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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-2743-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SPILLERMAN HILL, a/k/a
SPILLERMAN A. HILL, SPILLERMAN
ADOLPH, SPELLERMAN A. HILLS,
JULIUS SPILLERMAN, JULIUS
SHADOL, CHUCKIE HILL, SHADOL
HILL, SPELLERMAN A. HILL,
JULIOUS SPILLERMAN, JULIOUS
HILL and SPILLERMAN HILL, JR.,

Defendant-Appellant.

Submitted April 10, 2018 – Decided May 4, 2018

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 13-
03-0604.

Joseph E. Krakora, Public Defender, attorney
for appellant (Joseph Anthony Manzo,
Designated Counsel, on the brief).

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Barbara
A. Rosenkrans, Special Deputy Attorney

General/Acting Assistant Prosecutor, on the brief).

PER CURIAM

Defendant appeals the denial of his petition for post-conviction relief (PCR), arguing:

POINT I

BECAUSE COUNSEL DID NOT CORRECTLY EXPLAIN TO HIS CLIENT THE RULES GOVERNING THE AWARDING OF JAIL CREDITS AND THE EFFECT THEY WOULD HAVE ON THE SENTENCE TO BE SERVED, PERFORMANCE OF TRIAL COUNSEL WAS INEFFECTIVE.

POINT II

BECAUSE THE DEFENDANT MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, THE COURT MISAPPLIED ITS DISCRETION IN DENYING [PCR] WITHOUT CONDUCTING A FULL EVIDENTIARY HEARING.

We determine defendant has not met the prejudice prong of the bedrock Strickland-Fritz¹ standard and affirm the denial of his PCR application without an evidentiary hearing.

Absent an evidentiary hearing, our review of the factual inferences drawn by the judge from the record – as well as the

¹ The only part of the two-prong standard applicable here is the requirement that defendant prove he suffered prejudice from counsel's deficient performance, Strickland v. Washington, 466 U.S. 668, 691-92 (1984), which affected the outcome of the case, State v. Fritz, 105 N.J. 42, 59 (1987).

judge's legal conclusions – is de novo. State v. Blake, 444 N.J. Super. 285, 294 (App. Div.), certif. denied, 226 N.J. 213 (2016).

Defendant was sentenced pursuant to a plea agreement² to concurrent thirteen-year State prison terms with eighty-five percent of parole ineligibility per the No Early Release Act, N.J.S.A. 2C:43-7.2, on two second-degree robberies charged in separate indictments.³ The sentence was also concurrent to a sentence imposed in Hudson County for second-degree robbery, and to parole violations – that were triggered prior to this sentence – for a juvenile homicide adjudication and numerous robbery and assault convictions.⁴ Defendant contends his plea counsel "did not explain," "incorrectly explained," "failed to correctly explain," or "failed to clearly explain" the sentencing law, including "the non-applicability of jail credit to persons incarcerated on parole warrants."

² The State recommended a fifteen-year term with eighty-five percent parole ineligibility. Defendant faced a mandatory extended-term pursuant to the Three Strikes Law, N.J.S.A. 2C:43-7.1(b).

³ We affirmed the sentence on an excessive sentencing calendar, remanding it only for vacation of the Law Enforcement Officers Training and Equipment Fund penalty, N.J.S.A. 2C:43-3.3, on one indictment. State v. Hill, No. A-4660-14 (App. Div. Feb. 9, 2016).

⁴ Defendant, as a juvenile, received an indeterminate term not to exceed thirty-three years in 1983 for the homicide adjudication; as an adult, he received lesser sentences in 1989 and 1996 for the numerous robbery and aggravated assault convictions.

The judge – who also took defendant's plea and sentenced him – acknowledged defendant's plea colloquy averment that his counsel advised him that, although he was incarcerated on a technical parole violation, he would receive gap time credits. But the judge recalled debunking that alleged advice during the plea colloquy during which she told defendant, "Once a parole violation hits, you're not getting any credit. . . . [O]nce a parole hit occurs, there's no time that's credited." As the judge commented, "While it's true that [defendant] had questions for the [c]ourt, he appeared very satisfied with the answers provided to him. And, subsequently, indicated his desire to plead guilty." The judge concluded defendant failed to establish – as required under our Supreme Court's holding in State v. DiFrisco, 137 N.J. 434 (1994)⁵

⁵ A defendant who seeks to vacate a guilty plea because of ineffective assistance of counsel must prove:

(i) counsel's assistance was not "within the range of competence demanded of attorneys in criminal cases," Tollett v. Henderson, 411 U.S. 258, 266 (1973); and (ii) "that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

[DiFrisco, 137 N.J. at 457 (alteration in original).]

– there was a reasonable probability that, but for counsel's errors, he would have rejected the plea offer and gone to trial.


From our de novo review of the record, we note defendant had just been sentenced in Hudson County to thirteen years in State prison after pleading guilty to an amended charge of second-degree robbery. He also faced – besides the two indictments to which he pleaded guilty – two indictments that were dismissed pursuant to this plea agreement, both of which charged second-degree robbery; two counts in one indictment, one count in the other. The indictments here charged crimes that occurred on separate dates and could have resulted in consecutive sentences. Defendant faced mandatory extended terms under the Three Strikes Law. And the judge reduced the State's offer of fifteen years to thirteen years.

We therefore affirm the judge's well-supported determination that defendant failed to establish that, but for counsel's error, he would not have pleaded guilty to a deal that netted a thirteen-year aggregate sentence on all four matters, concurrent to both the parole violations and the Hudson County sentence. State v. O'Donnell, 435 N.J. Super. 351, 371 (App. Div. 2014) (holding a defendant "must convince the court that a decision to reject the plea bargain would have been rational under the circumstances" (quoting Padilla v. Kentucky, 559 U.S. 356, 372 (2010))).

We determine defendant's argument that the judge abused her discretion by denying him an evidentiary hearing to be without sufficient merit to warrant discussion here. R. 2:11-3(e)(2). A defendant must establish a prima facie case in support of a PCR application, R. 3:22-10(b); State v. Preciose, 129 N.J. 451, 462 (1992), by demonstrating "the reasonable likelihood of succeeding" under the Strickland test before an evidentiary hearing is ordered, Preciose, 129 N.J. at 463. Defendant failed to do so and an evidentiary hearing was not warranted.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION