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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2680-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAHEED WILLIAMS, a/k/a
BIRTH SHAHEED, SHAREEL
WILLIAMS, RASHEED EWILL,
ALI GREEN, JAMES LUNDY,
RASHEED LUNDY, OMAR
MCKININ, SHADEED
WILLIAMS, SHAHEED S.
WILLIAMS,

Defendant-Appellant.

Submitted May 6, 2024 – Decided June 6, 2024

Before Judges Sabatino and Marczyk.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 18-01-0139.

Jennifer Nicole Sellitti, Public Defender, attorney for
appellant (Frank J. Pugliese, Designated Counsel, on
the briefs).

Theodore N. Stephens, II, Essex County Prosecutor,
attorney for respondent (Hannah Kurt, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Shaheed Williams appeals from the Law Division's December 17, 2021, and February 15, 2023 orders denying his application for post-conviction relief ("PCR") without an evidentiary hearing. Following our review of the record and the applicable legal principles, we affirm.

I.

At the time of his plea, defendant acknowledged that on October 25, 2017, he was driving a silver Mercedes in Newark, with a juvenile passenger, looking for cars to steal. At approximately 2:00 a.m., defendant and the juvenile pulled into a car wash. Defendant agreed that he and the juvenile approached and entered a "limo-type" vehicle. The juvenile took an iPad. The owner observed this activity and began to chase the juvenile. Defendant re-entered the Mercedes as the juvenile also tried to re-enter the Mercedes. Defendant then exited the Mercedes with an unpermitted handgun and fired a single shot, missing the owner of the limo. At that point, defendant and the juvenile both re-entered the Mercedes and fled the scene.

The stolen iPad was equipped with GPS tracking, which allowed police to subsequently track down the vehicle later that day. Upon locating the Mercedes, a chase ensued, which ended in a crash. The police arrested the driver of the vehicle, Quincy Moody, in connection with the stolen Mercedes. Moody advised police he obtained the Mercedes from "Purge" and "Sha." Moody stated "he did not know their real names, but that he was friends with Purge on Facebook." A review of New Jersey State Police records later revealed "Purge" was D.W., the juvenile involved in the incident, and "Sha" was defendant, Shaheed Williams. The detective subsequently viewed video footage from the car wash and observed the driver was "a [B]lack male with dreadlocks." Six days after the robbery, based on information received from Moody, the victim positively identified defendant from a photo array as the man who fired the handgun at him.

In January 2018, an Essex County Grand Jury returned an indictment charging defendant with second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2(a)(1) and 2C:15-1(a)(2) (count one); first-degree robbery, N.J.S.A. 2C:15-1(a)(2) (count two); first-degree attempted murder, N.J.S.A. 2C:5-1(a)(1) and 2C:11-3(a)(1) (count three); second-degree unlawful possession of a weapon, namely a handgun, without a permit, N.J.S.A. 2C:39-5(b)(1) (count

four); and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1) (count five).

In March 2019, defendant pled guilty, pursuant to a plea agreement, to first-degree robbery, second-degree unlawful possession of a handgun without a permit, and second-degree possession of a handgun for an unlawful purpose.

On April 22, 2019, defendant was sentenced to an aggregate state prison term of thirteen years with an eighty-five percent parole bar.¹ In August 2021, defendant filed a PCR petition. PCR counsel filed a brief in support of defendant's petition.² In October 2021, PCR counsel submitted a supplemental letter with a copy of the photo array displayed to the victim including the photo display report compiled by the Newark Police Department.

In October 2021, the PCR court conducted a hearing and reserved its decision. On December 17, 2021, PCR counsel submitted for the court's consideration the certification of defendant's alibi witness, Myava McKenzie. On that same date, the PCR court issued an order and written decision, discussed more fully below, denying defendant's PCR application.

¹ Defendant appealed his sentence only. In May 2020, we issued an order affirming defendant's sentence but remanded for ministerial corrections on the judgment of conviction.

² The appendix included a letter of recantation written by the witness, Moody.

In July 2022, we granted defendant's motion to supplement the record with a letter he had written to the Deputy Public Defender while the underlying case was pending. We later remanded to the PCR court to reconsider its ruling in light of this additional evidence. We noted the pending appeal was closed, but defendant could move to reopen the appeal if he was unsuccessful on the remand. On February 15, 2023, the PCR court, following a hearing, issued a supplemental opinion affirming its previous denial of defendant's application for an evidentiary hearing and PCR. This appeal followed.

II.

Defendant raises the following points on appeal:

POINT I

DEFENDANT PRESENTED A PRIMA FACIE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. DEFENDANT'S CLAIM IS SUPPORTED BY MATERIAL ISSUES OF DISPUTED FACTS LYING OUTSIDE THE RECORD. THE RESOLUTION OF THE DISPUTED FACTS NECESSITATED AN EVIDENTIARY HEARING. THE PCR COURT ERRED IN FAILING TO CONDUCT SUCH A HEARING.

A. Defendant Established a Prima Facie Case That Trial Counsel's Failure to Request a Wade/Henderson³ Hearing in

³ United States v. Wade, 388 U.S. 218 (1967); State v. Henderson, 208 N.J. 208 (2011).

His Case Constitutes Ineffective Assistance of Counsel.

B. Defendant Established a Prima Facie Case That Counsel's Failure to Investigate Defendant's Alibi Witness Constitutes Ineffective Assistance of Counsel.

C. Quincy Moody's Recantation Letter Constitutes Newly Discovered Evidence Entitling Defendant to an Evidentiary Hearing.

We review a PCR court's conclusions of law de novo. State v. Nash, 212 N.J. 518, 540-41 (2013). We must affirm the PCR court's factual findings unless they are not supported by "sufficient credible evidence in the record" and "are so clearly mistaken that the interests of justice demand intervention and correction." State v. Elders, 192 N.J. 224, 243-44 (2007) (internal quotation marks omitted). A judge's decision to deny a PCR petition without an evidentiary hearing is reviewed under an abuse of discretion standard; however, we may review the factual inferences and legal conclusions drawn by the court de novo. State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013) (citing State v. Marshall, 148 N.J. 89, 157-58 (1997)).

Under the Sixth Amendment of the United States Constitution, a person accused of crimes is guaranteed the effective assistance of legal counsel in his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish a

deprivation of that right, a convicted defendant must satisfy the two-part test enunciated in Strickland by demonstrating that: (1) counsel's performance was deficient, and (2) the deficient performance actually prejudiced the accused's defense. Ibid. The Strickland test has been adopted in New Jersey. State v. Fritz, 105 N.J. 42, 58 (1987). See also State v. Allegro, 193 N.J. 352, 366 (2008); State v. Loftin, 191 N.J. 172, 197-98 (2007). In reviewing such claims, courts apply a strong presumption that defense counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy" Fritz, 105 N.J. at 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963)); see also State v. Perry, 124 N.J. 128, 153 (1991). "With respect to both prongs of the Strickland test, a defendant asserting ineffective assistance of counsel on PCR bears the burden of proving his or her right to relief by a preponderance of the evidence." State v. Gaitan, 209 N.J. 339, 350 (2012).

When considering Strickland's first prong, "[j]udicial scrutiny of counsel's performance must be highly deferential," and courts "must indulge a strong presumption" that counsel's performance was reasonable. Strickland, 466 U.S. at 689. To that end, "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)).

To satisfy the prejudice prong, a defendant must establish 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. Ultimately, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 691.

Failure to meet either prong of the Strickland/Fritz test results in the denial of a PCR petition. State v. Parker, 212 N.J. 269, 280 (2012) (citation omitted). That said, "courts are permitted leeway to choose to examine first whether a defendant has been prejudiced, and if not, to dismiss the claim without determining whether counsel's performance was constitutionally deficient." Gaitan, 209 N.J. at 350 (citation omitted).

In the context of showing prejudice after having entered a guilty plea, a defendant must prove "that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial." State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).

A.

Defendant claims, "[h]ad trial counsel practiced due diligence and communicated with her client she would no doubt have requested a Wade/Henderson hearing." Specifically, defendant argues that counsel was ineffective by not moving for a Wade hearing for "faulty witness identifications" in the photo array because the witness was "unsure of the identification and [it] was done . . . six days after the crime had occurred." Defendant further argues the photo array took "no more than [ten] minutes," and the police report of the array was insufficient and violated Rule 3:11,⁴ because the police did not make a contemporaneous record of the process and failed to document important details about the procedure. For example, the report only noted the time and the fact that the witness did not ask to see the array again, but the report does not indicate which of the six individuals the witness identified as the assailant.

The right to a Wade hearing is not absolute, and a hearing is not required in every case involving an out-of-court identification. State v. Ruffin, 371 N.J. Super. 371, 391 (App. Div. 2004). "A threshold showing of some evidence of impermissible suggestiveness is required." Ibid. (citing State v. Ortiz, 203 N.J.

⁴ Defendant acknowledges the June 2020 amendments to Rule 3:11 are "inapplicable to defendant's case."

Super. 518, 522 (App. Div. 1985)). In order for a defendant to be entitled to a Wade hearing, the defendant must show evidence of a mistaken identification that must be connected to a system variable.⁵ Henderson, 208 N.J. at 288. Defendant is not entitled to a Wade hearing if the evidence is based solely on an estimator variable.⁶ Id. at 288-89. System variables are variables within the control of the legal system, and estimator variables are out of the legal system's control. Id. at 261. To obtain a pretrial Wade hearing, "a defendant has the initial burden of showing some evidence of suggestiveness that could lead to a mistaken identification." Id. at 288.

A defendant claiming ineffective assistance of counsel based on a failure to file a motion must show the motion would have been successful. State v. Roper, 362 N.J. Super. 248, 255 (App. Div. 2003). "The failure to raise

⁵ In Henderson, the Court identified various system variables for eyewitness identifications such as: blind administration, pre-identification instructions, lineup construction, feedback, recording confidence, multiple viewings, showup timeline, private actors, and other identifications made. 208 N.J. at 289-91.

⁶ The Henderson Court cataloged estimator variables including: stress, weapon focus, duration, distance and lighting, witness characteristics, perpetrator characteristics, memory decay, race-bias, opportunity to view the criminal, degree of attention, accuracy of prior descriptions, level of certainty demonstrated at identification before feedback, and time between the crime and confrontation. 208 N.J. at 291-93.

unsuccessful legal arguments does not constitute ineffective assistance of counsel." State v. Worlock, 117 N.J. 596, 625 (1990); see also State v. Taimanglo, 403 N.J. Super. 112, 124 (App. Div. 2008) ("[A]s there is no basis for reversing the conviction on the grounds asserted, there is no basis for finding that defendant was denied the effective assistance of counsel.").

The PCR court noted that plea counsel's decision not to move for a Wade hearing was objectively reasonable because defendant was not entitled to a hearing simply because the identification took place six days after the crime. There was no evidence to suggest that the witness's identification was uncertain, defendant could not prove a system variable was present, and the photo array did not violate Rule 3:11(b) because it was recorded, and a summary is only needed when the array is unrecorded.

The PCR court did not err in rejecting defendant's arguments on this issue, and we are unpersuaded by defendant's arguments on appeal. The record supports the out-of-court identification was recorded.⁷ Therefore, under Rule 3:11(b), the officers were not required to contemporaneously document the

⁷ In defendant's reply brief, he asserts "the record is barren of any proof that the out-of-court identification was recorded." However, according to the opinion of the PCR court and the October 2021 oral argument, the photo array was recorded.

identification procedure because it was electronically recorded. Moreover, as the PCR court noted, there is no indication the victim was uncertain in his identification of defendant.

The record indicates the victim, on October 31, 2017, was shown a photo array and positively identified defendant as the individual who exited the Mercedes and shot at him. Because the victim positively identified defendant, absent suggestiveness or a violation of Rule 3:11, a Wade hearing would not have changed the outcome of the underlying matter. In short, defendant failed to establish that a motion challenging the out-of-court identification would likely have been successful, particularly given the failure to identify any system variables. Therefore, defendant's argument fails under both Strickland prongs.

B.

Defendant next contends he established a prima facie showing that counsel's failure to investigate defendant's alibi witness constitutes ineffective assistance of counsel. Defendant's alibi witness was his girlfriend who, in an affidavit dated four years after the crime, asserted:

I became pregnant with Shaheed Williams in early 2017. We lived together. We ate dinner together every night while I was pregnant and stayed together every night during the pregnancy. I gave birth on October 8, 2017. After I had the baby, Shaheed Williams and I still ate dinner together every night and stayed together

every night until he was arrested at our home. I was hormonal during the pregnancy[,] and I made sure during the pregnancy and afterward that he stayed home with me every night.^[8]

Defendant contends the PCR court made an "arbitrary assessment of defendant's alibi witness declaring that because she was defendant's girlfriend, '[her] testimony would have been suspect anyway'" Defendant further argues that under State v. Porter, the failure to investigate an alibi can result in the reversal of a conviction. 216 N.J. 343, 353 (2013). Defendant contends an evidentiary hearing was necessary for the court to conclude "what counsel in fact did concerning the alibi witness."

An ineffective assistance of counsel claim may be established "when counsel fails to conduct an adequate pre-trial investigation." Id. at 352. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure

⁸ When detectives spoke to McKenzie in October 2017, she explained "[defendant] does not actually live [at the residence] but he stays and sleeps there on most nights." She further stated, "[defendant] often leaves at night with friends that live[] in the area."

of deference to counsel's judgments." Strickland, 466 U.S. at 691. "Failure to investigate an alibi defense is a serious deficiency that can result in the reversal of a conviction." Porter, 216 N.J. at 353; see also State v. Pierre, 223 N.J. 560, 582-88 (holding that counsel's presentation of an alibi defense was deficient and prejudicial because he failed to interview known, key witnesses who could have bolstered that defense and "chose to forego evidence that could have reinforced that alibi," entitling defendant to a new trial). Indeed, "few defenses have greater potential for creating a reasonable doubt as to [a] defendant's guilt in the minds of the jury [than an alibi]." State v. Mitchell, 149 N.J. Super. 259, 262 (App. Div. 1977).

When a defendant claims his attorney inadequately investigated an alibi defense, "[the defendant] 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." State v. Cummings, 321 N.J. Super. 154, 170 (citing R. 1:6-6). When supported by the witness's affidavit or certification, the testimony of an alibi witness should not be dismissed as not credible without an evidentiary hearing. See State v. Jones, 219 N.J. 298, 313-16 (2014) (holding that where the State's case turned on questions of credibility, and the alibi witness's account could have bolstered the

defendant's version of events, the PCR court erred by not conducting an evidentiary hearing at which the alibi witness and counsel could testify); Porter, 216 N.J. at 356.

On December 17, 2021, the judge issued a written decision. The court determined plea counsel investigated the alibi witness and "did not fall short of an objectively reasonable standard" because trial counsel put the prosecutor on notice about defendant's alibi witness in a December 26, 2017 letter. Specifically, the court noted:

[D]efense counsel cites Porter, 216 N.J. at 357, which indicates that a failure to investigate an alibi witness establishes a prima facie case of ineffective assistance. However, Porter is distinct from the case at bar because plea counsel did investigate . . . McKenzie. Specifically, there is a letter dated December 26, 2017 from [plea counsel] to the prosecutor. In the letter, [plea counsel] puts the prosecutor on notice of her intent to proffer the alibi witness and provide . . . McKenzie's pedigree. Thus, [p]etitioner's argument that his plea counsel's assistance was ineffective and unreasonable because she did not investigate this particular alibi witness is a misrepresentation of the facts. Simply put, plea counsel did, in-fact, investigate this witness, so plea counsel did not fall short of an objectively reasonable standard. Therefore, [p]etitioner cannot satisfy the first required prong under the Strickland-Fritz approach.

[(Citation reformatted).]

We affirm substantially for the reasons set forth by the trial court in its analysis of prong one of Strickland. Defendant's trial counsel did in fact put the State on notice regarding defendant's alibi witness McKenzie. Despite putting the State on notice regarding McKenzie, defense counsel ultimately engaged in plea negotiations with the State. This is not unusual because defendants often enter into plea negotiations even when they have an alibi witness. Given the above, counsel's conduct cannot be considered ineffective assistance.

Next, the court determined defendant did not meet the second Strickland prong because defendant cannot meet the "high" standard that but for counsel's deficient performance, the outcome would have been different because "[t]here is an overwhelming amount of evidence" against him including witness statements, positive identifications, surveillance footage, and physical evidence. The court also noted that due to the "plethora of evidence, it is unrealistic to say that plea counsel's failure to investigate a witness, whose testimony would have been suspect anyway, would have had an impact on the outcome." Although the PCR court briefly referenced McKenzie's credibility under prong two of Strickland, the court did not consider her credibility in rejecting defendant's argument under prong one. Because we affirm the PCR court's decision as to prong one, we need not address the court's comment regarding McKenzie's

credibility under prong two. As noted above, failure to meet either prong of the Strickland/Fritz test results in the denial of a PCR petition. Parker, 212 N.J. at 280.

C.

Lastly, defendant argues the PCR court only rejected Moody's recantation letter because, generally, recantation testimony is "suspect and untrustworthy." State v. Carter, 69 N.J. 420, 427 (1976). Defendant further "submits that . . . Moody's recantation letter must be tested for credibility at an evidentiary hearing and it should not have been summarily rejected merely based on the PCR court's character assessment of the witness." Specifically, defendant relies on Porter for the proposition that failing to call an unconvincing alibi witness denies a defendant effective assistance of counsel because of the likelihood that the outcome could have been different. Porter, 216 N.J. at 256.

Here, the essential question is whether the PCR judge misused his discretion in denying defendant's PCR application without an evidentiary hearing regarding the recantation testimony. The court opined:

Respondent opposes this letter in their response brief by citing Carter, 69 N.J. at 420. In Carter, the [C]ourt ruled that recantation testimony is "suspect and untrustworthy." Id. at 427. Indeed, this [c]ourt agrees with the [C]ourt in Carter. This [c]ourt has serious doubts about the truthfulness of . . . Moody's letter due

to the fact that the letter was written two years after the incident, and it is not corroborated by any other evidence. Therefore, this [c]ourt does not find that . . . Moody's letter should entitle . . . [p]etitioner to [PCR].

[(Citation reformatted).]

When the newly "discovered" evidence is a witness recanting their trial testimony, the "burden of proof rests on those presenting such testimony to establish that it is probably true and the trial testimony probably false." Carter, 69 N.J. at 427. "[T]he sincerity of a recantation is to be viewed with 'extreme suspicion.'" State v. Hogan, 144 N.J. 216, 239 (1996) (quoting United States v. Santiago, 837 F.2d 1545, 1550 (11th Cir. 1988)). We "defer to a PCR judge's credibility findings[,] . . . particularly . . . in the context of recantation testimony, a species of newly discovered evidence generally regarded 'as suspect and untrustworthy.'" State v. Ways, 180 N.J. 171, 196-97 (2004) (quoting Carter, 69 N.J. at 427) (evaluating witness recantations alongside other facts in that case before remanding for a new trial based only on newly discovered physical evidence). If a PCR judge finds the recantations "unbelievable" while setting forth specific factors informing that decision, we defer to that determination. Carter, 69 N.J. at 427.


Initially, we observe Moody's letter was unsworn. Moreover, it is uncorroborated, and the recantation contains little more than a conclusory

statement that the witness previously lied and now wishes to recant. Considering the totality of the circumstances, including the evidence of defendant's guilt, the PCR court found Moody's recantation was suspect given the generally unreliable nature of recantations. We discern no error. The PCR court did not misapply its discretion in denying defendant's PCR application without an evidentiary hearing.

To the extent that we have not addressed any of defendant's remaining arguments, we conclude they lack 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