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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-4810-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMAAL GEORGE, a/k/a  
JAMES GEORGE, SPEEDY,

Defendant-Appellant.

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Submitted October 24, 2017 – Decided January 10, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Indictment No.  
12-02-0403.

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

Esther Suarez, Hudson County Prosecutor,  
attorney for respondent (Frances Tapia Mateo,  
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Jamaal George<sup>1</sup> appeals from a May 19, 2016 order, denying his petition for post-conviction relief (PCR). Defendant presents the following points of argument for our consideration:

POINT I: THE COURT BELOW ERRED WHEN IT DETERMINED THAT IT WAS NOT INEFFECTIVE ASSISTANCE FOR TRIAL COUNSEL'S FAILURE (sic) TO FILE A MOTION TO DISMISS THE INDICTMENT WHERE IT WAS DETERMINED THE MOTION WOULD MOST LIKELY HAVE BEEN SUCCESSFUL ON THE MERITS AND WHERE COUNSEL RETURNED 25% OF HIS FEE TO THE DEFENDANT AFTER SENTENCING WAS CONDUCTED.

POINT II: DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ENTITLING HIM TO POST CONVICTION RELIEF AND A REMAND FOR AN ADDITIONAL EVIDENTIARY HEARING.

(A) Trial counsel was ineffective for soliciting incriminating statements by two of the State's witnesses which cumulatively led to his conviction.

On this appeal, we defer to the PCR judge's factual findings and credibility determinations, issued after an evidentiary hearing; however, we review her legal conclusions de novo. State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014). To be entitled to PCR relief, defendant must establish that his trial counsel rendered ineffective assistance and counsel's inadequate performance prejudiced the defense. See Strickland v. Washington,

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<sup>1</sup> Defendant's first name is spelled "Jamaal" on the judgment of conviction. It is spelled "Jamal" on the order denying his PCR petition.

466 U.S. 668, 687 (1984). After reviewing the record in light of those legal standards, we find no merit in defendant's appellate arguments, and we affirm.

A jury convicted defendant of two counts of third-degree possession of cocaine and heroin, N.J.S.A. 2C:35-10(a)(1); third-degree possession of cocaine and heroin with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3); third-degree possession of cocaine and heroin with intent to distribute within 1000 feet of a school, N.J.S.A. 2C:35-7; and second-degree possession of cocaine and heroin with intent to distribute within 500 feet of a public housing facility, N.J.S.A. 2C:35-7.1. The trial court denied the State's motion to impose a discretionary extended term, and sentenced defendant to an aggregate term of nine years in prison with four and one-half years to be served without parole. We affirmed the conviction on direct appeal. State v. George, No. A-6141-12 (App. Div. June 4, 2014), certif. denied, State v. George, 220 N.J. 101 (2014). Defendant then filed a PCR petition.

At the trial, the State's case against defendant was uncomplicated. Defendant was arrested after a police officer saw him take what appeared to be a bag of drugs from behind a wall, take out one small object, and replace the bag in the hiding place. Defendant appeared poised to give the small object to a female

customer, but then walked away from her. After arresting defendant, the police looked behind the wall and recovered a bag filled with small vials of cocaine and baggies of heroin.

We summarized the trial evidence in our opinion on the direct appeal:

According to Detective Anthony Goodman, while conducting undercover surveillance, he observed defendant walking down a street with a woman. When the two subjects reached a parking lot, the woman waited on the sidewalk while defendant walked to a low retaining wall and sat on it. Goodman saw defendant reach behind the wall, retrieve "a clear plastic bag containing white objects in it," and take one object from the bag. Goodman testified that defendant started walking back toward the woman but then glanced in the direction of the van from which Goodman was conducting the surveillance. At that point, defendant looked "skeptical," turned away from the woman, and crossed the street to a beige Lexus automobile. Goodman saw defendant get into the car and come out a minute or two later.

Having seen what he believed was illegal drug activity, Goodman radioed his back-up team and asked them to arrest defendant and retrieve the drugs. Sergeant Stephen Trowbridge testified that he went to the retaining wall, as Goodman directed, and there he found a clear plastic bag containing numerous small vials of cocaine and glassine baggies of heroin. However, Trowbridge, who also arrested defendant, did not find any drugs on his person or in the Lexus. . . .

On cross-examination, Goodman admitted that in his grand jury testimony, he stated that he saw defendant give the woman a bag of drugs. That was inconsistent with what

Goodman stated in his police report and his trial testimony. At trial, Goodman admitted that he made a "mistake" in his grand jury testimony. . . .

In his summation, defense counsel argued to the jury that Goodman was not a credible witness. The prosecutor argued that Goodman made an honest mistake in his grand jury testimony and that, consistent with Goodman's report, defendant was charged with possession with intent to distribute but not with distribution.

[George, No. A-6141-12 (slip op. at 2-4).]

In his PCR petition, defendant contended that his trial counsel should have filed a motion to dismiss the indictment, because Officer Goodman misinformed the grand jury that he saw defendant distribute drugs to the woman. He also argued that the attorney made errors in questioning Goodman and the State's narcotics expert, and admitted that he made mistakes when he refunded defendant \$2500 of his fee after losing at trial.<sup>2</sup>

At the evidentiary hearing, defendant's former trial attorney explained that he did not move to dismiss the indictment for tactical reasons. He believed that if the court granted the motion, the State would simply re-present the case to the grand

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<sup>2</sup> Defendant also contended that the attorney should have called two additional trial witnesses. At the evidentiary hearing, the attorney thoroughly explained the strategic reasons why he did not present the witnesses. We need not address this issue further, because defendant has not pursued it on this appeal.

jury, and in re-presenting the case, would "clean up" Goodman's error. The attorney preferred not to give the State that opportunity, and instead, waited to cross-examine Goodman about the error at trial.

The PCR judge found that the attorney's testimony was credible and his strategy was reasonable. We agree with the judge's reasoning on this point. Defendant did not prove that his trial counsel was ineffective, or that if counsel erred, the error prejudiced the defense. See Strickland, 466 U.S. at 687.

In his PCR testimony, the attorney denied telling defendant that he felt he did a bad job of representation, and he explained why he gave defendant a \$2500 refund. The attorney testified that he expected to win the case and was surprised and disappointed by the verdict. He also knew defendant could not afford to hire an appellate attorney without some financial assistance, and gave him \$2500 toward that expense because he felt so bad about losing the case. The attorney's testimony was corroborated by statements the trial judge made after the verdict, when he complimented defendant's counsel on doing a good job and expressed his own surprise at the guilty verdict. The PCR judge believed the attorney's testimony, and we find no basis to second-guess her evaluation of his credibility. See O'Donnell, 435 N.J. Super. at 373.

Finally, defendant contends, as he did in his PCR petition, that his counsel was ineffective in cross-examining two prosecution witnesses. Focusing on the fact that the police did not find the baggie of suspected drugs in defendant's possession, counsel asked Goodman what happened to it. Goodman replied that defendant "probably ate it." Counsel then used Goodman's response to attack his credibility, eliciting Goodman's admission that he had defendant under surveillance the entire time and did not see defendant put anything in his mouth. We agree with the PCR judge that counsel's cross-examination was not ineffective.

The PCR judge likewise concluded that trial counsel was not ineffective in asking the State's narcotics expert a couple of questions designed to show that a drug dealer would be unlikely to conceal his stash of drugs behind a wall in a public place. We agree with the judge's reasoning. The argument does not warrant further discussion. R. 2:11-3(e)(2).

An evidentiary hearing was not required as to trial counsel's cross-examination of Goodman or the expert, because defendant did not present a prima facie case of ineffective assistance. See State v. Preciose, 129 N.J. 451, 463-64 (1992).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION