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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-4321-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHRISTOPHER B. FOUNTAIN, a/k/a
BUCK FOUNTAIN, CHRIS FOUNTAIN
and CHARLES M. SPIVEY,

Defendant-Appellant.

Submitted April 18, 2018 – Decided May 7, 2018

Before Judges Koblitz and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
07-07-1649.

Christopher Fountain, appellant pro se.

Damon G. Tyner, Atlantic County Prosecutor,
attorney for respondent (John J. Santoliquido,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Christopher B. Fountain appeals from the May 12,
2017 order denying his motion to vacate his convictions and
sentence. He appeals only on the grounds that the judge who

presided over his trial, a Tax Court Judge temporarily assigned to the Superior Court, did not have jurisdiction under the New Jersey Constitution. Defendant was convicted of second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1), and related charges, and sentenced to an extended aggregate term of seventeen years, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. We reject his constitutional argument and affirm.

Defendant has exhausted his direct appeal rights and was unsuccessful in his first petition for post-conviction relief (PCR) in the trial court and on appeal. State v. Fountain, No. A-1743-08 (App. Div. Apr. 19, 2010) (affirming and remanding for merger of one count only); State v. Fountain, No. A-5245-12 (App. Div. Dec. 28, 2015) (affirming the denial of PCR).

On appeal, defendant argues:

POINT I: DEFENDANT'S CONVICTION AND SENTENCE WAS OBTAINED IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONS BECAUSE THE TRIAL COURT LACKED JURISDICTION TO IMPOSE THE JUDGMENT RENDERED UPON DEFENDANT.

Defendant on this motion for the first time argued that the Tax Court Judge temporarily assigned by the Chief Justice to the Superior Court, Criminal Division, lacked jurisdiction to conduct the trial. Because a failure of jurisdiction may be raised at any time, we consider defendant's claim. R. 3:10-2(e). In 1993, the Tax Court Act, N.J.S.A. 2B:13-1 to -15, established "a court of

limited jurisdiction pursuant to Article VI, Section I, paragraph 1 of the New Jersey Constitution." N.J.S.A. 2B:13-1(a). The jurisdiction of the Tax Court is to "review actions or regulations with respect to a tax matter" N.J.S.A. 2B:13-2(a).

Under the Tax Act, "[t]he Chief Justice may assign judges of the Tax Court to the Superior Court or to any other court as the need appears, and any judge so assigned shall exercise all of the powers of a judge of that court." N.J.S.A. 2B:13-12. Pursuant to the prior Tax Court legislation, N.J.S.A. 2A:3A, our Supreme Court recognized that power in resolving the issue of presiding over prerogative writs actions involving tax matters. Alid, Inc. v. Town of North Bergen, 89 N.J. 388, 388-89 (1981). After citing to various provisions of the New Jersey Constitution, the Court determined any such matters would be presided over by a Tax Court judge temporarily assigned to the Law Division. Ibid.

Defendant argues that because Article VI, Section 7, Paragraph 2 of the State Constitution allows the Chief Justice to "assign Judges of the Superior Court to the Divisions and Parts of the Superior Court," without mentioning assigning Tax Court judges, the Chief Justice may not assign Tax Court judges to the Superior Court. Defendant argues the Tax Court Act, which directs such temporary assignment of Tax Court judges, is therefore unconstitutional.

In State v. Buckner, a similar argument was raised regarding the Recall Statute, N.J.S.A. 43:6A-13, which enables the Chief Justice to call back from retirement judges over the age of seventy, the constitutionally-compelled age of retirement under Article VI, Section 6, Paragraph 3. 223 N.J. 1 (2015). In Buckner, our Supreme Court held that the defendant failed to show beyond a reasonable doubt the Recall Statute was clearly repugnant to the New Jersey Constitution. Id. at 14-15, 38-39. Here also, defendant has failed to demonstrate by that high burden that the statute concerning Tax Court judges is unconstitutional.

The New Jersey Constitution states: "The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State." N.J. Const. art. VI, § 7, ¶ 1. The Chief Justice thus has the power to temporarily assign Tax Court judges to the Superior Court. The judge who presided over defendant's trial was so assigned.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION