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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-3972-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RODOLFO GODINEZ, a/k/a RODOLFO
GODIEZ and RODOLFO GOMEZ,

Defendant-Appellant.

Submitted November 28, 2017 – Decided January 9, 2018

Before Judges Reisner, Hoffman, and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No.
08-09-2688.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kisha M. Hebbon, Designated
Counsel, of counsel and on the brief).

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Frank J.
Ducoat, Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the
brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

This appeal arises out of the 2007 robberies, murders, and attempted murder of four young adults. A jury convicted defendant Rodolfo Godinez of the three murders, the attempted murder, and related offenses. He appeals from a March 1, 2016 order denying his motion for a new trial, and a March 2, 2016 order denying his petition for post-conviction relief (PCR). The PCR court held an evidentiary hearing on both applications. We affirm substantially for the reasons explained in the thorough written opinions issued by Judge Michael L. Ravin.

I.

In August 2007, a brother and sister and two close friends were hanging out on a warm summer night at a school playground in Newark. Six gang members encountered the four victims and, without provocation, the gang robbed, assaulted, and murdered three of the victims. The fourth victim was robbed, sexually assaulted, slashed with a machete, and shot. That fourth victim, a young woman, survived her assault and eventually gave testimony at defendant's trial.

The ensuing investigation revealed evidence that defendant was a senior member of a gang and that, at his direction, he and five co-defendants committed the robberies, assaults, murders, and attempted murder. That evidence included DNA from beer bottles

and cigarette butts linking defendant to the scene of the crimes, a statement from defendant during which he admitted his involvement with the robberies and murders, and a statement from a county jail inmate to whom defendant admitted that he ordered the murders.¹

Defendant was the first of the six gang members tried for the robberies, assaults, murders, and attempted murder. A jury convicted defendant of three counts of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); first-degree attempted murder, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3(a)(1) and (2); four counts of first-degree robbery, N.J.S.A. 2C:15-1; three counts of first-degree felony murder, N.J.S.A. 2C:11-3(a)(3); and six related conspiracy and weapons crimes.

Defendant moved for a new trial, which the trial judge, Judge Ravin, denied. Defendant was then sentenced to three consecutive terms of life in prison for the murder convictions and a consecutive term of twenty years in prison for the attempted murder conviction. Defendant will be ineligible for parole for over 200 years.

¹ The facts and evidence against defendant are detailed in our unpublished opinion affirming his convictions and sentences on direct appeal. State v. Godinez, No. A-6205-09 (App. Div. Apr. 2, 2014), certif. denied, 220 N.J. 40 (2014). Accordingly, we have only summarized some of the facts and evidence in this opinion.

As previously noted, defendant filed a direct appeal challenging his convictions and sentences. We rejected defendant's arguments and affirmed his convictions and sentences.

In 2015, defendant filed a self-represented petition for PCR. He was assigned counsel. Defendant also filed a motion for a new trial, contending that there was newly discovered evidence consisting of an exculpatory statement from co-defendant Melvin Jovel.

The State consented to an evidentiary hearing and Judge Ravin granted the hearing to address both defendant's motion for a new trial and his PCR petition. At the hearing, Jovel and defendant's trial counsel testified.

Shortly after the murders in 2007, Jovel gave a detailed statement in which he told the police that defendant was the leader and gave the directions on the night of the crimes. Thereafter, Jovel pled guilty to the murders and attempted murder. He was sentenced to an aggregate prison term of over 200 years. At his sentencing, Jovel suggested that defendant might not have been responsible for the crimes. In 2015, he provided PCR counsel with a certification disavowing his 2007 statement, and asserting that defendant had nothing to do with the crimes that occurred on August 4, 2007.

At the evidentiary hearing, Jovel testified that he was eighteen years old at the time of the crimes and younger than most of his co-defendants, including defendant. Jovel denied that he or any of his co-defendants were gang members, but acknowledged that defendant was present in the school yard when the robberies and murders took place. He stated, however, that he alone was responsible for the shootings. Indeed, he testified that he acted alone and that defendant tried to stop him from committing the murders. He also contended that the statement he gave in 2007 implicating defendant was a lie.

Trial counsel for defendant testified that defendant told him before trial that Jovel might be prepared to exculpate him. When trial counsel tried to contact Jovel, however, Jovel's counsel did not give him permission to speak with Jovel.

Trial counsel also testified about his representation of defendant at trial. Specifically, counsel explained his forty-one years of experience as a criminal defense attorney, his efforts to deal with the public notoriety of defendant's case, his efforts to exclude and limit the gang-related evidence against defendant, his effort to address defendant's incriminating statement, his evaluation of issues that arose during jury deliberations, and his strategies and strategic decisions made at trial.

After hearing the testimony, Judge Ravin first addressed defendant's motion for a new trial in a detailed written opinion issued on March 1, 2016. The judge found Jovel's testimony not to be credible. Specifically, he analyzed how Jovel's testimony at the hearing was inconsistent and made no sense. He also pointed out that the testimony at the evidentiary hearing was totally inconsistent with the detailed statement Jovel gave in 2007 shortly after the murders. In that regard, Judge Ravin found that Jovel's testimony was so incredible that no reasonable jury would accept the exculpatory testimony and reject the "overwhelming evidence of [defendant's] guilt." In particular, Judge Ravin pointed out that the jury heard detailed evidence, including defendant's own incriminating statement and the admission that defendant made to a fellow jail inmate.

In a separate opinion issued on March 2, 2016, Judge Ravin analyzed defendant's PCR petition. Judge Ravin found the testimony of defendant's trial counsel credible. The judge then reviewed each of defendant's PCR arguments, including arguments made by PCR counsel and arguments made in defendant's pro se supplemental brief. Judge Ravin found no evidence to support defendant's claims that his trial counsel had been ineffective in (1) dealing with issues that arose during the jury's deliberations; (2) not requesting a separate jury instruction on the gang expert's

testimony; (3) failing to object to the prosecutor's comments concerning defendant's failure to "provide answers" and other indirect comments about defendant's decision to remain silent; (4) failing to adequately inquire into the destruction of notes prepared by law enforcement officers; (5) failing to object to the surviving victim's testimony about her sexual assault; (6) failing to request Judge Ravin's recusal; (7) failing to point out that an officer might have lied about where a machete was found; (8) failing to point out that the surviving victim allegedly lied in her testimony; and (9) failing to move to have Jovel's matter proceed first. Judge Ravin also analyzed and rejected defendant's arguments about the alleged ineffective assistance of his appellate counsel.

II.

On this appeal, defendant makes two arguments, which he articulates as follows:

POINT I: THE TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A NEW TRIAL BECAUSE MELVIN JOVEL'S WILLINGNESS TO TESTIFY ABOUT DEFENDANT'S INNOCENCE WARRANTED A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE.

POINT II: THE TRIAL COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST CONVICTION RELIEF BECAUSE THERE WAS SUFFICIENT EVIDENCE PRESENTED DURING THE EVIDENTIARY HEARING TO PROVE THAT DEFENDANT WAS DENIED THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL.

- A. The Prevailing Legal Principles Regarding Claims Of Ineffective Assistance Of Counsel, Evidentiary Hearings And Petitions For Post Conviction Relief
- B. Trial Counsel Rendered Ineffective Legal Representation By Virtue Of His Failure To Investigate Whether The High Publicity Of The Case Improperly Influenced The Jury.
- C. Trial Counsel Rendered Ineffective Legal Representation By Virtue Of His Failure To Request A Tailored Jury Charge With Regard To The Gang Expert's Testimony And To Request An Adverse Inference Jury Charge With Regard To The Police Officers' Destruction Of Interview Notes.
- D. Trial Counsel Rendered Ineffective Legal Representation By Virtue Of His Failure To Object To N.A.'s Testimony About Being Sexually Assaulted And To Object To The Prosecutor's Comments About Defendant Exercising His Right To Not Testify At Trial.
- E. Appellate Counsel Rendered Ineffective Legal Representation By Virtue Of His Failure To Raise The Ineffective Assistance Of Trial Counsel Claims And The Trial Court's Failure To State Its Reasons For Imposing A VC[C]B Penalty That Was Over The Minimum Amount.

Defendant also submitted a pro se supplemental brief in which he contends (1) he is entitled to a new trial, and (2) there are

exceptional circumstances showing that "THE WRONG MAN HAS BEEN CONVICTED."

Having reviewed the record and applicable law, we find no merit in any of defendant's arguments. Judge Ravin held an evidentiary hearing, made credibility findings, and analyzed, but rejected, each argument made by defendant. The credibility and factual findings made by Judge Ravin are amply supported by substantial credible evidence in the record. See State v. Nash, 212 N.J. 518, 540 (2013) (stating that an appellate court will uphold a PCR court's findings that are supported by substantial credible evidence in the record). We also find no error in Judge Ravin's careful review of the controlling law and his application of the law to the facts he found. State v. Harris, 181 N.J. 391, 416 (2004) ("[F]or mixed questions of law and fact, we give deference . . . to the supported factual findings of the [PCR] court, but review de novo the [] court's application of any legal rules to such factual findings."). Finally, we discern no abuse of discretion in Judge Ravin's decision not to grant defendant a new trial. R. 3:20-1 (providing that a new trial should only be granted if it is "required in the interest of justice."). We, therefore, affirm for the reasons explained in detail by Judge Ravin in his written opinions issued on March 1, 2016, and March 2, 2016. We add two comments.

Newly discovered evidence is sufficient to warrant a new trial if it is "(1) material to the issue and not merely cumulative or impeaching or contradictory; (2) discovered since the trial and not discoverable by reasonable diligence beforehand; and (3) of the sort that would probably change the jury's verdict if a new trial were granted." State v. Carter, 85 N.J. 300, 314 (1981). See also Nash, 212 N.J. at 547; State v. Ways, 180 N.J. 171, 187 (2004). Moreover, under prong one, material evidence "'is any evidence that would have some bearing on the claim being advanced' and includes evidence that supports a general denial of guilt." Nash, 212 N.J. at 549 (quoting Ways, 180 N.J. at 188).

Here, defendant put forward the exculpatory certification of Jovel. In some circumstances, exculpatory testimony might need to be weighed by a new jury. This, however, was not one of those circumstances. Judge Ravin held an evidentiary hearing, heard Jovel's live testimony, assessed his demeanor and found him incredible. In making that assessment, Judge Ravin considered Jovel's prior statement from 2007 that incriminated defendant, that Jovel had nothing to lose in changing his story because he had pled guilty and had been sentenced, and that Jovel and defendant were housed in the same prison unit. Moreover, Judge Ravin, as the trial judge, was very familiar with the evidence against defendant. He weighed Jovel's testimony against the

"overwhelming [trial] evidence" and found that no reasonable jury would accept Jovel's testimony. On this record, we find no abuse of discretion in not granting a new trial.

The crimes that occurred on August 4, 2007, were shocking and tragic. The promising lives of four young adults were destroyed. Families and communities were deeply and adversely affected. The ensuing investigation uncovered strong evidence establishing defendant's guilt. The record establishes that defendant was accorded a fair trial, at which he was adequately represented by an experienced criminal attorney. A jury found defendant guilty. Importantly, defendant was accorded full due process and fair hearings in pretrial proceedings, at trial, on direct appeal, on his motion for a new trial, and on his PCR petition. While mistakes can occur in the criminal justice process, no error has been shown in this case. Instead, defendant has been given all the process he is due. He was found guilty and he was sentenced accordingly.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION