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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-4602-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GARRY SHAW,

Defendant-Appellant.

Submitted April 18, 2018 – Decided May 2, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
12-06-1165.

Joseph E. Krakora, Public Defender, attorney
for appellant (Karen A. Lodeserto, Designated
Counsel, on the brief).

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Svjetlana Tesic,
Assistant Prosecutor, on the brief).

PER CURIAM

Two years and two months after the court sentenced defendant
to a two-year probationary term for third-degree possession of a
controlled dangerous substance in a school zone, N.J.S.A. 2C:35-

7, defendant filed a petition for post-conviction relief (PCR). In his petition, he claimed his trial counsel was ineffective because he did not properly investigate the case, misinformed defendant about the immigration consequences of his plea, did not file pre-trial motions, and did not explain to defendant his legal options. Five months after defendant filed his petition, a court dismissed it because defendant had been deported and his whereabouts were unknown. Defendant re-filed the petition in August 2016 and reasserted the same arguments.

Following oral argument on defendant's PCR petition, Judge Mitzy Galis-Menendez denied it without an evidentiary hearing. In a written opinion, Judge Galis-Menendez quoted the relevant section of the guilty plea colloquy between the trial judge and defendant:

Q All right. The other question, Mr. Shaw, I know you've appeared before me and this issue has been raised before, have you had an opportunity to discuss your -- your status in this country, that is, the fact that you're not a citizen with immigration counsel?

A Yes.

Q All right. And are you -- do you understand that if your plea of guilty is to a crime considered an aggravated felony under federal law, you will be subject to deportation or removal?

A Yes.

Q Do you also understand that this [c]ourt has no jurisdiction or control over any decision made by a federal court regarding your potential deportation, your ability to re-enter the United States or your application for United States citizenship or any other form of residency if I take this plea?

A Yes.

Q So without knowing for sure whether you will or will not be deported and I just want to assume for now that you would be deported, do you still wish to plead guilty?

A Yes.

Judge Galis-Menendez pointed out that during the plea colloquy, the trial judge also asked defendant if he had reviewed the plea forms with counsel, whether his answers were truthful, whether he had initialed each page of the plea form, and whether his answer would be the same if the judge asked the questions again. Defendant responded affirmatively. Defendant acknowledged by his answers to the questions on the plea forms that he understood his guilty plea might result in removal proceedings, he had the right to seek advice from an attorney about the effect of his plea on his immigration status, he had in fact discussed the potential consequences of the plea with counsel, and he nonetheless wished to plead guilty.

On appeal, defendant argues:


POINT ONE

DEFENDANT SHOULD BE ENTITLED TO AN EVIDENTIARY HEARING UNDER STATE V. GAITAN¹ AND UNITED STATES V. OROCIO².

We affirm, substantially for the reasons expressed by Judge Galis-Menendez in her written decision. Defendant's argument is without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

¹ 209 N.J. 339 (2012).

² 645 F.3d 630 (3rd Cir. 2011).