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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4704-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN CASTILLO,

Defendant-Appellant.

Submitted November 9, 2017 – Decided November 27, 2017

Before Judges Koblitz and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment No. 06-
05-0485.

Joseph E. Krakora, Public Defender, attorney
for appellant (William Welaj, Designated
Counsel, on the brief).

Thomas K. Isenhour, Acting Union County
Prosecutor, attorney for respondent (Milton S.
Leibowitz, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

This matter returns to us after remand. Defendant Juan
Castillo appeals from an order denying his petition for post-

conviction relief (PCR) without oral argument or an evidentiary hearing. This is defendant's second appeal from a denial of his PCR. In State v. Castillo, No. A-4022-13 (App. Div. May 23, 2016) (slip op. at 4), we remanded to "allow the judge to either hear oral argument and issue a reconsidered decision, or to issue a statement of reasons why oral argument was denied" per State v. Parker, 212 N.J. 269 (2012).

In that opinion, we recited the relevant factual and procedural history which we restate herein. On May 25, 2006, defendant was indicted and charged with first-degree murder, N.J.S.A. 2C:11-3(a)(1) "and/or" (2) (count one); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count two); and third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count three).

The indictment arose from an incident on the evening of September 25, 2006, in which defendant was involved in a physical altercation with another patron outside of a bar in Elizabeth. The victim with whom defendant had been arguing at the bar prior to the incident died from stab wounds inflicted during the altercation.

On September 11, 2008, defendant was convicted by a jury on all three counts. On November 21, 2008, the trial judge sentenced defendant on the murder charge to forty-five years imprisonment,

subject to eighty-five percent parole ineligibility pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2(a). The judge then merged counts two and three and imposed a concurrent three-year term on that offense, as well as appropriate fines and penalties. Defendant appealed, and we affirmed, but remanded for merger of the remaining weapons offense with the murder conviction. State v. Castillo, No. A-3067-08 (App. Div. June 28, 2011) (slip op. at 21-23), certif. denied, 208 N.J. 600 (2011).

Defendant filed a PCR petition on January 20, 2012, which was supplemented by appointed counsel. The PCR judge, who was also the trial and sentencing judge, denied the petition in a written opinion without oral argument or an evidentiary hearing.

After remand, the PCR judge, who was the original PCR judge, issued an amended order and opinion denying the PCR without oral argument. In addressing the reasons for denying oral argument, the judge stated:


The [c]ourt is mindful of the general presumption in favor of oral argument for an initial petition for post-conviction relief. [Parker, supra, 212 N.J. at 282-83]. In this case, oral argument would not have been helpful. In the instant case, defendant fails to articulate a prima facie case in favor of relief, and that is clear from a review of the trial transcript.

We again are constrained to remand since we conclude that the reasons for eschewing oral argument do not satisfy the Parker

paradigm. First, the presumption in favor of oral argument is a "strong" one, not a "general" one. Second, the conclusory statement that oral argument "would not have been helpful" fails to adequately articulate a "statement of reasons that is tailored to the particular application." Parker, supra, 212 N.J. at 282. Given that this is the second remand, we exercise original jurisdiction, pursuant to Rule 2:10-5, for the limited purpose of ordering that oral argument be provided to defendant. As in our prior opinion, we do not address the substantive arguments raised on appeal.

Remanded. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION