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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-1209-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MANFRED J. YOUNGER, a/k/a MANFRED
JAY YOUNGER, MANFRAD YOUNGER,
FRED YOUNGER, MANFRED J.
YOUNGER, JR., RAHEEM BLACKWELL
and BABY J,

Defendant-Appellant.

Submitted January 17, 2018 – Decided April 11, 2018

Before Judges Summers and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
09-02-0793.

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

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

PER CURIAM

Defendant Manfred Younger appeals from an order entered after an evidentiary hearing denying his petition for post-conviction relief (PCR), contending:

POINT I

DEFENDANT'S CONVICTIONS MUST BE REVERSED
BECAUSE TRIAL COUNSEL WAS INEFFECTIVE BY NOT
HAVING AN EXCULPATORY WITNESS TESTIFY.

We conclude the PCR judge's findings that the exculpatory witness was not credible are well-supported by the record and affirm.

A jury convicted defendant of murder, N.J.S.A. 2C:11-3(a)(1); attempted murder, N.J.S.A. 2C:11-3(a)(1), 2C:5-1; and other related charges in connection with a shooting on June 17, 2007. Following his sentencing to an aggregate seventy-eight year state prison sentence subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, defendant appealed; we denied same in an unpublished decision, State v. Younger, No. A-0805-11 (Apr. 11, 2014), certif. denied, 220 N.J. 40 (2014), which fully sets forth the factual and procedural history; we will not repeat same.

Defendant's sole, present contention is that his trial counsel failed to call Richard Barge as a witness at trial. Barge, variously in a written certification and in testimony during the PCR evidentiary hearing, alleged he spoke to the murdered victim before the shooting, observed the shooter as he opened fire, dove behind a car during the gunfire, and saw both the shooter and his

companion as they ran past him after the shooting. Defendant, he contended, was neither the shooter nor his companion. Barge maintained he spoke with defendant's trial counsel sometime in 2009 while counsel was visiting another client in the jail in which Barge was being held on his own murder charge. He said he related the exculpatory information to trial counsel, but was never called to testify on defendant's behalf.

The PCR judge also considered trial counsel's testimony at the evidentiary hearing. Defendant's trial was counsel's last after a thirty-six year career with the Office of the Public Defender. Counsel testified he spoke, or had investigators speak, with witnesses mentioned in discovery. Counsel also testified he had no recollection of defendant telling him that Barge had relevant information, or of speaking with Barge in the jail.

The PCR judge – who also presided over defendant's trial – found counsel's testimony "exceedingly credible," and attributed counsel's clear memory of the case to the fact that it was his last. She did not find Barge's testimony "credible at all." Based on knowledge she gained as the trial judge about the crime scene, she deduced that Barge's testimony that he was with the murder victim at the time of the shooting was false because he, too, would have been shot if he was there. She also did not believe his testimony that he met with trial counsel in the jail, noting

Barge did not testify as to the month when he met counsel. Assessing the lengths counsel went to interview witnesses, the judge concluded

it's just not credible to the [c]ourt, and it make no sense that [counsel] would . . . refuse to interview a witness or to present a witness, or let's say even interview . . . in more detail . . . the witness, and not share it with his client, when it's testified to that witnesses that he did interview, he discussed with [defendant].

The judge also considered that Barge's name was mentioned only after the State disclosed that a witness against defendant – Jamal Gibbs – had also testified against Barge; and that defendant's trial counsel contacted Barge's attorney and had several conversations about Gibbs, but Barge's attorney never revealed that Barge was a witness to the murder with which defendant was charged. The judge also took into account that Barge did not tell the police about his observations during the shooting, and did not discuss his alleged observations of the shooting and discussion with trial counsel with defendant when they were together in jail. Based on "the totality of the circumstances" and her observations of Barge during his testimony, she found Barge incredible, reiterating that finding no less than eight times during her oral opinion.

"Our standard of review is necessarily deferential" to the factual findings of a PCR court so long as the findings are supported by sufficient credible evidence in the record. State v. Nash, 212 N.J. 518, 540 (2013). "Those findings warrant particular deference when they are 'substantially influenced by [the judge's] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Rockford, 213 N.J. 424, 440 (2013) (alteration in original) (quoting State v. Robinson, 200 N.J. 1, 15 (2009)). We, however, do "not defer to a PCR court's interpretation of the law; a legal conclusion is reviewed de novo." Nash, 212 N.J. at 540-41.

To establish a PCR claim of ineffective assistance of counsel, a defendant must satisfy the test 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, 58 (1987). First, he must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Fritz, 105 N.J. at 52 (quoting Strickland, 466 U.S. at 687). Second, a defendant must prove that he suffered prejudice due to counsel's deficient performance. Strickland, 466 U.S. at 691-92. Defendant must show by a "reasonable probability" that

the deficient performance affected the outcome. Fritz, 105 N.J. at 58.

In that the judge believed neither that Barge was an eyewitness nor that he discussed the case with defendant's trial counsel, we agree that defendant failed to meet his burden of proof that counsel was ineffective by failing to present Barge's testimony at trial. We affirm the PCR court's denial of his PCR petition.

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



CLERK OF THE APPELLATE DIVISION