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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-0787-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KAMILA CASON, a/k/a KAREN SMITH,

Defendant-Appellant.

Submitted March 30, 2017 – Decided July 6, 2017

Before Judges Lihotz and Hoffman.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
05-09-1315.

Joseph E. Krakora, Public Defender, attorney
for appellant (David A. Snyder, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Jennifer E. Kmiecik,
Deputy Attorney General, of counsel and on the
brief).

PER CURIAM

Defendant Kamila Cason appeals from the May 27, 2015 Law
Division order denying her post-conviction relief (PCR) petition
alleging ineffective assistance of counsel. We affirm.

Defendant shared a Jersey City first-floor apartment with her friend, K.W. On June 4, 2005, the two began arguing over a ten-dollar debt, and after a series of altercations, defendant lit several fires in the apartment. Second-floor tenants, a mother and her two sons, managed to escape the fire; however, one of the sons died later that night from smoke inhalation.

In 2008, a jury convicted defendant of felony murder and three counts of aggravated arson. On February 27, 2009, the trial court sentenced defendant to forty years imprisonment, with an eighty-five percent parole ineligibility period pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Defendant appealed, and we affirmed her conviction and sentence in an unpublished opinion. State v. Cason, A-2612-09 (App. Div. Oct. 3, 2012), certif. denied, 213 N.J. 390 (2013).

On December 30, 2013, defendant filed a pro se petition for PCR. In her petition, defendant alleged she received ineffective assistance because: (a) "her trial attorney did not interview and call as witnesses the owners of the building that was burnt down;" (b) "her trial attorney did not interview and call as a witness [S.J.], who could provide an alibi for [defendant's] whereabouts at the time of the beginning of the fire;" and (c) "her trial attorney did not retain a forensic arson investigator expert to rebut the State's arson investigator."

On April 30, 2015, Judge Mitzy Galis-Menendez held an evidentiary hearing on defendant's petition. The judge first heard the testimony of S.J., defendant's alibi witness and long-time friend. S.J. testified she and defendant attended a barbeque at the time of the fire. On cross-examination, however, she acknowledged attending "most days" of defendant's trial and knowing defendant received a forty-year sentence. Nevertheless, she testified she never told defendant's attorney or law enforcement she could provide an alibi for defendant. Defendant then testified she told her trial attorney that S.J. "could verify that I was with her at the time of the fire."

The State then presented testimony from defendant's trial attorney, who said her trial strategy attempted to blame K.W. for starting the fire. She explained that K.W. "was being evicted[,][a]nd so it was my theory that she was getting back at the landlord[,]" and she was the one that set fire to the . . . apartment." At trial, testimony from a court employee established the landlord had filed eviction proceedings against K.W. less than two months before the fire. Defendant's trial attorney testified she had no recollection of defendant ever mentioning an alibi witness or the name S.J.

On May 27, 2015, Judge Galis-Menendez entered an order denying PCR, accompanied by a nineteen-page written opinion. The judge

found "no evidence that would lead to the conclusion" that the performance of defendant's trial attorney "fell below an objective standard of reasonableness or that her performance materially contributed to [defendant's] conviction."

Regarding the alleged failure to call as witnesses the owners of the building that burned down, the judge noted that defendant failed to provide any certifications from the owners of the building; regardless, the judge found no evidence that "any testimony from the owners" would "have changed the outcome of the case." Of note, the testimony of the court employee effectively established the pending eviction proceedings against K.W.

The judge also rejected S.J.'s testimony that she could have provided defendant with an alibi defense, finding her testimony not credible. Instead, the judge credited the testimony of defendant's trial attorney that defendant never mentioned the name S.J. as a possible alibi witness, nor was an alibi issue "raised, discussed or contemplated after review of the discovery or after speaking with [defendant]."

The judge further rejected defendant's claim regarding the failure to retain a forensic arson investigation expert to rebut the State's arson investigator. The judge found no evidence to conclude that "a rebuttal expert would have changed the outcome

of the case," especially in light of the defense contention that defendant did not start the fire.

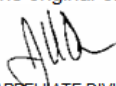
This appeal followed, with defendant presenting the following argument for consideration:

THE PCR COURT COMMITTED ERROR IN DENYING THE DEFENDANT'S PCR PETITION BECAUSE THE DEFENDANT MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF COUNSEL AND MET HER BURDEN BY A PREPONDERANCE OF THE EVIDENCE.

Following review of the pleadings and arguments advanced, in light of the record and applicable law, we affirm substantially for the reasons stated by Judge Galis-Menendez in her cogent written opinion. We find no basis to interfere with the order under review.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION