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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-3630-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RENEE D. EDWARDS, a/k/a RENE
C. EDWARDS, WILLIE DALLAS,
WILLIE DALLZ and WILLIE
DALIZ,

Defendant-Appellant.

Submitted October 18, 2016 – Decided April 3, 2017

Before Judges Fasciale and Kennedy.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
07-09-3093.

Joseph E. Krakora, Public Defender, attorney
for appellant (William Welaj, Designated
Counsel, on the brief).

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Linda A. Shashoua,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant appeals from a December 19, 2014 order denying his petition for post-conviction relief (PCR). Defendant maintains his trial counsel rendered ineffective assistance. We disagree and affirm.

A grand jury indicted and charged defendant with second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (Count One); third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7) (Count Two); third-degree subjecting a law enforcement officer to bodily fluid, N.J.S.A. 2C:12-13 (Count Three); third-degree resisting arrest, N.J.S.A. 2C:29-2(a) (Count Four); and third-degree aggravated assault on a police officer, N.J.S.A. 2C:12-1(b)(5)(a) (Count Five).

Following a jury trial, defendant was acquitted on Counts One and Three; convicted of the lesser-included offense of simple assault, N.J.S.A. 2C:12-1(a), on Count Two; and convicted on Counts Four and Five.¹ The court sentenced defendant to a five-year term of imprisonment, subject to a parole ineligibility period of two and one-half years, on Counts Four and Five; and to a six-month term of imprisonment for the lesser-included disorderly persons offense on Count Two; all to run concurrently. These sentences

¹ The conviction on Count Five pertained only to the charge as to two of three Sheriff's Officers.

were to run consecutively to defendant's sentence for a violation of probation on an earlier conviction.²

Defendant appealed, and in an unpublished opinion, we affirmed the convictions. State v. Edwards, No. A-0284-10 (App. Div. Jan. 16, 2013), certif. denied, 214 N.J. 176, cert. denied, ___ U.S. ___, 134 S. Ct. 828, 187 L. Ed. 2d 689 (2013). In 2014, defendant filed his PCR petition arguing that his trial counsel failed to call him to testify at the trial. The PCR judge conducted oral argument, which defendant refused to attend, and denied the petition without conducting an evidentiary hearing, concluding that defendant failed to make a prima facie showing of ineffectiveness. After defendant filed this appeal, a federal district court judge denied defendant's habeas petition. Edwards v. State of New Jersey, No. 13-6523 (D.N.J. August 20, 2015).

On appeal, defendant raises the following argument:

POINT I

THE [PCR] COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR [PCR] WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS CONTENTION THAT HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL AS A RESULT OF TRIAL COUNSEL'S

² At the time of the events giving rise to the indictment, defendant was on probation for a conviction for fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b). The trial judge found a violation of probation and sentenced defendant to an eighteen-month term of imprisonment, subject to a nine-month period of parole ineligibility.

FAILURE TO THOROUGHLY DISCUSS WITH THE DEFENDANT ALL RELEVANT RAMIFICATIONS ASSOCIATED WITH HIS DECISION WHETHER OR NOT TO TESTIFY, AS A RESULT OF WHICH THE DEFENDANT DID NOT TESTIFY IN HIS OWN DEFENSE.

For a defendant to obtain relief based on ineffective assistance grounds, he must show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); State v. Fritz, 105 N.J. 42, 58 (1987). Defendant failed to meet either prong of the Strickland/Fritz test.

We conclude that defendant's arguments on appeal are without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(2), and affirm substantially for the reasons expressed by the PCR judge. We add the following comments.

As to the first prong of Strickland, the PCR judge carefully considered the trial transcripts on the subject of defendant's strategic election not to testify. Based on defendant's statements on the record, the PCR judge found that defendant understood the consequences of not testifying at trial. The PCR judge also noted that in making that decision, defendant avoided impeachment by having his prior convictions introduced into evidence. The trial judge's colloquy is as follows:

THE COURT: Now, we are to the defendant's case. I'll first ask in terms of witnesses[,] I would like to voir dire [defendant] to determine if he's going to testify. Has a decision been made?

[TRIAL COUNSEL]: Yes, Your Honor.

THE COURT: And is he going to testify?

[TRIAL COUNSEL]: He is not.

THE COURT: He is not?

[TRIAL COUNSEL]: Not.

THE COURT: All right. I'm going to ask [defendant].

[. . . .]

You understand that you do have the right to testify, sir?

DEFENDANT: Yes.

THE COURT: Okay. And my understanding based on what your attorney stated was that you are electing not to testify; is that correct, sir?

DEFENDANT: Yes.

THE COURT: All right. Further, you understand that I will give the Jury an instruction that they are not to draw any inferences or conclusions from your election not to testify. Do you understand that . . . that charge will be given?

DEFENDANT: Yes.

THE COURT: Counsel, he wants that charge?

[TRIAL COUNSEL]: Yes, Your Honor.

THE COURT: All right. And as well I'll tell . . . it would be improper to draw any conclusions, you know, either for you or against you from this decision not to testify. Do you understand that, sir?

DEFENDANT: Yes.

THE COURT: All right. You're not going to testify?

DEFENDANT: No.

THE COURT: Okay. And no one has pressured you not to testify, sir?

DEFENDANT: No.

THE COURT: It's your own voluntary decision; correct?

DEFENDANT: Yes.

THE COURT: Okay. Very good. I'm satisfied that he understands his rights to testify or not to testify, and he's clearly on voir dire elected not to testify.

Our review of the entire record reflects that defendant discussed with his trial counsel his decision not to testify, and fully understood the consequences.


Even assuming defendant's trial counsel was deficient, which is not the case, defendant failed to make a prima facie showing of the second prong of Strickland. As the PCR judge correctly stated, "defendant offers . . . no explanation or reasoning for his basically wholly uncorroborated, bare boned assertion that the jury would have ruled differently if he testified." This amounts to an improper mere "bald assertion[]" of ineffective assistance. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). As further noted by the PCR judge, had defendant testified at trial, the State could have used defendant's prior criminal history to discredit his testimony. As noted by the PCR judge, defendant's trial counsel went to "great lengths" to ensure that facts presented at the trial portrayed the encounter between defendant and the officers as deriving from a lawful basis.

We are also convinced that an evidentiary hearing was unwarranted. An evidentiary hearing on a PCR petition is required only when the facts viewed in the light most favorable to defendant would entitle a defendant to PCR. State v. Preciose, 129 N.J. 451, 462-63 (1992). For a judge to order a hearing, the defendant must make a prima facie showing of ineffective assistance of counsel by demonstrating a reasonable likelihood of success under the Strickland test. Ibid.; see also Cummings, supra, 321 N.J.

Super. at 170 (requiring defendant to "allege facts sufficient to demonstrate counsel's alleged substandard performance"). Defendant failed to meet this standard because he cannot demonstrate a reasonable likelihood of success under the Strickland/Fritz test.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION