

# RECORD IMPOUNDED

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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-0360-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WUKEEM W. LEWIS, a/k/a  
WALLACE W. LEWIS,

Defendant-Appellant.

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Submitted April 25, 2023 – Decided June 30, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law  
Division, Union County, Indictment No. 14-04-0259.

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

Matthew J. Platkin, Acting Attorney General, attorney  
for respondent (Sarah D. Brigham, Deputy Attorney  
General, of counsel and on the brief).

PER CURIAM

Defendant Wukeem W. Lewis appeals from two orders denying his petition for post-conviction relief (PCR). The majority of defendant's claims were denied without an evidentiary hearing because the PCR court found that defendant had not established a prima facie showing of ineffective assistance of counsel. After conducting an evidentiary hearing on two of defendant's claims, the court denied both of those remaining claims. Having reviewed both orders, and the supporting written opinions, we affirm.

A jury convicted defendant of first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1) and (2); third-degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a) and 2C:14-2(a)(3); second-degree attempted aggravated sexual assault, N.J.S.A. 2C:5-1 and 2C:14-2(a)(3); and second-degree attempted sexual assault, N.J.S.A. 2C:5-1 and 2C:14-2(c)(1). Defendant was sentenced to an aggregate prison term of thirty-seven years with periods of parole ineligibility and parole supervision as prescribed by the No Early Release Act, N.J.S.A. 2C:43-7.2. Defendant was also sentenced to parole supervision for life, N.J.S.A. 2C:43-6.4, and reporting and registration requirements under Megan's Law, N.J.S.A. 2C:7-2.

On direct appeal, we affirmed his convictions and sentence. State v. Lewis, No. A-1711-16 (App. Div. June 26, 2018). The Supreme Court denied

defendant's petition for certification. State v. Lewis, 236 N.J. 368 (2019). In February 2019, defendant filed a petition for PCR. He was assigned counsel and with the assistance of counsel he submitted a supplemental PCR petition.

On February 10, 2020, the PCR judge, Judge John M. Deitch, heard argument. Ten days later, on February 20, 2020, Judge Deitch issued a written opinion and order granting an evidentiary hearing on two of defendant's claims but denying an evidentiary hearing on defendant's nine other claims. The judge analyzed each of defendant's claims and, on the majority of the claims, found that defendant had failed to establish a prima facie showing of ineffective assistance of counsel. Accordingly, the judge denied those claims without an evidentiary hearing.

The judge granted an evidentiary hearing on defendant's claims that his trial counsel had been ineffective in (1) pursuing a false identification defense instead of an intoxication defense; and (2) persuading defendant not to testify. On April 12 and May 3, 2021, Judge Deitch conducted an evidentiary hearing on those claims. The judge heard testimony from three witnesses: defendant's trial counsel, defendant, and an investigator defendant had hired.

On May 10, 2021, Judge Deitch issued a written opinion and order denying defendant's remaining claims. In his written opinion, Judge Deitch

found the testimony of defendant's trial counsel credible and found defendant's testimony to be incredible and "self-serving." The judge then made factual findings and legal conclusions.

On this appeal, defendant presents the following arguments for our consideration:

POINT ONE – DEFENSE COUNSEL'S INARTICULATE EXPLANATION AS TO WHY HE OPTED FOR ONE WEAK DEFENSE OVER ANOTHER CONSTITUTED SUFFICIENT PROOF THAT DEFENDANT WAS PREJUDICED BY THE TRIAL STRATEGY HIS ATTORNEY DEvised.

POINT TWO – CONTRARY TO THE PCR JUDGE'S CONCLUSION, DEFENDANT ARTICULATED WITH PARTICULARITY THAT HIS TRIAL ATTORNEY SHOULD HAVE DISCUSSED WITH HIM PRIOR TO WAIVING THE RIGHT TO TESTIFY ON HIS OWN BEHALF THE BENEFITS AND CONSEQUENCES OF EXPLAINING TO THE JURY HOW THE EXCESSIVE CONSUMPTION OF ALCOHOL AND DRUGS AFFECTED HIS DECISION-MAKING ABILITIES.

POINT THREE – THE PCR JUDGE ABUSED HIS DISCRETION WHERE HE DID NOT CONDUCT AN EVIDENTIARY HEARING REGARDING DEFENSE COUNSEL'S FAILURE TO DISCUSS WITH DEFENDANT THE DISADVANTAGES OF NOT PURSUING A PLEA OFFER.

POINT FOUR – THE PCR JUDGE ABUSED HIS DISCRETION WHERE HE DID NOT CONDUCT AN EVIDENTIARY HEARING REGARDING DEFENSE

COUNSEL'S FAILURE TO OBJECT TO THE COURT OFFICERS' RESTRAINT OF DEFENDANT DURING CLOSING ARGUMENT.

POINT FIVE – THE PCR JUDGE ABUSED HIS DISCRETION WHERE HE DID NOT CONDUCT AN EVIDENTIARY HEARING REGARDING DEFENSE COUNSEL'S FAILURE TO OBJECT TO THE VICTIM'S PURPORTED OBSERVATION OF DEFENDANT IN RESTRAINTS.

POINT SIX – DEFENDANT'S PCR COUNSEL FAILED TO INVESTIGATE WHETHER AN EXPERT OPINION COULD BE SECURED IN ORDER TO CORROBORATE DEFENDANT'S INTOXICATION DEFENSE.

POINT SEVEN – DEFENDANT'S PRO SE ARGUMENTS ARE ADDRESSED IN SUMMARY FASHION.

All the arguments that defendant raises on this appeal were presented to Judge Deitch when he considered defendant's PCR petition. Having conducted the appropriate review of both orders and the supporting written opinion, we affirm essentially for the reasons thoroughly set forth in Judge Deitch's opinions issued on February 20, 2020, and May 10, 2021.

Judge Deitch correctly found that defendant had not established a prima facie showing of ineffective assistance of counsel on the majority of his claims. Therefore, defendant was not entitled to an evidentiary hearing on those claims. See State v. Porter, 216 N.J. 343, 355 (2013); R. 3:22-10. After conducting an

evidentiary hearing on two of defendant's claims, the judge made credibility and factual findings supported by the record, and his applications of his findings to the well-established law was correct. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (explaining the standard for analyzing claims of ineffective assistance of counsel); State v. Fritz, 105 N.J. 42, 57-58 (1987) (adopting the Strickland test).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION