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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-1408-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MALIK YARRELL,

Defendant-Appellant.

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Submitted January 23, 2018 – Decided February 7, 2018

Before Judges Carroll and Leone.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Indictment No. 00-  
08-2147.

Malik Yarrell, appellant pro se.

Robert D. Laurino, Acting Essex County  
Prosecutor, attorney for respondent (Camila  
Garces, Special Deputy Attorney General/  
Acting Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Malik Yarrell appeals from the September 30, 2016  
denial of his motion to compel discovery pursuant to Rule 3:13-3.  
The motion was filed more than fifteen years after defendant pled  
guilty on multiple indictments. We affirm.

We briefly recount the lengthy procedural history of this case. On December 18, 2000, defendant pled guilty to all charges in three indictments charging him with conspiracy to commit murder, purposeful or knowing murder, and weapons offenses. Pursuant to the plea agreement, defendant consented to testify truthfully against his co-defendants and the State agreed to dismiss a fourth indictment and recommend an aggregate sentence of thirty years in prison with a thirty-year period of parole ineligibility. On January 17, 2003, the sentencing judge found that defendant breached his plea agreement by refusing to testify against two of his co-defendants, and sentenced defendant to two consecutive terms of life imprisonment with thirty-year periods of parole ineligibility.

Defendant filed a direct appeal from his convictions and sentence. In an unpublished opinion, we affirmed the convictions and sentence in part, but remanded for the entry of corrected judgments of conviction merging the convictions for possession of a weapon for an unlawful purpose with the murder convictions, and for separate sentencing on the convictions for unlawful possession of weapons without a permit. State v. Yarrell, No. A-0691-03 (App. Div. Oct. 20, 2005). The Supreme Court denied defendant's petition for certification. State v. Yarrell, 186 N.J. 603 (2006).

Defendant filed a petition for post-conviction relief (PCR) in June 2006, alleging ineffective assistance of counsel. The PCR judge denied the petition, and we affirmed. State v. Yarrell, No. A-3892-06 (App. Div. Apr. 9, 2009), certif. denied, 200 N.J. 207 (2009).

Defendant filed a federal habeas petition on October 12, 2010. On February 24, 2011, the District Court issued an Opinion and Order directing defendant to show cause why his habeas petition should not be dismissed as time barred under 28 U.S.C. §2244(d). Yarrell v. Bartkowski, No. 10-5337, 2011 U.S. Dist. LEXIS 18146 (D.N.J. Feb. 24, 2011). Defendant filed his response, and on October 18, 2011, the District Court dismissed the petition as time-barred. Yarrell v. Bartkowski, No. 10-5337, 2011 U.S. Dist. LEXIS 119913 (D.N.J. Oct 18, 2011). The District Court thereafter denied defendant's motion for reconsideration. Yarrell v. Bartkowski, No. 10-5337, 2012 U.S. Dist. LEXIS 63785 (D.N.J. May 7, 2012).

In July 2016, defendant filed a motion in the trial court to compel discovery of a written statement purportedly given by co-defendant Jovar Persha. In his supporting certification, defendant averred that "during the course of . . . trial it was revealed via Jovar Persha's testimony that [he] made an inculpatory statement that the State never provided to the defense in the

initial discovery phase." Defendant contended "this inculpatory statement was pre-indictment discovery that was supposed to have been turned over pursuant to [Rule] 3:13-[3]."

Judge Martin Cronin denied the motion without prejudice in a letter opinion dated September 30, 2016. The judge reasoned:

Generally, the discovery obligations outlined in the [New Jersey] Court Rules do not extend past conviction. See State v. Marshall, 148 N.J. 89, 268 (1997); see also R. 3:13-2 to -4. "Nonetheless, . . . even in the absence of authorization in the form of a Court Rule or constitutional mandate, New Jersey courts have the inherent power to order discovery when justice so requires." Marshall, 148 N.J. at 269 (internal quotation omitted).

While recognizing the authority of the courts to order discovery post-conviction, the New Jersey Supreme Court anticipated that "only in the unusual case" will a court invoke such power. Id. at 270. The Court went on to note that a post-conviction "discovery order should be appropriately narrow and limited," as there "is no post-conviction right to 'fish' through official files for belated grounds of attack on the judgment, or to confirm mere speculation or hope that a basis for collateral relief may exist." Id. (internal quotations omitted). Thus, where a convicted defendant presents the "court with good cause to order the State to supply the defendant with discovery that is relevant to the defendant's case and not privileged, the court has the discretionary authority to grant relief." Id. The defendant bears the burden of persuading the court to exercise its judicial discretion.

Applying these principles, Judge Cronin concluded defendant failed to show good cause why the court should order production of Persha's purported inculpatory written statement. The judge found it "unclear" how the statement would "negate [defendant's] guilty plea, lead to a cognizable PCR claim, or have any bearing on [defendant's] constitutional rights." Instead, citing Marshall, 148 N.J. at 270, the judge found defendant's motion was simply an effort to "confirm mere speculation or hope that a basis for collateral relief may exist." This appeal followed.

On appeal, defendant raises the following contentions:

POINT I

[THE] TRIAL COURT'S DENIAL OF [THE] MOTION TO COMPEL DISCOVERY WAS CONTRARY TO DISCOVERY RULE 3:13-3(c)(7).

POINT II

IN THE INTEREST OF JUSTICE [DEFENDANT'S] MOTION TO COMPEL DISCOVERY SHOULD HAVE BEEN GRANTED.

We have considered these contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Cronin in his cogent 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