STATE OF NEW JERSEY, Plaintiff-Respondent, v. JADA M. McCLAIN, Defendant-Petitioner.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – CRIMINAL PART MONMOUTH COUNTY Accusation No. 20-01-00035-A Case No. 19001375 **OPINION**

Argued November 11, 2024 – Decided November 22, 2024

Howard W. Bailey, Esq., for defendant,

Monica L. do Outeiro, Assistant Prosecutor, for the State, (Raymond S. Santiago, Monmouth County Prosecutor).

GUADAGNO, J.A.D. (retired and temporarily assigned on recall)

Defendant Jada M. McClain seeks post-conviction relief (PCR) from her April 22, 2021, conviction by guilty plea to an accusation charging defendant with first-degree aggravated manslaughter, N.J.S.A. 2C:11-4, for killing her newborn infant. For the reasons that follow, the petition is denied without a hearing.

I.

The tragic facts of this case are gleaned from the record. In 2018, at the age of seventeen, defendant learned she was pregnant. Defendant discussed her pregnancy

with the child's father, her boyfriend Quaimere Mohammed. Text messages between defendant and Mohammed indicate that they did not want to have a child because, as defendant explained, "we both can't afford it and we have our whole life ahead of us." On December 13, 2018, defendant texted Mohammed that she wanted to "force a miscarriage." Mohammed questioned, "How do you do that?" Defendant responded, "just hurting it." Defendant then added that killing the child was not something she wanted to do but it was "the last option."[1] In one text defendant admitted that she punched herself, but it was "not hard enough." In another, defendant described getting a hammer and "just hammer this shit out of me." On February 3, 2019, defendant texted that she "punched myself a couple of times then I used this thing and just started hitting myself with it."

Defendant's efforts to terminate the pregnancy failed and on March 29, 2019, at approximately 4:00 a.m., defendant gave birth to a boy in the bathroom of her parent's home. The baby was crying at the time of birth and defendant named the child Legend. Defendant then took the infant into her bedroom, placed him on her bed and pressed with both of her hands on the infant's chest until he stopped breathing. At 4:08 a.m. defendant texted Mohammed, "I did it baby." In a later text,

[1] It appears from the numerous text messages that neither parent was aware of the New Jersey Safe Haven Infant Protection Act, N.J.S.A. 30:4C-15.5 to -15.11, which would have allowed them to safely, legally and anonymously surrender the infant to any hospital, police station, or fire department with no questions asked. The Legislature enacted the Safe Haven Act in 2000, L. 2000, c. 58, recognizing "that newborn infants are sometimes abandoned in life-threatening situations," and new parents "under severe emotional stress . . . may need a safe haven available to them and their child." N.J. Div. of Child. Prot. v. B.P., 257 N.J. 361, 369 (2024).

defendant described killing the infant, stating she "heard him struggling to breath [sic] when I was killing him." In another text, defendant acknowledged initially attempting to kill the newborn by "breaking his neck."

After killing the infant, defendant wrapped the body in a blanket which she placed in a bag. She then drove with the body to Mohammed's residence, picked him up, then drove to the Washington Village Apartment complex in Asbury Park where Mohammed threw the bag containing the infant's body into a dumpster.

On April 4, 2019, Neptune Township police learned from a high school classmate of defendant's that defendant had recently given birth and the classmate feared that the infant was dead. The classmate was with defendant in November 2018 when she took a pregnancy test and learned she was pregnant. During her pregnancy, defendant told the classmate that she was drinking alcohol, smoking "weed" and ingesting pills in an attempt to kill the baby. On March 31, 2019, defendant informed the classmate that she had delivered a baby and sent a photo of the infant on defendant's bed appearing "blue and purple."

Later that afternoon, defendant was interviewed by police and admitted to killing her newborn on March 29, 2019. That evening, defendant accompanied officers to the Washington Village Apartments and identified the trash dumpster where Mohammed had disposed of the infant's body. Video surveillance showed defendant's vehicle arriving at the site on March 29, 2019, at 9:30 a.m., and

Mohammed getting out and disposing of a blue trash bag. Defendant was arrested and charged with murder, N.J.S.A. 2C:11-3A(1) and desecrating human remains, N.J.S.A. 2C:22-1.

Defendant's counsel, Thomas J. Catley, Esq., negotiated a plea agreement with the State whereby defendant would plead guilty to an accusation charging first-degree aggravated manslaughter. In return, the State would dismiss the murder and desecration charges and recommend a sentence of 10 years in prison, subject to the No Early Release Act (NERA). Defendant reserved the right to request a sentence one degree lower, in the second-degree sentencing range.

On January 6, 2020, defendant appeared before Hon. David F. Bauman to waive her right to indictment and plead guilty to the accusation. During her allocution, defendant acknowledge having reviewed the waiver of indictment and plea with Mr. Catley. Defendant assured Judge Bauman that her decision to waive indictment and plead guilty was made voluntarily and of her own free will. Defendant told Judge Bauman that she had reviewed all paperwork related to the waiver and her plea with Mr. Catley, and that he had answered all her questions. Defendant confirmed her understanding of the terms of her plea by initialing and signing these documents. Defendant told Judge Bauman that she was "satisfied" with Mr. Catley's representation and denied that she needed any more time to speak with him about her case, her plea agreement, any terms thereof, or anything else pertaining

to this case. Defendant also acknowledged that she understood that she was entitled to a trial and did not have to plead guilty.

Defendant then provided a detailed factual basis supporting her plea, admitting that she discovered she was pregnant in 2018, hid that fact from her parents, gave birth to a live baby alone in a bathroom and later "placed [her] hands on the baby's chest" and "compressed the baby's chest with [her] hands," which caused the child to stop breathing and die.

Judge Bauman found that defendant made an adequate factual basis, fully understood the nature and consequences of her guilty plea, and "entered the plea knowingly and voluntarily with the assistance of competent counsel with whose services she is satisfied."

On April 22, 2021, defendant appeared before Judge Bauman for sentencing. Mr. Catley provided Judge Bauman with several letters of support and submitted a thorough and detailed sentencing memorandum advocating for a lesser sentence in the range designated for second-degree crimes. Mr. Catley argued forcefully that the court should apply mitigating factors four, seven, eight, nine, ten, eleven and twelve.

Judge Bauman found mitigating factors seven, eight, nine, twelve and fourteen. In doing so, the judge relied, in part, on the numerous letters submitted by Mr. Catley from defendant's aunts, M.D., J.D., M.M. and K.P.; defendant's cousins, P.L.M. and D.A.; a stepmother, C.M.; defendant's sister, N.D.; a close friend, T.D.; defendant's

grandmother, T.C.; and finally, defendant's parents, S.C. and D.N. Judge Bauman read portions of each letter into the record, describing them collectively as "heartbreaking" and expressed appreciation for Mr. Catley's arguments "truly, with his focus and emphasis on the youth of the defendant."

Judge Bauman found that the plea agreement allowed defendant to avoid a "painful trial" and took a possible murder charge "off the table." He imposed the agreed-upon sentence of ten years with an 85 percent NERA disqualifier.

After imposing sentence, Judge Bauman informed defendant of her right to appeal and concluded the proceeding with a finding that defendant clearly understood that right.

Defendant did not file a timely notice of appeal. Rather, on August 17, 2023, more than two years after her sentence, the Public Defender filed a notice of appeal on defendant's behalf accompanied by a motion requesting that the appeal be consider filed as within time. In her certification in support of this motion, defendant claimed, "My attorney did not want to file my appeal unless I paid him more money" and "I did not know I could request an appeal myself."

On September 5, 2023, Hon. Thomas W. Sumners, Jr., C.J.A.D., denied defendant's motion and dismissed her appeal, finding "The required showing of good cause and absence of prejudice pursuant to Rule 2:4-4(a) has not been made."

On November 14, 2023, defendant filed a pro se PCR petition setting forth

three grounds of alleged ineffectiveness by trial counsel:

> 1. failing to present appropriate expert evaluation testimony regarding [defendant's] mental health and youthfulness;
>
> 2. failing to submit N.J.S.A. 2C:44-1b(4) mitigating factor at sentencing; and,
>
> 3. failing to pursue a plea negotiation for the lesser included offense of reckless manslaughter.

In a Supplemental Certification defendant added two additional claims:

> 1. I told my Trial Attorney that I wanted to file an appeal. He informed me that unless he was paid more money, he would not file an appeal. I was not, to my knowledge, informed by my Trial Attorney that I should contact the Criminal Division Manager's Office ... to request and apply for appellate representation by the Office of the Public Defender, and
>
> 2. While my Trial Attorney did discuss some of the discovery with me, he did not provide me with a full copy or discuss all of the case proofs with me before advising me to accept a guilty plea.

After counsel was appointed, a brief was filed raising the following points:

> POINT ONE
>
> THE PETITIONER, JADA MCCLAIN, RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL THAT SUBSTANTIALLY DENIED [HER] STATE AND FEDERAL CONSTITUTIONAL RIGHTS GUARANTEED TO [HER] BY THE U.S. CONST., AMENDS. VI, XIV AND BY THE N.J. CONST. ART. I, PAR. 10

A. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN THEY FAILED TO FILE AN APPEAL FOR THE PETITIONER, OR DIRECT THE PETITIONER TO CONTACT THE CRIMINAL DIVISION MANAGER'S OFFICE OF MONMOUTH COUNTY TO APPLY FOR THE APPOINTMENT OF THE OFFICE OF THE PUBLIC DEFENDER TO REPRESENT HER AND FILE AN APPEAL

B. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN THE TRIAL ATTORNEY FAILED TO OBTAIN THE ASSISTANCE AND EVALUATION OF AN EXPERT TO DETERMINE THE IMPACT OF THE PETITIONER'S MEDICAL CONDITIONS ON THE PETITIONER'S PRE-INCIDENT BEHAVIOR AND HER CONDUCT DURING AND AFTER THE INCIDENT

C. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BY THE FAILURE OF TRIAL COUNSEL TO PROVIDE FULL DISCOVERY TO THE PETITIONER, TO REVIEW THE FULL DISCOVERY WITH PETITIONER, OR TO DEVELOP A TRIAL STRATEGY PRIOR TO COMMENCING PLEA NEGOTIATIONS

D. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO THE CUMULATIVE EFFECT OF REPETITIVE ERRORS BY THE TRIAL ATTORNEY

POINT TWO

THE PETITIONER, JADA MCCLAIN, HAS PROVIDED PRIMA FACIE PROOF THAT [S]HE SUFFERED

INEFFECTIVE ASSISTANCE OF COUNSEL AND THEREFORE AN EVIDENTIARY HEARING IS WARRANTED

POINT THREE

THE CLAIMS BY PETITIONER ARE NOT PROCEDURALLY BARRED FROM BEING RAISED IN THIS PETITION

A. THE PETITIONER'S CLAIMS ARE NOT BARRED BY R. 3:22-4

B. THE PETITIONER'S CLAIMS ARE NOT BARRED BY R. 3:22-5

C. THE PETITIONER'S CLAIMS ARE NOT BARRED BY R. 3:22-12.

POINT FOUR

PCR COUNSEL INCORPORATES ALL OF THE ISSUES SET FORTH IN PETITIONER'S PRO SE PETITION AND ANY SUPPLEMENTAL BRIEF

II.

To establish an ineffective assistance of counsel claim, a defendant must demonstrate: (1) "counsel's performance was deficient"; and (2) "the deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 687 (1984); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-pronged analysis in New Jersey). "That is, the defendant must establish, first, that

'counsel's representation fell below an objective standard of reasonableness' and, second, that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" State v. Alvarez, 473 N.J. Super. 448, 455 (App. Div. 2022) (quoting Strickland, 466 U.S. at 688, 694).

A defendant who has entered a guilty plea and is asserting that plea counsel's assistance was ineffective may meet the first prong of the Strickland standard if the defendant can show counsel's representation fell short of the prevailing standards expected of criminal defense attorneys. Padilla v. Kentucky, 559 U.S. 356, 366-67 (2010). Plea counsel's performance will not be deemed deficient if counsel has provided the defendant "correct information concerning all of the relevant material consequences that flow from such a plea." State v. Agathis, 424 N.J. Super. 16, 22 (App. Div. 2012) (citing State v. Nuñez-Valdez, 200 N.J. 129, 138 (2009)). Stated another way, counsel must not "'provide misleading, material information that results in an uninformed plea.'" State v. Gaitan, 209 N.J. 339, 353 (2012) (quoting Nuñez-Valdez, 200 N.J. at 140).

Under the second Strickland prong, the defendant must establish a reasonable probability that she would not have pled guilty but for counsel's errors. Gaitan, 209 N.J. at 351. "The petitioner must ultimately establish the right to PCR by a preponderance of the evidence." O'Donnell, 435 N.J. Super. at 370 (citing State v. Preciose, 129 N.J. 451, 459 (1992)).

At the outset, this court notes that the evidence that defendant intentionally killed her newborn, consisting of her admissions to police, corroborated by video and text messages, was overwhelming. The penalty defendant was facing on the murder charge, had she proceeded to trial, could easily have exceeded three times the sentence defendant received under the plea agreement. See, N.J.S.A. 2C:11-3(b)(1). Even assuming that defendant could establish errors by plea counsel, which she has not, defendant has not shown that "a decision to reject the plea bargain would have been rational under the circumstances" State v. O'Donnell, 435 N.J. Super. 351, 371 (App. Div. 2014) (quoting Padilla, 559 U.S. at 372), or that she would not have pled guilty and insisted on going to trial. Nunez-Valdez, 200 N.J. at 139.

Mr. Catley's performance in negotiating such a favorable plea agreement for such a heinous crime combined with his exceedingly thorough presentation at defendant's sentencing totally undermines defendant's claim of ineffective assistance.

Defendant's claim that Mr. Catley failed to comply with her request to file a notice of appeal was raised in her as-within-time motion and rejected by the Appellate Division. As the claim has been previously adjudicated on the merits, Rule 3:22-5 precludes raising it here. Even if this court were to find that the issue is not "identical or substantially equivalent," see State v. McQuaid, 147 N.J. 464, 484 (1997), defendant has failed to establish the second prong of Strickland by showing prejudice.

In her certification, defendant claims, "I was not to my knowledge informed by my trial attorney that I should contact the Criminal Division Manager's Officer (or how to contact them) to request and apply for appellate representation by the Office of the Public Defender." However, at her sentencing defendant was specifically informed of her right to appeal and the procedure to be followed by Judge Bauman:

> THE COURT: Ms. McClain, you have 45 days from today to appeal your conviction and sentence. If you cannot afford counsel, you or Mr. Catley should apply, via 5-A form, for a public defender.
>
> If you miss the 45-day deadline you can request a 30-day extension to file that appeal if you can show a good reason for missing the deadline.
>
> If you miss the extended deadline, you may lose your right to appeal all together. Do you understand that?
>
> THE DEFENDANT: Yes.

Judge Bauman then produced a form containing defendant's right to appeal, and defendant assured the judge that she had reviewed the form with Mr. Catley, he had answered all of her questions, and she had signed the document confirming this.

In defendant's brief, counsel claims that from the inception of his representation, Mr. Catley "was aware of the factual circumstance that would support a potential defense request for a professional evaluation of the [defendant] to support a potential 'diminished capacity' defense, pursuant to N.J.S.A. 2C:4-2." In a footnote counsel concedes, "The case file contains no documentation of this type of defense

being raised, or the need for this type of evaluation to be conducted." In fact, there is nothing in the record to support the claim that a diminished capacity defense was viable here. Without such proofs, defendant's claim that counsel's performance was ineffective for failing to retain an expert to perform an evaluation of defendant amounts to nothing more than a bald, unsupported allegation which is insufficient to warrant relief under Strickland.

The diminished capacity statute provides that "[e]vidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did not have a state of mind which is an element of the offense." N.J.S.A. 2C:4-2. It also provides, conversely, that "[i]n the absence of such evidence, it may be presumed that the defendant had no mental disease or defect which would negate a state of mind which is an element of the offense." Ibid.

There is not a flyspeck of evidence in the record to suggest that defendant suffered from a mental disease or defect. Moreover, this was not a crime committed in the "heat of passion." See N.J.S.A. 2C:11-4(b)(2). Rather, defendant planned for months with Mohammed to first cause a miscarriage by harming the fetus and then, if that failed, "to do whatever it takes to just have it gone." After the infant was born defendant first tried to break his neck and, when that failed, she smothered the child until he stopped breathing. The text messages and defendant's admissions demonstrated that she was coherent, logical, alert, and fully oriented throughout the

planning and execution of this crime; her behavior was totally inconsistent with a diminished capacity claim.

During oral argument, defendant's counsel argued that this court should grant an evidentiary hearing. However, defendant is not entitled to an evidentiary hearing "if the 'allegations are too vague, conclusory, or speculative to warrant an evidentiary hearing[.]'" State v. Porter, 216 N.J. 343, 355 (2013), quoting State v. Marshall, 148 N.J. 89, 158, cert. denied, 522 U.S. 850 (1997). An evidentiary hearing will be granted only "if a defendant has presented a prima facie claim in support of [PCR]." State v. Preciose, 129 N.J. 451, 462 (1992). "[I]n order to establish a prima facie claim, a petitioner must do more than make bald assertions that [she] was denied the effective assistance of counsel. [She] must allege facts sufficient to demonstrate counsel's alleged substandard performance. Thus, when a petitioner claims [her] trial attorney inadequately investigated his case, [she] 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 (App. Div. 1999).

Considering defendant's contentions indulgently and viewing the facts asserted by her in the light most favorable to her, this court must conclude that defendant has failed to establish a prima facie claim of ineffective assistance of plea counsel. To the contrary, defendant received a generous plea offer through the efforts

of Mr. Catley and he made a valiant effort to secure a more lenient sentence for her. Defendant's petition is denied without a hearing.