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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-0423-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBINSON DIONICIO,

Defendant-Appellant.

Submitted March 13, 2018 – Decided March 22, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 09-
08-2248.

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

Gurbir S. Grewal, Attorney General, attorney
for respondent (Jane C. Schuster, Deputy
Attorney General, of counsel and on the
brief).

PER CURIAM

Defendant appeals from an August 5, 2016 order denying his
petition for post-conviction relief (PCR). Defendant argues he

received ineffective assistance from trial counsel. Judge Alfonse J. Cifelli entered the order and rendered a lengthy oral opinion. We affirm.

On appeal, defendant argues:

POINT I

DEFENDANT'S PETITION FOR [PCR] SHOULD NOT BE BARRED BECAUSE DEFENDANT'S CLAIMS WERE NOT EXPRESSLY ADJUDICATED BY THE APPELLATE DIVISION.

POINT II

DEFENDANT'S PETITION FOR [PCR] SHOULD NOT BE BARRED BECAUSE DEFENDANT COULD NOT HAVE BROUGHT HIS CLAIMS IN A PRIOR PROCEEDING AND THE INTERESTS OF JUSTICE REQUIRE HIS CLAIMS BE HEARD.

POINT III

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ENTITLING HIM TO [PCR] AND AN EVIDENTIARY HEARING.

A. Counsel was ineffective for failing to review discovery prior to trial.

B. Trial counsel was ineffective for failing to object to the admission of a drug field test as hearsay evidence thereby depriving defendant his constitutional right to confront the actual witness against him.

We conclude 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 Cifelli, and add the following brief remarks.

An evidentiary hearing was unwarranted. A defendant is entitled to an evidentiary hearing only when he or she "has presented a prima facie [case] in support of [PCR]," State v. Marshall, 148 N.J. 89, 158 (1997) (first alteration in original) (quoting State v. Preciose, 129 N.J. 451, 462 (1992)), meaning that "the defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits," ibid. Defendant fails to demonstrate a reasonable likelihood of success on the merits.

As to the alleged confrontation violation, we rejected that argument on direct appeal. State v. Dionicio, No. A-5767-11 (App. Div. Sept. 23, 2014) (slip op. at 9-10). In rejecting this contention, we stated that

there was no out-of-court statement as the State did not seek to admit a lab certification into evidence. Instead, Sergeant D'Alessio testified about his own conclusions, reached based on his observations of a detective conducting the field test. Therefore, there was no Sixth Amendment violation because defendant had the opportunity to confront Sergeant D'Alessio.

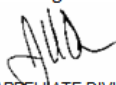
[Id. at 10.]

Even if there had been a violation, which is not the case, defendant failed to show prejudice. That is so because there was independent evidence in the record to prove the matter tested was cocaine.

For these reasons and substantially for the reasons set forth by Judge Cifelli in his cogent decision, we conclude that defendant failed to demonstrate a prima facie case of ineffectiveness under the Strickland/Fritz¹ 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

¹ Strickland v. Washington, 466 U.S. 668 (1984); State v. Fritz, 105 N.J. 42 (1987).