SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2368-16T3

STATE OF NEW JERSEY,

    Plaintiff-Respondent,

v.

ROCCO MALDONADO,

    Defendant-Appellant.

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Submitted March 6, 2018 — Decided March 22, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No. 10-
07-1246.

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

Joseph D. Coronato, Ocean County Prosecutor,
attorney for respondent (Samuel Marzarella,
Chief Appellate Attorney, of counsel; Shiraz
Deen, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Rocco Maldonado appeals from a December 2, 2016 order denying his petition for post-conviction relief (PCR). We affirm.

In connection with a brutal home invasion robbery, defendant was convicted of two counts of robbery, N.J.S.A. 2C:15-1; one count of burglary, N.J.S.A. 2C:18-2; one count of possession of a prohibited device, N.J.S.A. 2C:39-3(h); and one count of possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(e). After the jury returned its verdict, defendant pled guilty to one count of possession of a weapon by a convicted felon, N.J.S.A. 2C:39-7. The trial court sentenced him to an aggregate term of forty years in prison, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

We affirmed defendant's conviction on direct appeal. State v. Maldonado, No. A-4047-11 (App. Div. Jan. 15, 2015). The evidence was discussed in detail in our opinion and need not be repeated here. In summary, defendant was captured soon after the robbery. At the time of his arrest, he spontaneously admitted that he "broke in" and was "sorry." The State presented additional, overwhelming evidence of defendant's guilt, including evidence that his DNA was found on a black face mask that the robber left at the victims' home. His DNA was also found on some

gloves in a black bag, which contained burglary tools and was found near the victims' home.

On his direct appeal, defendant raised the following issues:

> POINT I: THE TRIAL JUDGE ERRED IN DENYING DEFENDANT'S MOTION TO DISMISS THE ROBBERY COUNTS FROM THE INDICTMENT AND IN DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL ON THE ROBBERY COUNTS AT THE END OF THE STATE'S CASE BECAUSE THE STATE FAILED TO PROVE THAT DEFENDANT COMMITTED A THEFT OR ATTEMPTED THEFT.
>
> POINT II: THE TRIAL COURT ERRED IN FAILING TO CHARGE AGGRAVATED ASSAULT AND SIMPLE ASSAULT AS LESSER INCLUDED OFFENSES OF ROBBERY. (Not Raised Below).
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> POINT III: THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR WHEN HE FAILED TO CHARGE THE JURY ON "ATTEMPT" BECAUSE AN ATTEMPTED THEFT FORMED THE BASIS FOR THE ROBBERY CHARGE. (Not Raised Below).
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> POINT IV: THE TRIAL COURT'S FAILURE TO EXCUSE JUROR NO. 2 ON THE SECOND DAY OF THE TRIAL AFTER SHE REVEALED THAT SHE LIVED IN THE SAME TOWN AS THE VICTIMS AND THAT SHE MAY HAVE HERSELF BEEN THE VICTIM OF A THWARTED BURGLARY DEPRIVED DEFENDANT OF THE RIGHT TO DUE PROCESS OF LAW AND A FAIR TRIAL BY AN IMPARTIAL JURY. (Not Raised Below).
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> POINT V: DEFENDANT'S SENTENCE IS EXCESSIVE.

We addressed and rejected all of those arguments. Significantly, we thoroughly discussed and rejected defendant's argument that the trial court should have charged the jury on assault as a lesser included offense of robbery. We concluded

that assault was not a lesser included offense of robbery, and "a
rational juror could have found all the elements of robbery
existed." Id. slip op at 28.

Defendant then filed a PCR petition, raising a series of
issues, only two of which he has pursued on this appeal. He once
again raised the argument about charging the jury on assault as a
lesser included offense. He also asserted that the State had
offered him a plea agreement, which he claimed he accepted. Judge
James M. Blaney rejected those arguments in a thorough written
opinion issued with the order on December 2, 2016. The judge
concluded that the plea offer was not enforceable because the
State withdrew it before it was presented to the trial court. He
further concluded that the argument about the lesser included
offense was barred by Rule 3:22-5, and was otherwise without merit.

On this appeal, defendant presents the following points of
argument:

> POINT I: THE TRIAL COURT ERRED IN DENYING THE
> DEFENDANT'S PETITION FOR POST CONVICTION
> RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY
> HEARING TO FULLY ADDRESS HIS CONTENTION THAT
> HE FAILED TO RECEIVE ADEQUATE LEGAL
> REPRESENTATION FROM TRIAL COUNSEL AS A RESULT
> OF TRIAL COUNSEL'S FAILURE TO REQUEST THE
> TRIAL COURT INSTRUCT THE JURY REGARDING
> AGGRAVATED ASSAULT AS A LESSER INCLUDED
> OFFENSE OF ROBBERY.
>
> POINT II: THE TRIAL COURT ERRED IN DENYING
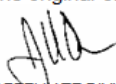> THE DEFENDANT'S PETITION FOR POST CONVICTION

RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY
HEARING TO FULLY ADDRESS HIS CONTENTION
RELATING TO THE STATE'S WITHDRAWAL OF A PLEA
OFFER HE HAD ALREADY ACCEPTED.

POINT III: THE TRIAL COURT ERRED IN DENYING
THE DEFENDANT'S PETITION FOR POST CONVICTION
RELIEF, IN PART, ON PROCEDURAL GROUNDS
PURSUANT TO RULE 3:22-5.

We find no merit in any of those contentions, and except as briefly addressed here, they do not warrant further discussion. R. 2:11-3(e)(2). We affirm substantially for the reasons stated in Judge Blaney's opinion. On the record presented to us, defendant's claim concerning the alleged plea agreement was not supported by a signed plea form, reflecting the alleged deal he claims he accepted, and the alleged agreement was not presented to the trial court. Defendant was not entitled to an evidentiary hearing, because he did not present a prima facie case of ineffective assistance of counsel. See State v. Preciose, 129 N.J. 451, 462-63 (1992).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION

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