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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-0649-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM CROWLEY,

Defendant-Appellant.

Submitted December 19, 2017 – Decided January 5, 2018

Before Judge Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment Nos.
09-09-0859 and 09-09-0860.

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

Christopher S. Porrino, Attorney General,
attorney for respondent (Jenny M. Hsu, Deputy
Attorney General, of counsel and on the
brief).

PER CURIAM

Defendant William Crowley appeals from the June 17, 2016 Law Division order denying his petition for post-conviction relief (PCR). We affirm.

In September 2009, a grand jury indicted defendant on charges of murder, possession of a weapon for an unlawful purpose, and unlawful possession of a weapon. A separate indictment charged defendant with certain persons not to possess weapons. These charges stemmed from defendant's participation in the shooting death of R.P. on July 9, 1989. Defendant was not arrested for these crimes until October 18, 2008.

Following pretrial hearings on evidence issues, trial took place from June 15 to June 30, 2011. A jury found defendant guilty of all charges.

Defendant did not testify at trial. During a colloquy after the State rested its case, trial counsel told the court that defendant said he did not want to take the stand. The court stated that it was aware of counsel's "ongoing discussions" with defendant about whether he would testify, and counsel confirmed that he had "spoken to" defendant about the issue. The court then told defendant that although he "certainly should consult with [his] lawyer," the decision to exercise his right not to testify was "ultimately [his] to make and [his] alone." The court also said that it could issue an instruction to the jurors telling them they

should not consider defendant's silence against him when determining his guilt or innocence. Defendant said, "I don't want to testify and I want this [instruction] read." The court asked whether defendant had any questions about the issue of his testimony, and he replied, "No, sir."

On March 3, 2012, the court sentenced defendant to an aggregate term of life imprisonment with a thirty-year period of parole ineligibility on his first indictment, and to a consecutive sentence of eighteen months with an eighty-five percent period of parole ineligibility on the second indictment. On July 8, 2014, we affirmed the convictions and sentence. State v. Crowley, No. A-4547-11 (App. Div. July 8, 2014). The Supreme Court denied a petition for certification on December 2, 2014. State v. Crowley, 220 N.J. 101 (2014).

On January 9, 2015, defendant filed a pro se petition for PCR. On March 21, 2016, he filed a certification in support of the petition. Defendant argued that despite his "deep desire to testify at trial and profess [his] innocence," his trial counsel advised him that this would not be in his best interest because it was possible that his prior criminal record could have been used to impeach him. Defendant stated that he did not know he could act contrary to this advice, and alleged that his counsel

did nothing to prepare him to testify if he chose to do so. He asserted that therefore, his counsel's assistance was ineffective.

After oral argument on June 17, 2016, the PCR court denied defendant's petition. It made note of the colloquy where counsel stated he had spoken to defendant about testifying and where defendant told the court he did not want to do so). The court rejected defendant's argument that he was unaware he could act against counsel's advice, because the trial judge told him the decision whether to testify was his alone to make. The PCR court also found that defendant's assertion that counsel did not prepare him to testify was belied by his lack of objection to counsel's statement to the trial court that the two had discussed the issue. The court found that defendant had not demonstrated that the outcome of the trial would have been different if he testified, because there was substantial evidence against him, he would have been subject to "impeachment with his prior convictions," and he "[had] not indicated what he would have testified to except to 'profess his innocence.'" The PCR judge concluded that an evidentiary hearing was not needed because defendant had not established a prima facie case of ineffective assistance of counsel.

On appeal, defendant presents the following argument for consideration:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS BECAUSE HE ADVISED HIM NOT TO TESTIFY.

An evidentiary hearing is required only when a defendant establishes a prima facie case of ineffective assistance. State v. Preciose, 129 N.J. 451, 462-63 (1992). "To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claims, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits." R. 3:22-10(b). "'[B]ald assertions' are not enough—rather, the defendant 'must allege facts sufficient to demonstrate counsel's alleged substandard performance.'" State v. Jones, 219 N.J. 298, 311-12 (2014) (quoting State v. Porter, 216 N.J. 343, 355 (2013)).

To succeed on his claim of ineffective assistance of counsel, defendant needed to show that counsel's performance was deficient and, if it was, that there was a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 694, (1984). He has not done so.

Defense counsel's advice to defendant that he should not testify was, according to the PCR petition, based upon the fact that if defendant took the stand, his prior criminal record could

be brought to the jury's attention. The advice thus constituted a matter of trial strategy which "will not serve to ground a constitutional claim of inadequacy" of representation. State v. Fritz, 105 N.J. 42, 54 (1987).


Further, defendant himself stated at trial that he did not want to testify, and wanted the court to issue an instruction to the jury on his decision not to do so. The court explicitly told him that although he should consult with counsel, the decision was his to make. As a result, defendant's current assertions, that he had wanted to testify and did not know he could act against counsel's advice, clearly lack merit.

Defendant has also failed to demonstrate a reasonable probability that the outcome would have been different had he testified. The evidence against him was formidable, and included the testimony of multiple eyewitnesses who saw him and two other men shooting the victim. Against the weight of this and other evidence collected by police witnesses, defendant has offered only "bald assertions" that his testimony would have turned the tide in his favor. State v. Jones, supra, 219 N.J. at 311-12.

In sum, because defendant did not establish a prima facie case of ineffective assistance of counsel, he was not entitled to an evidentiary hearing.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION