SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2421-19T2

STATE OF NEW JERSEY,

     Plaintiff-Appellant,

v.

ANTHONY PINSON, DARNELL
KONTEH, ANTOINE WILLIAMS,
SHAHEED WROTEN, DANIQUE
SIMPSON, ASHLEY STEWART,
and PAUL SEXTON,

     Defendants-Respondents.

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Submitted May 19, 2020 – Decided May 22, 2020

Before Judges Accurso and Gilson.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 18-02-0346, 18-02-0348, 18-02-0349, 18-02-0350, 18-02-0351, 18-02-0352, 18-02-0353, and 19-04-0700.

Christopher L.C. Kuberiet, Acting Middlesex County Prosecutor, attorney for appellant (David M. Liston, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the briefs).

Joseph E. Krakora, Public Defender, attorney for respondent Anthony Pinson (Elizabeth C. Jarit, Deputy Public Defender, of counsel and on the brief).

Joseph E. Krakora, Public Defender, attorney for respondents Darnell Konteh and Ashley Stewart, joins in the brief of respondent Anthony Pinson.

Mazraani & Liguori, LLP, attorneys for respondent Antoine Williams, join in the brief of respondent Anthony Pinson.

The Serruto Law Firm, PC and Lindsay B. Gargano, Deputy Public Defender, attorneys for respondent Danique Simpson, join in the brief of respondent Anthony Pinson.

Yonta Law, LLC, attorneys for respondent Paul Sexton, join in the brief of appellant State of New Jersey.

PER CURIAM

We granted the State's motion for leave to appeal the trial court's February 5, 2020 order barring defendant Paul Sexton, a cooperating co-defendant, from testifying at trial in connection with the eight indictments listed in the caption as a sanction for the State's failure to comply with court orders for discovery. We accelerated this interlocutory appeal and stayed trial pending our disposition. Two weeks ago, however, the Supreme Court granted defendants' motion for leave to appeal in the related matter of State v. Pinson, 461 N.J. Super. 536 (App. Div. 2019), the State's interlocutory appeal of

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orders suppressing evidence seized in the course of executing an arrest warrant, and summarily remanded to the trial court with instructions to conduct a <u>Franks</u>[1] hearing.

The State now argues we should temporarily remand this matter to the trial court pending the <u>Franks</u> hearing because "[t]he issues before the trial court and this court are not sufficiently discrete to allow for bifurcated jurisdiction without the risk of unintended consequences that could further complicate and delay these proceedings." Defendant Sexton sides with the State on the question. The remaining defendants,[2] who opposed the State's motion for leave to appeal, now oppose a remand, arguing, among other things, that the issues are discrete, and a decision from this court affirming the preclusion of Sexton's testimony "may very well result in new plea offers that could moot out the need for the <u>Franks</u> hearing" and thus continuation of the appeal promotes judicial economy.

In light of the Supreme Court's remand and having considered the parties' various positions on the effect of that remand on this interlocutory

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[1] <u>Franks v. Delaware</u>, 438 U.S. 154 (1978).

[2] Defendants Konteh and Wroten did not respond to the court's letter to the parties asking their positions as to the effect of the Court's remand on this appeal.

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appeal, we determine leave to appeal was improvidently granted. We accordingly dismiss the appeal without prejudice. All stays of the trials of any or all defendants imposed by this court are vacated. We do not retain jurisdiction.

Appeal dismissed.

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