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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-2290-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LENROY LAURANCE,
a/k/a DAMON D. WILLIAMS,

Defendant-Appellant.

Submitted January 22, 2018 – Decided May 9, 2018

Before Judges Messano and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Indictment
No. 10-08-0841.

Joseph E. Krakora, Public Defender, attorney
for appellant (Steven M. Gilson, Designated
Counsel, on the brief).

Scott A. Coffina, Burlington County
Prosecutor, attorney for respondent (Alexis R.
Agre, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

A jury convicted defendant Lenroy Laurence of the felony murder of L.B., who defendant and others kidnapped during a

carjacking in Pennsylvania and drove around New Jersey for several hours before executing her in a deserted field in Burlington County. State v. Lenroy Laurance, No. A-3696-11 (App. Div. Apr. 7, 2015) (slip op. at 1-2, 11-14).¹ Judge Jeanne T. Covert sentenced defendant on the murder and other related crimes to an aggregate term of life imprisonment plus forty years, subject to ninety-four and one-quarter years of parole ineligibility. Id. at 2. On direct appeal, we vacated defendant's conviction on one count but otherwise affirmed his conviction and sentence. Id. at 4. The Court denied defendant's petition for certification. 223 N.J. 283 (2015).

Defendant filed a timely pro se petition for post-conviction relief (PCR). PCR counsel raised two claims of ineffective assistance of trial counsel (IAC), only one of which is preserved for appeal. Specifically, citing our decision in State v. Gonzalez, 444 N.J. Super. 62 (App. Div.), certif. denied, 226 N.J. 209 (2016), defendant argued trial counsel provided ineffective assistance by not objecting to the judge's use of the phrase

¹ Although Rule 1:36-3 generally forbids citing an unpublished opinion, we do so here to provide a full understanding of the issues presented and pursuant to the exception that permits citation "to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law." Ibid.; see also Badiali v. N.J. Mfrs. Ins. Grp., 429 N.J. Super. 121, 126 n.4 (App. Div. 2012), aff'd, 220 N.J. 544 (2015).

"and/or" during jury instructions on "coconspirator liability." The State argued that Gonzalez did not apply to the facts of this case, and that defendant was procedurally barred from raising the argument on PCR review because it could have been raised on direct appeal but was not. R. 3:22-4.

Judge Covert denied defendant's petition without an evidentiary hearing for reasons expressed in a comprehensive written opinion. The judge properly set forth the two-prong analysis for IAC claims formulated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). First, a defendant claiming IAC must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Id. at 52 (quoting Strickland, 466 U.S. at 687). Second, he suffered prejudice due to counsel's deficient performance. Strickland, 466 U.S. at 687. A defendant must show a "reasonable probability" that the deficient performance affected the outcome. Fritz, 105 N.J. at 58. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." State v. Pierre, 223 N.J. 560, 583 (2015) (quoting Strickland, 466 U.S. at 694; Fritz, 105 N.J. at 52).

Judge Covert acknowledged that while instructing the jury on the substantive crimes in the indictment, she "utilized 'and/or'

terminology several times" in identical fashion. For example, she told the jurors that in order to find defendant guilty of kidnapping, they must find "[defendant] and/or the conduct of another person for which he [was] legally accountable unlawfully removed [L.B.]". She gave similar instructions regarding carjacking and felony murder.

Judge Covert distinguished this case from Gonzalez, noting there we reversed the defendant's conviction because the use of "and/or"

left open the possibility that some jurors could have found defendant conspired in or was an accomplice in the robbery but not the assault, while other jurors could have found he conspired in or was an accomplice in the assault but not the robbery. In short, these instructions did not necessarily require that the jury unanimously conclude that defendant conspired to commit or was an accomplice in the same crime.

[Gonzalez, 444 N.J. Super. at 76.]

Judge Covert reasoned that in this case, the instructions' "use of 'and/or' was limited to describing the relationship between [d]efendant's own conduct and the conduct of others with whom he was in league. At no point . . . would [the use of 'and/or']

cause confusion as to which charge the defendant could be guilty of."²

The judge also noted that while using "and/or" was disfavored, the Court did not "place an outright ban on the practice, so long as the instructions are sufficiently clear and correct." See Gonzalez, 226 N.J. 209 ("The Court agrees with the Appellate Division's conclusion that the use of 'and/or' in the jury instruction in this case injected ambiguity into the charge. The criticism of the use of 'and/or' is limited to the circumstances in which it was used in this case.").

Lastly, Judge Covert concluded that defendant failed to demonstrate prejudice. She noted, and we agree, there was "very strong and compelling evidence of [d]efendant's guilt adduced at trial." The judge entered an order denying defendant's petition, and this appeal followed.

Before us, defendant argues:

DEFENDANT'S FELONY MURDER, ROBBERY,
KIDNAPPING, AND CARJACKING CONVICTIONS MUST BE
REVERSED DUE TO TRIAL COUNSEL'S
INEFFECTIVENESS FOR FAILING TO OBJECT TO THE
"AND/OR" TERMINOLOGY IN THE TRIAL COURT'S JURY
INSTRUCTIONS; IN THE ALTERNATIVE, THIS MATTER
MUST BE REMANDED FOR AN EVIDENTIARY HEARING
BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE
CASE OF TRIAL COUNSEL'S INEFFECTIVENESS.

² Defendant never asserted that the instructions on coconspirator or accomplice liability were deficient.

We have considered this argument in light of the record and applicable legal standards. We affirm substantially for the reasons set forth in Judge Covert's opinion. We add only the following.

Although "and/or" was extensively used throughout the instructions, and it did on occasion offer the jury an opportunity to consider two different crimes, our review of the entire jury charge convinces us that the phrase did not create ambiguity or confusion. Given the substantial evidence of defendant's guilt, any error was harmless beyond a reasonable doubt. Therefore, even if trial counsel rendered deficient performance by not objecting, there is no "reasonable probability" that defendant suffered any prejudice.

Affirmed.³

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



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³ The State has not reasserted its argument that Rule 3:22-4(a), which generally bars PCR claims based on any ground for relief that could have been raised at trial or on direct appeal but was not, provides an independent basis to affirm. Given our resolution of the appeal, we need not specifically address the issue.