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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-0401-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

YUSUF IBRAHIM, a/k/a
YUSUT IBRAHIM, YUSEF F.
IBRAHIM, YUSIF IBRAHIM,
YUSLIF IBRAHIM, YUSUF
IBRAHAM, and YUSUF MESHAL.

Defendant-Appellant.

Submitted November 2, 2022 – Decided November 10, 2022

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Indictment No. 13-10-1944.

Joseph E. Krakora, Public Defender, attorney for
appellant (Howard W. Bailey, Designated Counsel, on
the brief).

Esther Suarez, Hudson County Prosecutor, attorney for
respondent (Stephanie Davis Elson, Assistant
Prosecutor, on the brief).

PER CURIAM

Defendant Yusuf Ibrahim appeals from the Law Division's May 18, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

A Hudson County grand jury charged defendant in a two-count indictment with first-degree carjacking, contrary to N.J.S.A. 2C:15-2, and second-degree robbery, contrary to N.J.S.A. 2C:15-1. Defendant pled guilty to the robbery charge. In accordance with the terms of defendant's negotiated plea, Judge Mitzy Galis-Menendez sentenced defendant to six years in prison subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

Defendant filed a timely petition for PCR. Defendant asserted his attorney provided him with ineffective assistance because he: (1) failed to obtain and review all the discovery in the case; (2) did not meet with defendant enough times to sufficiently review the discovery, prepare legal defenses, and keep him apprised of his plans for representing him; and (3) did not properly investigate the case.

Following oral argument, Judge Galis-Menendez 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 counsel's performance was deficient and that, but for the deficient performance, the result would have been different. The judge found that defendant raised only bald assertions to support his allegations and his arguments were belied by the record.

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

POINT I

THE COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR [PCR] WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS ASSERTION THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS, AND PETITIONS FOR [PCR].

B. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO PROPERLY COMMUNICATE WITH HIM.

C. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO CONDUCT A PROPER PRE-TRIAL INVESTIGATION.

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).

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 was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance, material issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. R. 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged 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). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

Having considered defendant's contentions in light of the record and the applicable law, we affirm the denial of defendant's PCR petition substantially for the reasons detailed at length in Judge Galis-Menendez's written opinion. We discern no abuse of discretion in the judge's consideration of the issues, or in her decision to deny the petition without an evidentiary hearing. We are satisfied that the trial attorney's performance was not deficient, and defendant provided nothing more than bald assertions to the contrary.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION