

**RECORD IMPOUNDED**

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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-1800-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

T.M.S.

Defendant-Appellant.

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Submitted March 13, 2018 – Decided April 5, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Indictment No.  
10-08-1409.

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

Gurbir S. Grewal, Bergen County Prosecutor,  
attorney for respondent (Elizabeth R. Rebein,  
Assistant Prosecutor, of counsel, and on the  
brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant T.M.S. appeals from an August 10, 2016 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm substantially for the reasons stated by Judge Edward A. Jerejian in his August 10, 2016 written opinion.

I

A jury found defendant guilty of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1); second-degree sexual assault, N.J.S.A. 2C:14-2(b); first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(2)(c); third-degree aggravated sexual contact, N.J.S.A. 2C:14-3; and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4, in connection with the repeated sexual abuse of his step-daughter.

The trial judge sentenced defendant to an aggregate forty-six years in prison, with an eighty-five percent parole disqualifier, N.J.S.A. 2C:43-7.2, on two consecutive eighteen-year terms, a consecutive ten-year flat term for endangering the welfare of a child; eighteen-year concurrent terms for aggravated sexual assault; a ten-year concurrent term for sexual assault; and a concurrent five-year term for criminal sexual contact. We affirmed defendant's conviction and sentence on direct appeal. State v. T.M.S., No. A-2411-11 (App. Div. Aug. 13, 2014), cert. denied, 221 N.J. 218 (2015).

Subsequently, defendant filed the PCR petition that gave rise to this appeal. He argues his trial counsel provided ineffective assistance in: (1) failing to object to the trial court's omitting a no-adverse inference charge regarding his decision to not testify; (2) "reneg[ing]" on an "implied promise to the jury that [he] would testify"; and (3) failing to adequately investigate.

In his written opinion, Judge Jerejian concluded defendant's PCR contentions were without merit. He found the trial court's "failure to provide a no-adverse inference jury instruction did not mandate automatic reversal . . . ." Specifically, he noted the jury received instructions that were the "functional equivalent" of the no adverse inference charge and completed a questionnaire indicating they would presume defendant was innocent "whether he testifie[d] or not."

Further, Judge Jerejian found defendant mischaracterized his trial counsel's opening statements and concluded "the jury could not have expected or even considered that defendant would testify in this trial." Finally, the judge rejected defendant's argument that his trial counsel failed to conduct an adequate investigation of his case and failed to prepare for trial, finding "the record shows trial counsel was knowledgeable as to the facts of the case, responded to the State's motions with knowledgeable arguments and thoroughly cross-examined all of the State's witnesses."

II

On this appeal, defendant raises the following points for our consideration:

DEFENDANT'S CONVICTIONS MUST BE REVERSED DUE TO TRIAL COUNSEL'S INEFFECTIVENESS; OR, IN THE ALTERNATIVE, THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS.

A. TRIAL COUNSEL FAILED TO OBJECT TO THE COURT'S OMISSION OF THE NO-ADVERSE INFERENCE CHARGE, THAT THE JURY CANNOT DRAW AN ADVERSE INFERENCE FROM DEFENDANT'S NOT TESTIFYING.

B. TRIAL COUNSEL RENEGED ON HIS IMPLIED PROMISE TO THE JURY THAT DEFENDANT WOULD TESTIFY.

C. TRIAL COUNSEL FAILED TO CONDUCT AN ADEQUATE INVESTIGATION AND REVIEW THE EVIDENCE BEFORE TRIAL, AND DID NOT PREPARE FOR TRIAL.

Defendant also submitted a pro se brief with the following headings:<sup>1</sup>

Conclusion of brief Summary

The defendant was charged with the following

Medical Examination Report Conducted by The Northern Regional Diagnostic Center for Child Abuse And Neglect

Brief Legal Argument


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<sup>1</sup> Defendant's pro se brief appears to emphasize that the victim's medical examination resulted in normal findings. Defendant presents no arguments in support of his implied assertion; rather, he attached a minimally annotated trial transcript.

Having reviewed the record, we conclude defendant's arguments all lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We agree with Judge Jerejian that defendant failed to demonstrate a prima facie case for ineffective assistance of counsel. See State v. Cummings, 321 N.J. Super. 154, 170 (1999) ("[I]n order to establish a prima facie claim, a petitioner must do more than make bald assertions that he was denied the effective assistance of counsel."); see also Strickland v. Washington, 466 U.S. 668, 694 (1984); State v. Preciose, 129 N.J. 451, 462-63 (1992); State v. Fritz, 105 N.J. 42, 58 (1987).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION