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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-2529-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DONALD RANDALL,

Defendant-Appellant.

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Submitted February 13, 2018 – Decided February 28, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,  
Law Division, Camden County, Indictment No.  
12-09-2295.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Andrew R. Burroughs, Designated  
Counsel, on the brief).

Mary Eva Colalillo, Camden County Prosecutor,  
attorney for respondent (Linda A. Shashoua,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant appeals from an October 28, 2016 order denying his  
petition for post-conviction relief (PCR). Judge John T. Kelley

entered the order and rendered an extensive oral decision on the record.

On appeal, defendant argues:

POINT I

AS DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL, HE IS ENTITLED TO [PCR].

1. Trial counsel failed to adequately cross-examine William McNeil.
2. Trial counsel failed to object to leading questions posed by the prosecutor.
3. Trial counsel failed to fashion and request a jury charge on voice identifications.
4. The cumulative errors committed by trial counsel require [PCR].

POINT II

DEFENDANT'S PCR CLAIMS ARE NOT PROCEDURALLY BARRED.

POINT III

APPELLATE COUNSEL WAS INEFFECTIVE BY FAILING TO RAISE CERTAIN ISSUES ON DIRECT APPEAL.

POINT IV

AS THERE ARE GENUINE ISSUES OF MATERIAL FACTS IN DISPUTE, AN EVIDENTIARY HEARING IS REQUIRED.

POINT V

DEFENDANT IS ENTITLED TO A NEW PCR HEARING BECAUSE PCR COUNSEL FAILED TO RAISE SEVERAL CLAIMS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

We conclude that defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

We affirm substantially for the reasons expressed by Judge Kelley in his oral decision, and add the following brief remarks concerning defendant's contentions that the PCR judge failed to conduct an evidentiary hearing and his PCR counsel provided ineffective assistance.

A defendant is entitled to an evidentiary hearing only when he or she "has presented a prima facie [case] in support of [PCR]," State v. Marshall, 148 N.J. 89, 158 (1997) (first alteration in original) (quoting State v. Preciose, 129 N.J. 451, 462 (1992)), meaning that a "defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits," ibid. For defendant to obtain relief based on ineffective assistance grounds, he is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland v. Washington, 466 U.S. 668, 687 (1984); accord State v. Fritz, 105 N.J. 42, 58 (1987). Judge Kelley correctly stated:

[D]efendant has not presented any evidence to establish that his trial counsel was ineffective in failing to object to leading questions, or inquire further as to Mr. McNeill's termination. Defendant's trial counsel did not commit any unprofessional error during the direct and cross of Mr. McNeill. Rather, he made a strategic decision to undermine the perception and memory of Mr. McNeill and to object to questions he found prejudicial.

Despite these efforts, the jury believed beyond a reasonable doubt that the defendant was the individual in the security video, and the individual committed the crimes.

Finally, regarding defendant's claim that trial counsel committed the ineffective assistance of counsel by failing to request the [c]ourt to draft a voice identification charge for the jury, the defendant has not submitted any evidence showing that a separate charge is required for voice recognition.

. . . .

Therefore, having failed to prove a deficient performance or prejudice, defendant has failed to establish a prima facie case of ineffective assistance of counsel.

Defendant fails to demonstrate a reasonable likelihood of success on the merits, and he was not entitled to an evidentiary hearing.

For the first time on appeal, defendant contends that he was denied effective assistance by his PCR counsel. We "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). Thus, we decline to consider

defendant's assertion that his PCR counsel provided ineffective assistance.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION