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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-1535-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ABDUL AZIZ, a/k/a
ABDUL S. AZIZ,

Defendant-Appellant.

Submitted June 4, 2024 – Decided June 12, 2024

Before Judges Gooden Brown and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 11-12-1201.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Steven M. Gilson, Designated Counsel, on the brief).

William A. Daniel, Union County Prosecutor, attorney for respondent (Milton Samuel Leibowitz, Assistant Prosecutor, on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Abdul Aziz appeals from the Law Division's January 10, 2023 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

The underlying facts concerning the offenses involved in this matter are set forth in our prior opinion on defendant's direct appeal in which we affirmed his conviction and sentence on murder and weapons charges. See State v. Aziz, No. A-4795-17 (App. Div. Nov. 24, 2020), certif. denied, 245 N.J. 373 (2021). Therefore, those facts will not be repeated here.

Defendant filed a timely petition for PCR. Defendant asserted that his attorney provided him with ineffective assistance at trial because the attorney failed "to duly investigate the case from inception through sentencing." In his lengthy petition, defendant cited numerous examples of what he deemed to be an "inadequate investigation."

However, as the trial court found in its thirty-nine page written decision rejecting each of defendant's claims, "[w]hile [defendant's] submissions [were] long in form, they [were] short on substance." The court observed that defendant's assertions were "largely general in nature" and "lack[ed] the necessary specificity sufficient to support a prima facie case." Defendant did

not present any certifications detailing what any failed investigation would have revealed and was unable to detail what difference any further investigation would have made to the final outcome of the trial.

Therefore, the trial court concluded 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 court fully explained the basis for each of its rulings in its comprehensive opinion which detailed its findings of fact and conclusions of law.

On appeal, defendant presents the following contention in the brief submitted by his attorney:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS BASED UPON A LITANY OF CLAIMS REGARDING HIS FAILURE TO INVESTIGATE AND FAILURE TO CONSULT WITH DEFENDANT; IN THE ALTERNATIVE, THIS MATTER MUST BE REMANDED BECAUSE THE PCR COURT FAILED TO STATE SEPARATELY ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE FAILURE TO CONSULT CLAIM.

In a pro se supplemental brief, defendant raises the following arguments:

POINT I

PRIOR TO TRIAL, AN ATTORNEY HAS AN ESPECIALLY IMPORTANT OBLIGATION TO INVESTIGATE AVAILABLE DEFENSES THOROUGHLY AND COMPETENTLY.

POINT II

DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.

POINT III

CARE MUST BE TAKEN TO AVOID THE STRATIFICATION OF THOUGHT THAT WOULD DETER A JURY FROM RETURNING THE PROPER AVAILABLE VERDICT.

POINT IV

THE CONSEQUENCES OF AN INADEQUATE RECORD, MAY INCLUDE A FINDING THAT A CONSTITUTIONAL ISSUE WAS WAIVED DUE [TO] A DENIAL OF DUE PROCESS AND ANCILLARY SERVICES.

POINT V

APPELLANT[']S CURRENT [FIFTY-]YEAR SENTENCE AMOUNTS TO A LIFE SENTENCE AND A CLEAR SHOWING OF ABUSE OF DISCRETION BY THE TRIAL COURT, AND AMOUNTS TO "PATENT AND GROSS ABUSE OF DISCRETION BY THE JUDGE."

POINT VI

INFORMATION SUPPLIED BY THE POLICE MUST BE WRITTEN BOTH FACTUALLY AND LEGALLY, ABSENT OF MISLEADING FABRICATIONS AND EXAGGERATIONS.

POINT VII

IMPROPER INVESTIGATIVE METHODS COINED AS "INEVITABLE DISCOVERY."

POINT VIII

AN INFERIOR COURT MAY NEVER OVERRULE THE DECISION OF A SUPERIOR COURT NOR DISREGARD THE LAW ESTABLISHED WITHIN THAT HOLDING.^[1]

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).

¹ The arguments raised in defendant's supplemental brief either lack support in any known precedent or are misapplications of the law to his case. These supplemental contentions are clearly without merit and do not warrant further discussion. See R. 2:11-3(e)(2).

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obligated 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). Under the first prong of this test, the defendant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. Under the second prong, the defendant must show "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Ibid. That is, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

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 [or she] was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999); see also R. 3:22-10(e)(2) (stating that a court shall not hold an evidentiary hearing if "the defendant's allegations are too vague, conclusory or speculative"). Therefore, "when a [defendant] claims his trial attorney inadequately investigated his case, he must

assert the facts that an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Cummings, 321 N.J. Super. at 170.

As the trial court correctly found, defendant failed to satisfy this burden. His petition was unsupported by cognizable evidence. Thus, defendant's contentions were classic "bald assertions" that did not warrant an evidentiary hearing or PCR relief. Ibid.


Defendant argues that the trial court did not address his claim that his attorney provided ineffective assistance because he did not meet with him sufficient times before the trial. Therefore, he asserts the matter must be remanded. This argument lacks merit.

Defendant did not raise this contention before the trial court in his PCR petition and, therefore, the trial court did not need to consider it. Defendant disagrees and contends he presented the issue before the trial court because his appendix included two letters he sent to the public defender's office in 2017, prior to his trial, complaining about the number of meetings he had with his attorney. However, issues which are not briefed are deemed waived, Liebling v. Garden State Indem., 337 N.J. Super. 447, 465-66 (App. Div. 2001), and defendant failed to brief this issue before the trial court.

In any event, defendant has again failed to demonstrate how the number of meetings he had with his attorney prior to the trial affected the outcome of the trial. Therefore, he is unable to meet both prongs of the Strickland test on his newly-minted contention.

In sum, we affirm the denial of defendant's petition substantially for the reasons detailed at length in the trial court's written opinion. We discern no abuse of discretion in the court's consideration of the issues, or in its decision to deny the petition without an evidentiary hearing. We are satisfied that the trial attorney's performance was not deficient under 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