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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-2881-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD STROBEL,

Defendant-Appellant.

Argued January 30, 2018 – Decided February 7, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Municipal Appeal
No. 2016-045.

Richard D. Huxford argued the cause for
appellant (Triarsi, Betancourt, Wukovits &
Dugan, LLC, attorneys; Steven F. Wukovits and
Howard P. Lesnik, of counsel and on the
brief).

Stephen A. Pogany, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued
the cause for respondent (Robert D. Laurino,
Acting Essex County Prosecutor, attorney;
Stephen A. Pogany, of counsel and on the
brief).

PER CURIAM

Defendant was convicted of driving while intoxicated (DWI), N.J.S.A. 39:4-50, in Irvington in May 1985, and again in Union in October 2014. He was represented by counsel in the later 2014 proceeding, but his attorney did not assert a Laurick defense¹ because the 1985 Irvington conviction occurred more than twenty years earlier and, as a consequence, the 2014 Union conviction was correctly treated as a first offense. Defendant now faces a third DWI charge in Summit.

In April 2016, defendant filed a motion in Irvington, seeking post-conviction relief based on his contentions that, during the 1985 proceedings, he was unemployed, uncounseled, and unaware of his right to counsel. Defendant alleged in his supporting certification that "[t]o the best of his recollection, he does not believe that he was drunk on the night of the arrest, and recalls having had one or two beers." In reply to requests for further information, the Irvington Municipal Court advised that all documents relating to the matter were destroyed and no tape or transcript of the 1985 proceedings was available. By way of a brief written decision, the municipal judge denied defendant's motion on September 27, 2016; the judge relied on the passage of

¹ The Court held in State v. Laurick, 120 N.J. 1, 16 (1990), that "in the case of repeat DWI convictions based on uncounseled prior convictions, the actual period of incarceration imposed may not exceed that for any counseled DWI convictions."

time, the failure of counsel in the 2014 Union matter to assert a Laurick defense, and the lack of evidence of defendant's indigency in 1985. The municipal judge viewed defendant's supporting certification as "self-serving," and "not credible" on its face.

Defendant appealed to the Law Division. The judge, after hearing counsel's argument, determined that the PCR motion was not time-barred even though thirty-one years had elapsed since the Irvington conviction. In reaching this conclusion, the judge held a Laurick defense was "of no moment" until defendant faced the 2016 Summit DWI charge, quoting State v. Bringhurst, 401 N.J. Super. 421, 432 (App. Div. 2008). In explaining, the judge correctly recognized that, because the 1984 Irvington conviction occurred more than twenty years earlier, defendant was entitled to be treated as a first-time offender in the 2014 Union matter. It was only when the 2016 Summit charge followed so soon after the Union conviction that defendant felt an acute need for a Laurick defense.

The judge also held that defendant's claim that he was unemployed, uncounseled, and unaware of the right to counsel during the 1984 Irvington matter was established through application of the preponderance standard.

But the judge denied post-conviction relief. According to the judge, defendant "failed to submit proof with specificity of

fact[s] sufficient to establish a prima face case of entitlement to Laurick relief[] because [he] failed to demonstrate by a preponderance of the evidence a defense that would 'in all likelihood' have changed the outcome of his Irvington conviction," citing State v. Shadewald, 400 N.J. Super. 350, 354-55 (App. Div. 2007). As the judge noted, defendant only testified, "[t]o the best of his recollection," that he did not "believe . . . he was drunk" and "recall[ed] . . . he only had one or two beers." The judge found "hardly sufficient" what she referred to as defendant's "unsubstantiated recollection of non-intoxication." In light of this determination, and in consideration of the undeniable prejudice to the State resulting from the significant passage of time, the judge denied defendant's application.

We affirm substantially for the reasons set forth by Judge Ramona A. Santiago in her thorough and well-reasoned written decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION