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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0630-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CRAIG A. SCOTT, a/k/a ALTEREK JONES, RICKEY JONES, RICKY SMIOTH and RICKY SMITH,

Defendant-Appellant.

Submitted January 9, 2018 – Decided January 22, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Indictment No. 08-04-1209.

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

Robert D. Laurino, Acting Essex County Prosecutor, attorney for respondent (Lucille M. Rosano, Special Deputy Attorney General/ Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from an April 15, 2016 order denying his petition for post-conviction relief (PCR). Defendant's petition contended his trial counsel rendered ineffective assistance by failing to produce alibi witnesses; object to testimony from Patrick Hall; advise defendant of the penal consequences before rejecting a plea deal; object to playing a taped recording of testimony from a witness; object to testimony from a detective; and ask for a limited instruction to the jury. Judge Michael L. Ravin denied the petition after conducting an evidentiary hearing as to the alibi witnesses. We affirm.

Defendant is serving two consecutive life prison terms for murdering two juveniles. We affirmed the convictions in an unpublished opinion. State v. Scott, No. A-2948-10 (App. Div. Aug. 13, 2013), certif. denied, 217 N.J. 288 (2014). On his direct appeal, defendant had raised the following arguments:

> POINT I
>
> THE STATE HAVING CONCEDED THAT "THE MAJORITY OF" JARON WINKEY'S STATEMENT TO THE POLICE WAS "A FALSE STORY HE CREATED," THE TRIAL COURT ERRED IN ADMITTING THAT STATEMENT PURSUANT TO N.J.R.E. 803(a)(1) BECAUSE IT WAS UN-RELIABLE, SELF-SERVING, AND NOT CORROBORATED BY OTHER EVIDENCE IN THE CASE.
>
> A. INTRODUCTION
>
> B. LEGAL ARGUMENT

POINT II

AFTER PATRICK HALL TESTIFIED THAT HE HAD VIEWED 20 OR 30 PHOTOGRAPHS, INCLUDING ONE OF DEFENDANT, BEFORE SELECTING DEFENDANT'S PHOTO FROM AN ARRAY, THE TRIAL COURT SHOULD HAVE RECONSIDERED DEFENSE COUNSEL'S REQUEST FOR A WADE[3] HEARING. (NOT RAISED BELOW).

POINT III

THE DEFENDANT WAS DENIED HIS RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY WHEN THE COURT FAILED TO MAKE ANY INQUIRY AFTER RECEIVING THE FOREPERSON'S NOTE SUGGESTING THAT SHE WAS TOO AFRAID TO READ THE VERDICT IN OPEN COURT. (NOT RAISED BELOW).

POINT IV

THE AGGREGATE OF TRIAL ERRORS DENIED DEFENDANT A FAIR TRIAL AND REQUIRES THAT HIS CONVICTIONS BE REVERSED.

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[3] United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967).

[Id. at 7-8.]

On the direct appeal, defendant raised the following additional arguments in his pro se supplemental brief:

POINT I

SINCE JUROR NUMBER TWO WAS UNABLE TO CONTINUE UNDER R. 1:8-2(d), AND THE JURORS HAD YET TO REACH A CRUCIAL STAGE IN THE TRIAL, THE TRIAL COURT ERRORE [SIC] IN FAILING TO DISCHARGE HER FROM FURTHER JURY SERVICE. THUS VIOLATING DEFENDANT'S RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY. U.S. CONST. AMENDS. VI, VIX;

N.J. CONST. (1947) ART. I PARS. 1, 9, AND 10. (NOT RAISED BELOW).

POINT II

THE STATE'S PRESENTATION OF HEARSAY, TO THE EFFECT THAT DEFENDANT'S PHOTOGRAPH WAS INCLUDED IN THE ARRAYS SHOWN TO EYEWITNESSES BECAUSE HE HAD BEEN IMPLICATED IN THE SHOOTING BY A NON-TESTIF[Y]ING WITNESS, VIOLATED DEFENDANT'S RIGHT TO CONFRONT WITNESSES AND HIS RIGHT TO DUE PROCESS OF LAW AND A FAIR TRIAL. U.S. CONST. AMENDS. VI, XIV; N.J. CONST. (1947) ART. I, PARS. 1, 9, AND 10.

POINT III

THE ADMISSION OF EXTREMELEY [SIC] DAMAGING, BLATANTLY INADMISSIBLE HEARSAY EVIDENCE TO BOLSTER JAROD WINKEY'S TESTIMONY VIOLATED DEFENDANT'S RIGHT TO CONFRONTATION, THE HEARSAY PROHIBITION OF THE EVIDENCE RULES, AND CRAWFORD V. WASHINGTON.[4]

POINT IV

THE TRIAL COURT ABUSED ITS DISCRETION IN RULING THAT PATRICK HALL'S PRIOR CONVICTION FOR AGGRAVATED MANSLAUGHTER WAS INADMISSIBLE TO IMPEACH HIS CREDIBILITY.

POINT V

THE TRIAL WAS SO INFECTED WITH ERROR THAT EVEN IF THE INDIVIDUAL ERRORS, SET FORTH ABOVE DO NOT CONSTITUTE REVERSIBLE ERROR, THE ERROR[S] IN THE AGGREGATE DENIED DEFENDANT A FAIR TRIAL. (NOT RAISED BELOW).

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[4] 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

[Id. at 8-9 (alterations in original).]

We concluded that defendant's contentions on the direct appeal lacked merit, but rendered a twenty-five page decision nevertheless. Id. at 9.

On this appeal, defendant argues:

> POINT I
> THE TRIAL COURT IMPROPERLY DENIED DEFENDANT'S POST-CONVICTION RELIEF CLAIM BASED ON THE FAILURE TO CALL ALIBI WITNESSES.
>
> POINT II
> DEFENDANT WAS ENTITLED TO AN EVIDENTIARY HEARING ON THE REMAINDER OF HIS POST-CONVICTION RELIEF CLAIMS.

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(2). In addition to affirming substantially for the reasons given by Judge Ravin in his eighteen-page written decision, we add the following brief remarks.

Defendant maintains that his trial counsel failed to produce testimony from two alibi witnesses: defendant's mother; and a friend, who is the mother of defendant's child. At the evidentiary hearing, the PCR judge took testimony from these witnesses and defendant's trial counsel. Defendant argued he was with the friend on the night of the murders. The mother was unable to testify from personal knowledge that defendant was with the friend when

the murders occurred. Defendant's certification, in support of his petition, conflicted with the friend's testimony and certification, the mother's certification, and investigative reports. Indeed the friend was unable to say when defendant arrived at her home.

Judge Ravin made detailed credibility findings. He found defendant's mother "largely credible," defendant's trial counsel credible, and the friend incredible. Most importantly, the judge found that

> [defendant] has failed to make out a prima facie case of ineffective assistance of counsel based on [trial counsel's] failure to call [the friend and mother] as alibi witnesses. . . . [Trial counsel] testified that he does not recall being approached by either [the friend or mother] about proffering their testimony as alibi witnesses on [defendant's] behalf. He testified that he had a general discussion about alibi witnesses with [defendant] and explained to him the risks of pursuing that strategy. On the basis of [trial counsel's] testimony, it does not appear that [trial counsel] made the strategic decision not to call [the mother and friend] as alibi witnesses; he claims, instead, that he was not aware that these witnesses could be presented as alibi witnesses.

Judge Ravin also concluded that even if defendant had shown prong one of Strickland,[1] he failed to demonstrate a prima facie case on prong two.

We reject defendant's contention that he was entitled to an evidentiary hearing on the remaining points of purported ineffectiveness. A defendant is entitled to an evidentiary hearing only when he or she "has presented a prima facie [case] in support of [PCR]," meaning that "the defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89, 158 (1997) (first alteration in original) (quoting State v. Preciose, 129 N.J. 451, 462-63). Defendant fails to demonstrate a reasonable likelihood of success on the merits for his remaining PCR claims, and thus he is not entitled to an additional evidentiary hearing.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION

[1] Strickland v. Washington, 466 U.S. 668 (1984).