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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-0906-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MUSADDIQ A. AHMAD, a/k/a
MUSADDIQ A. MAYS SADEK,

Defendant-Appellant.

Submitted February 12, 2018 - Decided April 2, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
14-03-0356.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kevin G. Byrnes, Designated
Counsel, on the brief).

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Erin M. Campbell,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Musaddiq A. Ahmad appeals from the dismissal of
his petition for post-conviction relief (PCR), contending he
established a prima facie case of ineffective assistance of

counsel requiring an evidentiary hearing. Because the trial judge correctly determined the evidence insufficient to sustain defendant's burden, we affirm.

Although the Hudson County Prosecutor's Office Narcotics Task Force had been investigating defendant for over a month for selling ecstasy in Jersey City, including making four controlled buys from defendant through a confidential informant, he was not arrested for dealing drugs. Instead, defendant was arrested on a public street on an outstanding child support warrant discovered by investigators conducting an NCIC inquiry in the course of their narcotics investigation. A search incident to defendant's arrest revealed drugs, and he was indicted on possessory drug charges.

Defendant eventually pled guilty to second-degree possession of a controlled dangerous substance with intent to distribute, N.J.S.A. 2C:35-5.3a(a) and N.J.S.A. 2C:35-5.3a(b); third-degree possession of a CDS with the intent to distribute within 1000 feet of a school, N.J.S.A. 2C:35-7; and to an apparently related bail jumping offense charged in a separate indictment.¹ The judge merged the two drug counts and sentenced

¹ Neither the indictment nor judgment of conviction for this charge are included in the record on appeal. The only information we have is drawn from the parties' briefs.

defendant to a five-year prison term with a three-year period of parole ineligibility and a concurrent three-year term on the bail jumping conviction. His direct appeal was dismissed at his request.

Defendant filed a timely petition for post-conviction relief based on claims of ineffective assistance of plea counsel. Defendant claimed his counsel failed to investigate potential defenses, including entrapment, or to move to suppress the drugs recovered from his person or to force the State to disclose the identity of the confidential informant. After hearing the argument of counsel, the judge issued a written opinion denying the petition on the basis that defendant had failed to establish a prima facie claim for relief. See State v. Preciose, 129 N.J. 451, 462-64 (1992).

The judge found no support in the record for an entrapment defense as defendant was arrested on a child support warrant having nothing whatsoever to do with his drug sales to the confidential informant. He similarly rejected defendant's claim his counsel was ineffective for failure to make a motion to unmask the informant, finding the informant's contribution too marginal to have required disclosure of his identity by the State. See State v. Milligan, 71 N.J. 373, 387 (1976).

The judge also rejected defendant's claim the police improperly used the child support warrant "as a bootstrap mechanism to obtain evidence" to sustain the criminal prosecution. State v. Dispoto, 189 N.J. 108, 123 (2007). He explained that unlike in Dispoto, where the State Police obtained evidence as a result of an invalid domestic violence search warrant, which they used as a "bootstrap" for a criminal search warrant, the warrant on which the Hudson County officers relied to arrest defendant was valid and outstanding. Because the officers "did not subvert the process of obtaining a criminal arrest warrant, nor use an invalid civil warrant in order to obtain evidence to establish probable cause," the judge found Dispoto inapposite and defendant's warrantless search incident to arrest valid under Chimel v. California, 395 U.S. 752, 768 (1969). He thus concluded a motion to suppress the drugs found in that search would have been unsuccessful.

On appeal, defendant presents the following arguments:

POINT I

THE DEFENDANT WAS DENIED THE RIGHT TO
EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AS
GUARANTEED BY THE SIXTH AMENDMENT TO THE
UNITED STATES CONSTITUTION AND ART. I, PAR.
10 OF THE NEW JERSEY CONSTITUTION.

- A. Trial Counsel Failed to
Investigate the Facts and Bring a
Meritful Defense.

1. Objectively Reasonable Counsel
Would Have Moved to Suppress
Evidence Because the Law
Requires Suppression.
 2. Objectively Reasonable Counsel
Would Have Proceeded with an
Entrapment Defense.
- B. Trial Counsel Failed to Move to
Disclose the Identity of the
Confidential Informant.
- C. The Cumulative effect of Counsel's
Deficiencies Resulted in an Unfair
Proceeding.

POINT II

THE DEFENDANT IS ENTITLED TO AN EVIDENTIARY
HEARING.

Having reviewed the record, we reject those arguments and
affirm the denial of defendant's petition substantially for the
reasons set forth in Judge Isabella's July 1, 2016 written
opinion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION