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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-0925-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAYMOND MARTIN,

Defendant-Appellant.

Submitted February 6, 2018 – Decided February 20, 2018

Before Judges Carroll and Leone.

On appeal from Superior Court of New Jersey,
Law Division, Somerset County, Indictment No.
05-06-0501.

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

Michael H. Robertson, Somerset County
Prosecutor, attorney for respondent (Lauren R.
Casale, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Raymond Martin appeals from the denial of his
petition for post-conviction relief (PCR) following an evidentiary

hearing. Defendant contends his trial counsel rendered ineffective assistance. We affirm.

In June 2005, a Somerset County grand jury returned Indictment No. 05-06-0501, charging defendant with third-degree distribution of cocaine, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3) (counts one to three); and third-degree resisting arrest, N.J.S.A. 2C:29-2(a) (count four). Defendant was tried before a jury. He was convicted on all counts and sentenced to a three-year prison term.

On direct appeal, we determined "that the trial court [had] mistakenly exercised its discretion when it insisted at 4:00 p.m. that defendant could not ponder overnight whether to take the stand." State v. Martin, No. A-4341-07 (App. Div. April 29, 2009) (slip op. at 6-7). Consequently, we reversed defendant's convictions and remanded for a new trial. Id. at 8.

Defendant was again tried before a jury. During deliberations, the jury indicated it was deadlocked, and the judge declared a mistrial.

A third jury trial followed, before the same judge who presided at the earlier trials. Defendant was represented by the same attorney who represented him during the second trial. The jury found defendant guilty on all counts, and the judge again imposed a three-year prison term.

On direct appeal, defendant raised the following arguments:

POINT I

THE TRIAL JUDGE'S CONDUCT DURING JURY SELECTION AND THE TRIAL DEPRIVED [DEFENDANT] OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL. (Partially Raised Below)

POINT II

THE TRIAL JUDGE'S IMPROPER DISMISSAL AND TREATMENT OF A HISPANIC-AMERICAN POTENTIAL JUROR CONTAMINATED THE IMPANELED JURY WITH RACIAL BIAS, UNFAIRLY DEPRIVED THAT JUROR OF HIS RIGHT TO SERVE, AND DEPRIVED [DEFENDANT] OF HIS RIGHT TO AN IMPARTIAL JURY. (Not Raised Below)

POINT III

SEVERAL OF THE TRIAL JUDGE'S EVIDENTIARY RULINGS VIOLATED THE RULES OF EVIDENCE AND THEREBY DEPRIVED [DEFENDANT] OF HIS SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES ON CROSS-EXAMINATION.

POINT IV

THE TRIAL JUDGE ERRED IN STATING THAT EVIDENCE OF FLIGHT MUST BE USED BY THE JURY TO INFER CONSCIOUSNESS OF GUILT AND IN FAILING TO INCORPORATE [DEFENDANT'S] EXPLANATION OF HIS ACTIONS INTO THE CHARGE. (Not Raised Below)

POINT V

THE TRIAL JUDGE ERRED IN ADMITTING THE T-MOBILE PHONE RECORDS PURSUANT TO THE N.J.R.E. 803(c)(6) EXCEPTION TO [THE RULE AGAINST HEARSAY].

POINT VI

THE TRIAL JUDGE'S DECISION TO ALLOW THE JURY TO TAKE THE AUDIO RECORDINGS OF THE UNDERCOVER OFFICER'S CALLS ARRANGING THE CDS PURCHASES INTO THE JURY ROOM UNSUPERVISED, CONSTITUTES REVERSIBLE ERROR. (Not Raised Below)

[State v. Martin, No. A-2693-12 (App. Div. March 31, 2015) (slip op. at 5-6).]

We rejected each of defendant's arguments, and affirmed his convictions. Id. at 22.¹ Defendant's petition for certification was thereafter denied by the Supreme Court. State v. Martin, 222 N.J. 18 (2015).

Defendant, represented by counsel, filed a timely PCR petition. Defendant contended he received ineffective assistance of counsel at trial because his attorney (1) failed to move to recuse the trial judge; (2) failed to object to the trial judge's improper dismissal and disparate treatment of a Hispanic potential juror; (3) failed to seek a mistrial or limiting instruction after the trial judge asked a State's witness his race; (4) failed to object to the flight charge; (5) failed to object to the jury being allowed to take the audio recordings of the undercover officer's calls arranging drug purchases with defendant into the jury room; (6) failed to object to the undercover officer's testimony about the existence of a confidential informant who was in the vehicle he used during the first drug buy; (7) failed to advise defendant of his right to seek immigration counsel; (8) failed to investigate the existence of surveillance cameras at

¹ We need not recite the testimony from the trial, which is extensively detailed in our prior opinion.

Walmart and Rhythms during the time of the undercover drug buys; and (9) failed to have the recording of the phone conversations with the undercover officer analyzed.

Judge Kathy C. Qasim, who was not the trial judge, ordered an evidentiary hearing on the petition. Defendant was the sole witness to testify at the June 14, 2016 hearing. After the summations of PCR counsel and the prosecutor, Judge Qasim set forth her findings and conclusions in a comprehensive thirty-three page written opinion dated July 11, 2016. The judge cited the appropriate two-prong test regarding evaluation of a claim of ineffective assistance of counsel as enunciated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987).²

Judge Qasim initially addressed defendant's first five claims of ineffective assistance of counsel, enumerated above. The judge cited our earlier opinion, and concluded these claims were procedurally barred under Rule 3:22-5³ because they were rooted in similar claims defendant raised, and we rejected, on direct appeal.

² The Strickland test requires a defendant to show that the performance of his attorney was deficient, and counsel's deficient performance prejudiced the defense. Strickland, 466 U.S. at 687.

³ Rule 3:22-5 provides that "[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction

The judge then carefully analyzed each of defendant's remaining claims of ineffective assistance, enumerated six through nine above. After reviewing the trial record, and the evidence and testimony presented at the PCR hearing, Judge Qasim found defendant's claims failed both individually and cumulatively to satisfy the standard for relief set forth in Strickland.

In his present appeal, defendant raises the following arguments:

POINT ONE

THE TRIAL COURT IMPROPERLY FOUND DEFENDANT'S CLAIMS TO BE PROCEDURALLY BARRED.

POINT TWO

THE TRIAL JUDGE IMPROPERLY DENIED DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF.


- A. Recusal of the Trial Judge
- B. Defendant's Immigration Consequences
- C. Trial Counsel's Investigation
- D. Counsel's Conduct of the Trial
- E. Cumulative Error

proceeding. . . ." Rule 3:22-5 thus bars from further litigation through a PCR petition claims that were actually considered and decided in a prior proceeding. State v. Marshall, 173 N.J. 343, 350-53 (2002); State v. McQuaid, 147 N.J. 464, 484 (1997).

Our canvass of the record reveals that Judge Qasim's analysis of these issues was comprehensive and correct, and we discern no basis to disturb her findings and conclusions. We therefore affirm substantially for the reasons expressed by Judge Qasim in her thorough and well-reasoned 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