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APPROVAL OF THE APPELLATE DIVISION**

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-3156-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASHON A. CAUSEY, a/k/a
RASHAWN CAUSEY, BREAD
HARRIS, SHURON HARRIS,
RASHAN CASUEY, RASHON
A. CAUSEY, RON-RON,
RA-RA, SHAUN M. CAUSEY,
and RASHAWN A. CAUSEY,

Defendant-Appellant.

Submitted December 19, 2022 – Decided December 23, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law
Division, Burlington County, Indictment No. 17-03-
0190.

Joseph E. Krakora, Public Defender, attorney for
appellant (Adam W. Toraya, Designated Counsel, on
the brief).

LaChia L. Bradshaw, Burlington County Prosecutor,
attorney for respondent (Alexis R. Agre, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Rashon A. Causey appeals from a Law Division order denying his petition for post-conviction relief (PC) without an evidentiary hearing. We affirm.

Following a trial, a jury found defendant guilty of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and N.J.S.A. 2C:11-3(a)(2); second-degree burglary, N.J.S.A. 2C:18-2(a)(1); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); and fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d). The trial judge sentenced defendant to fifty years in prison, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

Defendant filed a direct appeal. We affirmed defendant's convictions and sentence, and the Supreme Court denied certification. State v. Causey, No. A-2757-17 (App. Div. Apr. 10, 2019), certif. denied, 240 N.J. 8 (2019).

Defendant then filed a timely petition for PCR. Among other things, defendant asserted his trial attorney provided him with ineffective assistance because she failed to seek a mistrial or a new trial based on alleged newly discovered evidence. Defendant also claimed his appellate counsel was

ineffective because she did not argue that the trial court incorrectly denied his motion to suppress certain evidence.

Following oral argument, the PCR judge rendered a thorough written decision, concluding that defendant did not satisfy the two-prong test of Strickland v. Washington, 466 U.S. 668, 687 (1984), which requires a showing that trial counsel's performance was deficient and that, but for the deficient performance, the result would have been different. The judge found that defendant presented no competent evidence supporting his claim he had newly discovered evidence that would have affected the result of the trial, and that defendant failed to demonstrate that a challenge to the denial of the suppression motion on appeal would have been successful.

On appeal, defendant raises the same arguments he unsuccessfully presented to the Law Division. Defendant contends:

POINT I

THE COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR [PCR] WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS ASSERTION THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS OF INEFFECTIVE

ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS, AND PETITIONS FOR [PCR].

B. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO REQUEST A MISTRIAL BASED UPON NEWLY DISCOVERED EVIDENCE.

C. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS APPELLATE ATTORNEY FAILED TO ARGUE ON DIRECT APPEAL THAT THE MOTION TO SUPPRESS WAS WRONGLY DECIDED.

When petitioning for PCR, 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); State v. Preciose, 129 N.J. 451, 459 (1992). To sustain that burden, the defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing and the defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance, material

issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. R. 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland, 466 U.S. at 687; State v. Fritz, 105 N.J. 42, 58 (1987). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

An appellate counsel is not ineffective for failing to raise every issue imaginable. State v. Gaither, 396 N.J. Super. 508, 515 (App. Div. 2007). Instead, appellate counsel is afforded the discretion to construct and present what they deem are the most effective arguments in support of their client's position. Ibid.

Having considered defendant's contentions in light of the record and the applicable law, we affirm the denial of defendant's PCR petition substantially for the reasons detailed at length in the trial judge's written opinion. We discern no abuse of discretion in the judge's consideration of the issues, or in his decision to deny the petition without an evidentiary hearing. We are satisfied that the trial attorney's performance was not deficient, and defendant provided nothing more than bald assertions to the contrary.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION