

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-3198-15T4
A-4726-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EMMANUEL PIERREVIL,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMEEL ROLLINS,

Defendant-Appellant.

Submitted November 6, 2017 – Decided February 22, 2018

Before Judges Messano and Accurso.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 09-
01-0262.

Joseph E. Krakora, Public Defender, attorney for appellant Emmanuel Pierrevil (Kimmo Z. H. Abbasi, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant Jameel Rollins (John A. Albright, Designated Counsel, on the brief).

Robert D. Laurino, Acting Essex County Prosecutor, attorney for respondent in A-3198-15 (LeeAnn Cunningham, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

Robert D. Laurino, Acting Essex County Prosecutor, attorney for respondent in A-4726-15 (Camila Garces, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Co-defendants Emmanuel Pierrevil and Jameel Rollins were tried together and convicted by a jury of second-degree conspiracy to commit carjacking, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-2; second-degree conspiracy to commit aggravated assault, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:12-1b(1); second-degree eluding, N.J.S.A. 2C:29-2b; two counts of second-degree unlawful possession of a firearm, N.J.S.A. 2C:39-5b; two counts of second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4a; two counts of third-degree receiving stolen property, N.J.S.A. 2C:20-7; and two counts of third-degree resisting arrest by creating a risk of physical injury, N.J.S.A. 2C:29-2a(3)(b). State v. Rollins, No. A-2468-11, A-2492-11 (App. Div. Aug. 19, 2014) (slip op. at 2-3).

On direct appeal, we vacated Rollins' conviction as to one count charging him alone with aggravated assault, id. at 30-31, and otherwise affirmed his and Pierrevil's conviction and sentence. Id. at 36. The Supreme Court denied each defendant's petition for certification. 220 N.J. 573 (2015).

Defendants filed separate petitions seeking post-conviction relief (PCR). The PCR judge, who was also the trial judge, denied both in written opinions accompanied by conforming orders. These appeals, which we now consolidate for purposes of issuing a single opinion, followed.

A-3198-15

Pierrevil's pro se petition alleged trial counsel provided ineffective assistance (IAC) by not objecting to the judge's failure to hold a formal charge conference on the record.¹ The court appointed PCR counsel, and Pierrevil filed a supplemental certification, asserting that despite a "deep desire to testify," trial counsel advised against it, and defendant did not understand he could "overrule trial counsel's advice." In his brief, PCR

¹ At trial, the judge met with the attorneys informally to "go over the charge," before outlining the intended charge on the record and incorporating some specific language requested by Rollins' counsel. Rollins, slip op. at 23-24. There were no objections from either defense counsel, and Pierrevil raised no substantive objection to the charge on direct appeal. Id. at 25-26.

counsel also argued that trial counsel was ineffective for failing to move to dismiss the indictment, defendant was denied his right to cross-examine the State's witnesses and appellate counsel provided ineffective assistance.

The judge rejected Pierrevil's IAC claims. After setting out the Strickland/Fritz² standard, the judge concluded trial counsel was not deficient for failing to seek dismissal of the indictment because the evidence the State allegedly failed to produce before the grand jury "neither directly negate[d] guilt nor [was it] clearly exculpatory." See State v. Hogan, 144 N.J. 216, 237 (1996). The judge also determined the trial record belied defendant's claim that defense counsel coerced or misled him into not testifying, and defense counsel's strategic decision not to cross-examine A.M., one of the victims, was understandable, because A.M. did not identify either defendant at trial.³

² Strickland v. Washington, 466 U.S. 668 (1984); State v. Fritz, 105 N.J. 42 (1987). A defendant must show "'that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment.'" Fritz, 105 N.J. at 52 (quoting Strickland, 466 U.S. at 687). Second, a defendant must prove that he suffered prejudice due to counsel's deficient performance. Strickland, 466 U.S. at 691-92.

³ A.M. had previously identified both defendants from a photo array; however, in the grand jury and at trial, A.M. did not
(footnote continued next page)

The judge noted we had rejected defendant's claim that the manner by which the judge conducted the charge conference violated defendant's due process rights. See Rollins, slip op. at 24-25 (disapproving "the practice actually employed" but finding no prejudice). Therefore, trial counsel's performance in failing to object was not deficient. Lastly, the judge rejected Pierrevil's claim that appellate counsel provided ineffective assistance because none of the arguments now raised would have succeeded on appeal. See State v. Echols, 199 N.J. 344, 361 (2009).

Before us, Pierrevil raises the following arguments:

POINT ONE

THE PCR COURT ERRED WHEN IT DETERMINED THAT THE CLAIMS CONTAINED IN THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WERE PROCEDURALLY BARRED.

POINT TWO

THE PCR COURT ERRED IN DENYING THE DEFENDANT AN EVIDENTIARY HEARING DESPITE THE FACT THAT HE DEMONSTRATED A PRIMA FACIE CASE OF THE INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL.

A. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO MOVE TO DISMISS THE INDICTMENTS.

(footnote continued)

identify either defendant and claimed both wore ski masks during the incident. Rollins, slip op. at 7. Rollins' trial counsel also posed no questions to A.M.

B. THE DEFENDANT WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO TESTIFY ON HIS OWN BEHALF.

C. THE DEFENDANT WAS DEPRIVED OF HIS RIGHT TO CROSS-EXAMINE THE STATE'S WITNESSES.

D. THE DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHT OF DUE PROCESS BY BEING IMPROPERLY EXCLUDED FROM THE CHARGE CONFERENCE.

E. THE DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

We affirm, substantially for the reasons expressed by the judge in his comprehensive written decision. We only add the following.

Although the judge cited Rule 3:22-4(a)⁴ as procedurally barring defendant's PCR claims, he nonetheless addressed the

⁴ Rule 3:22-4(a) provides:

Any ground for relief not raised in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of this rule, or in any appeal taken in any such proceedings is barred from assertion in a proceeding under this rule unless the court on motion or at the hearing finds:

(1) that the ground for relief not previously asserted could not reasonably have been raised in any prior proceeding; or

(footnote continued next page)

merits of the petition. Because we affirm the order denying defendant's PCR petition, we need not address whether the claims were procedurally barred. See State v. Scott, 229 N.J. 469, 479 (2017) (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)) ("It is a long-standing principle underlying appellate review that 'appeals are taken from orders and judgments and not from opinions . . . or reasons given for the ultimate conclusion.'").

A-4726-15

Rollins asserted a number of specific allegations supporting his IAC claim in his pro se PCR petition. After the court appointed PCR counsel, Rollins filed an amended petition relying upon IAC arguments raised in counsel's brief, in particular, that trial counsel failed to adequately inform Rollins of the pre-trial plea offer and potential sentencing exposure. Defendant also argued

(footnote continued)

(2) that enforcement of the bar to preclude claims, including one for ineffective assistance of counsel, would result in fundamental injustice; or

(3) that denial of relief would be contrary to a new rule of constitutional law under either the Constitution of the United States or the State of New Jersey.

that trial counsel failed to cross-examine A.M., particularly as to A.M.'s alleged cooperation with the State.⁵

The judge denied the petition for reasons stated in a comprehensive written decision. This appeal followed.

Before us, Rollins argues:

POINT I

THE LOWER COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING BECAUSE HE ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR, AMONG OTHER THINGS, FAILING TO CROSS-EXAMINE THE STATE'S KEY WITNESS, [A.M.], FAILING TO INVESTIGATE [A.M.]'S POTENTIAL COOPERATION WITH THE STATE, AND FAILING TO ADVISE DEFENDANT OF HIS SENTENCING EXPOSURE DURING THE PLEA BARGAINING PROCESS.

A. NO EXPLANATION APPEARS IN THE RECORD FOR TRIAL COUNSEL'S FAILURE TO CROSS-EXAMINE [A.M.].

B. NO EXPLANATION APPEARS IN THE RECORD FOR TRIAL COUNSEL'S FAILURE TO INVESTIGATE [A.M.]'S POTENTIAL COOPERATION WITH THE STATE, NOR DOES IT APPEAR FROM THE LOWER COURT'S DECISION THAT THE STATE EVEN DENIED THIS ALLEGATION.

C. THE PRETRIAL MEMORANDUM WAS AN INSUFFICIENT BASIS TO DISPENSE WITH DEFENDANT'S CLAIM THAT TRIAL COUNSEL DID NOT ADEQUATELY ADVISE HIM OF HIS SENTENCING EXPOSURE SO THAT HE COULD MAKE AN INFORMED

⁵ Defendant raised other issues before the PCR judge that are not presented on appeal.

DECISION WHETHER TO ACCEPT A
FAVORABLE PLEA OFFER.

Again, we affirm substantially for the reasons expressed by the judge.

The judge characterized trial counsel's decision not to cross-examine A.M. as a strategic one, to which the court owed "'extreme deference.'" Fritz, 105 N.J. at 52. As already noted, because A.M. could not identify either defendant at trial, it made no sense to cross-examine him about his prior out-of-court identification. As the judge noted, defense counsel wisely avoided the risk of "eliciting a positive . . . identification."

The judge also noted that Rollins assumed A.M. cooperated with law enforcement because A.M. was previously convicted of drug offenses when he testified at trial. However, Rollins had no "specific facts whatsoever showing that [A.M.] ever cooperated with law enforcement." At trial, the prosecutor asked A.M. about his conviction, and A.M. denied the State offered any incentive in return for his testimony. Rollins asserts no facts to the contrary.


The judge also rejected defendant's claim that trial counsel failed to adequately advise him of his sentence exposure, thereby negatively influencing defendant's decision to reject a more favorable plea offer. The judge noted defendant executed a

pretrial memorandum that clearly stated he was eligible for an extended term.

Defendant contends the pre-trial memorandum was "an insufficient basis" upon which to deny his IAC claim. However, the pre-trial memorandum directly negated defendant's assertions in his PCR petition that he was "never informed . . . he was subject to an extended term of imprisonment," and that "the failure to inform [defendant] of the same during pre-trial conference removed what would have been the last opportunity to enter a plea agreement." Accordingly, there was no need to hold an evidentiary hearing.

Affirmed in A-3198-15; affirmed in A-4726-15.

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


CLERK OF THE APPELLATE DIVISION