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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-3926-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LARRY MARTIN,

Defendant-Appellant.

Argued November 29, 2017 — Decided January 10, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Municipal Appeal
No. 3-12.

Celeste Dudley-Smith argued the cause for
appellant.

Stephanie Davis-Elson, Assistant Prosecutor,
argued the cause for respondent (Esther
Suarez, Hudson County Prosecutor, attorney;
Stephanie Davis-Elson, on the brief).

PER CURIAM

Defendant Larry Martin appeals from the April 1, 2016 order
of the Superior Court, Law Division, finding him guilty of simple
assault in violation of N.J.S.A. 2C:12-1(a). We have previously

reviewed defendant's arguments concerning the simple assault offense and found them to be without merit. We remain unpersuaded.

A thorough recitation of the facts is set forth in our first opinion regarding this matter, State v. Martin, No. A-3777-12 (App. Div. Apr. 9, 2015), and we rely on those facts for this review. In 2011, defendant was convicted in municipal court, after trial, of simple assault, N.J.S.A. 2C:12-1(a), and resisting arrest, eluding officer, N.J.S.A. 2C:29-2(a)(1)(a). The municipal court judge did not make any findings as to an additional charge of obstructing administration of law or other governmental function, N.J.S.A. 2C:29-1(a). The judgment of conviction, however, listed a finding of guilty on the obstruction charge but did not indicate a sentence.

Following an appeal to the Law Division and a trial de novo, the judge found defendant guilty of simple assault and obstructing administration of law or other governmental function but not guilty of resisting arrest. The judge found the testifying investigating officers to be credible and found defendant's testimony to be "incredible." As to the simple assault charge, the judge stated: "[T]he facts establish beyond a reasonable doubt that . . . [d]efendant did assault the officers by pulling Officer Cook by the shirt and dragging him off his feet and by hitting Officer

Moschella. His conduct as to each officer was sufficient to cause bodily injury and was purposeful."

On appeal to this court, defendant argued that the judge erred in finding him guilty on the simple assault and obstruction charges. We disagreed, finding "ample support" in the record for the Law Division judge's findings. Defendant petitioned for certification to the Supreme Court, asserting for the first time that because the municipal court judge did not find him guilty of the obstruction charge, it was error for the Law Division judge to make that finding. Citing to State v. De Bonis, 58 N.J. 182 (1971), defendant argued that, in a municipal appeal, the Law Division may not impose a greater penalty than that imposed by the municipal court. The petition was granted. State v. Martin, 222 N.J. 308 (2015). The Court "summarily remanded to the Superior Court, Appellate Division, to reconsider its judgment in light of the arguments raised by defendant for the first time in the petition, including the application of State v. De Bonis, 58 N.J. 182 (1971)." Ibid.

On remand, we noted the limited scope of the Court's order directing our consideration solely to the De Bonis argument asserted for the first time in the petition for certification. State v. Martin, No. A-3777-12 (App. Div. Mar. 30, 2016) (slip op. at 1-2). We concluded it was error for the Law Division judge to

subject defendant to a greater sentence on his appeal than initially imposed in the municipal court, and vacated the obstruction conviction. Id. at 6-7. Having complied with the remand order, we stated: "The Supreme Court's remand was directed solely to the De Bonis argument. Thus our prior decision affirming the simple assault conviction remains." Id. at 7.


On April 1, 2016, the Law Division entered an order finding defendant guilty of simple assault. Defendant now appeals from that order, arguing that the trial court erred in affirming the conviction for simple assault as it was not supported by the record.

The Supreme Court only remanded for a review of the De Bonis issue raised for the first time in defendant's petition for certification. The Court declined to consider the simple assault conviction. However, defendant attempts to reargue the merits of the simple assault conviction, arguments which we previously considered and found lacking. Once the Court declined to consider the simple assault conviction, "the Appellate Division judgment became final and the law of the case." Khoudary v. Salem Cty. Bd. of Soc. Servs., 281 N.J. Super. 571, 575 (App. Div. 1995). Because defendant is "precluded from relitigating any issues on the remand other than the specific purpose of the remand," he does not have a right to argue the merits of his simple assault conviction a

second time. Ibid. As a result, the appeal is dismissed. R.
2:8-2.

Appeal is dismissed.

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


CLERK OF THE APPELLATE DIVISION