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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-4482-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANA T. TOKLEY,

Defendant-Appellant.

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Submitted March 7, 2017 – Decided March 20, 2017

Before Judges Reisner and Koblitz.

On appeal from the Superior Court of New  
Jersey, Law Division, Camden County,  
Indictment No. 99-01-0246.

Dana T. Tokley, appellant pro se.

Mary Eva Colalillo, Camden County Prosecutor,  
attorney for respondent (Linda A. Shashoua,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant Dana T. Tokley appeals from a May 18, 2015 order  
denying his motion for a new trial, pursuant to Rule 3:20-1, and  
denying his application for appointed counsel. We affirm for the

reasons stated by Judge Frederick J. Schuck in his letter opinion issued with the order. We add these brief comments.

The history of this case is described in Judge Schuck's opinion, and in our prior opinion denying defendant's first petition for post-conviction relief (PCR). State v. Tokley, A-6536-05 (App. Div. Jan. 2, 2009), certif. denied, 199 N.J. 133 (2009). In brief summary, in 1999, a jury convicted defendant of first-degree robbery and second-degree possession of a firearm for an unlawful purpose. On April 3, 2000, defendant was sentenced to an extended term of fifty-five years in prison, half to be served without parole. Defendant unsuccessfully challenged his conviction in a direct appeal, a petition for PCR, and a federal petition for habeas corpus.

In 2014, defendant filed a motion for a new trial based on alleged newly discovered evidence. As Judge Schuck cogently explained in his opinion, the alleged new evidence would have made no difference to the outcome of defendant's trial. See State v. Nash, 212 N.J. 518, 549 (2013). The judge also concluded that defendant's clearly meritless claims did not warrant assignment of counsel. R. 3:22-6(b).

On this appeal, defendant raises the following issues:

POINT ONE

THE LOWER COURT ERRED AND MISAPPLIED THE LAW IN SUMMARILY DENYING DEFENDANT'S MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE WHICH EXPOSED NEW EVIDENCE WHICH COULD HAVE NOT ONLY SERVED AS STRONG IMPEACHMENT EVIDENCE AGAINST JOSE MARTINEZ, BUT IT WOULD HAVE CORROBORATED DEFENDANT TOKLEY'S DEFENSE THAT HE DID NOT COMMIT THE CRIMES IN WHICH HE WAS CONVICTED OF. THE COURT SHOULD HAVE GRANTED DEFENDANT TOKLEY A HEARING, THE COURT VIOLATED HIS RIGHT TO ADVANCE HIS CLAIMS.

POINT TWO

DEFENDANT APPLIED UNDER INDIGENCE STATUS FOR APPOINTMENT OF COUNSEL ON HIS MOTION TO THE COURT ON NEWLY DISCOVERED EVIDENCE. DEFENDANT FILED ACCORDING TO N.J.R.C. 3:27-1 DEFENDANT HAS A ABSOLUTE RIGHT TO COUNSEL PROTECTED BY THE DUE PROCESS CLAUSE OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION