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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-5545-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMELL L. CHINA,

Defendant-Appellant.

Submitted December 12, 2017 – Decided December 21, 2017

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
07-09-2161.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alison Perrone, Designated
Counsel, on the brief).

Damon G. Tyner, Atlantic County Prosecutor,
attorney for respondent (Nicole L. Campellone,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Jamell L. China appeals from an order entered by the Law Division on July 18, 2016, which denied his motion to correct an allegedly illegal sentence. We affirm.

Defendant was charged under Atlantic County Indictment No. 07-09-2161 with second-degree burglary, N.J.S.A. 2C:18-2 (count one); second-degree robbery, N.J.S.A. 2C:15-1 (counts two and five); second-degree kidnapping, N.J.S.A. 2C:13-1(b)(1) (counts three and four); and first-degree carjacking, N.J.S.A. 2C:15-2(a)(2) (count six).

On April 30, 2010, defendant pled guilty to counts two, three, and four. The State agreed to dismiss the remaining charges and recommend sentences on each count of eight years of incarceration, with an eighty-five percent period of parole ineligibility, pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The sentences would be consecutive with each other, but concurrent to a sentence defendant was then serving.

On July 9, 2010, the trial court sentenced defendant in accordance with the plea agreement, and entered a judgment of conviction (JOC). The court awarded defendant eight days of jail credits, pursuant to Rule 3:21-8, and 686 days of gap time credits pursuant to N.J.S.A. 2C:44-5(b)(2). The court amended the JOC on January 20, 2011, to include the NERA period of parole

ineligibility on count four, which apparently had been omitted from the initial JOC.

Defendant appealed the sentence, and the appeal was heard on the court's Excessive Sentence Oral Argument Calendar pursuant to Rule 2:9-11. The court then entered an order affirming the sentence. State v. China, No. A-0847-10 (App. Div. Aug. 3, 2011).

Thereafter, defendant filed what he characterized as a petition for post-conviction relief (PCR), in which he alleged that the sentencing court had erroneously awarded him gap time as opposed to jail credits. He sought to have all days from his arrest on August 31, 2006, until his sentencing on July 8, 2010, awarded as jail credits. Defendant asked the court to assign counsel to represent him in the matter.

On July 18, 2016, without appointing counsel or hearing oral argument, the trial court denied defendant's petition, which it deemed a motion to correct an illegal sentence rather than a PCR petition. In its letter opinion, the court noted that defendant was sentenced in Monmouth County on August 22, 2008, to twenty years for an offense that occurred on June 24, 2006.

The court pointed out that thereafter, defendant was sentenced on the Atlantic County charges to twenty-four years, subject to an eighty-five percent period of parole ineligibility pursuant to NERA. The Atlantic County sentence was to run

concurrently with the twenty-year Monmouth County sentence. The court stated that defendant received gap time for the time between the two sentences, from August 22, 2008, to July 8, 2010. The court found that gap time had properly been applied pursuant to N.J.S.A. 2C:44-5(b)(2), and denied the application.

Defendant appeals, arguing that he was "deprived of his right to counsel when the trial court dismissed his first petition for [PCR] without assigning an attorney to represent him" in accordance with Rule 3:22-6(a). He asserts that counsel was needed to "investigate and argue" the sentencing issue raised in his petition, as well as any other issues counsel deemed appropriate after reviewing the record. Notably, defendant makes no substantive argument challenging the merits of the trial court's decision.

According to Rule 3:22-2(c), a petition for PCR seeking correction of a sentence is cognizable only if it also includes an additional claim on another cognizable ground. Otherwise, the sentencing claim must be made in a motion to correct an illegal sentence in accordance with Rule 3:21-10(b)(5). R. 3:22-2(c).


Furthermore, Rule 3:21-10(c) provides that the trial court need only hold a hearing on a motion to correct an illegal sentence if required in the interests of justice. The court "may" assign

counsel to represent the defendant where there has been a showing of good cause. R. 3:21-10(c).

Here, defendant's lone sentencing claim was not cognizable as a first petition for PCR for which he would have been entitled to assigned counsel under Rule 3:22-6(a). Thus, the trial court did not err by treating defendant's petition as a motion to correct an illegal sentence. Moreover, absent a showing of good cause, which was not made here, defendant was not entitled to assigned counsel in connection with this motion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION