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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-3267-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TAMEKA HARDISON,

Defendant-Appellant.

Submitted March 28, 2017 – Decided April 20, 2017

Before Judges Messano and Espinosa.

On appeal from the Superior Court of New
Jersey, Law Division, Camden County,
Indictment No. 09-06-2330.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alan I. Smith, Designated
Counsel, on the brief).

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Patrick D. Isbill,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Following a bench trial, defendant Tameka Hardison was convicted of fourth-degree aggravated assault on a police officer, N.J.S.A. 2C:12-1(b)(5), third-degree terroristic threats, N.J.S.A.

2C:12-3(a), and the disorderly persons offenses of obstructing justice, N.J.S.A. 2C:29-1(a), and disorderly conduct, N.J.S.A. 2C:33-2(a), and sentenced to five years' probation with a condition of 364 days in the county correctional facility. We affirmed her convictions and sentence on appeal, State v. Hardison, No. A-4587-09 (App. Div. June 7, 2012), and the Supreme Court denied her petition for certification. 212 N.J. 456 (2012).

Defendant filed a pro se petition for post-conviction relief (PCR). Counsel was appointed to represent her, and, among other things, defendant asserted trial counsel provided ineffective assistance. Without granting oral argument, the PCR judge, who was also the trial judge, denied the petition by order dated October 3, 2013, supported by a comprehensive written opinion.

Defendant appealed, and another panel of this court, relying on State v. Parker, 212 N.J. 269 (2012), summarily remanded the matter to the PCR court. In Parker, the Court recognized a "residuum of discretion that rests with our trial judges" to consider PCR petitions without granting oral argument; however, the Court hastened to add that the judge's consideration of the issue "should be approached with the view that oral argument should be granted," with all favorable inferences provided to the defendant. Id. at 282. Most importantly, the Court instructed, "when the trial judge does reach the determination that the

arguments presented in the papers do not warrant oral argument, the judge should provide a statement of reasons that is tailored to the particular application, stating why the judge considers oral argument unnecessary." Ibid.

In remanding the matter, our colleagues provided specific reasons for the remand in their order and guidance for the PCR court to follow:

The PCR court did not provide a statement of reasons explaining why it denied oral argument. The matter is summarily remanded to the PCR court for the limited purpose of that court reconsidering the denial of oral argument on defendant's petition If, after oral argument, the court is satisfied that a hearing is necessary, the matter will proceed to a hearing. If oral argument is again denied, the court must provide a statement of reasons for the denial.

[(Emphasis added).]

On remand, without conducting any hearing, the same judge issued a letter opinion. He noted the receipt of supplemental briefs and "reaffirm[ed]" his denial of defendant's petition for failure to "make a prima facie case of ineffective assistance of counsel." The seventeen-page opinion recognizes the standards set forth in Parker. Yet, the judge never provided a statement of reasons why he again denied oral argument, except to state that defendant failed to present a prima facie case of ineffective assistance. In other words, the judge seemingly conflated the


standard governing the grant of an evidentiary hearing, see Rule 3:22-10(b) ("A defendant shall be entitled to an evidentiary hearing only upon the establishment of a prima facie case"), with Parker's holding that, presumptively, "oral argument should be granted." Parker, supra, 212 N.J. at 282.

Defendant has again appealed. One specific argument raised is that the PCR judge failed to provide an adequate statement of reasons for again denying oral argument, and, in doing so, failed to heed our instructions. We agree.

Since Parker was decided, the Court has reiterated the strong presumption in favor of oral argument in a series of published orders, all of which granted the defendants' petitions for certification and summarily remanded the matters to the PCR courts, either because the judges' statements of reasons for denying oral argument were inadequate to overcome the presumption, or because reconsideration was appropriate. See State v. Morales, 227 N.J. 373-74 (2016) (statement of reasons did not overcome presumption); State v. J.R., 226 N.J. 210 (2016) (same); State v. Daniels, 225 N.J. 338 (2016) (same); State v. Scott, 225 N.J. 337 (2016) (same); State v. Mitchell, 217 N.J. 300 (2014) (remanded for reconsideration in light of Parker). We are compelled to remand the matter to the trial court, which shall grant oral argument on defendant's PCR petition and thereafter decide its merits anew.

Reversed and remanded.

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


CLERK OF THE APPELLATE DIVISION