

**NOT FOR PUBLICATION WITHOUT THE
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-0310-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ABDUL GRIGGS, a/k/a
ABDUL B. GRIGGS, a/k/a
ABDUL BATES GRIGGS, a/k/a
ABDUL BATI GRIGGS, a/k/a
ABDUL BATIN GRIGGS, a/k/a
ABDUL I. GRIGGS, a/k/a
ABDUL K. GRIGGS, a/k/a
ABDUL R. GRIGGS a/k/a
ABDULBATI GRIGGS, a/k/a
ABDULBATI I. GRIGGS, a/k/a
IBINISHM GRIGGSABDULBATIN,
a/k/a BATEEN, a/k/a BATI and
a/k/a BATIN,

Defendant-Appellant.

Submitted February 1, 2018 – Decided March 8, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment Nos.
07-01-0015 and 07-01-0016.

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

Ann M. Luvera, Acting Union County Prosecutor, attorney for respondent (N. Christine Mansour, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant, Abdul Griggs, appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. For the reasons that follow, we affirm.

After a first trial ended in a mistrial, a second jury convicted defendant of murder, N.J.S.A. 2C:11-3(a)(1) and (2), and various weapons offenses under N.J.S.A. 2C:39-4(a), N.J.S.A. 2C:39-5(b) and N.J.S.A. 2C:39-7(b). The sentencing court imposed an aggregate sentence of life imprisonment, plus ten years, subject first to a No Early Release Act, N.J.S.A. 2C:43-7.2, parole disqualifier and then a consecutive five-year period of parole ineligibility.

Defendant appealed and we affirmed his convictions and sentence in an unpublished opinion. State v. Griggs, No. A-3814-10 (App. Div. July 17, 2014) (slip op. at 21). The Supreme Court denied his petition for certification. State v. Griggs, 220 N.J. 209 (2015).

The facts underlying defendant's convictions are set forth in our earlier opinion and need not be repeated here. See Griggs, slip op. at 5-6.

Defendant filed a PCR petition on March 16, 2015, in which he argued ineffective assistance of trial and appellate counsel. He cited to ten issues he found with counsel's performance: failure to object to certain expert testimony; allowing the jury to hear a witness refer to defendant's "[l]ast [t]rial"; failure to conduct pre-trial investigation; failure to call a handwriting expert; failure "to investigate [the] crime scene"; failure "to insure that defendant received a fair trial"; failure to file a motion "to suppress witnesses['] unsigned statements they testified to[]"; failure to call an expert forensic pathologist; and allowing witnesses to testify to hearsay.

PCR counsel submitted a brief on behalf of defendant on November 22, 2015. In this brief, defendant claimed trial counsel failed to "investigate, communicate, prepare or explain . . . trial strategy . . . or object during trial[,]" file necessary motions to prevent admission of "highly prejudicial evidence[,]" "file a motion or object to the testimony of" the deputy medical examiner about "stippling" marks, or communicate defendant's "wishes for a negotiated plea following [his] first trial."

Judge Scott J. Moynihan denied defendant's petition by order dated August 4, 2016. The judge issued a comprehensive, fifteen-page written decision setting forth his reasons for denying defendant's petition without an evidentiary hearing.

On appeal, defendant presents the following arguments:

POINT I:

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR POST CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS CONTENTION THAT HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION AT THE TRIAL LEVEL.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS AND PETITIONS FOR POST CONVICTION RELIEF.

B. THE DEFENDANT DID NOT RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL AS A RESULT OF COUNSEL'S FAILURE TO EFFECTIVELY ATTEMPT TO FACILITATE A MUTUALLY ACCEPTABLE PLEA AGREEMENT BETWEEN HIS CLIENT AND THE STATE FOLLOWING THE FIRST TRIAL, WHICH ENDED IN A MISTRIAL DUE TO THE JURY'S INABILITY TO REACH A UNANIMOUS VERDICT.

C. THE DEFENDANT DID NOT RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL AS A RESULT OF COUNSEL'S CONDUCT ELICITING TESTIMONY DURING CROSS-EXAMINATION OF THE MEDICAL EXAMINER INDICATING THERE HAD BEEN A "PRIOR

TRIAL", A REFERENCE OMITTED BY THE TRIAL COURT IN REJECTING THIS ASPECT OF THE DEFENDANT'S PETITION.

We are not persuaded by any of these arguments and affirm.

The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 49 (1987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-prong test of establishing both that: (1) counsel's performance was deficient and he or she made errors that were so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such that there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 687, 694.

We conclude from our review of the record that defendant's arguments "are without sufficient merit to warrant discussion in a written opinion[.]" R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Moynihan in his thorough written decision, as we agree with the judge that defendant failed to make a prima facie showing of ineffectiveness of counsel within the

Strickland-Fritz test, and therefore an evidentiary hearing was not warranted. See State v. Preciose, 129 N.J. 452, 462-63 (1992).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION