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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-1081-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARVIN THOMPSON,

Defendant-Appellant.

Submitted January 31, 2018 – Decided March 8, 2018

Before Judges Fuentes and Koblitz.

On appeal from Superior Court of New Jersey,
Law Division, Passaic County, Indictment No.
07-12-1507.

Joseph E. Krakora, Public Defender, attorney
for appellant (Andrew P. Slowinski, Designated
counsel, on the brief).

Camelia M. Valdes, Passaic County Prosecutor,
attorney for respondent (Christopher W. Hsieh,
Chief Assistant Prosecutor, of counsel and on
the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Marvin Thompson appeals from the August 31, 2016 denial of his motion for post-conviction relief (PCR) after a full plenary hearing. We affirm based substantially on the credibility findings and reasons placed on the record by Judge Joseph A. Portelli on August 31, 2016.

A jury found defendant guilty of second-degree official misconduct, N.J.S.A. 2C:30-2, third-degree possession of heroin, N.J.S.A. 2C:35-10, and fourth-degree filing a false report to law enforcement, N.J.S.A. 2C:28-4. Defendant, who had worked as a per diem Passaic County Sheriff's Department Corrections Officer, was given an aggregate sentence of five years in prison with a five-year period of parole ineligibility. He completed the sentence prior to the PCR hearing.

We affirmed his convictions on appeal, describing the crimes as follows: "The charges arose out of a peculiar attempt by defendant to win favor as a Sheriff's Department employee by planting contraband in the jail and then 'discovering' it and reporting the discovery to his superiors." State v. Thompson, No. A-2844-10 (App. Div. May 8, 2013), certif. denied, 217 N.J. 296 (2014).

In his PCR petition, defendant alleged his trial and appellate attorneys did not conduct sufficient investigation of his claims. At the PCR hearing defendant, his trial lawyer and three prior

inmates at the jail testified. Trial counsel testified that defendant never gave him the names of the three inmates to investigate. The three inmates claimed to have at least somewhat exculpatory information. Judge Portelli found trial counsel to be credible. He found defendant and the three prior inmates not to be credible. He also found no difficulty with trial counsel's handling of the State's laboratory report.

On this appeal, defendant argues:

POINT I: THE PCR COURT SHOULD HAVE GRANTED POST CONVICTION RELIEF BASED ON TRIAL COUNSEL'S FAILURE TO CONDUCT AN ADEQUATE PRETRIAL INVESTIGATION, VIOLATING DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL (U.S. CONST. AMEND. VI; N.J. CONST. ART. I, ¶10).

(a) DEFENDANT ESTABLISHED THAT HIS TRIAL COUNSEL BREACHED AN OBJECTIVE STANDARD OF REASONABLENESS BY FAILING TO INVESTIGATE AND IDENTIFY WITNESSES WHO COULD HAVE TESTIFIED THAT THE STATE'S INFORMANT ADMITTED TO SETTING UP DEFENDANT.

(b) DEFENDANT WAS PREJUDICED BY HIS TRIAL COUNSEL'S FAILURE TO INVESTIGATE AND IDENTIFY SUPPORTIVE WITNESSES AS THEIR TESTIMONY WOULD LIKELY HAVE CHANGED THE OUTCOME OF THE TRIAL.

POINT II: THE PCR COURT SHOULD HAVE HELD THAT DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

Defendant also submitted a pro se supplemental letter brief that did not contain point headings. See R. 2:6-2(b) (requiring a table of contents, including point headings). Defendant provided his version of the facts with some citations to the record. We

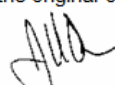
have not considered any information defendant supplied in his letter that is not contained in the record.

To establish ineffective assistance of counsel, a defendant must prove that: (1) "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and (2) "the deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 687 (1984). To satisfy the prejudice requirement, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. The standard for ineffectiveness is applied to both trial and appellate counsel. State v. Harris, 181 N.J. 391, 518 (2004).

We accept the credibility assessments of the PCR judge, who had the opportunity to view the witnesses. State v. S.S., 229 N.J. 360, 374 (2017) (quoting State v. Elders, 192 N.J. 224, 244 (2007) ("[A]ppellate courts defer to the trial court's factual findings because the trial court has the 'opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy.")). Finding the defense witnesses not credible, Judge Portelli found no grounds to grant PCR. We affirm substantially for the reasons expressed by the judge.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION