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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-2909-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

NORMAN REID,

Defendant-Appellant.

Submitted October 11, 2017 – Decided December 19, 2017

Before Judges Fasciale and Summers.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No. 96-
11-1122.

Norman Reid, appellant pro se.

Joseph D. Coronato, Ocean County Prosecutor,
attorney for respondent (Samuel Marzarella,
Chief Appellate Attorney, of counsel; Roberta
DiBiase, Senior Assistant Prosecutor, on the
brief).

PER CURIAM

On January 16, 1997, a jury convicted defendant of first-degree aggravated manslaughter and related offenses, which resulted in a life sentence with twenty-five years of parole

ineligibility. He subsequently filed several appeals and post-conviction relief (PCR) petitions that we need not discuss as they are set forth in detail in our unpublished decision, State v. Norman Reid, No. A-0106-13 (App. Div. June 15, 2015), denying his third PCR petition.

Defendant now alleges in his fourth PCR petition that he was entitled to a new trial because the State violated Brady v. Maryland, 373 U.S. 83, 87 (1963), by failing to provide evidence of a key State witness's prior conviction that would have allowed him to impeach the witness's credibility. The Office of the Public Defender declined defendant's request for assignment of counsel unless the PCR court determined that the petition had "good cause." R. 3:22-6(b).

On January 7, 2016, Judge James M. Blaney denied the PCR petition without an evidentiary hearing, issuing an order and letter opinion dismissing the petition for lack of good cause. Citing State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999), the judge reasoned that defendant made bald assertions of his trial counsel's ineffective performance without any facts "supported by affidavits and certifications by witnesses who would possess personal knowledge of that performance." The judge found defendant's claim that the State deprived him of the ability to impeach a witness's credibility based upon a prior conviction

was a collateral issue, which does not support PCR. Since the petition lacked good cause, the judge determined defendant was not entitled to assignment of counsel.

Following the dismissal, defendant submitted two certifications to Judge Blaney: his own stating it was not until November 2014, that he learned the witness had a prior conviction; and trial counsel's stating that he could not recall whether the State's discovery included the witness's criminal history, but if it did, he would have used the conviction for impeachment purposes. In response, Judge Blaney issued a February 5, 2016 letter reiterating that defendant's PCR petition was dismissed for the same reasons set forth in his January 7 letter opinion.¹

In this appeal, defendant raises a single-point:

THE PCR COURT ERRED WHEN IT DISMISSED THE DEFENDANT'S PETITION WITHOUT AN EVIDENTIARY HEARING AFTER BEING SUPPLIED WITH A CERTIFICATION OF HIS TRIAL ATTORNEY AND A CERTIFICATION OF THE DEFENDANT IN SUPPORT OF PCR.

(a) THIS PETITION IS NOT TIME BARRED AND GOOD CAUSE EXISTS FOR THE ASSIGNMENT OF COUNSEL ON THIS SUBSEQUENT PETITION.

(b) THE PETITIONER WAS ENTITLED TO AN EVIDENTIARY HEARING.

¹ Although defendant's Notice of Appeal indicates that an order was entered on February 5, 2016, no order is included in the record.

Defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add only the following.

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-part Strickland test by demonstrating that "counsel's performance was deficient," that is, "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); accord State v. Fritz, 105 N.J. 42, 58 (1987).

A court reviewing a PCR petition based on claims of ineffective assistance has the discretion to grant an evidentiary hearing only if a defendant establishes a prima facie showing in support of the requested relief. State v. Preciose, 129 N.J. 451, 462 (1992). The mere raising of a claim for PCR does not entitle a defendant to an evidentiary hearing. Cummings, 321 N.J. Super. at 170. When determining whether to grant an evidentiary hearing, the PCR court must consider the facts in the light most favorable to the defendant to determine if a defendant has established a prima facie claim. Preciose, 129 N.J. at 462-63. The court should only conduct a hearing if there are disputed issues as to material

facts regarding entitlement to PCR that cannot be resolved based on the existing record. State v. Porter, 216 N.J. 343, 354 (2013).

Here, there is no evidence that trial counsel was aware of the witness's prior conviction and failed to use the information to impeach the witness's credibility. We therefore affirm substantially for the reasons expressed by Judge Blaney in his written decisions.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION