

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-2013-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RENFORD WILSON,

Defendant-Appellant.

Submitted March 12, 2018 – Decided March 22, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
97-11-1297.

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

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Laura Sunyak,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Renford Wilson appeals from the trial court's
August 8, 2016 order denying his petition for post-conviction
relief ("PCR"). We affirm because defendant has not established

a prima facie claim of ineffective assistance of counsel.

After a jury trial, defendant was convicted in March 2002 of felony murder, aggravated manslaughter as a lesser-included charge to murder, armed robbery, armed burglary, conspiracy to commit armed robbery, and related weapons offenses. He was sentenced to a life term with thirty years of parole ineligibility on the felony murder charge and concurrent terms on the remaining charges.

The State's proofs at trial established that on June 29, 1997, defendant participated with three other men in the armed robbery of a bordello in Trenton. While attempting to carry out the robbery, defendant fired a shotgun at and killed the victim in the premises' kitchen. As the perpetrators fled the scene on foot, defendant discarded the shotgun and a scarf he had been wearing in an alley. The police apprehended the other perpetrators, and two of them gave statements implicating defendant as the victim's shooter. The police eventually located and apprehended defendant in the Bronx in July 2000.

All three of the co-perpetrators pled guilty to manslaughter and testified for the State at defendant's trial. The State's proofs included evidence that defendant's fingerprints had been detected on the car the perpetrators drove to the crime scene. The fingerprint match was supported by expert testimony from a police detective, Robert Pacillo. Defendant took the stand in his

own defense. He denied knowing the three co-defendants or having any involvement in the crime.

On direct appeal, this court affirmed defendant's convictions, but remanded for reconsideration of the sentence because the sentencing court had failed to merge certain counts and misapplied aggravating factors two and six. State v. Wilson, No. A-0358-03 (App. Div. Mar. 1, 2007) (slip op. at 5, 17-18). The Supreme Court denied defendant's petition for certification. State v. Wilson, 191 N.J. 316 (2007). Defendant was resentenced in August 2007 to a life term with thirty years of parole ineligibility on the felony murder charge. The murder, armed robbery, conspiracy, and one weapons charge were merged, while concurrent sentences were imposed on the remaining charges. Defendant's revised sentence was affirmed by this court on the excessive sentencing calendar in an order dated August 18, 2009.

Meanwhile, in August 2007, defendant timely filed a PCR petition. The petition was denied by the trial court on June 14, 2012.

Defendant appealed the PCR denial. In a sua sponte order dated September 30, 2013, we remanded for further proceedings. We noted that PCR counsel had failed to raise, despite defendant's request, an issue regarding the fingerprint found on the car used in the crimes. We thereafter clarified our order, directing that

"[o]n remand, the trial court shall consider defendant's contention of ineffective assistance specifically concerning his former PCR attorney's failure to present his contentions for relief concerning the admission at trial of fingerprint identification evidence. No other issues shall be addressed on remand." We left it to the PCR court's discretion as to whether an evidentiary hearing was required.

After considering further submissions and oral argument, the PCR court issued a written opinion on August 8, 2016, again denying defendant's petition. Referring to the State's evidence of guilt, the PCR court noted that defendant's three co-defendants had testified at defendant's trial that defendant had shot the victim.

The PCR court rejected defendant's argument that his trial counsel's cross-examination of the police detective who found defendant's fingerprint on the vehicle was deficient. Defendant claimed that it was suspicious that the fingerprint was not run through the Automated Fingerprint Identification System ("AFIS") until he was arrested in 2000, given that the detective had found the fingerprint in 1997. Defendant maintained that the State had access to his immigration records and, therefore, had the ability to compare the fingerprint to his own shortly after it was recovered. Defendant, further claimed that law enforcement "essentially, planted and created" the fingerprint evidence to

implicate him.

The PCR court found that defendant's "allegations of evidence tampering [were] dubious" and that he had failed to establish a prima facie case of ineffective assistance of counsel. The court noted that trial counsel's approach to cross-examination was "a proper execution of trial strategy" and that extensive cross-examination of the detective regarding the chronology of the fingerprint identification may not have benefitted defendant, as it risked "highlighting [to the jury his] status as a fugitive and emphasizing the three-year delay to effectuate his capture."

In his brief on the present appeal, defendant presents the following argument:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO CROSS-EXAMINE REGARDING THE FINGERPRINT IDENTIFICATION CHRONOLOGY.

Defendant argues that, by summarily rejecting his petition, the PCR court did not view his allegations in a light most favorable to him. He further contends that the fingerprint evidence "irreparably eviscerated the defense," and that a "bombshell" revelation that the evidence had been planted would "dwarf[] any conceivable prejudice inuring to defendant as a result of the cross-examination." We are unpersuaded by these

contentions.

A defendant is entitled to an evidentiary hearing on a PCR petition only when (1) he establishes a prima facie case in support of relief; (2) "there are material issues of disputed fact that cannot be resolved by reference to the existing record"; and (3) "an evidentiary hearing is necessary to resolve the claims for relief." R. 3:22-10(b). "To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his . . . claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits." Ibid.; see State v. Porter, 216 N.J. 343, 355 (2013). "[B]ald assertions are not enough—rather, the defendant must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Jones, 219 N.J. 298, 311-12 (2014) (citations omitted).

To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance "fell below an objective standard of reasonableness," and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 688, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. Further, "counsel is strongly presumed to have rendered adequate assistance and made

all significant decisions in the exercise of reasonable professional judgment." Id. at 690. In evaluating an ineffective assistance claim, a "court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Ibid.

Despite the rhetoric in his submissions, defendant has not presented a prima facie case that his trial counsel's performance "fell below an objective standard of reasonableness." Id. at 688. On cross-examination, defense counsel questioned Detective Pacillo regarding the procedures he followed to process the murder weapon and vehicle for fingerprints. Among other things, counsel suggested the fingerprints may have been affected by moisture and smudging. In his closing argument, defense counsel attempted to cast doubt on the fingerprint identification. Counsel pointed out to the jury that the detective was unable to recover any identifiable fingerprints from the murder weapon, despite testimony from the three co-defendants that they had handled the weapon. Counsel also questioned why no fingerprints from defendant or his co-defendants were identified from inside the vehicle. In addition to questioning the fingerprint identification, counsel also attacked the credibility of the co-defendants, pointing out multiple claimed inconsistencies in their testimony.

As the PCR court recognized, counsel's trial strategy concerning the fingerprint identification "fell within the wide range of reasonable professional assistance." See Strickland, 466 U.S. at 690 (observing that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable").

Defendant relies on pure speculation in arguing that further questioning of Pacillo by his trial attorney about the timing of the retrieval of the fingerprint and its submission to AFIS would have revealed that the fingerprint was "planted." Although the fingerprint was retrieved from the vehicle in July 1997, defendant's rolled fingerprint that was used for comparison was not obtained until he was arrested in July 2000. During that time frame, defendant was a fugitive, and he cannot fairly claim the State was delinquent in not obtaining his fingerprint sooner. We agree with the PCR judge that, "The simple fact that the police had access to [defendant]'s fingerprints before he was arrested in July 2000 [through immigration records] does not lead to the conclusion that law enforcement sought to fabricate evidence." All that is shown is that the State perhaps could have pursued the fingerprint match sooner. It does not establish fabrication.

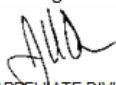
We also concur with the PCR judge's astute observation that if defendant's trial counsel had focused on the chronology of the

investigation between 1997 and 2000, he ran the risk of unduly prejudicing defendant with the jurors by highlighting his fugitive status during that interval and emphasizing the three-year delay in effectuating his capture.

All other points raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION