

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0063-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTONIO JONES,

Defendant-Appellant.

Argued November 15, 2016 - Decided December 7, 2016

Before Judges Espinosa and Guadagno.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No.
12-05-1001.

Peter T. Blum, Assistant Deputy Public
Defender, argued the cause for appellant
(Joseph E. Krakora, Public Defender,
attorney; Mr. Blum, of counsel and on the
brief).

Nicholas Norcia, Assistant Prosecutor,
argued the cause for respondent (Joseph D.
Coronato, Ocean County Prosecutor, attorney;
Samuel Marzarella, Chief Appellate Attorney,
of counsel; Mr. Norcia, on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant was convicted of first-degree robbery, N.J.S.A. 2C:15-1, and fourth-degree obstructing the administration of law, N.J.S.A. 2C:29-1, and was sentenced to an extended term of life without parole and a concurrent sentence for obstruction. In this appeal, he presents the following arguments for our consideration:

POINT I

A NEW TRIAL SHOULD OCCUR BECAUSE THE TRIAL COURT IMPROPERLY REFUSED TO QUESTION THE PROSPECTIVE JURORS ABOUT POSSIBLE RACIAL BIAS, EVEN THOUGH JONES WAS AN AFRICAN-AMERICAN MAN AND THE ROBBERY COMPLAINANT WAS A WHITE ORTHODOX JEWISH MAN. U.S. CONST. AMEND. VI, XIV; N.J. CONST. ART. I, PARA. 1, 10.

POINT II

THE CASE SHOULD BE REMANDED FOR A DECISION ON JONES'S MOTION TO DISMISS ON SPEEDY TRIAL GROUNDS BECAUSE THE COURT BELOW FAILED TO PROVIDE ANY DECISION ON THE MOTION -- MUCH LESS A REASONED DECISION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW. U.S. CONST. AMEND. XIV; N.J. CONST. ART. I, PARA. 1.

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

POINT I

THE PROSECUTOR WILLFULLY AND KNOWINGLY COMMITTED PROSECUTOR MISCONDUCT DURING A CROSS-[EXAMINATION] THE STATE WITNESS BY SHOWING THE JURY A PICTURE OF A GLASS SMOKING PIPE THAT WAS NOT PART OF THE EVIDENCE. THE [DEFENDANT'S] SIXTH AND FOURTEENTH AMENDMENT, DUE PROCESS OF LAW AND STATE CONSTITUTION RIGHT TO A FAIR TRIAL WAS VIOLATED U.S., CONS. AMENDS. VI, XIV; N.J. CONST. 1947, ART. 1, PARAS., I. 10.

POINT II

DEFENDANT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL UNDER U.S. CONST, AMEND. VI, COUNSEL'S FAILURE TO OBJECT TO THE INTRODUCTION OF A HIGHLY INFLAMATORY PICTURE DURING A CROSS-EXAMINATION OF THE STATE WITNESSES.

POINT III

THE COURT COMMITTED PLAIN ERRORS BY FAILING TO INSTRUCT THE JURY TO CONSIDER THE LESSER - INCLUDED OFFENSES.

After reviewing the record and applicable legal principles, we conclude that the arguments raised in defendant's supplemental pro se brief lack sufficient merit to warrant discussion. R. 2:11-3(e)(2). We do not address the argument raised in Point I of the brief submitted on behalf of defendant at this time because we are constrained to remand to the trial court for a review of defendant's speedy trial motion,

considering the factors set forth in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), and to set forth its findings on the record.

Defendant was arrested on these charges on February 8, 2012. Despite timely and repeated requests by defense counsel, the State failed to fully comply with its discovery obligations and the proceedings were delayed several times as a result. Although an order was entered in December 2012 directing the State to provide outstanding discovery, discovery demands remained unsatisfied for a prolonged period of time.

In July 2013, defendant "renew[ed] the Speedy Trial motion initially filed in September of 2012 when the State failed to respond to discovery requests," representing that the State had persisted in its failure to respond to requests for outstanding DNA results. Although court records state the motion was denied on August 19, 2013, it is undisputed that the trial court did not render a decision on the motion or set forth reasons for a denial of the motion. The court records only reveal that in August 2013, the court ordered that defendant was "not to be tried until all evidence in" and set a trial date of February 3, 2014. The trial commenced on February 11, 2014, two years after defendant's arrest. He remained incarcerated throughout that period.

The right to a speedy trial, guaranteed by the United States Constitution, U.S. Const. amend. VI, is a fundamental right applied to the states by the Due Process Clause of the Fourteenth Amendment. Klopfer v. North Carolina, 386 U.S. 213, 222-23, 87 S. Ct. 988, 993, 18 L.Ed.2d 1, 7-8 (1967). In Barker, the United States Supreme Court established a balancing test that continues to govern the evaluation of claims of speedy trial violations in all criminal and quasi-criminal matters. 407 U.S. at 530, 92 S. Ct. at 2192, 33 L. Ed. 2d at 117; State v. Cahill, 213 N.J. 253, 258 (2013). Under this test, the trial court must assess four non-exclusive factors: "the [l]ength of the delay, the reason for the delay, the defendant's assertion of [the right to speedy trial] and prejudice to the defendant." Barker, supra, 407 U.S. at 530, 92 S. Ct. at 2192, 33 L. Ed. 2d at 117. As our Supreme Court observed, "most decisions have identified a period of one year or slightly more than one year as the time 'after which . . . it makes sense to inquire further into why the defendant has not been tried more promptly.'" Cahill, supra, 213 N.J. at 265 (quoting 5 Wayne R. LaFave et al., Criminal Procedure § 18.2(b) at 119 (3d ed. 2007)). The Court has endorsed this concept, instructing, "once the delay exceeds one year, it is appropriate to engage in the analysis of the remaining Barker factors." Id. at 266.

At the time defendant renewed his speedy trial motion, approximately eighteen months had passed since his arrest. This delay warranted a full inquiry and balancing of the Barker factors. The State argues that defendant has failed to show he was prejudiced by the delay in his trial and that this argument lacks merit because defendant did not request the dismissal of the indictment. We are not persuaded that these arguments, presented with the advantage of hindsight, excuse the failure to conduct the analysis of the Barker factors to which defendant was entitled.

Therefore, we retain jurisdiction and remand to the trial court for an analysis of these factors, a decision on the speedy trial motion and a statement of reasons pursuant to Rule 1:7-4, to be completed within thirty days.

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


CLERK OF THE APPELLATE DIVISION