursuant to Rule 2:9-11. It was not until October 18, 2021, that OPD assigned Frank M. Gennaro, Esq. to represent defendant on appeal. On Defendant 6, 2021, defendant's appeal was heard by an SOA panel.

Later that day, the panel entered an order affirming defendant's sentence finding that it "is not manifestly excessive or unduly punitive and does not constitute an abuse of discretion." The panel also found that Judge Lemieux "gave detailed reasons to support the sentence in accordance with the plea agreement."

¹ Immediately after his sentencing, defendant told Mr. Mitchell that he wanted to appeal. However, Mr. Mitchell was contacted by private counsel on defendant's behalf who promised to confirm his representation of defendant but never did so. Although notice of appeal was not filed within 45 days, the Appellate Division granted a motion filed by OPD to file notice of appeal as within time.

On September 23, 2024, defendant filed a pro se PCR petition raising the following points:

- Length of sentence given no prior criminal history
- Age of petitioner at time of crime
- Communication barrier with appointed counsel
- Imposition of sentence in excess of or in accordance [sic] with law
- Substantial denial of defendant's rights under the Constitutions of the United States and New Jersey
- Ineffective assistance of counsel based on trial counsel failure to file appeal.

After counsel was appointed, a brief was filed raising the following points:

POINT ONE

THE PETITIONER, BRYAN CORDERO-CASTRO, RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL THAT SUBSTANTIALLY DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS GUARANTEED TO HIM BY THE U.S. CONST., AMENDS. VI, XIV AND BY THE N.J. CONST. ART. I, PAR. 10

A. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL:

BY THE FAILURE OF THE FIRST TRIAL ATTORNEY DURING THE PLEA TO ELICIT ESSENTIAL ELEMENTS OF THE CRIME OF MANSLAUGHTER DURING THE FACTUAL BASIS.

BY THE FAILURE OF THE SECOND TRIAL ATTORNEY TO RAISE THE DEFICIENT FACTUAL BASIS IN SUPPORT OF THE MOTION TO WITHDRAW THE GUILTY PLEA.

THE INEFFECTIVE ASSISTANCE OF THE TWO TRIAL ATTORNEYS SUBJECTED THE PETITIONER TO A SENTENCE NOT SUPPORTED BY THE FACTS ADMITTED BY THE PETITIONER

B. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO FILE A SUBSTANTIVE APPEAL OF THE DENIAL OF THE MOTION TO WITHDRAW THE GUILTY PLEA

C. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN THE APPELLATE COUNSEL HAVING IDENTIFIED A SUBSTANTIVE LEGAL DEFICIENCY IN THE FACTUAL BASIS, FAILED TO REQUEST THAT THE SENTENCE ONLY APPEAL BE CONVERTED INTO A PLENARY APPEAL SO THE ISSUE COULD BE PROPERLY BRIEFED AND ARGUED BEFORE THE APPELLATE DIVISION

D. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN DURING THE SENTENCING PROCEEDING THE TRIAL ATTORNEY FAILED TO ARGUE ANY MITIGATING FACTORS TO SUPPORT A REDUCTION IN THE SENTENCE RECOMMENDED IN THE PLEA

E. THE PETITIONER'S DECISION TO SEEK

POST- CONVICTION RELIEF IS RATIONAL;
AND THE GROUNDS ASSERTED BY THE
PETITIONER ARE NOT 'BALD ASSERTIONS'

F. THE PETITIONER RECEIVED
INEFFECTIVE ASSISTANCE OF COUNSEL
WITH REGARD TO THE FOLLOWING ISSUES
THAT ARE ASSERTED BY THE PETITIONER IN
HIS VERIFIED PETITION AND ARE BASED
UPON ARGUMENTS AND SUBMISSIONS OF
THE PETITIONER

G. PETITIONER RECEIVED INEFFECTIVE
ASSISTANCE OF COUNSEL DUE TO THE
CUMULATIVE EFFECT OF REPETITIVE
ERRORS RELATING TO THE DISPOSITION
OF HIS CASE

POINT TWO

THE PETITIONER, BRYAN CORDERO-
CASTRO, HAS PROVIDED PRIMA FACIE
PROOF THAT HE SUFFERED
INEFFECTIVE ASSISTANCE OF COUNSEL
AND THEREFORE AN EVIDENTIARY
HEARING IS
WARRANTED

POINT THREE

THE CLAIMS BY PETITIONER ARE NOT
PROCEDURALLY BARRED FROM BEING
RAISED IN THIS
PETITION

A. THE PETITIONER'S CLAIMS ARE NOT
BARRED BY R. 3:22-4

B. THE PETITIONER'S CLAIMS ARE NOT
BARRED BY R. 3:22-5

C. THE PETITIONER'S CLAIMS ARE NOT
BARRED BY R. 3:22-12

POINT FOUR

PCR COUNSEL INCORPORATES ALL OF THE
ISSUES SET FORTH IN PETITIONER'S PRO SE
PETITION AND ANY SUPPLEMENTAL BRIEF

II.

When a defendant claims ineffective assistance of counsel as the basis for relief, he must satisfy the two-pronged test formulated in Strickland v. Washington, 466 U.S. 668, 687 (1984), which was adopted by our Court in State v. Fritz, 105 N.J. 42, 58 (1987). “First, the defendant must show that counsel's performance was deficient Second, the defendant must show that the deficient performance prejudiced the defense.” Strickland, 466 U.S. at 687. Bare assertions are “insufficient to support a prima facie case of ineffectiveness.” State v. Blake, 444 N.J. Super. 285, 299 (App. Div. 2016) (quoting State v. Cummings, 321 N.J. Super. 154, 171 (App. Div. 1999)). A defendant seeking PCR based on an ineffective-assistance-of-counsel claim “bears the burden of proving his or her right to relief by a preponderance of the evidence.” State v. Gaitan, 209 N.J. 339, 350 (2012). If a defendant fails to sustain this burden under either prong of the standard, the ineffective-assistance-of-counsel claim fails. See Strickland, 466 U.S. at 687.

Under the first Strickland prong, a defendant must show “counsel's acts or

omissions fell outside the wide range of professionally competent assistance considered in light of all the circumstances of the case.” State v. Allegro, 193 N.J. 352, 366 (2008) (quoting State v. Castagna, 187 N.J. 293, 314 (2006)). Under the second Strickland prong, a defendant must “affirmatively prove” “a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Strickland, 466 U.S. at 693-94). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Ibid. (quoting Strickland, 466 U.S. at 694). Proof of prejudice under the second prong of Strickland “is an exacting standard.” Ibid. (quoting Allegro, 193 N.J. at 367). A defendant “must ‘affirmatively prove prejudice’” in a PCR petition to satisfy the second prong of the Strickland standard. Ibid. (quoting Strickland, 466 U.S. at 693). “[A] conviction is more readily attributable to deficiencies in defense counsel’s performance when the State has a relatively weak case than when the State has presented overwhelming evidence of guilt.” Id. at 557.

PCR petitions must be “accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity[,]” Jones, 219 N.J. at 312, “facts sufficient to demonstrate counsel's alleged substandard performance,” Cummings, 321 N.J. Super. at 170. “[F]actual assertions in a [PCR petition must] be made by affidavit or certification in order to secure an evidentiary hearing.” Jones,

219 N.J. at 312 (citing R. 3:22-10(c)).

Where the PCR involves a plea bargain, “a defendant must prove that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial.” Gaitan, 209 N.J. at 351 (quoting State v. Nunez-Valdez, 200 N.J. 129, 139 (2009)).\

Defendant claims that Mr. Weisberg failed to elicit the elements of the crime of manslaughter during defendant’s guilty plea. However, this same argument was presented to the SOA panel by Mr. Gennaro who argued “the factual basis for manslaughter was deficient.” This argument prompted Judge Rothstadt to ask somewhat incredulously:

JUDGE ROTHSTADT: Well, why is it if I’m looking – you said on the factual basis on page 25, right? If you look at the whole colloquy before, you’re arguing that that doesn’t establish the offense 22, 23, 24?

MR. GENNARO: He admitted that he killed his girlfriend.

JUDGE ROTHSTADT: But the whole discussion leading up to that.

MR. GENNARO: That he stabbed her and then he’s asked do you understand why this is an intentional homicide.

Because the SOA panel considered and rejected this argument it is now barred because of the prior adjudication on the merits. Preciose, 129 N.J. at 476 (citing R. 3:22-5). Defendant’s claim that Mr. Mitchell should have raised the factual basis issue when moving to withdraw the guilty plea is barred for the same reason.

Defendant claims that Mr. Gennaro failed to request that the SOA panel refer the factual basis issue to a plenary panel. Defendant ignores the fact that the SOA panel specifically considered and rejected the factual basis issue. Moreover, the panel had to option to make such a referral sua sponte if there was any merit to the argument.

Defendant complains that Mr. Mitchell's failure to appeal the denial of defendant's motion to withdraw his guilty plea and Mr. Gennaro's failure to argue the issue before the Appellate Division constituted ineffective assistance. However, defendant fails to demonstrate that an appeal from the denial of his motion would have been meritorious. As previously mentioned, Judge Lemieux rendered an exhaustive opinion detailing why defendant was not entitled to withdraw his plea. "Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52 (1983). Because defendant has made no showing that an appeal would have had any merit, the failure of Mr. Mitchell and Mr. Gennaro to pursue an appeal Judge Lemieux's denial of the motion was not ineffective assistance of counsel. Appellate counsel cannot be depicted as being ineffective for failing to raise an issue that has no merit. State v. Worlock, 117 N.J. 596, 625 (1990).

Defendant claims Mr. Mitchell failed to argue mitigating factors at sentencing such as lack of a prior criminal record and age of defendant. In fact, Judge Lemieux found that mitigating factor seven applied as defendant had no prior convictions. However, since the Appellate Division affirmed the sentence with a specific reference to Judge Lemieux's "detailed reasons to support the sentence" the argument is barred as previously adjudicated. It also lacks merit under Strickland.

Finally, defendant argues that all of these failings by defendant's attorneys resulted in cumulative error. When a defendant alleges multiple errors, "the predicate for relief for cumulative error must be that the probable effect of the cumulative error was to render the underlying [proceeding] unfair." State v. Wakefield, 190 N.J. 397, 538 (2007). Even where a defendant alleges multiple errors, "the theory of cumulative error will still not apply where no error was prejudicial and the [proceeding] was fair." State v. Weaver, 219 N.J. 131, 155 (2014).

Considering defendant's contentions indulgently and viewing the facts in the light most favorable to him, this court must conclude that defendant has failed to establish a prima facie claim of ineffective assistance of counsel. Defendant's PCR petition and his motion to withdraw his guilty plea are denied without a hearing.