

# RECORD IMPOUNDED

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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-3091-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN V. COELLO,  
a/k/a JUAN CARLOS COELLO,  
JUAN COELLO VELASQUEZ, and  
JUAN C. COELLO VELASQUEZ,

Defendant-Appellant.

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Submitted October 10, 2023 – Decided October 26, 2023

Before Judges Sabatino and Chase.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Indictment No. 16-02-0599.

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

Theodore N. Stephens, II, Acting Essex County  
Prosecutor, attorney for respondent (Matthew E.  
Hanley, Special Deputy Attorney General/Acting  
Assistant Prosecutor, of counsel and on the brief).

## PER CURIAM

This appeal concerns a defendant's claims of ineffectiveness concerning his counsel's arguments at a post-plea sentencing hearing, when defendant was being sentenced to a mandatory term of imprisonment under the Jessica Lunsford Act, N.J.S.A. 2C:14-2. For the reasons that follow, we affirm the trial judge's denial of defendant's petition for Post-Conviction Relief ("PCR") without an evidentiary hearing.

In February 2016, an Essex County grand jury indicted defendant Juan Coello for seventeen counts of first-degree sexual assault of a minor, N.J.S.A. 2C:14-2(a)(1), and six counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-2(a).

After negotiations with the State, defendant plead guilty to one count of first-degree sexual assault and one count of second-degree endangering the welfare of a child. He admitted he committed an act of sexual penetration on a ten-year-old girl. He also admitted an eight-year-old boy was present when the act occurred, and he had responsibility to care for the boy. In exchange for his guilty plea, the State agreed to recommend a twenty-one-year prison term, all of which was to be served without parole eligibility pursuant to the Lunsford Act.

At sentencing, after reviewing the pre-sentence report with defendant, counsel asked the court to make corrections. Counsel then requested the court to sentence defendant in accordance with the plea agreement and with the Adult Diagnostic Center's recommendation that defendant serve his sentence at Avenel. Additionally, counsel explained to the court that defendant had accepted responsibility for his actions and was very forthcoming with him in trying to understand why he committed the offenses. Furthermore, counsel spoke of defendant's search for counseling, treatment, and assistance in understanding his behavior so "in the future he is not a problem for himself or anybody else." Counsel did not ask the court to find any specific mitigating factor. Defendant then presented a short allocution, taking responsibility for his actions and telling the court he wanted to find out why he committed the offenses. In conformity with the plea agreement and the Lunsford Act, defendant was sentenced to twenty-one years in prison with no parole eligibility.

Defendant took a direct appeal of his sentence. State v. Coello, No. A-2772-16 (App. Div. July 6, 2018) (slip op. at 1-4). The only issue raised on appeal was that the prosecutor's increase of the original plea offer under the Lunsford Act was arbitrary and capricious. We rejected that argument. Ibid.

Defendant then filed a petition for PCR, alleging his counsel was ineffective at sentencing. Specifically, defendant argued that because his counsel did not ask the court to consider specific mitigating factors, he received ineffective assistance of counsel. The PCR court, after hearing oral argument, orally denied the petition. The PCR court held that there were no issues to be resolved at an evidentiary hearing because defendant did not receive "deficiency in the performance on the part of trial level counsel," and "in light of the application of Lunsford, there can't be any prejudice."

This appeal followed. Defendant's sole contention on appeal is:

[DEFENDANT] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO ADVOCATE ADEQUATELY AT SENTENCING.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Afanador, 151 N.J. 41, 49 (1997) (citing State v. Preciose, 129 N.J. 451, 459 (1992)). "It is a safeguard to ensure that a defendant was not unjustly convicted." Ibid. (citing State v. McQuaid, 147 N.J. 464, 482 (1997)). It provides a final opportunity for a defendant to raise a legal error or constitutional issue, including a violation of the right to effective assistance of

counsel as guaranteed by the Sixth Amendment of the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution.

"Ordinarily, PCR enables a defendant to challenge the legality of a sentence or final judgment of conviction by presenting contentions that could not have been raised on direct appeal." Afanador, 151 N.J. at 49 (citing McQuaid, 147 N.J. at 482-83). "Where, as here, the PCR court has not conducted an evidentiary hearing, we review its legal and factual determinations de novo." State v. Aburoumi, 464 N.J. Super. 326, 338 (App. Div. 2020) (citing State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018)).

In addressing an ineffective assistance claim, we follow the two-pronged standard formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show that counsel's performance was deficient." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland, 466 U.S. at 687). The test is whether "counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. "Second, the defendant must have been prejudiced by counsel's deficient performance." Gideon, 244 N.J. at 550 (citing 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." Strickland, 466 U.S. at 694. Failure to meet either prong of the Strickland/Fritz test results in the denial of a petition for PCR. State v. Parker, 212 N.J. 269, 280 (2012).

"To establish a prima facie case [in support of post-conviction relief], defendant must demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits." R. 3:22- 10(b). 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); Preciose, 129 N.J. at 459. If defendant does not present a prima facie claim of a Sixth Amendment violation, then there is no need for an evidentiary hearing. Preciose, 129 N.J. at 459.

The Lunsford Act increases the punishment for defendants convicted of aggravated sexual assault on a victim who is less than thirteen years old to a minimum of twenty-five years in New Jersey State Prison. N.J.S.A. 2C:14-2(a). Under the Lunsford Act, the court "may accept the negotiated plea agreement and upon such conviction shall impose the term of imprisonment and period of parole ineligibility as provided for in the plea agreement and may not impose a lesser term of imprisonment." N.J.S.A. 2C:14-2(d). According to the Attorney

General's guidelines under the Lunsford Act, in negotiating pleas, prosecutors are authorized to offer a negotiated plea agreement after indictment reducing the mandatory minimum term of twenty-five years to no less than eighteen years.<sup>1</sup>

At sentencing, counsel implored the court to accept defendant's plea agreement, which was lower than the twenty-five year minimum the Lunsford Act otherwise requires upon conviction. Counsel advocated that his client had accepted responsibility and was looking to understand why he committed these offenses so he would not commit them again. Defendant echoed the same in his allocution and the court accepted the agreement. Defendant now contends his counsel should have argued for specific mitigating factors to apply.

The trial court had only two options at sentencing: reject the plea agreement or sentence the defendant to twenty-one years. It follows that the trial court did not have the option of sentencing defendant to a custodial term less than the negotiated twenty-one years, as that would have been an illegal sentence. There was no harm caused by the defense strategy of arguing for the court to accept the plea agreement instead of arguing for specific mitigating

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<sup>1</sup> See generally Uniform Plea Negotiation Guidelines to Implement the Jessica Lunsford Act, L. 2014, c. 7 (May 29, 2014). The goal in negotiating below the twenty-five year minimum is to avoid causing any further trauma to victims and their families by going to trial.

factors. There is no reasonable probability arguing for specific mitigating factors would have changed the outcome of the case, as defendant received the only legal sentence the court could have imposed and for which he had negotiated. The PCR court was correct in concluding defendant had failed to establish either prong of Strickland. Absent any material issues of disputed facts, no evidentiary hearing was required. Preciose, 129 N.J. at 459.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION