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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1929-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRYANT LAMBERT,

Defendant-Appellant.

Submitted May 21, 2024 – Decided May 28, 2024

Before Judges Gooden Brown and Haas.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Indictment No.
17-03-0355.

Jarred S. Freeman, attorney for appellant.

Yolanda Ciccone, Middlesex County Prosecutor,
attorney for respondent (Erin M. Campbell, Assistant
Prosecutor, on the brief).

PER CURIAM

Defendant Bryant Lambert appeals from the Law Division's August 26, 2022 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 multiple robbery and other charges. See State v. Lambert, No. A-2476-17 (App. Div. May 11, 2020), certif. denied, 244 N.J. 450 (2020). Therefore, those facts will not be repeated here.

Defendant filed a timely petition for PCR. Defendant asserted that his trial attorney provided him with ineffective assistance because he "failed to investigate exculpatory witnesses, including . . . alibi witnesses[es]" and "failed to investigate the co-defendant's willingness to testify on [defendant's] behalf." Defendant also alleged that his appellate counsel provided ineffective assistance because he did not appeal the trial court's denial of his motion for a new trial. Finally, defendant argued that "[c]umulative errors denied [him] the right to a fair trial."

Following oral argument, the PCR judge, who had also presided over defendant's trial, 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 and appellate counsel's performances were deficient and that, but for the deficient performances, the result would have been different. The judge fully explained the basis for each of his rulings in his comprehensive opinion which detailed his findings of facts and conclusions of law.

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

POINT I

[DEFENDANT'S] APPEAL SHOULD BE GRANTED BECAUSE THE TRIAL COURT ERRED BY DENYING HIS MOTION FOR [PCR].

- A. The Trial Court Erred By Denying [Defendant's] Motion For [PCR] Because His Trial Counsel Failed To Properly Investigate Alibi Witnesses.
- B. Trial Counsel Was Ineffective Because He Failed To Investigate Co-Defendant Jackson's Willingness To Testify On Behalf Of [Defendant].

POINT II

THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] MOTION FOR [PCR] BECAUSE HIS APPELLATE COUNSEL WAS INEFFECTIVE BY FAILING TO APPEAL THE DENIAL OF THE MOTION FOR A NEW TRIAL BASED ON THE

STATE'S FAILURE TO IDENTIFY COREY SAUNDERS PRIOR TO TRIAL.

POINT III

THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] MOTION FOR [PCR] BECAUSE CUMULATIVE ERRORS MADE BY HIS COUNSEL DENIED HIM THE RIGHT TO A FAIR TRIAL.

- A. The Trial Court Erred By Denying [Defendant's] Motion For [PCR] Because His Trial Attorney Was Ineffective By Failing To Object To The Prosecutor's Prejudicial Remarks.
- B. The Trial Court Erred By Denying [Defendant's] Motion for [PCR] Because Trial Counsel Failed To Advise The Court A Juror Was Sleeping, Thereby Depriving [Defendant] Of His Right To a Fair Trial.

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).

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.

There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690. Moreover, the acts or omissions of counsel of which a defendant complains must amount to more than mere tactical strategy. Id. at 689. As the Supreme Court observed in Strickland,

[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under

the circumstances, the challenged action "might be considered sound trial strategy."

[Ibid. (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)).]

An appellate attorney 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 the 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 petition substantially for the reasons detailed at length in the PCR 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 and appellate attorneys' performances were 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