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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-4222-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSE ALEMAN, a/k/a ANGEL  
ALEMAN, JOSE ALEMAN-ACOSTA,  
JOE ALEMAN, TAKAKA ALEMAN,  
TATICA ALEMAN, and JOSEPH  
ANGEL ALEMAN,

Defendant-Appellant.

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Submitted March 15, 2018 – Decided April 10, 2018

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey,  
Law Division, Atlantic County, Indictment No.  
08-08-1998.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Janet A. Allegro, Designated  
Counsel, on the briefs).

Damon G. Tyner, Atlantic County Prosecutor,  
attorney for respondent (Mario C. Formica,  
Deputy First Assistant Prosecutor, of counsel  
and on the brief).

PER CURIAM

Defendant Jose Aleman appeals from the March 29, 2017 Law Division order, which denied his petition for post-conviction relief (PCR) following an evidentiary hearing. We affirm.

Following a jury trial, defendant was convicted of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-4(a); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b); fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(3); and second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7. The charges stemmed from the shooting death of Pong Yu and injuring of Carlos Smith. The State's evidence included several witnesses to the murder, surveillance videotape that depicted the murder in its entirety, and an audio-video recording of defendant's confession. The trial judge sentenced defendant to an aggregate 50.5 years with an eighty-five percent period of parole ineligibility subject to the no Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

On direct appeal, we affirmed defendant's conviction, finding the evidence against him was "nearly overwhelming." State v. Aleman, No. A-5010-10 (App. Div. Dec. 7, 2012) (slip op. at 11, 16, 19). Our Supreme Court denied certification. State v. Aleman, 215 N.J. 486 (2013).

Defendant filed a PCR petition. In a certification, defendant said trial counsel told him prior to the trial that the State had offered to recommend a fifteen-year prison term if he agreed to plead guilty to aggravated manslaughter. Defendant also said trial counsel stated she would try to obtain a ten-year deal, but later told him the State rejected the counter-offer. Defendant argued that trial counsel rendered ineffective assistance by failing to advise the State he was still willing to accept the original fifteen-year offer, thus forcing him to go to trial. In opposition, the assistant prosecutor submitted certification, stating the State did not extend a fifteen-year offer to defendant.

The PCR judge denied the petition without conducting an evidentiary hearing to evaluate the competing certifications. We reversed and remanded for an evidentiary hearing on the merits. State v. Aleman, No. A-3860-14 (App. Div. June 20, 2016) (slip op. at 5).

At the remand hearing, which occurred before a different PCR judge, the assistant prosecutor testified, and documentary evidence confirmed,<sup>1</sup> that the State never offered defendant a fifteen-year plea deal. Rather, the State originally offered

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<sup>1</sup> The confirming documentary evidence included correspondence from trial counsel to the prosecutor, correspondence from the prosecutor to trial counsel, and a pre-trial memorandum.

"life-do-30," and later offered first-degree aggravated manslaughter with a recommendation not to exceed twenty-four years subject to NERA. Trial counsel tried to get the State to come down from its offer, but the State never did.

The PCR judge determined defendant was not entitled to a full evidentiary hearing because he failed to establish a prima facie case of ineffective assistance of counsel. The judge emphasized defendant's claim of ineffective assistance of counsel was nothing more than a bald assertion contradicted by the assistant prosecutor's testimony and documentary evidence.

On appeal, defendant raises the following contentions:

LEGAL ARGUMENT

POINT I

THE COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF SINCE HE MET HIS BURDEN THAT HE FAILED TO RECEIVE EFFECTIVE LEGAL REPRESENTATION AT THE TRIAL LEVEL.

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

(B) THE PCR COURT ERRONEOUSLY FOUND THAT THE STATE PROVIDED UNCONTROVERTED EVIDENCE THAT THEY DID NOT OFFER DEFENDANT A FIFTEEN YEAR PLEA DEAL AND ANALYZED THE EVIDENCE UNDER THE WRONG LEGAL STANDARD.

Our Supreme Court has established the standard of review in PCR cases where the court held an evidentiary hearing:

In reviewing a PCR court's factual findings based on live testimony, an appellate court applies a deferential standard; it "will uphold the PCR court's findings that are supported by sufficient credible evidence in the record." Indeed, "[a]n appellate court's reading of a cold record is a pale substitute for a trial judge's assessment of the credibility of a witness he has observed firsthand." However, a "PCR court's interpretation of the law" is afforded no deference, and is "reviewed de novo." "[F]or mixed questions of law and fact, [an appellate court] give[s] deference . . . to the supported factual findings of the trial court, but review[s] de novo the lower court's application of any legal rules to such factual findings."

[State v. Pierre, 223 N.J. 560, 576-77 (2015) (citations omitted).]

To establish a prima facie claim of ineffective assistance of counsel, the

defendant must satisfy two prongs. First, he must demonstrate that counsel made errors "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." An attorney's representation is deficient when it "[falls] below an objective standard of reasonableness."

Second, a defendant "must show that the deficient performance prejudiced the defense." A defendant will be prejudiced when counsel's errors are sufficiently serious to deny him a "fair trial." The prejudice standard is met if there is "a reasonable

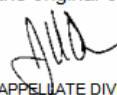
probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." A "reasonable probability" simply means a "probability sufficient to undermine confidence in the outcome" of the proceeding. [State v. O'Neil, 219 N.J. 598, 611 (2014) (quoting Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984)).]

"[I]n order to establish a prima facie claim, [the defendant] must do more than make bald assertions that he was denied the effective assistance of counsel. He must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). The defendant must establish, by a preponderance of the credible evidence, that he is entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013).

We have considered defendant's contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We are satisfied that defendant failed to establish a prima facie claim of ineffective assistance of counsel, and affirm substantially for the reasons the PCR judge expressed in her oral 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