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APPROVAL OF THE APPELLATE DIVISION**

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-3710-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

STANFORD YOUGH,

Defendant-Appellant.

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Submitted October 17, 2017 – Decided October 27, 2017

Before Judges Fisher and Fasciale.

On appeal from the Superior Court of New  
Jersey, Law Division, Passaic County,  
Indictment No. 06-04-0402.

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

Camelia M. Valdes, Passaic County Prosecutor,  
attorney for respondent (Marc A. Festa, Senior  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

At the conclusion of a 2007 jury trial, defendant was convicted of second-degree robbery and, later that same year, sentenced as a persistent offender to an extended fifteen-year

prison term, subject to an eighty-five percent period of parole ineligibility. We reversed his conviction and remanded for a new trial. State v. Yough, No. A-3832-07 (App. Div. 2010). The Supreme Court, however, reversed our determination and remanded for our consideration of other issues we previously found unnecessary to decide. State v. Yough, 208 N.J. 385 (2011). We then rejected defendant's remaining arguments and affirmed the judgment of conviction. State v. Yough, No. A-3832-07 (App. Div. 2013). And the Supreme Court denied defendant's subsequent petition for certification. 214 N.J. 176 (2013).

Defendant filed a pro se post-conviction relief (PCR) petition in 2014. The judge<sup>1</sup> heard argument and denied the PCR petition for reasons set forth in a thorough oral decision in 2016.

Defendant appeals, arguing in a single point:

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

We find insufficient merit in this argument to warrant further discussion in a written opinion, R. 2:11-3(e)(2), except to add a few brief comments.

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<sup>1</sup> The PCR judge was also the trial judge.

Defendant argued to the PCR judge that he was deprived of the effective assistance of counsel because his trial attorney failed to investigate an alibi defense. The robbery occurred in Paterson at approximately 1:00 a.m., on October 10, 2005, and, as part of his PCR petition, defendant provided his sister's affidavit. She asserted that defendant "could not have committed the crime for which he was convicted" because, during that time frame,

I would come home from work at late hours during the early morning (12:30 a.m. to 1:00 a.m.) and my brother would be at home to open the door and would always be there around the same time, he would go to his room and go to bed and go [to] work in the morning. He did this regularly as part of his routine and I know he did this during the month of October 2005.

Argument during the PCR hearing revealed that defendant and his sister shared a home that was approximately 1.3 miles from the robbery scene. As the judge recognized when he explored the affidavit's assertions,<sup>2</sup> defendant's sister did not directly state defendant was home when the robbery occurred on October 10, 2005, only that "during the month of October 2005" he "routine[ly]" would be at home around that time. Even if the record contained a

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<sup>2</sup> Although the PCR petition was filed more than five years from the entry of the judgment of conviction, the judge did not invoke the time-bar contained in Rule 3:22-12(a), but instead considered the merits.

sworn statement to suggest that what defendant's sister said in her affidavit was conveyed to defense counsel prior to trial<sup>3</sup> – the attorney, after all, could not be expected to investigate an alibi defense that was not suggested by the information provided by defendant or others – we find no merit in defendant's contention that the judge should have conducted an evidentiary hearing into these allegations. We discern from his oral decision that the judge assumed the truth of defendant's sister's affidavit but found that acceptance of those assertions at face value did not present an effective alibi defense. Indeed, like the experienced trial judge, we agree that even if the attorney knew of this information he would have reasonably viewed this alleged alibi defense as tactically unfeasible. As the judge recognized, testimony from defendant's sister in conformity with this affidavit would actually have placed defendant within close proximity of the crime scene without the benefit of a definitive assertion that she saw him at their home at the time the robbery occurred.

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<sup>3</sup> The only sworn statement that might suggest this fact – the inclusion in the sister's affidavit of her statement that "[h]is attorney was asked by him to interview me to be a witness at his trial" – would not have been admissible.

For these reasons and substantially for the reasons set forth by the judge in his cogent oral decision, we conclude that defendant failed to demonstrate a prima facie case of ineffectiveness under the Strickland/Fritz<sup>4</sup> 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

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<sup>4</sup> 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).