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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-1215-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASHAAN LEWIS,

Defendant-Appellant.

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Submitted March 21, 2017 – Decided April 18, 2017

Before Judges Koblitz and Sumners.

On appeal from the Superior Court of New  
Jersey, Law Division, Monmouth County,  
Indictment No. 07-03-0629.

Moriarty Law Firm, attorneys for appellant  
(Timothy C. Moriarty, on the brief).

Christopher J. Gramiccioni, Monmouth County  
Prosecutor, attorney for respondent (Paul H.  
Heinzel, Assistant Prosecutor, of counsel;  
Lisa Sarnoff Gochman, Legal Assistant, on the  
brief).

Appellant filed a supplemental pro se brief.

PER CURIAM

Defendant Rashaan Lewis appeals from an August 27, 2014 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant was convicted by a jury of "killing one man and wounding another in a shooting outside of Murphy's Bar in Asbury Park." State v. Lewis, No. A-1689-08 (App. Div. May 31, 2011) (slip op. at 1). He is serving a forty-five-year custodial term with a parole disqualifier of almost forty-three years for his convictions of murder, attempted murder and related gun charges. He alleges ineffective assistance of trial and appellate counsel. After reviewing the record in light of the contentions advanced on appeal, we affirm substantially for the reasons stated in Judge John T. Mullaney, Jr.'s August 28, 2014, thirty-one-page rider to his August 27 order. We add only limited comments regarding three of the issues raised by defendant.

In our opinion on direct appeal, we related in detail the facts underlying defendant's convictions. State v. Lewis, supra, slip op. at 2-5. We need not repeat them here.

On direct appeal defendant raised the following points:

POINT I: THE CUMULATIVE IMPACT OF HEARSAY AND OTHERWISE INADMISSIBLE, HARMFUL TESTIMONY DENIED DEFENDANT HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL. (Partially raised below)

A. Braswell's Hearsay Testimony About Stovall's Explanation For Why Defendant Killed Bell.

B. Chaparro's Testimony That "There Was No Question That Rashaan Lewis Was the Shooter."

C. Sinclair's Testimony That He Was In Danger For Testifying Against Defendant. (Not raised below)

POINT II: DEFENDANT'S RIGHT TO A FAIR TRIAL WAS VIOLATED WHEN THE COURT ERRONEOUSLY PERMITTED THE JURY TO LEARN THAT DEFENDANT HAD TWICE PREVIOUSLY THREATENED TO KILL BELL.

POINT III: THE COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES ON THE MURDER AND ATTEMPTED MURDER CONVICTIONS.

POINT IV: THE RESTITUTION ORDER SHOULD BE VACATED BECAUSE IT WAS IMPOSED WITHOUT AN INQUIRY INTO DEFENDANT'S ABILITY TO PAY.

We affirmed, remanding only for an ability-to-pay hearing with regard to restitution.

Defendant raises the following issues in his PCR appeal:

POINT I: THE COURT IMPROPERLY DENIED AN EVIDENTIARY HEARING ON WHETHER THE TRIAL JUDGE ERRED IN FAILING TO CONDUCT A WADE HEARING; AND APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS ISSUE ON DIRECT APPEAL.

POINT II: THE COURT IMPROPERLY FOUND THAT TRIAL COURT DID NOT COMMIT AN ERROR IN NOT HAVING ORDERED THAT DEFENSE COUNSEL BE PERMITTED TO REVIEW THE VICTIM'S GANG UNIT FILE DUE TO THE FACT THAT IT WAS REPORTED THAT THE VICTIM WAS A HIGH RANKING BLOODS MEMBER, AND INDICATIONS THAT THE SHOOTING MAY BE RELATED TO ANOTHER RECENT SHOOTING; AND APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS ISSUE.

POINT III: DEFENDANT SUBMITS THAT NEWLY DISCOVERED EVIDENCE FROM WITNESSES WHO WILL TESTIFY THAT ONE OF THE BOUNCERS WAS GIVEN

MONEY TO IDENTIFY RASHAAN LEWIS AS THE SHOOTER; AND THIS NEWLY DISCOVERED EVIDENCE WOULD HAVE ALTERED THE OUTCOME OF THE TRIAL.

POINT IV: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL WITNESSES TO TESTIFY REGARDING RASHAAN LEWIS BEING IN VIRGINIA TO REBUT CERTAIN TESTIMONY OF JAMES SINCLAIR DURING PRE-TRIAL HEARINGS AND DURING TRIAL; AND APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS ISSUE.

POINT V: DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL THROUGH THE FAILURE TO OBJECT TO HEARSAY AND OTHER TESTIMONY, AND THE CUMULATIVE IMPACT OF HEARSAY AND OTHER TESTIMONY DENIED DEFENDANT HIS RIGHT TO A FAIR TRIAL (CERTAIN ISSUES RAISED ON APPEAL).

POINT VI: THE PROSECUTOR IMPROPERLY VOUCHERED FOR THE TESTIMONY OF A KEY WITNESS IN THE CASE DEPRIVING DEFENDANT OF HIS RIGHT TO A FAIR TRIAL AND APPELLATE COUNSEL WAS INEFFECTIVE IN RAISING THIS ISSUE.

POINT VII: THE TRIAL COURT INCORRECTLY DETERMINED THAT DEFENSE COUNSEL DID NOT FAIL TO UTILIZE THE VIDEO SURVEILLANCE TO CROSS EXAMINE SUPPOSED EYEWITNESSES WHICH DEPRIVED DEFENDANT OF A FAIR TRIAL AND EFFECTIVE COUNSEL.

Defendant raises the following issues in his pro se supplemental PCR brief:<sup>1</sup>

POINT I: THE PCR COURT IMPROPERLY DENIED AN EVIDENTIARY HEARING ON WHETHER THE TRIAL JUDGE ERRED IN FAILING TO CONDUCT A WADE HEARING.

POINT II: THE PCR COURT IMPROPERLY FOUND THAT TRIAL COURT DID NOT COMMIT AN ERROR IN NOT HAVING ORDERED THAT DEFENSE COUNSEL BE

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<sup>1</sup> We reproduce the points as written by defendant.

PERMITTED TO REVIEW THE VICTIM'S GANG UNIT FILE.

POINT III: DEFENDANT SUBMITS THAT NEWLY DISCOVERED EVIDENCE FROM A WITNESS WHO WILL TESTIFY THAT ONE OF THE BOUNCERS WAS GIVEN MONEY TO IDENTIFY RASHAAN LEWIS AS THE SHOOTER.

In Point I of defense counsel and defendant's briefs, they raise the issue that appellate counsel was ineffective in not arguing that the trial court should have ordered a Wade<sup>2</sup> hearing with regard to the two bouncers who identified defendant from the bar's surveillance videotape and were also shown photographic arrays. Defendant could point to no irregularity in the procedures beyond the allegation that the police were discussing the case in the bar when the bouncers separately viewed the surveillance video. Because the Wade issue was meritless, appellate counsel had no obligation to raise the issue on appeal. State v. Gaither, 396 N.J. Super. 508, 515 (App. Div. 2007), certif. denied, 194 N.J. 444 (2008).

In Point II of both defendant and his counsel's briefs, defendant argues that the PCR court erred when it held that the trial court appropriately denied his request for defense counsel to review the victim's gang unit file. Contrary to the State's representation of the contents of the file, defendant believes

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<sup>2</sup> United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L. Ed. 2d 1149 (1967).

that the file could have contained information regarding a third party threat against the deceased victim.

Judge Mullaney correctly determined that defendant's claim was barred by Rule 3:22-5 because the identical claim was raised and adjudicated on the merits before the trial court. The PCR court correctly held that the claim was also barred by Rule 3:22-4(a) because it could have been raised in defendant's direct appeal, but was not. Additionally, defendant never proffered any evidence to refute the assistant prosecutor's assertions that the file did not contain any exculpatory information.

In Point III of both briefs, defendant argues that the PCR court erred when it held that he was not entitled to a new trial based on his claim that newly discovered evidence revealed that one of the six eyewitnesses who testified received money to identify defendant as the shooter. Defendant claims that a prisoner at Trenton State Prison told a private investigator that eyewitness Mark Dennis gave money to a bouncer at Murphy's bar to testify against defendant at trial. Also, the prisoner claimed that Dennis admitted after trial that he did not see defendant shoot the murder victim, which was consistent with Dennis's initial statement to police, but contrary to both his second statement to the police prior to trial and his trial testimony.

The PCR court held that defendant was not entitled to a new trial because his claim of newly discovered evidence was unsupported by legally competent evidence. Defendant sought the admission of the private investigator's recorded and transcribed conversation with the unsworn prisoner. The prisoner's information was purportedly received from Dennis, who was not directly interviewed. The prisoner's statement was therefore hearsay, pursuant to N.J.R.E. 801 and N.J.R.E. 802. Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.J.R.E. 801; State v. White, 158 N.J. 230, 238 (1999) (stating that hearsay is inadmissible because it is not reliable or trustworthy).

Rule 1:6-6 states that the court cannot hear a motion unless the motion is supported by "affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify." A PCR court may summarily reject an unverified post-judgment statement made to a third party without conducting an evidentiary hearing. See State v. Nash, 212 N.J. 518, 547 (2013) (stating that a PCR court should conduct a hearing regarding newly discovered evidence when it is presented in the form of verified statements of material witnesses). A defendant's claim seeking PCR must be "supported by affidavits or

certifications based upon the personal knowledge of the affiant or the person making the certification." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). Thus, the PCR court did not err when it rejected defendant's hearsay claim of newly discovered evidence without holding an evidentiary hearing.

The alleged statements by the prisoner to the private investigator were made in October 2012 and the hearing before the PCR court did not occur until August 2013. Defendant had ample time to obtain an affidavit directly from Dennis.

With regard to the other issues raised by defendant regarding defense counsel's alleged trial errors and the prosecutor's improper trial statements, we rely on Judge Mullaney's written opinion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION