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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1547-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAHEEM CLEVELAND, a/k/a
FUQUAN PAIGE, NAIM PAIGE,
RAHEEM PAIGE, and RASHEED
THOMAS,

Defendant-Appellant.

Submitted May 3, 2023 – Decided July 24, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 12-03-0875.

Joseph E. Krakora, Public Defender, attorney for
appellant (Frank M. Gennaro, Designated Counsel, on
the brief).

Theodore N. Stephens, II, Acting Essex County
Prosecutor, attorney for respondent (Lucille M.
Rosano, Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the brief;

Romesh C. Sukhdeo, Special Deputy Attorney General/Acting First Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Raheem Cleveland appeals from a November 25, 2021 Law Division order, entered following our remand, which denied his post-conviction relief (PCR) petition following an evidentiary hearing. We vacated the court's earlier order denying defendant's petition because the PCR judge failed to make adequate findings of fact and conclusions of law, and also mistakenly exercised his discretion by granting only a limited evidentiary hearing. Because we are satisfied the court complied with our remand instructions, and correctly denied defendant's petition, we affirm.

I.

This case concerned the July 2011 murder of Marquis Robinson in Newark. In 2013, a jury found defendant guilty of first-degree purposeful or knowing murder, first-degree attempted murder, second-degree unlawful possession of a handgun without a permit, and second-degree possession of a handgun for an unlawful purpose. Defendant received an aggregate prison sentence of fifty-five years, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. We affirmed his judgment of conviction on direct appeal, State v. Cleveland

(Cleveland I), No. A-2422-13 (App. Div. Mar. 23, 2016) (slip op.), and the Supreme Court denied certification. State v. Cleveland, 226 N.J. 212 (2016).

In July 2016, defendant filed a timely PCR petition asserting his trial counsel was constitutionally ineffective under the two-part test established in Strickland v. Washington, 466 U.S. 668, 687 (1984),¹ by failing to: request a mistrial or curative instruction, speak with an alibi witness, and object at several points during the trial. Defendant also alleged a claim of ineffective assistance of appellate counsel.

In May 2017, assigned counsel filed an amended PCR petition, asserting trial counsel also failed to address remaining discovery issues, failed to read or review an August 14, 2011 Star-Ledger article regarding the police investigation, failed to argue a key witness for the State committed perjury, and failed to contact witnesses from a later shooting involving the murder weapon.

The State agreed an evidentiary hearing was warranted but only with respect to trial counsel's failure to object to lay testimony regarding a gunshot

¹ To establish ineffective assistance of counsel, a convicted defendant must satisfy the two-part test enunciated in Strickland, 466 U.S. at 687, by demonstrating that: 1) counsel's performance was deficient, and 2) the deficient performance actually prejudiced the accused's defense. The Strickland test has been adopted for application under our State constitution in New Jersey. See State v. Fritz, 105 N.J. 42, 58 (1987).

residue test (GSR test) performed on defendant. The PCR judge agreed and denied an evidentiary hearing on defendant's remaining claims. In a written opinion, the judge rejected all of defendant's claims and denied PCR.

According to the trial record, in the early morning of July 5, 2011, a man approached Robinson and his fiancé, A.N.,² as they sat on the front porch of Robinson's home in Newark. After a brief conversation, the man pretended to leave, only to turn and begin firing a handgun, striking both Robinson and A.N. They were both rushed to a local hospital where Robinson died a few hours later but A.N. survived. Surgeons removed a .40 caliber bullet from Robinson's stomach which matched casings investigators found at the scene. Police canvassed the area, but found no eyewitnesses to the shooting other than A.N.

According to Essex County Detective Tyrone Crawley, he spoke with A.N. on July 8, 2011, in her hospital room, where she told him defendant "shot me and my boyfriend." She also stated she knew defendant "for two years." Detective Crawley did not record the interview nor did he take notes. After A.N.'s release from the hospital, Detective Crawley contacted her to take a statement and she agreed. On July 12, 2011, Detective Crawley and his partner transported A.N. to the Essex County Prosecutor's Office for an interview. In

² We use initials to protect the identity of the surviving victim.

the subsequent videotaped interview, the detectives showed A.N. a photograph of defendant, which she signed, identifying defendant as the shooter. Detective Crawley stated he did not show A.N. any other photos because she previously identified defendant by name, and stated she knew him for two years.

According to Detective Crawley, the interview began ten minutes after A.N. entered the interview room of the Homicide Unit, and no preliminary interview occurred before he turned on the video camera. Police arrested defendant the same day. A search of defendant's home, pursuant to a warrant, failed to produce any evidence linking him to the shooting.

The day before his arrest, defendant and seven other people sustained gunshot wounds in a drive-by shooting in Newark. The drive-by shooting occurred approximately two hours after Robinson's funeral, which defendant attended, and .40 caliber shell casings found at the scene matched those used to shoot Robinson. In addition, the casings matched a previous shooting from 2009. Police investigation of the July 11, 2011 shooting also indicated the drive-by shooter left .223 caliber Remington shell casings.

Several hours after the July 11, 2011 shooting, investigators performed a GSR test on defendant at a local hospital, where he had been transported for treatment of his gunshot wound. The test yielded a negative result.

On July 22, 2011, A.N. contacted Detective Crawley and recanted her earlier identification of defendant, telling him, the "person that shot me was Gerald Moore." She also told him she would no longer cooperate with the investigation. According to Detective Crawley, he investigated A.N.'s identification of Moore as the shooter and found no connection between him and either shooting.

Before opening statements, the trial judge found A.N.'s videotaped statement reliable and ruled it admissible. During Detective Crawley's testimony, the judge also allowed the State to present A.N.'s July 8, 2011 statement to rebut her "allegations of police misconduct."

At trial, A.N. continued to identify Moore as the shooter and claimed to have known defendant her "whole life," describing him as "[c]ool, civil, like a brother to me." A.N. specifically denied defendant was involved in the shootings, explaining she implicated him solely because the police "made me say it was him numerous times." She further testified that during her interview, the detectives showed her a photograph of "the wrong guy." She claimed to have signed and dated the photograph and wrote "Raheem" on the back only because the police threatened to arrest her, after holding her in an interview room for seven hours.

A.N. also attacked her photo identification of defendant by suggesting another person previously identified defendant as the shooter to the police. She stated:

[W]hen you brung me down to the statement he already had his picture. You had someone else questioned before me because if you going to ask me you supposed to have a line up of people, not just one picture. So the person that you all took down there to question picked him out first

Defense counsel objected to this testimony at trial, and A.N. later repeated the same claim. Defense counsel did not object when A.N. repeated her assertion a third party identified defendant, nor did he move to strike the testimony or request the judge instruct the jury concerning it.

On cross-examination, Detective Crawley admitted he presented a theory before the grand jury that when defendant was shot on July 11, 2011, he shot back. In support, he cited the ballistic match between the .40 caliber shell casings found in the area where defendant was shot on July 11, 2011, and the .40 caliber shell casings found near the area where Robinson was shot on July 5, 2011, emphasizing that "it was a match to the same gun that was used to kill Marquis Robinson."

Detective Crawley also testified that he had no knowledge as to how the GSR test was performed on defendant after the drive-by shooting but

nevertheless stated, "I do know it's unreliable. It's just an unreliable test." Defense counsel did not object to Detective Crawley's testimony but was successful in eliciting testimony from him that his office continues to use the test.

After the State rested, the defense presented testimony from one witness, Essex County Investigator Telmo Silvestri, who testified regarding the July 11, 2011 crime scene. On cross-examination, and without objection, Silvestri agreed the GSR test is "highly" inaccurate and added that he does not use it "personally."

On direct appeal, defendant argued the judge erred in admitting A.N.'s prior statements and the testimony of Detective Crawley regarding the GSR test and imposed an excessive sentence. He also argued that the prosecutor engaged in misconduct during the investigation. We rejected these arguments and affirmed.

Regarding defendant's claim of error regarding the GSR testimony, we explained:

Here, the record reveals that defense counsel introduced the topic of the July 11[, 2011] shooting and the negative test results of defendant's GSR test because it was the cornerstone of defendant's theory of that case.

That is, defense counsel wanted the jury to know about the negative results of the test because it supported the defense theory that defendant never possessed the handgun and that someone else shot Marquis and [A.N.]. This is presumably why defense counsel did not object to the officers' qualifications to render the opinions, or to their testimony about the test's reliability. If, as defendant contends, "[t]he real issue in this matter is the lack of objection from the trial attorney," this issue is better suited for a PCR petition.

[Cleveland I, slip op.at 18.]

Defendant filed a timely PCR petition and, despite our comment regarding trial counsel's lack of objection to the GSR testimony, the PCR judge decided to conduct a limited evidentiary hearing regarding the reliability of GSR testing, without allowing defendant to present the testimony of his trial counsel or any other witnesses. At the hearing, defendant produced Carl Leisinger, a retired State Police Major, as a ballistics expert, to testify about GSR testing, including the Blue View³ GSR test kit used on defendant following the July 11, 2011 shooting.

According to the PCR judge, "[Major] Leisinger explained that [GSR] on someone's hand indicates that the person fired a gun, was near someone who

³ According to Major Leisinger, "Blue View" refers to the manufacturer of the test kit used on defendant and "they call it Blue View because the reaction to gunshot residue turns the residue blue."

fired a gun or handled a gun that had been fired." A person administering a GSR test does not need any particular training, only the ability to follow the directions provided in the GSR test kit. Major Leisinger described the GSR test as a presumptive test, meaning the test is used based on the presumption the test subject has come in contact with a gun, and that the test result will likely yield a positive result. The State presented testimony from Detective Frank Ricci, who completed various tests using the Blue View kit. While most of his test results were negative, the record reflects Detective Ricci failed to follow the instructions provided in the kit.

The PCR judge found Major Leisinger credible and accepted his conclusion "that the Blue View testing kit [was] reliable. Unlike the testifying police officers, [Major] Leisinger's opinion was based on and supported by facts and data and he provided the why and wherefore for his opinion." Notwithstanding the PCR judge's credibility findings with respect to Major Leisinger, Detective Ricci's noted failure to follow the instructions for using the Blue View kit and acknowledgment that he never saw the report written by the officer who administered the GSR test, the PCR judge found his testimony "credible[,] . . . reasonable and consistent." The judge also cited Detective Ricci's testimony as supporting Detective Crawley's "opinion that . . . Blue View

is not reliable." The PCR judge further reasoned as "Detective Crawley offered a legitimate lay opinion, his testimony was admissible. An objection would have been properly overruled."

In reviewing the file, PCR counsel discovered an August 14, 2011 Star-Ledger article entitled "The Killing Cycle: Inside Story of the Essex County Homicide Squad as It Tries to Break the Murder Chain." The article included numerous details of the investigation that lead to defendant's arrest for the killing of Marquis Robinson, and a detailed account of A.N.'s interview. The PCR judge detailed in his opinion how the account contradicted significant portions of Detective Crawley's trial testimony.

PCR counsel argued that trial counsel was ineffective for not using the information in the article to impeach Detective Crawley's credibility. The PCR judge denied defendant's request for a hearing on the issue as well as counsel's request for the court to issue subpoenas to the parties present at A.N.'s interrogation.

As noted, the PCR judge denied defendant's petition. Defendant appealed and maintained the PCR judge erred in concluding his counsel was not ineffective for failing to object to improper lay opinion evidence regarding the GSR testing and to A.N.'s hearsay statements. After considering the relevant

facts in the light most favorable to defendant, we concluded defendant presented a credible prima facie case of ineffective assistance requiring a full evidentiary hearing, and accordingly vacated the court's order. State v. Cleveland (Cleveland II), No. A-3259-17 (App. Div. May 21, 2019) (slip op.).

As we explained, by granting only a limited hearing, the PCR judge improperly precluded testimony of critical witnesses, including defendant's trial counsel, and failed to make adequate findings and conclusions concerning the issues related to GSR testing. We specifically noted it was necessary for the court on remand to explore trial counsel's reasons for not objecting to A.N.'s testimony regarding an alleged unidentified witness as hearsay and for not objecting to Detective Crawley's and Investigator Silvestri's opinions regarding the reliability of the GSR test. We also required additional testimony and findings regarding trial counsel's explanation for not using the information contained in the Star-Ledger article, including calling witnesses identified in the article to impeach Detective Crawley's testimony.

Additionally, we concluded the PCR judge made conflicting findings and conclusions regarding the reliability of the GSR test that required further explication. For example, the PCR judge found the testimony of Major Leisinger credible and accepted his conclusion "that the Blue View testing kit is

reliable." We also noted, however, the judge similarly stated he found Detective Ricci's testimony "credible[,] . . . reasonable and consistent," and cited his testimony as supporting Detective Crawley's "opinion that . . . Blue View is not reliable." Finally, we noted the potential importance of the information and witnesses identified in the Star-Ledger article and concluded the reasons for counsel not investigating or following up on that information at trial needed to be developed at an evidentiary hearing.

On remand, defendant contended his trial counsel was ineffective for, among other reasons, failing to: (1) object to A.N.'s trial testimony that another person identified defendant's photograph before her identification, move to preclude A.N. from testifying, request a Wade⁴ hearing, or seek a mistrial; (2) object to the State's witnesses' inadmissible net opinions testimony regarding the reliability of the GSR test; (3) call a defense expert to testify as to the reliability of the GSR test; (4) introduce prior convictions and other evidence impeaching the individual who identified defendant as the shooter; (5) competently cross-examine Detective Crawley and the other detectives present during A.N.'s interview, including neglecting to impeach Detective Crawley's truthfulness regarding A.N.'s interview based on the information contained in

⁴ United States v. Wade, 388 U.S. 218 (1967).

the Star Ledger article, (6) call the author of the Star-Ledger article as a trial witness, and (7) investigate three witnesses to the July 11, 2011 shooting. Finally, defendant argued his appellate counsel was ineffective for failing to assert numerous arguments on direct appeal.

The court conducted an evidentiary hearing consistent with our opinion over the course of four days. Detectives Crawley and Ricci testified again at the hearing, as did defendant's trial counsel, Detectives Murad Muhammad and Thomas McEnroe, Sergeants Miguel Arroyo, John Zutic, and Paul Kochis, and Chief Michael DeMaio.⁵ The court determined all of the witnesses credibly testified and described each witness's testimony as "reasonable and consistent."

After considering the testimony and documentary evidence, along with the oral arguments, the PCR judge denied defendant's petition, concluded defendant failed to satisfy either Strickland's performance or prejudice prongs, and issued a comprehensive written opinion. We detail only those portions of the PCR judge's opinion pertinent to the issues raised in this appeal. See infra pp. 17-18.

⁵ The testimony of Detectives Muhammad and McEnroe, Sergeants Arroyo, Zutic, and Kochis, and Chief DeMaio related to the Star Ledger article and are not pertinent to the issues raised in this appeal.

First, the PCR the judge rejected defendant's argument that his trial counsel should have precluded A.N.'s testimony with respect to someone else identifying defendant, finding trial counsel "did not and could not anticipate [A.N.]'s testimony because he had no reason to believe that [A.N.] even knew about a non-testifying witness identifying [defendant] and . . . [A.N.] became a runaway witness on the stand." The judge further concluded defendant's trial counsel was not constitutionally ineffective for "failing to adequately object, move for mistrial, or request a curative instruction after the sole recanting witness, [A.N.], testified that someone else identified [defendant]'s photograph before her," and after A.N.'s testimony was read back to the jury.

On this point, the PCR judge found A.N.'s "brief mention of another witness was simply part of her recanted identification of [defendant] and her claim of police coercion and fabrication, which the jury [chose] not to believe." He further noted A.N.'s testimony about another witness was contradicted by her "credible out-of-court statement," which was shown to the jury. According to the judge, "it was reasonable for trial counsel to believe that the jury found [A.N.] less than credible and thus would not want to draw further attention to her testimony by moving to strike." Additionally, the judge determined a mistrial "would not have been appropriate under the circumstances" in any event

and, "[e]ven if a curative instruction was appropriate, it would not have materially impacted the trial due to [A.N.]'s lack of credibility."⁶

The PCR judge also rejected defendant's claims his counsel's performance was deficient in failing to "object to the State's witnesses offering net opinions that the Blue View gunpowder residue test" was unreliable, or obtain expert testimony related to the GSR test. Although the PCR judge determined, contrary to his earlier opinion, that Detective Crawley and Investigator Silvestri provided improper lay opinion testimony about the reliability of the GSR test, he also found defendant's counsel did not act unreasonably in failing to object to the officers' testimony because counsel believed the witnesses had "undermin[ed] their own credibility by simultaneously testifying that they administered the Blue View test and that the Essex County Prosecutor's Office regularly administers the Blue View test[,] [but also] testifying that it was an unreliable test." Based on trial counsel's credible testimony, the judge concluded trial counsel "essentially felt he did not need to object as the State was making itself look bad, as it defies common sense that someone would administer a test they felt was unreliable."

⁶ The court also determined defendant's claims with respect to A.N.'s testimony were procedurally barred because defendant could have raised his arguments on direct appeal. R. 3:22-4(a).

The PCR judge also credited trial counsel's testimony that he did not call an expert witness because "a negative gunshot residue test spoke for itself" and "experts could get into more detail than he wanted them to and may have been detrimental." The judge also noted any expert witness would have been subject to cross-examination and concluded "it was a reasonable strategic decision for trial counsel to not call an expert." Finally, the PCR judge determined "any mistakes made by trial counsel regarding the reliability of the [GSR] test did not actually prejudice [defendant]" because the test was taken after the July 11 shooting, which "was a separate shooting from the one for which [d]efendant was convicted, which occurred on July 5."

Before us, defendant raises the following points for our consideration:

THE PCR COURT IMPROPERLY DENIED DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF, AS HE DEMONSTRATED THAT HIS TRIAL COUNSEL PROVIDED HIM WITH INEFFECTIVE ASSISTANCE OF COUNSEL

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS FOR INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS AND PETITIONS FOR POST-CONVICTION RELIEF

B. DEFENDANT ESTABLISHED HIS ENTITLEMENT TO POST-CONVICTION RELIEF, DUE TO TRIAL COUNSEL'S REPEATED FAILURES TO PREVENT A.N. FROM TELLING

THE JURY THAT A NON-TESTIFYING WITNESS
HAD IDENTIFIED DEFENDANT AS THE
SHOOTER

C. DEFENDANT DEMONSTRATED THAT HIS
TRIAL COUNSEL WAS INEFFECTIVE FOR
FAILING TO OBJECT TO, MOVE TO STRIKE,
SEEK A CURATIVE INSTRUCTION, OR CALL A
DEFENSE EXPERT ON THE ISSUE OF THE
RELIABILITY OF THE GUNSHOT RESIDUE TEST⁷

As reflected in defendant's point headings, he raises two arguments before us. First, he argues his trial counsel was constitutionally ineffective for "failing to object to . . . A.N.'s references to a non-testifying eyewitness who identified defendant as the shooter prior to her identification" and also "for failing to move to strike, seek a curative instruction for, or request that A.N.'s hearsay references be omitted from the read back of her testimony during jury deliberations." On this point, he explains, A.N.'s testimony served no "purpose other than to lead the jury to the inescapable inference that the police received information from

⁷ Notably, defendant has not raised any error with respect to the court's factual findings or legal conclusions related to the remaining arguments raised in the remanded PCR proceedings, including those pertaining to the Star-Ledger article, and we accordingly consider any Strickland-related claims as to these issues waived. See Telebright Corp. v. Dir., N.J. Div. of Taxation, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023) ("[A]n issue not briefed is deemed waived.").

an unknown source implicating the defendant in the crime," and an "effective defense" counsel would have objected, moved to strike, and sought a curative instruction. According to defendant, "A.N.'s injection of inadmissible hearsay into the record bolstered the State's case with an identification from a shadowy witness who could not be confronted."

Defendant further contends the manner in which his trial counsel addressed the GSR test issue amounted to ineffective assistance of counsel. Specifically, he maintains counsel's failure to object to Detective Crawley's and Investigator Silvestri's inadmissible opinions was constitutionally deficient as their testimony directly contradicted and undermined counsel's theory that defendant did not fire the gun. Defendant also contends counsel was ineffective for neglecting to offer a defense expert on the subject of the reliability of the GSR test.

We reject all of defendant's arguments and affirm substantially for the reasons detailed by the PCR judge in his written opinion. The judge correctly denied defendant's PCR petition after determining defendant failed to satisfy either the performance or prejudice prong of the Strickland test. That decision is supported by substantial credible evidence in the record, and in accordance

with applicable legal principles. We provide the following comments to amplify our decision.

Our review of a PCR claim after a court has held an evidentiary hearing "is necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013); see also State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014) ("If a court has conducted an evidentiary hearing on a petition for PCR, we necessarily defer to the trial court's factual findings."). Where an evidentiary hearing has been held, we should not disturb "the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Pierre, 223 N.J. 560, 576 (2015) (citations omitted). We review any legal conclusions of the trial court de novo. Nash, 212 N.J. at 540-41.

The first prong of the Strickland test requires a showing that "counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. A defendant, however, must overcome a strong presumption that counsel rendered reasonable professional assistance. Id. at 689. "The test is not whether defense counsel could have done better, but whether he met the constitutional threshold for effectiveness." Nash, 212 N.J. at 543. Further, the failure to raise unsuccessful legal arguments does not constitute ineffective

assistance of counsel. State v. Worlock, 117 N.J. 596, 625 (1990) (citing Strickland, 466 U.S. at 688).

It is well-settled that a defense attorney's trial strategy is generally not second-guessed in a PCR proceeding. State v. Gary, 229 N.J. Super. 102, 116 (App. Div. 1988). To the contrary, trial counsel's informed strategic decisions demand our heightened deference, and "are virtually unchallengeable." Strickland, 466 U.S. at 690-91. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy of representation." Fritz, 105 N.J. at 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963)); see also State v. Echols, 199 N.J. 344, 358 (2009) (holding presumption that counsel provided effective reasonable legal assistance "may be rebutted if defendant demonstrates that counsel's actions did not equate to 'sound trial strategy'"). "Merely because a trial strategy fails does not mean that counsel was ineffective." State v. Bey, 161 N.J. 233, 251 (1999).

Under the second prong, a defendant must demonstrate that counsel's errors prejudiced the defense such as to deprive defendant of a fair and reliable outcome. Strickland, 466 U.S. at 687. To prove this element, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

Here, we are satisfied the PCR judge's detailed findings with respect to defense counsel's trial strategy were all supported by the record. First, the record supports the judge's determination trial counsel was not deficient for failing to object to, move to strike, or seek a curative instruction with respect to A.N.'s testimony that a third party identified defendant prior to her own identification. As detailed above, the State's case relied primarily on A.N.'s initial statement in which she identified defendant as the shooter, and the prosecutor stressed in closing that A.N.'s initial statement was credible. Contrariwise, trial counsel pursued a strategy that relied upon the jury accepting A.N.'s recanted testimony at trial and that the police coerced her initial identification. Pursuant to that strategy, trial counsel chose not to undermine A.N.'s trial testimony, by moving to strike portions of it, or highlight for the jury the unfavorable portion of that testimony. Based on the trial and record before the PCR court, we are satisfied defendant has not shown counsel's trial strategy was unsound.

Similarly, we discern no reason to disagree with the PCR judge's conclusion trial counsel's asserted failures with respect to A.N.'s testimony did not materially impact the trial result in light of the fact the jury clearly chose not to believe A.N.'s trial testimony. As observed by the PCR judge, A.N.'s fleeting

remarks were part of her narrative that the police coerced her initial identification, which the jury clearly did not accept.

The PCR judge's findings as to counsel's decision-making with respect to the GSR test evidence are similarly supported by the record. On this point, the PCR court found defendant's trial counsel's failure to object to the detectives' reliability testimony was a reasonable strategic decision because counsel "essentially felt he did not need to object as the State was making itself look bad, as it defie[d] common sense that someone would administer a test they felt unreliable." As noted, Detective Crawley's testimony the Essex County Prosecutor's Office regularly used the Blue View test undermined the detectives' opinions the GSR test was unreliable. Counsel's decision not to retain an expert similarly did not run afoul of Strickland, as counsel was reasonably concerned about testimonial risks related to cross-examination of any expert given the test results were favorable to defendant and the State likely would have cross-examined any expert about the test's deficiencies.

In light of our disposition of defendant's arguments on the merits, we need not address the PCR court's conclusion that defendant's claims with respect to his counsel's handling of A.N.'s testimony were procedurally deficient under Rule 3:22-4(a). To the extent we have not expressly addressed any arguments

made in support of defendant's appeal, we have determined they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION