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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-2594-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT G. CASON, a/k/a ROBERT CASON, ROBERT GUY CASON, R. GUY CA'SON, ROBERT GUY CASOM, JAMES WISON,

Defendant-Appellant.

Submitted June 7, 2017 – Decided July 14, 2017

Before Judges Accurso and Lisa.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 09-03-0374.

Joseph E. Krakora, Public Defender, attorney for appellant (Steven M. Gilson, Designated Counsel, on the brief).

Andrew C. Carey, Middlesex County Prosecutor, attorney for respondent (Nancy A. Hulett, Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant, Robert G. Cason, appeals from the December 3, 2015 order denying his petition for post-conviction relief (PCR), and declining to conduct an evidentiary hearing.

Tried to a jury, defendant was convicted of second-degree eluding, N.J.S.A. 2C:29-2b, and the disorderly persons offense of resisting arrest, N.J.S.A. 2C:29-2a(1) (as a lesser included offense of third-degree resisting arrest, N.J.S.A. 2C:29-2a(3), which was charged in the indictment). Defendant was sentenced to three years' imprisonment for eluding, and a concurrent term of six months imprisonment for resisting arrest.

Defendant appealed and we affirmed his conviction and sentence. State v. Cason, No. A-4236-11 (App. Div. June 18, 2014). The Supreme Court denied defendant's petition for certification. 220 N.J. 100 (2014).

Defendant filed a pro se PCR petition on February 24, 2015. He asserted, generally, ineffective assistance of trial counsel. PCR counsel was assigned, and a brief was filed under counsel's name. The matter came before Judge Alberto Rivas for oral argument on December 1, 2015. Defendant's PCR counsel informed the judge that defendant was the true author of the brief submitted under counsel's name and indicated that defendant wished to personally argue the case. The judge granted the request.

Essentially, defendant contended that his trial counsel did not conduct an adequate investigation in preparing for trial. He supported his argument by pointing out minor inconsistencies in the testimony of various witnesses, minor inconsistencies between the testimony of a police officer and the contents of that officer's report, and the like.

The judge noted that defendant's trial counsel had cross-examined the witnesses thoroughly, pointing out such inconsistencies. The judge also noted that defendant had filed no affidavits or certifications in support of his PCR petition, by individuals possessing personal knowledge, setting forth what facts would have been disclosed by a more thorough investigation and how those facts would have had the probability of changing the outcome of the trial.

Further, the judge pointed out that defendant was essentially convicted by his own words, having told the police in the aftermath of the incident that he was sorry for not stopping when he was signaled to do so and admitting that he knew he was on the suspended list and had an outstanding warrant, but wanted to get his car home. Rather than pulling over along the highway, he drove to the apartment complex where he lived, at which time he finally stopped. His statement to the police had been ruled admissible after a

Miranda[1] hearing. Defendant testified at trial and further acknowledged that he saw the police lights and heard the sirens, as a result of which he knew he was supposed to stop, but he did not. At trial, he also acknowledged that he knew his license was suspended, but denied that he was aware a warrant was outstanding for unpaid traffic tickets.

Defendant also criticized the trial strategy developed by his trial counsel. That strategy was to downplay the events, characterizing them as a traffic violation and a motor vehicle stop, as opposed to criminal activity. The judge noted that this was a sound strategy in light of the evidence the State was expected to present, including defendant's admissions in his statement to the police.

Judge Rivas found defendant's arguments unpersuasive. He outlined the controlling legal principles, including the two-prong Strickland/Fritz[2] test, which requires a showing of deficient performance by trial counsel and a likelihood that, but for the deficient performance, the result of the trial might have been different. As to trial strategy, the judge noted that courts must

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2] Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Fritz, 105 N.J. 42 (1987).

be highly deferential and avoid second guessing strategic decisions made at the time of trial, citing State v. Savage, 120 N.J. 594, 617 (1990).

Judge Rivas concluded:

> None of the arguments that are raised by Mr. Cason require an evidentiary hearing at this time. There is no factual dispute regarding [defense counsel's] performance. Like I said, much of the arguments raised by Mr. Cason in his brief and his oral argument focuses on minute issues and differences of perception, which do not rise to a level to call into question the quality of the performance or the trial.
>
> A defendant must do more than just make bald assertions that he was denied ineffective assistance of counsel. He must allege facts; facts sufficient to demonstrate counsel's allegedly substandard performance. In order to do that, the application must be supported by affidavits or certifications, none of which were filed in this particular case.
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> The test is: But for the counsel's error, the result would be different. Strickland, [supra, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.]
>
> Mr. Cason has failed to show that his counsel performed deficiently under constitutional standards. He has failed to show there's a reasonable likelihood of success on the merits. And based on what has been stated on the record, the [c]ourt having considered the moving papers, the [c]ourt finds that Mr. Cason's petition for post-conviction relief has not adduced sufficient evidence to warrant an evidentiary hearing or to require a finding of ineffective assistance of counsel. Defendant's request for post-conviction relief is denied at this time.

On appeal, in the brief filed by defendant's counsel, a single argument is presented:

> THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CLAIM OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO ADEQUATELY INVESTIGATE HIS CASE.

Defendant has filed a supplemental pro se brief, in which he raises the following additional arguments:

> POINT [I]
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> THE TRIAL AND RESULTING CONVICTION VIOLATED THE STATE'S DOCTRINE OF FUNDAMENTAL FAIRNESS. ASIDE FROM HAVING EXCULPATORY VALUE, THE WEATHER REPORTS HAD IMPEACHMENT VALUE IN ITS NON-DISCLOURE BY THE STATE AND COUNSEL. A VIOLATION OF [DEFENDANT]'S DUE PROCESS RIGHTS, WHICH WAS COMPOUNDED BY THE SUPERIOR COURT'S DENIAL OF A[] HEARING ON DECEMBER 1[,] 2015.
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> POINT [II]
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> COUNSEL ERROR: INEFFECTIVENESS OF COUNSEL FAILURE TO MITIGATE.
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> POINT [III]
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> MATERIALLY INCONSISTENT STATEMENTS BY THE STATE[']S WITNESS CREATING A DEPRIVATION OF DUE PROCESS.
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> POINT [IV]
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> INSUFFICIENT EVIDENCE TO PROVE AN ATTEMPT TO ELUDE.
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> POINT [V]
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> HEARSAY STATEMENTS BY THE PRINCIP[AL] AND ASSISTING OFFICERS.

POINT [VI]

THE COURT ERRED ON DECEMBER 1[,] 2015 BY NOT CONSIDERING PROSECUTORIAL MISCONDUCT AS A PROBATIVE MITIGATING FACTOR FOR DEPRIVATION OF DUE PROCESS.

Defendant's arguments are completely lacking in merit and do not warrant discussion in a written opinion. R. 2:11-3(e)(2). We nevertheless offer the following brief comments.

Defendant's unsupported assertion that his attorney failed to adequately investigate the case is not sufficient to entitle him to post-conviction relief or to an evidentiary hearing. Such an assertion must be supported by an affidavit or certification, made on personal knowledge, stating the facts which would have been found if a more thorough investigation had been conducted, and how those facts might have changed the outcome. State v. Cummings, 321 N.J. Super. 154, 170-71 (App. Div.), certif. denied, 162 N.J. 199 (1999). Merely raising allegations of ineffective assistance, without competent evidence sufficient to establish the required prima facie showing, does not entitle a defendant to an evidentiary hearing. Id. at 170.

Nothing in the trial record evidenced a lack of familiarity with the facts in the case on the part of trial counsel. Indeed, the record demonstrates the opposite. We agree with Judge Rivas that trial counsel employed a sound strategy in light of the

evidence with which he would be confronted. This included defendant's admission. And, trial counsel executed that strategy very competently in the manner in which he conducted himself throughout the trial.

Evidentiary hearings may be granted on a PCR petition if the defendant establishes a prima facie case of ineffective assistance of counsel. State v. Preciose, 129 N.J. 451, 462 (1992). Such hearings are only required if resolution of disputed issues are "necessary to resolve the claims for relief." R. 3:22-10(b). Hearings shall not be granted if they "will not aid the court's analysis of the defendant's entitlement to post-conviction relief," or "if the defendant's allegations are too vague, conclusory or speculative." R. 3:22-10(e)(1) and (2). In order to establish a prima facie case, a defendant must demonstrate a reasonable likelihood that he or she will ultimately succeed on the merits. State v. Marshall, 148 N.J. 89, 157-58, cert. denied, 552 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997).

Defendant's contentions are indeed vague, conclusory and speculative. They are unsupported by competent evidence setting forth specific facts that are in dispute. There was no basis in this case for an evidentiary hearing, and Judge Rivas correctly declined to conduct such a hearing.

We affirm substantially for the reasons expressed by Judge Rivas in his oral opinion of December 1, 2015.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION