

RECORD IMPOUNDED

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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-1864-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

L.J.A.,

Defendant-Appellant.

Submitted March 21, 2018 – Decided April 16, 2018

Before Judges Koblitz and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment Nos.
09-05-0986, 09-04-0634 and 09-02-0399.

Joseph E. Krakora, Public Defender, attorney
for appellant (Craig S. Leeds, Designated
Counsel, on the brief).

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Luisa M. Florez,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant L.J.A. appeals from the October 19, 2016 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. A jury convicted defendant of serious sexual

assaults on his young daughter. Defendant is serving an aggregate extended term of fifty years in prison with an 85% parole disqualifier. N.J.S.A. 2C:43-7.2. We affirm substantially for the reasons expressed by Presiding Criminal Judge Sheila A. Venable in her August 31, 2016 fifteen-page written opinion. We also reject defendant's argument that his PCR counsel was ineffective.

We affirmed defendant's convictions on direct appeal. State v. L.J.A., No. A-0493-11 (App. Div. Dec. 27, 2013) (slip op. at 33). The Supreme Court reversed the sentence only and remanded to us for reconsideration. State v. L.J.A., 220 N.J. 565 (2015). We, in turn, remanded to the trial court and defendant was resentenced. State v. L.J.A., No. A-0493-11 (App. Div. Mar. 31, 2015) (slip op. at 5).

On this appeal, defendant argues:

POINT I: DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF THE UNITED STATES AND NEW JERSEY CONSTITUTIONS AND THE LOWER COURT ERRED IN CONCLUDING OTHERWISE.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS AND PETITIONS FOR POST CONVICTION RELIEF.

B. BECAUSE OF TRIAL COUNSEL'S INEFFECTIVE REPRESENTATION, INADMISSIBLE EVIDENCE REGARDING THE EXISTENCE OF A RESTRAINING ORDER AGAINST DEFENDANT, AND HIS ARREST FOR HAVING VIOLATED THAT ORDER, PERMEATED THE TRIAL RECORD.

C. TRIAL COUNSEL'S CROSS EXAMINATION OF THE STATE'S EXPERT, DR. TASKA, WAS WHOLLY INSUFFICIENT, AND THEREFORE, DENIED DEFENDANT HIS CONSTITUTIONAL RIGHT TO CONFRONT HIS ACCUSER.

D. DEFENDANT'S OTHER CONTENTIONS CONTAINED IN PCR COUNSEL'S SUPPLEMENTAL BRIEF AMOUNT TO INEFFECTIVE [ASSISTANCE] OF COUNSEL.

POINT II: DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF POST CONVICTION RELIEF COUNSEL (not raised below).

POINT III: THE CUMULATIVE EFFECT OF THE ERRORS COMPLAINED OF RENDERED THE TRIAL UNFAIR.

POINT IV: THE LOWER COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING.

Under the Sixth Amendment of the United States Constitution, a person accused of crimes is guaranteed the effective assistance of legal counsel in his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish a deprivation of that right, a convicted defendant must satisfy the two-part test enunciated in Strickland by demonstrating that: (1) counsel's performance was deficient, and (2) the deficient performance actually prejudiced the accused's defense. Id. at 687; see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey). In reviewing such claims, courts apply a strong presumption that defense counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment." Strickland, 466 U.S. at 690. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy. . . ." Fritz, 105 N.J. at 42, 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963)).

We rely primarily on Judge Venable's thorough opinion, adding only a few brief comments. On direct appeal we noted that defense counsel's reference to a final restraining order against defendant was a matter of trial strategy. L.J.A., slip op. at 22 (2013). With regard to the cross-examination of the expert, it too was trial strategy, as explained in detail by Judge Venable.

Defendant argues that his PCR counsel was ineffective because his thirty-three page written supplemental brief did not cover in detail four of the eight issues raised.¹ PCR "counsel should advance any grounds insisted on by defendant notwithstanding that counsel deems them without merit." State v. Rue, 175 N.J. 1, 13 (2002) (quoting R. 3:22-6). Counsel is not required, however, to write in detail on every issue. "[T]he brief must advance the arguments that can be made in support of the petition and include defendant's remaining claims, either by listing them or incorporating them by reference so that the judge may consider


¹ Defendant supplied the supplemental brief but not the first brief filed.

them." State v. Webster, 187 N.J. 254, 257 (2006). The issues not briefed extensively involve a purported failure to sufficiently investigate information potentially discrediting the victim and her mother as well as a failure to call an expert used at the Michaels² hearing. These issues also involve trial strategy. Defendant's argument that PCR counsel was ineffective is unsupported and does not require a hearing. See State v. Preciose, 129 N.J. 451, 462 (1992).

We therefore affirm substantially for the reasons expressed by Judge Venable in her opinion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

² State v. Michaels, 136 N.J. 299 (1994).