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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-3984-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MAURICE MOSLEY,

Defendant-Appellant.

Submitted March 6, 2018 – Decided March 22, 2018

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 11-
10-1905.

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

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Matthew
E. Hanley, Special Deputy Attorney General/
Acting Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Maurice Mosley appeals from a December 1, 2016
order denying his petition for post-conviction relief. We affirm.

A jury convicted defendant of murder and associated offenses in connection with the shooting of a pimp. The shooting occurred in front of two witnesses, who were prostitutes. They identified defendant from photo arrays, and they identified him at the trial. We affirmed defendant's conviction on his direct appeal. State v. Mosley, No. A-4021-12 (App. Div. April 20, 2015).

Defendant filed a PCR petition, raising several arguments, all of which were addressed and rejected by Judge Verna G. Leath in a written opinion dated December 1, 2016. Pertinent to this appeal, defendant argued that his trial counsel should have objected to allegedly improper comments by the prosecutor during her summation. Judge Leath, who had also presided over the trial, rejected that argument without a hearing.¹ She concluded that the prosecutor's remarks about witness credibility were made in response to defense counsel's summation, which disparaged the witnesses as "crack smoking prostitutes." The judge also found that if there was any impropriety in the summation, it was harmless error.

¹ As Judge Leath noted, she actually presided over two trials. Defendant's first trial resulted in a hung jury; the second trial resulted in a conviction.

Defendant also contended that his attorney should have requested a Wade² hearing, and his appellate attorney should have raised the identification issue on his direct appeal. Judge Leath held an evidentiary hearing on that claim.

At the hearing, defendant's former trial attorney testified in considerable detail about his strategic reasons for not filing a Wade motion. He explained that he did not think there were meritorious grounds to file a Wade motion and believed a hearing would be denied. He also believed that, if the motion were granted and a hearing were held, he would not prevail in excluding the witnesses' identifications. The attorney further reasoned that he would give away his trial strategy in cross-examining the witnesses at a Wade hearing, and he preferred to save his questions for cross-examination at trial. Judge Leath credited that testimony, and found that the attorney pursued a reasonable strategy. She concluded that his decision not to file a Wade motion was "within the ambit of professional competence."

On this appeal, defendant presents the following points of argument:

POINT I: DEFENDANT'S CONVICTIONS MUST BE REVERSED BECAUSE TRIAL COUNSEL WAS INEFFECTIVE FOR NOT PURSUING A WADE HEARING.

² United States v. Wade, 388 U.S. 218 (1967).

POINT II: DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF COUNSELS' INEFFECTIVENESS FOR NOT PURSUING THE PROSECUTION'S INJECTION OF PERSONAL BELIEF BOLSTERING THE SURVIVING VICTIMS' CREDIBILITY IN SUMMATION; THEREFORE, THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING.

On this appeal, we defer to the PCR judge's factual findings, including her evaluation of witness credibility. See State v. Nash, 212 N.J. 518, 540 (2013). We find no basis to second-guess Judge Leath's finding that defendant's trial counsel made a reasonable strategic decision to forego a Wade hearing. Defendant did not overcome the "strong presumption that counsel exercised reasonable professional judgment and sound trial strategy in fulfilling his responsibilities." Nash, 212 N.J. at 542 (citations omitted).

We also agree with Judge Leath that the prosecutor's remarks were within permissible bounds. The prosecutor told the jury: "I submit these girls were straightforward. If they didn't see something, they'd tell you. . . . And I think that became clear on the stand." The comments were made in response to defense counsel's characterization of the witnesses' testimony as "lies" and the witnesses as "crack smoking prostitutes." Further, even if the prosecutor's remarks had crossed the line, they did not have a clear capacity to produce an unjust result. R. 2:10-2. Consequently, we agree that defendant did not satisfy either prong

of the Strickland test. See Strickland v. Washington, 466 U.S.
668, 687 (1984).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION