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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-1834-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ERIC D. DANIELS,

Defendant-Appellant.

Submitted January 31, 2018 – Decided February 20, 2018

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment No. 08-
12-1096.

Joseph E. Krakora, Public Defender, attorney
for appellant (Janet A. Allegro, Designated
Counsel, on the brief).

Ann M. Luvera, Acting Union County Prosecutor,
attorney for respondent (Meredith L. Balo,
Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Eric D. Daniels appeals from an order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

This matter returns to us after the Supreme Court's decision in State v. Daniels, 225 N.J. 338 (2016). The Court reversed this court's decision affirming the denial of defendant's PCR and remanded to the Law Division to afford defendant oral argument in accord with State v. Parker, 212 N.J. 269 (2012). Ibid.

Upon remand and after oral argument, the PCR judge denied defendant's petition in a written opinion and without an evidentiary hearing. We recite the following relevant facts as taken from our prior decision, State v. Daniels, No. A-3317-09 (App. Div. Feb. 20, 2013), which affirmed defendant's conviction:

The events underlying this offense occurred on August 12 and 13, 2008 at the home of defendant's former girlfriend, Tanya Reeves. Defendant and Reeves had lived together in Linden for a period of time. After their relationship ended, Reeves moved to another apartment on the same street with her son in August 2008. Reeves testified that, when they broke up, she made it clear to defendant that she wanted nothing to do with him anymore. However, when she moved, she took clothing defendant had left behind with her to give him an opportunity to retrieve it. Her arrangement with him was that "he was to call the police officer when he needed his belongings and they would escort him to [her] home to pick them up."

On August 12, 2008, defendant arrived at Reeves's residence in the evening and rang the doorbell. Reeves spotted him through her window blinds, but she did not answer the door. Reeves had not allowed defendant into her house since she had moved and was afraid to let him into the house because he appeared "[a] little disturbed." After defendant came back several times, Reeves asked him what he wanted. He said he needed some things to wear. Reeves prepared a bag of his clothes and threw it out the window.

The next morning, August 13, 2008, at approximately 7:20, Reeves was in her bedroom with her friend, John Hendricks. As the two prepared for work, Reeves opened the bedroom door, which had been cracked open, and saw defendant standing right at the bedroom door. When defendant saw there was another man there, he started calling Reeves names, such as a "stinking bitch[.]" Defendant struck Hendricks once and Reeves once or twice, knocking Reeves to the floor, where she "tussle[d]" with defendant. Reeves yelled to her son to get her neighbor, Jacyn McPhail, a Linden police officer. Before McPhail arrived, defendant asked Reeves to return a chain and a ring he had given to her while they were dating. Reeves testified that she "voluntarily" returned the jewelry to prevent the situation from "elevat[ing]" further.

Officer McPhail testified that at approximately 7 a.m., he was awakened by "loud banging and screaming" coming from Reeves's apartment, which was attached to his unit. He heard a woman screaming, "get off me, get off me, stop." McPhail instructed his wife to call 911. McPhail got dressed in street clothes and placed his police badge around his neck. As he was getting dressed, his doorbell began to ring and he could hear Reeves's son yelling. He answered the door and Reeves's

son directed him toward Reeves's open apartment door.

When McPhail entered Reeves's unit, defendant had Reeves pinned against a wall. He held her up against the wall with his left hand around her throat and his right arm was drawn back "like he was going to punch" her. Hendricks was "kind of in between them trying to shield [] Reeves from [defendant.]" McPhail drew his duty weapon and yelled "Linden police." He told defendant to let Reeves go and get on the floor. Defendant "smirked," looked at McPhail and said, "fuck that, fuck you." When he did not release Reeves, McPhail "rushed [defendant] and put him in a compliance hold down on the floor[.]" McPhail got on top of him but defendant was "still very angry" and "still trying to get up and peel [McPhail's] hands away from holding him down."

After another officer arrived, McPhail had an opportunity to inspect the house. He discovered that the screen on the basement window on Reeves's side of the apartment was off and the window was open. Among the items in defendant's possession at the time of his arrest were a diamond ring and a diamond necklace, items consistent with the description of items Reeves reported defendant had taken from her. Photographs were taken of bruises Reeves had sustained on her arm and neck.

[Daniels, slip op. 1-4.]

On appeal, defendant raises the following argument:

POINT I

THE COURT ERRED IN DENYING DEFENDANT'S PETITION FOR [PCR] WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS

CONTENTION THAT HE FAILED TO RECEIVE EFFECTIVE
LEGAL REPRESENTATION.

A. THE PREVAILING LEGAL PRINCIPLES
REGARDING CLAIMS OF INEFFECTIVE
ASSISTANCE OF CONSEL ARISING OUT OF
EVIDENTIARY HEARINGS AND PETITIONS
FOR [PCR].

1. TRIAL COUNSEL'S FAILURE TO MAKE
A MOTION FOR JUDGMENT OF ACQUITTAL
AFTER THE STATE RESTED CONSTITUTED
INEFFECTIVE ASSISTANCE OF COUNSEL.

2. TRIAL COUNSEL'S FAILURE TO MAKE
A MOTION AFER THE DISCHARGE OF THE
JURY CONSTITUTED INEFFECTIVE
ASSISTANCE OF COUNSEL.

3. TRIAL COUNSEL WAS INEFFECTIVE
FOR FAILING TO SUBPOENA THE LANDLORD
TO SHOW THAT MR. DANIELS HAD A RIGHT
TO BE ON THE PROPERTY.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Preciose, 129 N.J. 451, 459 (1992). Under Rule 3:22-2(a), a criminal defendant is entitled to post-conviction relief if there was a "[s]ubstantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of the State of New Jersey[.]" "A petitioner must establish the right to such relief by a preponderance of the credible evidence." Preciose, 129 N.J. at 459 (citations omitted). "To sustain that burden, specific facts" that "provide the court with an adequate

basis on which to rest its decision" must be articulated. State v. Mitchell, 126 N.J. 565, 579 (1992).

Claims of constitutionally ineffective assistance of counsel are well suited for post-conviction review. See R. 3:22-4(a)(2); Preciose, 129 N.J. at 460. In determining whether a defendant is entitled to relief on the basis of ineffective assistance of counsel, New Jersey courts apply the two-prong test articulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984), and United States v. Cronin, 466 U.S. 648, 658-60 (1984). Preciose, 129 N.J. at 463; see State v. Fritz, 105 N.J. 42, 49-50 (1987).

Under the first prong of the Strickland test, a "defendant must show that [defense] counsel's performance was deficient." Strickland, 466 U.S. at 687. Under the second prong, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

Our review of an order granting or denying PCR contains consideration of mixed questions of law and fact. State v. Harris, 181 N.J. 391, 415-16 (2004). "[W]here the court does not hold an evidentiary hearing, we may exercise de novo review over the factual inferences the trial court has drawn from the documentary record." State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div.

2014)(citing Harris, 181 N.J. at 420-21). A PCR court's interpretations of law are provided no deference and are reviewed de novo. State v. Nash, 212 N.J. 518, 540-41 (2013).

At the outset, we note that defendant's argument relating to his counsel's failure to move for a judgment of acquittal was raised before this court on a prior appeal. In rejecting that argument, we held:

In this case, the sole issue raised in defendant's petition relates to his contention that the evidence was insufficient to support a conviction for burglary in light of his assertion that he lacked the requisite intent to commit a crime when he entered the dwelling. The standard applicable to whether a motion for a judgment of acquittal should be granted is straightforward. The issue is not whether an acquittal is possible given the version of facts proffered by the defendant but "whether, viewing the State's evidence in its entirety . . . and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt." State v. Reyes, 50 N.J. 454, 458-59 (1967); See R. 3:18. The PCR court identified the correct legal standard and applied it to the evidence presented at trial.

. . . .

We agree with the PCR court that even if counsel had moved for a judgment of acquittal based upon an alleged insufficiency of the evidence, such a motion would have been unsuccessful.

[State v. Daniels, No. A-4594-13 (App. Div. Feb. 4, 2016) (slip op. 5-7).]

Predicated upon our review of the record, we adopt our prior decision relating to this discrete argument.

Defendant argues that his trial counsel was ineffective for failing to call the victim's landlord to support the contention that defendant was also a lessee of the apartment. "[W]hen a petitioner claims his trial attorney inadequately investigated his case, he must assert the facts that an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." State v. Porter, 216 N.J. 343, 353 (2013) (quoting State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)).

In support of the PCR, defendant did not identify the name of the landlord, nor did he submit any proof that he was legally entitled to enter the apartment to rebut the burglary charge. As such, the judge properly held that defendant "failed to submit a certification from the unidentified landlord as to any facts based on personal knowledge that would have aided the defense nor would those alleged facts have any material effect on the outcome of the case."


Notwithstanding our determination regarding defendant's failure to establish that counsel's performance was deficient, we

briefly address the second Strickland prong. Upon consideration of the record, we conclude that defendant has also failed to demonstrate how any alleged deficiency resulted in a prejudice that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694; Fritz, 105 N.J. at 52 (citation omitted).

Finally, we reject defendant's argument that the court erred in denying his petition without an evidentiary hearing. An evidentiary hearing is required where the defendant has shown a prima facie case and the facts on which he relies are not already of record. Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 3:22-10 (2016). The mere raising of a claim for PCR does not entitle defendant to an evidentiary hearing. Cummings, 321 N.J. Super. at 170. As defendant failed to establish a prima facie case of ineffective assistance of counsel, no evidentiary hearing was required.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION