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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-4218-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHRISTOPHER GONZALEZ,

Defendant-Appellant.

Submitted November 27, 2017 – Decided December 7, 2017

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
07-08-1362.

Joseph E. Krakora, Public Defender, attorney
for appellant (Steven M. Gilson, Designated
Counsel, on the brief).

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Joie Piderit,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Christopher Gonzalez appeals the trial court's dismissal of his petition for post-conviction relief ("PCR") without an evidentiary hearing. He contends that his former trial

counsel and appellate counsel were constitutionally ineffective by allegedly failing to protect his rights sufficiently under the Interstate Agreement on Detainers, N.J.S.A. 2A:159A-1 to -15 ("the IAD"). We agree with the PCR judge that defendant's claims of ineffectiveness lack merit and affirm.

The underlying facts and procedural history that resulted in defendant's conviction in 2008 of various crimes is set forth in detail in this court's 2012 unpublished opinion on direct appeal, and need not be repeated here. See State v. Gonzalez, No. A-1802-08 (App. Div. July 17, 2012), certif. denied, 213 N.J. 389 (2013). In essence, the State's proofs in two successive 2008 trials showed that on July 21, 2006, defendant and a co-defendant forced their way into the female victim's apartment, took money and other valuables at gunpoint from the victim and her boyfriend, and confined them to separate closets.

Among other things, defendant was found guilty of first-degree armed robbery, second-degree kidnapping, conspiracy, several weapons offenses, and other crimes. The trial court sentenced him to an aggregate term of thirty-two years, subject to the parole ineligibility conditions of the No Early Release Act, N.J.S.A. 2C:43-7.2. The sentence is consecutive to custodial time defendant received in the State of New York for unrelated offenses.

After charges were brought in New Jersey against defendant concerning the 2006 robbery incident, correctional authorities in New York, where defendant was serving his New York sentence, sent a letter dated July 12, 2007 to the Middlesex County Prosecutor pursuant to the IAD. The letter requested that defendant be delivered to New Jersey and held in temporary custody here for disposition of the Middlesex County charges. This letter was accompanied by the requisite forms, N.J.S.A. 2A:159A-3(b), which were signed by defendant. The exact date on which the July 12 letter was received in New Jersey by the county prosecutor and the court is not documented in the record. In any event, it is undisputed that defendant was transported to New Jersey as requested. Meanwhile, an indictment on the New Jersey charges was issued by a Middlesex County Grand Jury on August 31, 2007.

Article III of the IAD, which is codified at N.J.S.A. 2A:159A-3, provides that whenever a prisoner from a party state has criminal charges pending in another party state and a detainer has been lodged against that prisoner, "he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint[.]" N.J.S.A. 2A:159A-

3(a). Unless an exception applies, the State's failure to abide by the 180-day time limit authorizes dismissal of the indictment with prejudice. N.J.S.A. 2A:159A-5(c).

Here, trial was scheduled to convene in New Jersey on January 8, 2008, which was 180 days from the date of defendant's request as set forth in the July 12, 2007 letter. Although, as we have noted, the actual date of New Jersey's receipt of the July 12, 2007 letter is unknown, it is clear that the trial date was scheduled within the 180-day period, particularly since the letter was transmitted through the United States mails with no indication that it was sent by more expeditious means.

The initial trial date of January 8, 2008 was adjourned twenty days to January 28, 2008. As reflected in pretrial transcripts, the reason for the trial adjournment was that additional time was needed to deal with DNA lab testing results that recently had been served by the prosecutor on December 28, 2007. Defendant's trial counsel immediately forwarded the DNA results to a defense expert. He also moved to exclude the State's DNA evidence, and to have the initial planned trial date kept intact.

The trial court denied the motion to exclude, and adjourned the trial twenty days to January 28, 2008. The trial commenced on that date, and resulted in convictions on certain counts and a hung jury on other counts. The mistried counts were tried before

a second jury in May-June 2008, resulting in defendant's acquittal on a charge of aggravated sexual assault but his conviction on kidnapping and conspiracy charges.

Defendant's appellate counsel raised multiple arguments on direct appeal, but did not allege an IAD violation. After we affirmed the convictions and the Supreme Court denied certification, defendant filed the instant PCR petition, alleging ineffective assistance of counsel relating to alleged non-compliance with the IAD. The PCR court found those arguments unavailing.

Among other things, the PCR judge noted that Article III of the IAD allow the statutory time frames to be extended if "the court having jurisdiction of the matter [grants a] necessary or reasonable continuance." N.J.S.A. 2A:159A-3(a) (Article III); N.J.S.A. 2A:159A-4(c) (Article IV). The judge noted that defendant has "offered no compelling argument that the adjournment [here] was unreasonable." Hence, because there is no proven IAD violation, defendant's former counsel could not have been constitutionally ineffective.

In his brief on the present appeal, defendant makes the following point:

THIS MATTER MUST BE REMANDED FOR AN
EVIDENTIARY HEARING BECAUSE DEFENDANT
ESTABLISHED A PRIMA FACIE CASE OF COUNSELS'

INEFFECTIVENESS FOR FAILING TO PURSUE THE
STATE'S NONCOMPLIANCE WITH THE INTERSTATE
AGREEMENT ON DETAINERS.

Having duly considered this contention, we affirm the denial of defendant's PCR petition, substantially for the reasons set forth in the PCR judge's April 8, 2016 written opinion. Although there are a few minor and inconsequential errors in passages in that opinion, the substance of the PCR judge's analysis is clearly correct as a matter of law.

The brief adjournment of the trial, granted to enable defendant's trial counsel to respond to and deal with the recently-generated DNA lab report, was manifestly reasonable. Indeed, the adjournment no doubt aided defendant's attorney in preparing for trial. There is no indication of dilatory conduct by the State.

Defendant has not satisfied either prong of the Sixth Amendment criteria for ineffectiveness under Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 697 (1984), as there is no proof of either counsel's deficient performance or actual prejudice to defendant.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION