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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-0710-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY O. ROSE, a/k/a
MU MU,

Defendant-Appellant.

Submitted February 7, 2018 – Decided March 16, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
10-04-0642.

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

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Roseanne Sessa,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Anthony Rose appeals from the denial of his post-conviction relief (PCR) petition without an evidentiary hearing.

Defendant contends counsel was ineffective in advising him to reject all plea recommendations, and failing to object to certain issues during trial. Because we find that the trial issues should have been raised in the direct appeal, and that defendant failed to demonstrate a prima facie case of ineffective assistance of counsel, we affirm.

Defendant was charged in an indictment with: first-degree purposeful/knowing murder, in violation of N.J.S.A. 2C:11-3(a)(1) and (2) (count one); second-degree possession of a firearm for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(a) (count two); second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b) (count three); fourth-degree terroristic threats, in violation of N.J.S.A. 2C:12-3(b) (count four); second-degree possession of a firearm for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(a) (count five); second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b) (count six); and second-degree possession of a weapon by a convicted felon, in violation of N.J.S.A. 2C:39-7(b) (count ten).

After a jury trial, defendant was convicted of the lesser-included offense of aggravated manslaughter, count one, but found not guilty of counts two and three. The remaining counts were dismissed. The judge imposed a sentence of twenty-five years subject to an eighty-five percent parole disqualification period

pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.3. We affirmed defendant's direct appeal of his conviction and sentence. State v. Rose, No. A-2696-12 (App. Div. Oct. 20, 2014). The Supreme Court denied the subsequent petition for certification. State v. Rose, 221 N.J. 286 (2015).

Defendant filed a petition for PCR in July 2015, which was supplemented by assigned counsel. Defendant argued that trial counsel had erred in advising him to reject all plea offers and proceed to trial. He asserted further that counsel failed to object to certain leading questions posed by the prosecutor to several witnesses, failed to object to prejudicial comments made by the State during summation, and failed to object to the jury charge. In a comprehensive written decision, Judge John A. Young, Jr. denied defendant's request for an evidentiary hearing and his PCR petition. The judge found defendant's argument concerning the jury charge was adjudicated in the direct appeal, and the remainder of his arguments did not demonstrate prima facie evidence of ineffective assistance of counsel.

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 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on a claim of ineffective assistance of counsel,

defendant must meet the two-prong test, 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.

Defendant contends that trial counsel was ineffective in his advice to proceed to trial rather than accept a plea offer. Defendant claims that he was tendered a plea offer of five years with a five-year parole disqualifier, an offer far more favorable than the twenty-five-year sentence with an eighty-five percent parole disqualification period that was imposed after his conviction at trial. He contends that trial counsel advised him to reject the offer. However, his assertions regarding the terms of the plea offer do not come by way of an affidavit and are unsupported by the record.

The State denies ever tendering a five-year plea deal, instead contending that the plea cutoff recommendation was an eighteen-year term with an eighty-five percent parole disqualification period. The State also notes that defendant claims the five-year

offer was made at a point during the pretrial proceedings when the State had been successful on several pre-trial motions. It argues that it is illogical to conclude that defendant was offered a very favorable plea deal after the State had prevailed on pre-trial issues.

In addressing this contention, Judge Young stated:

[Defendant's] assertion of ineffective assistance as it pertains to trial counsel's recommendation that he proceed to trial is unsupported. [Defendant] has not supplied anything to support this allegation nor has he submitted an affidavit stating that he wanted to resolve the matter or was offered a five-year sentence. In fact, the record indicates that . . . [t]he State's offer at plea cut-off was for an eighteen-year state prison sentence. [I]t is not reasonable to believe the State made a subsequent offer to [defendant] for a five-year state prison sentence after it prevailed on three pretrial motions following plea cutoff.

In presenting a PCR petition, "[a] defendant must allege specific facts and evidence supporting his allegations[,]" State v. Porter, 216 N.J. 343, 355 (2013), and "do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity the facts that he wished to present." State v. Jones, 219 N.J. 298, 312 (2014). Here, defendant has failed to provide any supporting

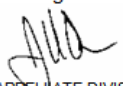
evidence other than his own assertion and, therefore, he has not presented prima facie evidence of ineffective assistance.

We conclude that the remainder of defendant's arguments lack sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(2), and affirm substantially for the cogent reasons expressed by Judge Young. Defendant's contentions pertaining to the prosecutor's leading questions and comments during summation were issues for the direct appeal. Furthermore, Judge Young analyzed the objectionable remarks and found them lacking in prejudice. He also concluded that trial counsel's failure to object to the comments was not objectively unreasonable.

We are satisfied that defendant did not establish a prima facie case of ineffective counsel and thus is 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.


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