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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-3664-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES H. RASHID,

Defendant-Appellant.

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Submitted January 10, 2017 – Decided April 12, 2017

Before Judges Messano and Espinosa.

On appeal from the Superior Court of New  
Jersey, Law Division, Middlesex County,  
Indictment No. 02-01-0036.

Charles H. Rashid, appellant pro se.

Andrew C. Carey, Middlesex County Prosecutor,  
attorney for respondent (Brian D. Gillet,  
Deputy First Assistant Prosecutor, of counsel  
and on the brief).

PER CURIAM

Defendant appeals from the denial of his motion to compel  
discovery from the Middlesex County Prosecutor's Office, the

Criminal Case Manager's Office and the Public Defender and for a bill particulars. We affirm.

Defendant was convicted of murder in 2004. On direct appeal, the following arguments were presented:

POINT I

THE TRIAL JUDGE'S FAILURE TO INSTRUCT THE JURORS THAT A CONTINUING COURSE OF ILL TREATMENT COULD PROVIDE THE BASIS FOR A VERDICT OF PASSION/PROVOCATION MANSLAUGHTER DEPRIVED DEFENDANT OF THE RIGHT TO DUE PROCESS OF LAW AND A FAIR TRIAL. U.S. CONST. AMENDS. VI, XIV; N.J. CONST. (1947) ART. I, PARS. 1, 9, 10. (Not Raised Below).

POINT II

THE JUDGE'S INCONSISTENT AND CONFUSING INSTRUCTIONS IMPROPERLY PREVENTED THE JURORS FROM CONSIDERING PASSION/PROVOCATION MANSLAUGHTER UNLESS THEY HAD FIRST ACQUITTED DEFENDANT OF MURDER, IN VIOLATION OF HIS RIGHT TO DUE PROCESS OF LAW AND A FAIR TRIAL. U.S. CONST. AMEND. XIV; N.J. CONST. (1947) ART. I, PARS. 1, 9, 10. (Not Raised Below).

POINT III

THE SIXTY-FIVE[-]YEAR SENTENCE FOR MURDER WAS MANIFESTLY EXCESSIVE.

Defendant raised the following points in his pro se supplemental brief:

POINT I

FAILURE TO WARN DEFENDANT OF HIS RIGHTS AND TOTALITY OF CIRCUMSTANCES RENDER CONFESSION INVOLUNTARY AND INADMISSIBLE UNDER FIFTH AMENDMENT PRIVILEGE AGAINST SELF-

INCRIMINATION AND SIXTH AMENDMENT RIGHT TO COUNSEL.

POINT II

THE COURT COMMITTED REVERSIBLE ERROR ADMITTING DEFENDANT'S CONFESSION INTO EVIDENCE AND THE DETECTIVES WHO INTERROGATED DEFENDANT DID NOT SCRUPULOUSLY HONOR DEFENDANT'S RIGHT TO REMAIN SILENT.

POINT III

THE TRIAL COURT'S ADMISSION OF AUTOPSY PHOTOGRAPHS CONSTITUTED ABUSE OF DISCRETION[.] THE PHOTOGRAPH DID NOT HAVE PROBATIVE VALUE AND WAS UNDULY INFLAMMATORY.

POINT IV

CONFESSION SHOULD HAVE BEEN SUPPRESSED BECAUSE THE STATEMENTS IT CONTAINED WERE NOT VOLUNTARY AND WERE OBTAINED ONLY AFTER DEFENDANT'S WILL [WAS] OVERBORNE AND THAT ITS USE VIOLATED DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

Defendant did not contend that the State had failed to satisfy its obligation to provide discovery pursuant to Rule 3:13-3(c). We affirmed defendant's conviction for murder and remanded for resentencing. State v. Rashid, Docket No. A-3853-04T4 (App. Div.), certif. denied, 197 N.J. 16 (2008).

In 2009, he filed a petition for post-conviction relief (PCR), which was denied. In his appeal, he presented the following arguments:

POINT I

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS.

A. Trial Counsel Failed to Exercise Peremptory Challenges So As To Ensure That Defendant Was Tried Before An Impartial Jury.

B. Trial Counsel Failed To Prepare Defense Witnesses.

POINT II

THIS MATTER MUST BE REMANDED FOR A NEW PCR HEARING BECAUSE PCR COUNSEL FAILED TO ADVANCE ALL OF THE ISSUES DEFENDANT RAISED IN HIS PCR PETITION. (Not Raised Below)

Defendant filed a supplemental pro se brief, presenting the following points:

POINT I

THE DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN THAT COUNSEL FAILED TO SUBPOENA LEAD DETECTIVE AS WITNESS.

POINT II

TRIAL COUNSEL FAILED TO PROPERLY ADVISE DEFENDANT OF PLEA DEAL.

POINT III

THE ACCUMULATION OF ERRORS DEMAND AN EVIDENTIARY HEARING.

Again, defendant did not argue that he was not provided with appropriate discovery or that his counsel failed to review

discovery with him. We affirmed the denial of his petition, State v. Rashid, Docket No. A-1858-11T4 (App. Div. 2013), certif. denied, 218 N.J. 276 (2014), and the United States Supreme Court denied his petition for certiorari. Rashid v. New Jersey, \_\_\_ U.S. \_\_\_, 135 S. Ct. 965, 190 L. Ed. 2d 852 (2015).

Defendant states he requested documents so he might conduct a "review of full pre-trial discovery." The record shows he did make requests for documents from the Public Defender's Office, the Middlesex County Prosecutor's Office, the Government Records Council and the trial court. The responsive letters he has submitted reflect that documents were either provided or had been purged as of the time the requests were made. Because of deficiencies in his submissions, he has filed two briefs, both of which argue that the denial of his motion for discovery was not supported by substantial evidence, and contend he "had not seen or examined many of the documents and police reports associated with his conviction." Although he has not explicitly said so in this appeal, it appears that defendant sought "discovery" here for the purpose of filing a second PCR petition.<sup>1</sup>

In State v. Marshall (III), 148 N.J. 89, cert. denied,

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<sup>1</sup> In light of our conclusion that the motions for discovery and reconsideration were properly denied, we need not address the application of procedural bars to a second PCR petition. See R. 3:22-4; R. 3:22-12.

522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 89 (1997), our Supreme Court held that, despite "the State's failure to comply fully with its pretrial discovery obligations," the PCR court properly denied a request for discovery where there was "no showing that the State acted willfully, with malice, or with the intent to conceal discoverable evidence from defense counsel." Id. at 271-72. Defendant has similarly failed to make any showing that the State willfully deprived him of discoverable evidence. The trial judge acted well within his discretion in denying defendant's request and his motion for reconsideration.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION