

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ZAINABU SILLAH,

Defendant-Appellant.

DOCKET NUMBER A-001105-23

ON APPEAL FROM FINAL JUDGMENT  
SUPERIOR COURT OF NEW JERSEY  
MERCER COUNTY

QUASI-CRIMINAL ACTION

SAT BELOW  
HON. SHERRY L. WILSON, J.S.C. and  
HON. LEWIS J. KORNGUT, J.M.C.

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BRIEF AND APPENDIX SUBMITTED ON BEHALF OF DEFENDANT-APPELLANT  
ZAINABU SILLAH

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LIST OF PARTIES

<b>Party Name</b>	<b>Appellate Party Designation</b>	<b>Trial Court Party Role</b>	<b>Trial Court Party Status</b>
Zainabu Sillah	Appellant	Defendant	Participated Below
State of New Jersey	Respondent	Plaintiff	Participated Below

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**STATEMENT OF PROCEDURAL HISTORY**

On August 11, 2017, Zainabu Sillah was charged under Lawrence Ticket E17 007212 with a violation of N.J.S.A. 39:4-50. Da1<sup>1</sup>. She pled guilty to the offense on February 21, 2018 in the Lawrence Township Municipal Court. Ms. Sillah filed a petition for post conviction relief in the matter on July 8, 2022 seeking to vacate her plea on grounds that at the time of her plea Ms. Sillah received ineffective assistance of counsel. Da2-5.

The petition for post conviction relief was heard before the Honorable  
10 Lewis J. Korngut, J.M.C., on November 14, 2022, however was ultimately denied for the reasons set forth on the record. 2T 28:10-21; 29:14-25; 30:1-1-25; 31:1-25; and 32:1-16. Da6.

Ms. Sillah filed Notice of Appeal to the Mercer County Law Division on December 5, 2022. Da7-10. The appeal was heard before the Honorable Judge Sherry L. Wilson, J.S.C., on November 29, 2023, whereby the denial of post conviction relief was affirmed. Da11-26.

This appeal to the New Jersey Appellate Division follows. Da27-29.

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<sup>1</sup> “Da” refers to Defendant Appendix

“1T” refers to the Transcript of Plea dated February 21, 2018

“2T” refers to the Transcript of Hearing dated November 14, 2022

“3T” refers to the Transcript of Hearing dated November 29, 2023

**STATEMENT OF FACTS**

Ms. Sillah pled guilty to Lawrence Township Ticket E17 007212 in violation of N.J.S.A. 39:4-50 on February 21, 2018. Ms. Sillah was represented by Raymond Staub, Esq., at the time of her guilty plea. The following is an excerpt from the plea colloquy elicited by the Court and then counsel for Ms. Sillah:

10 MR. STAUB: Your Honor, based upon my knowledge of the facts, if I were to take the factual basis, because I know there's a part that she doesn't recall, but I don't want the Court to think we're evading responsibility.

THE COURT: Sure, if you want to - if you want to do it, counselor, and then ill follow up, if I need to.

MR. STAUB: Ms. Sillah, I'm going to turn your attention back to the in question and that is - August 11 of 2017. On that night in question, at some point you had an interaction with Lawrence Township Police, correct?

MS. SILLAH: Yes.

20 MR. STAUB: And they came to your vehicle, you were found in your vehicle at the location on Kuser Lane, correct?

A: Yes.

Q: Now, I know were not (indiscernible) together. You're not denying you were intoxicated that night, correct?

A: No.

Q: In fact, you went out knowing you were going to drink, correct?

A: I did, yes.

Q: And at some point, and we've reviewed the evidence here, unfortunately the person that you thought was supposed to be your designated driver left you, correct?

30 A: Yes.

Q: And as a result, you admit that on that date and time, you did, in fact, operate your motor vehicle, correct?

A: Earlier in the night, yes.

Q: And you admit that you were intoxicated, correct?

A: Yes, but I was not driving.

THE COURT: I'm sorry what?

MS. SILLAH: I said, but I was not - I said "I was not driving."

MR. STAUB: Okay.

MS. SILLAH: But earlier in the night I was.

(Attorney/ Client discussion) . . .

MR. STAUB: And even though you don't recall leaving the party, based upon the evidence where the vehicle was, where you were located, statements given, and all the review of the evidence you're admitting that you operated the motor vehicle while intoxicated, correct?

10

MS. SILLAH: Yes.

1T 7:18-25; 8:1-25; 9:1-18; 10:18-25. Ms. Sillah was ultimately found guilty and sentenced as a first offender to a 3 month suspension of her New Jersey driving privileges, and 12 hours in the Intoxicated Driver Resource Center (IDRC), as well as the associated fines and court costs. 1T 16:1-6.

20

In her petition for post conviction relief, Ms. Sillah asserted ineffective assistance of counsel based on a legitimate issue with respect to operation of the motor vehicle, which was not explored prior to the plea. Da2-5. Ms. Sillah asserted she was not fully advised of defenses to the DWI charge, including defenses to the road side physical testing, and the breath testing defenses. Da2-5. Additionally, had she been fully advised of all the defenses in her case, she would not have entered the guilty plea and elected to proceed to trial. Da2-5.

**STANDARD OF REVIEW**

In order to set aside the factual findings made by the trial court, this Court must be:

[T]horoughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction, ... then, and only then, [the appellate court] should appraise the record as if it were deciding the matter at inception and make its own findings and conclusions. While this feeling of “wrongness” is difficult to define, because it involves the reaction of trained judges in the light of their judicial and human experience, it can well be said that that which must exist in the reviewing mind is a definite conviction that the judge went so wide of the mark, a mistake must have been made. This sense of “wrongness” can arise in numerous ways—from manifest lack of inherently credible evidence to support the finding, obvious overlooking or undervaluation of crucial evidence, a clearly unjust result, and many others.

State v. Locurto, 157 N.J. 463, 471 (1999).

**LEGAL ARGUMENT**

**I. HAVING ESTABLISHED A PRIMA FACIE CASE FOR INEFFECTIVE ASSISTANCE OF COUNSEL, AN EVIDENTIARY HEARING IS REQUIRED**

“In New Jersey, it is well-settled that a plea must be entered into voluntarily and intelligently.” State v. Crawly, 149 N.J. 310, 318 (1997).

In State v. Preciose, 129 N.J. 451 (1992), our Supreme Court set the standard for factual hearings on PCR applications:

[T]rial courts ordinarily should grant evidentiary hearings to resolve



ineffective-assistance-of-counsel claims if a defendant has presented a prima facie claim in support of post-conviction relief. As in a summary judgment motion, courts should view the facts in the light most favorable to a defendant to determine whether a defendant has established a prima facie claim.

To establish a prima facie claim of ineffective assistance of counsel, a defendant must demonstrate the reasonable likelihood of succeeding under the test set forth in *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674, 698 (1984), and *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), which we adopted in *State v. Fritz*, 105 N.J. 42, 58, 519 A.2d 336 (1987).

“Under the Strickland-Cronic-Fritz standard, the first issue is whether counsel's performance was deficient.” *State v. Preciose*, 129 N.J. 463 (1992). “The second. . . prong of the. . . test is whether there exists ‘a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.’” *Preciose* at 464, citing *Strickland*, supra, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698.

Ms. Sillah received ineffective assistance of counsel in this matter. The transcript of the plea is not clear as to the circumstances of whether Ms. Sillah was actually operating the motor vehicle at the time she was intoxicated. Ms. Sillah denied operation numerous times during her plea. There is a reasonable probability that had the matter proceeded to trial, the outcome of the case would have been different because of the persistent and legitimate issue with respect to the

operation of a motor vehicle by Ms. Sillah. Proving both “operation” and “operation while impaired” beyond a reasonable doubt is incumbent upon the State in order to sustain a finding of guilt to an alleged DWI offense. Here, the issue was not explored by defense counsel at the time of Ms. Sillah’s guilty plea, and as such it would represent at grave injustice to not allow Ms. Sillah the opportunity to raise the issue at an evidentiary hearing or subsequent trial.

**CONCLUSION**

10        For the reasons set forth herein, it is respectfully requested that this Court grant Ms. Sillah’s motion for post conviction relief and have her matter remanded to the Lawrence Township Municipal Court for an evidentiary hearing, or have the plea vacated and the matter proceed to trial.

Respectfully submitted,

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\_\_\_\_\_  
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\_\_\_\_\_  
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Attorney’s for the Defendant-Appellant

30 DATED: March 4, 2024



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The Honorable Judges of the  
Superior Court of New Jersey  
Appellate Division  
Richard J. Hughes Justice Complex  
Post Office Box 006  
Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Respondent)  
v. Zainabu Sillah (Defendant-Appellant)

Docket No. A-001105-23

Criminal Action: On Appeal from a Denial of Post-Conviction Relief  
in the Superior Court, Law Division (Criminal),  
Mercer County

Sat Below: Honorable Sherry L. Wilson, J.S.C.

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Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of a  
more formal brief submitted on behalf of the State of New Jersey.

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POINT I .....2

DEFENDANT DID NOT ESTABLISH A PRIMA FACIE CLAIM OF  
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PROPERLY DENIED DEFENDANT’S PETITION FOR POST-  
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## PROCEDURAL HISTORY

The State is satisfied to rely on the Statement of Procedural History as set forth in defendant's brief.

## COUNTERSTATEMENT OF FACTS

For the purposes of this appeal, the State relies upon the summary of the relevant facts as set forth in the order denying the initial PCR appeal.

In defendant's PCR, she alleged trial counsel was ineffective for failing to fully advise defendant of her defenses and that she would have rejected her plea had she been fully informed.

In denying the PCR petition, the PCR court found defendant failed to establish a prima facie claim of ineffective assistance. The PCR court found that because defendant failed to establish a prima facie claim of ineffective assistance, she was not entitled to an evidentiary hearing.

Defendant then appealed the denial of the PCR and argued that she had established a prima facie case of ineffective assistance and was entitled to an evidentiary hearing. That appeal was denied as the court found that defendant failed to establish that trial counsel was ineffective under either prong of the Strickland test.

## LEGAL ARGUMENT

Appellate review of the factual findings of a PCR court is deferential. State v. Nash, 212 N.J. 518, 540 (2013). Where no evidentiary hearing was held, however, the reviewing court may exercise de novo review over the factual inferences drawn from the documentary record by the PCR judge. State v. Gideon, 244 N.J. 538, 551 (2021); Nash, 212 N.J. at 540; State v. Harris, 181 N.J. 391, 415 (2004). State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014); State v. Reevey, 417 N.J. Super. 134, 146-47 (App. Div. 2010). The legal conclusions of a PCR judge are reviewed de novo. Nash, 212 N.J. at 540-41; Reevey, 417 N.J. Super. at 146.

### POINT I

DEFENDANT DID NOT ESTABLISH A PRIMA FACIE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND THE TRIAL COURT PROPERLY DENIED POST-CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING.

Defendant argues that the PCR court improperly denied her PCR petition, claiming she established trial counsel was ineffective for failing to fully inform her of the consequences related to, and the merits of, her plea. A review of the record establishes that the courts below thoroughly analyzed defendant's claim and properly determined that defendant failed to establish a prima facie claim of

ineffective assistance of counsel. Thus, the PCR court properly denied the PCR petition without an evidentiary hearing. That denial should be affirmed.

To establish ineffective assistance of counsel, a defendant must show: (1) counsel's performance "fell below an objective standard of reasonableness," Strickland v. Washington, 46 U.S. 668, 688 (1984), and if so, (2) there exists a "reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." Id. at 694; State v. Castagna, 187 N.J. 293, 313-14 (2006). A defendant must fulfill both prongs in order to show that the conviction resulted from a "breakdown in the adversary process that renders the result unreliable" such that relief should be granted. State v. Arthur, 184 N.J. 307, 318 (2005) (quoting State v. Fritz, 105 N.J. 42, 52 (1987)).

Under the first prong, defendant must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." State v. Nash, 212 N.J. 518, 540 (2013). To do this, a defendant must "overcome 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), and prove that counsel's representation was unreasonable. State v. Sloan, 226 N.J. Super. 605, 613 (App. Div. 1988); see also Fritz, 105 N.J. at 52. A defendant cannot simply "make bald assertions that he was denied the effective assistance of counsel," but must

“allege facts sufficient to demonstrate counsel’s alleged substandard performance.” State v. Cummings, 321 N.J. Super. 154, 170 (1999). In determining whether a prima facie claim has been established, the facts should be viewed in the light most favorable to the defendant. State v. Preciose, 129 N.J. 451, 462-63 (1992).

Mere dissatisfaction with counsel's judgment is insufficient to warrant overturning a conviction. State v. Echols, 199 N.J. 344, 358 (2009), (quoting Castagna, 187 N.J. at 314). The court “must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct,” ibid., without the “distorting effects of hindsight.” State v. Hess, 207 N.J. 123, 147 (2011). Generally, “except in those rare instances where they are of such magnitude as to thwart the fundamental guarantee of [a] fair trial,” strategic miscalculations or trial mistakes are insufficient to warrant reversal. State v. Buonadonna, 122 N.J. 22, 42 (1991); State v. Perry, 124 N.J. 128, 153 (1991) (refusing to second-guess counsel’s trial strategy); State v. Thomas, 245 N.J. Super. 428, 432 (App. Div. 1991). “[I]f counsel makes a thorough investigation of the law and facts and considers all likely options, counsel’s trial strategy is ‘virtually unchallengeable.’” State v. Chew, 179 N.J. 186, 217 (2004) (quoting Strickland, 466 U.S. at 690–91).

To satisfy the second prong, a defendant must show that the error committed was “so serious as to undermine the court’s confidence in the jury’s



verdict or the result reached.” State v. Allegro, 193 N.J. 352, 367 (2008); Castagna, 187 N.J. at 315. It is not sufficient for the defendant to merely show that the errors had some conceivable effect on the outcome. Arthur, 184 N.J. at 319. To establish prejudice, a 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.” Ibid.; Harris, 181 N.J. at 432. As a “reasonable probability” is a probability sufficient to undermine confidence in the outcome, State v. Arthur, 184 N.J. 307, 319 (2005), the error committed must be so serious as to undermine the court’s confidence in the jury’s verdict or the result reached. Castagna, 187 N.J. at 315. To warrant relief, the defendant bears the burden to “demonstrate a reasonable likelihood that [his] claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.” R. 3:22-10(b).

Although claims of ineffective assistance of counsel are well suited for post-conviction review, R. 3:22-4(a); Preciose, 129 N.J. at 460, the mere raising of such a claim does not entitle a defendant to an evidentiary hearing. Cummings, 321 N.J. Super. at 170. Rather, an evidentiary hearing on defendant’s PCR petition should be granted only if: (1) defendant has established a prima facie claim for relief, (2) there is a factual dispute on a matter outside the scope of the record, and (3) the court determines, based on the papers submitted by both parties, that the issue has

potentially sufficient factual and legal merit. State v. Cooper, 410 N.J. Super. 43, 56 (App. Div. 2009); see also R. 3:22-10. Where the “defendant’s allegations are too vague, conclusory, or speculative . . . an evidentiary hearing need not be granted.” State v. Marshall, 148 N.J. 89, 158 (1992).

As the PCR court correctly found, all of defendant’s claims failed to present a prima facie claim of ineffective assistance of counsel such that an evidentiary hearing would be warranted. The court below properly found that defendant’s claim fails on both prongs of Strickland/Fritz. As the court noted, the issue regarding operation was factored into the plea deal and it explained why the State agreed to allow defendant to plead to a first tier DWI rather than a second tier. It was also noted that the defendant acknowledged that she discussed the case with her attorney including regarding the issues related to operation, the plea deal and its consequences, and the evidence against her.

Defendant provides nothing at all to establish that anything productive would have come from the holding of an evidentiary hearing. When a petitioner claims her trial counsel inadequately investigated her case, she “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.” Cummings, 321 N.J. Super. at 170; State v. Petrozelli, 351 N.J. Super. 14, 23 (App. Div. 2002). Without any specific information that would have added to a defendant’s

case, the PCR court cannot find that the defendant was prejudiced by trial counsel's investigation. See Fritz, 105 N.J. at 64-65.

Defendant's claim is purely a vague, conclusory, and speculative assertion with no support in fact or law. She merely continues to assert that accepting the plea deal was the wrong decision and therefore argues that trial counsel was deficient in participating in that decision. There is no evidence presented that trial counsel did not properly weigh the considerations involved. Defendant, thus, has failed to establish either prong of Strickland was met. Accordingly, the PCR court's proper denial of this claim should be affirmed.

The court below properly determined that the claim presented was nothing more than an unsupported, bald assertion insufficient to warrant relief. See Cummings, 321 N.J. Super. at 170. Defendant did not and cannot establish a prima facie claim of trial counsel acting unreasonably, let alone made errors that would cause the conviction to have resulted from a "breakdown in the adversary process that renders the result unreliable" such that relief should be granted. Arthur, 184 N.J. at 318. As the PCR court properly found, there was no need for additional development of the record since all the claims are contained in the record, and defendant did not identify additional facts that would or could be elicited at an evidentiary hearing to possibly overcome the 'strong presumption' that counsel exercised 'reasonable professional judgment' and 'sound trial strategy' in fulfilling

his responsibilities,” Hess, 207 N.J. at 147 (2011) (quoting Strickland, 466 U.S. at 689-90).

The PCR court, therefore, properly found that defendant failed to establish a prima facie claim of ineffective assistance of counsel, and appropriately denied the claims without an evidentiary hearing. That denial should be affirmed.

### CONCLUSION

Based on the aforementioned reasons, the State respectfully requests that this Court affirm the PCR’s court’s denial of defendant’s petition for post-conviction relief.

Respectfully submitted,

ANGELO J. ONOFRI  
Mercer County Prosecutor

/s/ Peter Rhineland

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