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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-1184-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VERNON L. SIMMONS,

Defendant-Appellant.

Submitted July 6, 2017 – Decided July 19, 2017

Before Judges Yannotti and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Indictment
No. 84-05-0329.

Vernon L. Simmons, appellant pro se.

Scott A. Coffina, Burlington County
Prosecutor, attorney for respondent (Jennifer
B. Paszkiewicz, of counsel and on the brief).

PER CURIAM

Defendant Vernon L. Simmons appeals from amended judgments of conviction (JOC) entered by the Law Division on March 25, 2015 and September 30, 2015, which corrected errors in the original JOC dated February 22, 1985. We affirm.

Following a seven-day trial, a jury convicted defendant of two counts of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (counts one and two),¹ and unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count three). State v. Simmons, No. A-3370-84 (App. Div. January 23, 1987) (slip op. at 1), certif. denied, 107 N.J. 628 (1987). The trial court sentenced defendant to concurrent life terms on counts one and two, with a thirty-year period of parole ineligibility on each count, and to a five-year concurrent term on count three. Id. at 1-2.

On direct appeal, we affirmed defendant's convictions. Id. at 4. However, we held that defendant's two murder convictions should have been merged by the trial court at the time of sentencing. Ibid. Therefore, we merged the two convictions, vacated "the concurrent term imposed for [the] second murder conviction[,]" and "remanded for correction of the [JOC]." Ibid. In all other respects, we affirmed defendant's sentence.²

¹ There was only one victim. The indictment charged defendant with purposely causing the victim's death or serious bodily injury resulting in death under count one, and with knowingly causing the victim's death or serious bodily injury resulting in death under count two.

² Over the course of the next twenty-six years, defendant filed four unsuccessful petitions for post-conviction relief in our state courts. See State v. Simmons, No. A-3489-09 (App. Div. May 19, 2011) (slip op. at 3-5) (summarizing the petitions), certif. denied, 209 N.J. 596 (2012). Defendant also filed several

Unfortunately, the trial court did not issue a corrected JOC. However, as a result of a request for clarification from the Parole Board regarding the merger of counts one and two in connection with defendant's first application for parole, a trial judge reviewed our January 23, 1987 decision on defendant's direct appeal, and issued an amended JOC on March 25, 2015. In pertinent part, the amended JOC stated:

The [JOC] and Order for Commitment dated February 22, 1985 remains in FULL FORCE and EFFECT except for the following correction:

1. Per Appellate Decision from January 23, 1987, Counts 1 and 2 are merged and the concurrent term imposed for a second murder conviction is vacated.

However, under the heading "Total Custodial Term" at the bottom of the first page of the JOC, the trial court mistakenly wrote "030 Years 00 Months 000 Days[.]" This entry was plainly incorrect because defendant had been sentenced to a life term, with a thirty-year period of parole ineligibility, and not to a thirty-year term as now reflected in the March 25, 2015 amended JOC.

unsuccessful petitions for a writ of habeas corpus in the federal courts. See Simmons v. Lagana, Civ. No. 12-2237 (RBK) (D.N.J. August 26, 2013) (slip op. at 1-6) (summarizing the petitions).

Subsequently, this error was brought to the trial judge's attention and, on September 30, 2015, the judge entered a new corrected JOC. In pertinent part, this JOC stated:

The Judgment[s] of Conviction[] and Orders for Commitment dated February 22, 1985 and [March 25, 2015] remain[] in full force and effect except for the following correction:

1. The original sentence should have read – the Defendant is sentenced to life in prison; 30 years without parole. This sentence has not changed per the Decision of the Appellate Division.

Following the entry of the new JOC, defendant filed his current appeal. Defendant contends that once the trial court issued the March 25, 2015 amended JOC mistakenly stating that his total term was thirty years, rather than life in prison with thirty years of parole ineligibility, the court was barred from correcting this error and he should have been released from prison because he had served thirty years of his sentence. Specifically, defendant contends:

POINT 1

SENTENCE OF SEPTEMBER 30, 2015 WAS ILLEGAL AND NOT IMPOSED ACCORDING TO LAW IN VIOLATION OF STATE LAW AND DEFENDANT'S DUE PROCESS RIGHTS UNDER STATE & FEDERAL CONSTITUTIONS. THEREFORE IT MUST BE THROWN-OUT AND AMENDED SENTENCE OF MARCH 25, 2015 REINSTATED WITH THE IMMEDIATE RELEASE OF DEFEN[D]ANT.

Having considered defendant's contentions in light of the record and the applicable law, we conclude that that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add the following brief comments.

Over fifty years ago, our Supreme Court held that errors in sentencing a defendant may be corrected under Rule 1:13-1 without violating the protection against double jeopardy. State v. Matlack, 49 N.J. 491, 501-02, cert. denied, 389 U.S. 1009, 88 S. Ct. 572, 19 L. Ed. 2d 606 (1967). Rule 1:13-1 provides:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the court on its own initiative on the motion of any party, and on such notice and terms as the court directs, notwithstanding the pendency of an appeal.

Here, the March 25, 2015 amended JOC was clearly incorrect because, as specifically held in our decision on direct appeal, defendant was sentenced to life in prison, with a thirty-year period of parole ineligibility, and not to a thirty-year term as reflected in the amended JOC. Contrary to defendant's argument, the trial court was not barred from correcting this mistake. As the Court stated in Matlack:

No fundamental right of [a] defendant will be violated if an inadvertent clerical-type error is corrected, and he [or she] receives the sentence which the trial judge intended him [or her] to receive. The protection against

double jeopardy bars double punishment for the same conviction, but does not prevent correction of a clerical error so that the sentence actually intended by the initial exercise of judicial discretion may be given a defendant. The Constitution does not prevent correction of inadvertent errors in sentencing.

[Matlack, supra, 49 N.J. at 502.]

Thus, the trial court properly corrected the error in the March 25, 2015 JOC by issuing the September 30, 2015 JOC, which set forth defendant's proper sentence. R. 1:13-1.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION