

APPENDIX

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

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-5136-18T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VERNON COLLINS,¹

Defendant-Appellant.

Submitted August 10, 2020 – Decided August 17, 2020

Before Judges Whipple and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment No. 86-08-0769.

Vernon Collins, appellant pro se.

Angelo J. Onofri, Mercer County Prosecutor, attorney for respondent (Laura C. Sunyak, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

¹ Defendant is referenced in the record also as Vernon Allen Collins and Vernon A. Collins.

Defendant Vernon Collins appeals from the denial of his Rule 3:21-10 motion to correct an illegal sentence. We affirm.

The facts relevant to defendant's conviction are discussed at length in his initial direct appeal, State v. Collins, No. A-5173-88 (App. Div. July 21, 1992) certif. denied, 130 N.J. 601 (1992), (Collins I) and need not be repeated at length here. Briefly, defendant was indicted in 1986 for possession of a controlled dangerous substance (CDS), N.J.S.A. 24:21-20(a)(2), (count one); possession of CDS with intent to distribute, N.J.S.A. 24:21-19(a)(1), (count two); unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), (count three); and possession of hollow point bullets, N.J.S.A. 2C:39-3(f), (count four). In 1988, he was found guilty on each count.

At his sentencing on May 5, 1989, defendant exercised his right to allocution, under Rule 3:21-4(b), before Judge David J. Schroth imposed a prison term for life, with a twenty-five-year parole ineligibility period on count two. The judge also directed defendant to serve a consecutive seven-year term on count one and a five-year term on count three, concurrent to the sentences imposed on counts one and two. Also, the judge merged count four into count three at sentencing. On May 24, 1989, Judge Schroth executed a judgment of conviction (JOC) reflecting this sentence, and as we observed in Collins I, per

the JOC, defendant was directed to serve his aggregate sentence "consecutive to a previous thirty-five-year sentence for a Maryland conviction."²

On direct appeal, we affirmed defendant's conviction, but remanded to the Law Division for "merger of the count for possession of heroin into the count for possession with intent to distribute, and for amendment of the judgment of conviction and the sentence imposed pursuant thereto." Collins I, slip op. at 6, 16.

Turning to the instant appeal, we note that one of defendant's contentions on direct appeal, specifically at Point VI, was that his sentence "must be modified on several grounds." In particular, at Point VI-A., defendant argued that "this sentence must run concurrently with the federal [sic] defendant is serving." Importantly, in Collins I, we disagreed and determined that "[w]ith the exception of Point VI[-]B[.] (involving merger of counts one and two), we find all of the defendant's contentions to be clearly without merit." Id. at 5.

On September 30, 1993, Judge Schroth entered an amended JOC consistent with our remand order, merging counts one and two. In doing so, the

² According to the May 1989 sentencing transcript, defendant was convicted in Maryland in July 1987 for "conspiracy to distribute a CDS, possession of CDS with intent to distribute and employing persons under eighteen with the intent to distribute a [CDS]."

judge left intact the life sentence and twenty-five-year period of parole ineligibility for count two and concurrent five-year term on count three. Likewise, count four remained merged and dismissed, and in the amended JOC, the judge confirmed defendant's resentence would run consecutively to "any other prison terms imposed by the State of Maryland on other matters." Defendant did not appeal from this amended JOC.

In August 2017, defendant filed a Rule 3:21-10 motion, arguing his sentence was illegal. On June 19, 2019, the motion judge denied the motion for "failing to state a claim [on] which relief can be granted." The motion judge recognized that Rule 3:21-10(b)(5) permitted him to correct "a sentence not authorized by law." However, the judge also acknowledged that per State v. Clark, 65 N.J. 426, 437 (1974), "mere excessiveness of sentence otherwise within authorized limits, as distinct from illegality by reason of being beyond or not in accordance with legal authorization, is not an appropriate ground of post-conviction relief and can only be raised on direct appeal from the conviction." Additionally, the motion judge referenced State v. Acevedo, 205 N.J. 40, 47 (2011) to confirm that "allegations of improper consideration of aggravating and mitigating factors and consecutive sentencing guidelines [are] not cognizable" in post-conviction proceedings. Finally, the motion judge found defendant was

sentenced to the "maximum term under the statute, but Judge Schroth was within his power to order that sentence."

On appeal, defendant raises the following arguments for our consideration:

POINT I

THE MERCER COUNTY SUPERIOR COURT ERRED IN CONCLUDING [DEFENDANT'S] MOTION TO CORRECT AN ILLEGAL SENTENCE CLAIMS WERE NOT COGNIZABLE BECAUSE THEY [WERE] SIMILAR TO THE EXCESSIVE OF SENTENCE CLAIM THE NEW JERSEY SUPREME COURT DENIED RECENTLY IN ACEVEDO.

POINT II

THE MERCER COUNTY SUPERIOR COURT ERRED IN HOLDING THAT THE SENTENCING TRANSCRIPT ESTABLISHES THE TRIAL COURT IMPOSED THE SENTENCES TO RUN CONSECUTIVE WITH THE FEDERALLY [-]IMPOSED THIRTY-FIVE YEAR [SENTENCE] SINCE THE SENTENCING TRANSCRIPT DOES NOT [SUPPORT] THAT CLAIM.

POINT III

THE MERCER COUNTY SUPERIOR COURT ERRED IN CONCLUDING [DEFENDANT'S] CLAIMS WERE NOT COGNIZABLE UNDER N.J. CT. RULE 3:21-10(B)(5) WHEN THE SENTENCES ORIGINALLY IMPOSED WITHOUT ANY SPECIFICITY OF RUNNING CONCURRENT OR CONSECUTIVE WITH THE FEDERALLY

[-]IMPOSED SENTENCE WAS INCREASED BY ADDING A PROVISION IN THE JUDGMENT OF CONVICTION AND ORDER FOR COMMITMENT SOME [NINETEEN] DAYS LATER AFTER [DEFENDANT] HAD LEFT THE COURTHOUSE THOSE SENTENCES WERE TO RUN CONSECUTIVE.

POINT IV

THE SUPERIOR COURT ERRED IN CONCLUDING CLAIMS INVOLVING CONSIDERATION OF AGGRAVATING FACTORS WERE NOT COGNIZABLE CLAIMS ON PROCEDURAL GROUNDS IN LIGHT OF CUNNINGHAM v. CALIFORNIA³ RENDER THE LIFE SENTENCE WITH TWENTY-FIVE YEARS PAROLE INELIGIBILITY IMPOSED PURSUANT TO 2C-44-1(A) AND (B) AN ILLEGAL SENTENCE SINCE THE QUANTUM OF PUNISHMENT WAS INCREASED UPON THE TRIAL COURT FINDING STATUTORY AND NON[-]STATUTORY AGGRAVATING FACTORS NOT FOUND BY THE JURY BEYOND A REASONABLE DOUBT.

Based on our careful review of the record, as well as this matter's extensive procedural history, we find these arguments unpersuasive.

"A defendant may challenge an illegal sentence at any time." State v. Zuber, 227 N.J. 422, 437 (2017) (citing Rule 3:21-10(b)(5); Acevedo, 205 N.J. at 47 n.4). "[A]n illegal sentence is one that 'exceeds the maximum penalty . . .

³ 549 U.S. 270 (2007).

for a 'particular offense' or a sentence 'not imposed in accordance with law.'"

Acevedo, 205 N.J. at 45 (quoting State v. Murray, 162 N.J. 240, 247 (2000)).

"That includes a sentence 'imposed without regard to some constitutional safeguard.'" Zuber, 227 N.J. at 437 (quoting State v. Tavares, 286 N.J. Super. 610, 618 (App. Div. 1996)).

Additionally, if an issue was previously decided on direct appeal, a defendant is procedurally barred from relitigating that issue. R. 3:22-5. This is so because of the public policy "to promote finality in judicial proceedings." State v. McQuaid, 147 N.J. 464, 483 (1997). Further, it is well established that when our courts enter a remand order directing a "specific amendment or correction to [a] sentence imposed . . . such as . . . directing merger . . . the judge need only implement our judgment. No further proceedings would be required."

Tavares, 286 N.J. Super. at 616.

Here, it is uncontested that defendant was present at his original sentencing and was afforded the opportunity to say to Judge Schroth whatever he wanted to say. Further, it is evident that Judge Schroth had two choices when considering whether defendant should serve his New Jersey sentence consecutively or concurrently to his Maryland sentence. Judge Schroth chose the former. In Collins I, we found defendant's argument that his New Jersey

sentence should be modified to run concurrent to his Maryland sentence was without merit. Accordingly, we entered a remand order limited to merger of defendant's possession of CDS and possession with intent to distribute charges. Given this procedural history, defendant is procedurally barred under Rule 3:22-5 from renewing the argument that his New Jersey sentence should run concurrent to his Maryland sentence, simply by labeling his 1989 sentence "illegal." Likewise, since the 1993 resentence superseded the 1989 sentence, the same analysis applies.

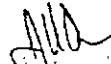
To the extent defendant references Cunningham v. California, 549 U.S. 270 (2007) and argues Judge Schroth imposed an illegal sentence by improperly finding aggravating and mitigating factors not found by the jury, we disagree. Not only is Cunningham factually distinguishable from this case, but our courts have consistently recognized that trial judges have broad sentencing discretion as long as the sentence is based on competent credible evidence and fits within the statutory framework. State v. Dalziel, 182 N.J. 494, 500 (2005). Additionally, judges must identify and consider "any relevant aggravating and mitigating factors" that "are called to the court's attention[.]" and "explain how they arrived at a particular sentence." State v. Case, 220 N.J. 49, 64-65 (2014) (quoting State v. Blackmon, 202 N.J. 283, 297 (2010)). We

are satisfied Judge Schroth adhered to these principles, that his findings of fact concerning aggravating and mitigating factors were based on ample credible evidence and that he applied the correct sentencing guidelines enunciated in the Code, both in 1989 and on remand in 1993. Accordingly, we decline to find defendant's sentence or resentence was illegal.

To the extent we have not addressed defendant's remaining arguments, we find they do not warrant further discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

STATE OF NEW JERSEY,

Plaintiff,

vs.

VERNON COLLINS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION-MERCER COUNTY

INDICTMENT NO.: 86-8-0769

ORDER OF THE COURT

THIS MATTER, having been brought before the Court; and

THIS COURT having considered the submissions on this Motion, and for good cause shown;

IT IS on this 19th day of June, 2019:

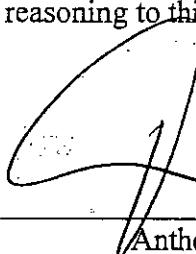
ORDERED that Defendant's motion to correct an illegal sentence is hereby DENIED for failing to state a claim of which relief can be granted;

The Court has attached an explanatory opinion stating its reasoning to this Order.

FILED

JUN 19 2019

SUPERIOR COURT OF NJ
MERCER VICINAGE
CRIMINAL DIVISION


Anthony M. Massi, J.S.C.

Appx (B) 1 of 1

SUPREME COURT OF NEW JERSEY
C-499 September Term 2020
085021

State of New Jersey,

Plaintiff-Respondent,

v.

O R D E R

Vernon Collins,

Defendant-Petitioner.

A petition for certification of the judgment in A-005136-18
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
23rd day of March, 2021.



CLERK OF THE SUPREME COURT

APPX(CC) 1021

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
Ind. No. 86-8-769
Appellate No. A-5173-88-T4

STATE OF NEW JERSEY, :
Complainant, : STENOGRAPHIC TRANSCRIPT

-V- : OF

VERNON A. COLLINS, : SENTENCE
Defendant, :

PLACE: Mercer Count Courthouse
Trenton, New Jersey
DATE: May 5, 1989

B E F O R E:

HON. DAVID J. SCHROTH, J.S.C.

Transcript Ordered By:

Richard Dunlevy,
Assistant Deputy Public Defender

A P P E A R A N C E S:

PAUL T. KOENIG, JR.,
PROSECUTOR - MERCER COUNTY
BY: TIMOTHY MC NAMARA,
Assistant Prosecutor
For the State of New Jersey

VERNON COLLINS, Pro Se

ROBIN BARBACZK, Esquire
Legal Advisor

ROSEMARIE LEVANDOWSKI, C.S.R.
OFFICIAL COURT REPORTER
MERCER COUNTY COURTHOUSE

Appx (D) 1-16

1 THE COURT: Mr. Collins.

2 SERGEANT-AT-ARMS: Step down here,
3 Mr. Collins.

4 THE COURT: Prosecutor.

5 MR. MC NAMARA: Good morning. Timothy
6 McNamara appearing for the State of New Jersey,
7 appearing for Jeffrey Rubin.

8 MS. BARBARCZK: Judge, if I may be
9 heard initially?

10 THE COURT: Yes.

11 MS. BARBARCZK: With respect to
12 Mr. Collins, Robin Barbarcz. Mr. Collins is
13 appearing pro se and I am his standby counsel.
14 This matter was, I believe, it was two weeks ago or
15 a week and a half ago originally scheduled for
16 sentencing, at which time Mr. Collins requested
17 that he be advised by myself in this regard.

18 I did not receive notice that this was
19 scheduled for sentencing here today. I did not
20 have an opportunity --

21 THE COURT: But, you knew it was
22 scheduled for last Friday. You knew that.

23 MS. BARBARCZK: I knew that, judge.
24 And, Mr. Collins did not have an opportunity to be
25 advised or ask me any questions. If perhaps we

1 could have an hour or so, I will gladly speak with
2 Mr. Collins.

3 THE COURT: Could you sit down a
4 minute, Mr. Collins. Could I see both of you.

5 (At which time a discussion was held off the
6 record at side bar.)

7 (At which time other matters were heard.)

8 THE COURT: Vernon Collins.
9 Prosecutor.

10 MR. MC NAMARA: Good morning. This is
11 the recall of State versus Vernon Collins. Timothy
12 McNamara appearing for the State of New Jersey,
13 appearing for Jeffrey Rubin.

14 This matter arises out of Indictment
15 86-8-769-I, prosecutor's file number 86-0405-02.
16 The defendant is here for sentencing as a result of
17 being found guilty of numerous charges, including
18 possession of controlled dangerous substances,
19 heroin, over 3.5 grams pure free base; possession
20 with intent to distribute heroin, over 3.5 pure
21 free base; unlawful possession and possession of a
22 prohibited devices.

23 The state would move to dismiss
24 complaint S 523242 after imposition of sentence.

25 Your Honor, it's my understanding that

1 Mr. Rubin has already put the state's version of
2 the trial as well as sentence on the record when
3 this matter was previously scheduled.

4 However, to briefly reiterate, the
5 state submits that the following aggravating
6 factors apply in the sentencing of this defendant.
7 Under 2C:44-1, aggravating factor number one,
8 number three, number five, number six, number nine
9 and number eleven.

10 The state also submits that no
11 mitigating factors apply in this case.

12 THE COURT: What ones do you say?

13 MR. MC NAMARA: Number one, number
14 three, number five, number six, number nine and
15 number eleven.

16 THE COURT: Mr. Collins, you are
17 representing yourself?

18 THE DEFENDANT: Yes.

19 THE COURT: Ms. Barbaczk has been your
20 standby attorney during most of the trial, and she
21 is here with you today in court. Are you ready to
22 proceed?

23 THE DEFENDANT: Yes.

24 THE COURT: Is there anything you would
25 like to say?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay.

3 THE DEFENDANT: I would like to object
4 to the state version as to information in it that
5 is subjective, not based on evidence that was put
6 forth in the case. The last paragraph of the state
7 version that you have in your hand --

8 THE COURT: Right.

9 THE DEFENDANT: -- concerning what
10 would have happened hadn't the state trooper
11 stopped me or whatever. I would like to object to
12 that being in there.

13 THE COURT: Okay. Your objection is
14 noted.

15 THE DEFENDANT: Also, there's material
16 in --

17 THE COURT: In that regard, may I say
18 that I heard the testimony and I'm relying on my
19 notes and my recollection.

20 THE DEFENDANT: Yes, sir. But, that
21 also follows me wherever I go, the state version,
22 that's why I wanted to check on that.

23 Also, there's redundancy of the charges
24 in the presentence report. The charge of 9-2-70
25 and 9-23-70 is the same charge.

1 THE COURT: Well, since you have
2 objected, I think I will make my position known. I
3 think it's a reasonable version of what the state
4 thinks happened. The record should indicate that
5 you disagree, but I'm not going to change it. It
6 can follow you as it is. That's the way they feel
7 it was, and it's supported by credible evidence.

8 What's your next point?

11 THE COURT: Where is that?

12 THE DEFENDANT: 9-2-70 and 9-23-70 is
13 the same offense.

14 THE COURT: Which one?

15 THE DEFENDANT: 9-2-70 and 9-23-70 is
16 the same offense. In other words, they got me
17 charged with homicide twice.

THE COURT: 9-2-70 and 9-223-70

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Both homicides, Baltimore;
21 first one was dismissed and the next one was nolle
22 pross'd. Why do you say they're the same charge?

23 THE DEFENDANT: They're the same
24 offense.

THE COURT: They don't look like it.

1 from this presentence report.

2 THE DEFENDANT: Well, they are.

3 THE COURT: They are. I'll take your
4 word for it. It doesn't matter, but I'll take your
5 word for it.

6 THE DEFENDANT: Also, 2-5-77 and
7 3-13-77, that was an acquittal on 9-9-77. It is
8 also redundance as to 3-13-77. There was no murder
9 charge. That's complete -- a complete error there.

10 THE COURT: Are you saying they are the
11 same offense?

12 THE DEFENDANT: Yes, sir, with the
13 exclusion of the murder charge. They have got down
14 there Count 3, murder. There was no murder charge.

15 THE COURT: Well, the first one says
16 assault with intent to murder, assault and armed
17 robbery, and the next one is armed robbery, assault
18 with intent to murder and murder. They say you
19 were acquitted on the first and acquitted and nolle
20 pross'd on the second. They appear to be the same,
21 you're right.

22 THE DEFENDANT: Yes, sir. But, absent
23 of the murder charge, there was no murder charge.

24 THE COURT: No murder charge?

25 THE DEFENDANT: No, sir.

1 THE COURT: I don't know about that. I
2 really can't accept that. This indicates there
3 was, but they are the same. But, it doesn't
4 matter, you weren't convicted.

5 Anything else?

6 THE DEFENDANT: No, sir.

7 THE COURT: Is there anything you'd
8 like to say?

9 THE DEFENDANT: No, sir.

10 THE COURT: This incident occurred on
11 March 24, 1986 at about 4:15 p.m. when a state
12 trooper on routine patrol on the New Jersey
13 Turnpike in East Windsor Township intercepted your
14 vehicle which was being operated by John Krissan,
15 your co-defendant, and also convicted and who is on
16 the loose with a warrant out for his arrest for not
17 returning to receive the verdict on the day of the
18 trial. The trooper detected an odor of burnt
19 marijuana, saw four partially burnt marijuana
20 cigarettes in the dashboard ashtray; arrest
21 followed and a plastic bag containing 61.7 grams of
22 heroin, which was 32.7 percent pure free base was
23 found.

1 you as you reached for it.

2 The second part of the presentence
3 report contained your record. You have a juvenile
4 petition, June 25, 1964 in Baltimore for
5 delinquency. You were placed on probation. You
6 later violated that probation and was incarcerated.

7 You have another juvenile petition fro
8 delinquency in January of '65, another in August of
9 '65. That was dismissed. And another in September
10 of '65 for delinquency and you were incarcerated.

11 Also, as a juvenile you have a robbery
12 in June of 1966, three counts, and a larceny. You
13 received an indeterminate three-year term and a
14 concurrent eighteen-month term.

15 You then became an adult. You were
16 charged with assault with a firearm. It was
17 dismissed in May of 1969. Two counts of robbery in
18 August of '69, dismissed. Homicide in September of
19 '69, and you were acquitted.

20 You have a disorderly persons violation
21 in Baltimore, May of 1970, sixty days in jail. You
22 have another homicide in Baltimore, September of
23 1970, it was dismissed.

24 Your first indictable offense was in
25 Baltimore, possession of a controlled dangerous

1 substance, four years in jail. And then you have
2 an assault with intent to murder, five years and a
3 one-year concurrent sentence on an assault.

4 Another assault in Baltimore, six months
5 consecutive. Another assault with intent to murder
6 in Baltimore, eight years consecutive. Another
7 assault with intent to murder and armed robbery in
8 February of 1977, acquitted. An escape in February
9 of 1977, six months consecutive. March of 1977
10 armed robbery, assault with intent to murder and
11 murder, acquitted.

12 December 21, 1978, escape, two years
13 consecutive.

14 Conspiracy to commit murder and escape
15 in Baltimore, March of 1981. You were acquitted.

16 March 24, 1986, possession of heroin,
17 possession with intent to distribute, unlawful
18 possession of a weapon, present offense.

19 May of 1986, felony murder, dismissed.

20 June of 1987, theft, nolle pross'd.

21 June of 1987, possession of CDS, dismissed. And,
22 July of 1987 in Baltimore, conspiracy to distribute
23 a CDS, possession of CDS with intent to distribute
24 and employing persons under eighteen with the
25 intent to distribute a controlled dangerous

1 substance. You received fifteen years in Baltimore
2 on one count and then twenty years consecutive on
3 employing the persons under eighteen

4 In conclusion, the third part of the
5 presentence report deals with your background.

2
6 That you refused to provide any information to the
7 probation officer. The probation officer refers to
8 you as a chronic criminal offender, not adverse to
9 the use of any violence. He suggests that you be
10 sentenced to the maximum allowed by the law.

11 And, the first decision I'm supposed to
12 make, whether or not this is a jail case. And, if
13 it is, I have to review the aggravating
14 circumstances and the mitigating circumstances to
15 determine whether or not you are entitled to a
16 presumptive or a greater or a lesser sentence.

17 In reviewing the aggravating
18 circumstances, I find that number one is present;
19 the nature and circumstances of the offense and the
20 role of the actor therein, including whether or not
21 the crime was committed in an especially heinous,
22 cruel or depraved manner. Not only was there a
23 very large amount of pure narcotics involved, but
24 you were also stopped while in the process of going
25 for a loaded gun; which your record would indicate

1 you would not hesitate to use.

2 Number three is present; the risk that
3 the defendant would commit another offense. That
4 appears to me to be an absolute certainty. You've
5 lived a life of crime. There's every indication
6 that you would have no intention of doing anything
7 other than to continue living a life of crime.
8 That is your way of existence.

9 Number six is present; the extent of
10 the defendant's prior criminal record and the
11 seriousness of the offenses of which you have been
12 convicted. You have a disgraceful criminal record.
13 You are obviously a serious threat to the safety of
14 law abiding citizens.

15 And, number nine is present; the need
16 for deterring the defendant and others from
17 violating the law. You're an individual that has
18 to be stopped, and the only way to stop you is to
19 put you behind bars and keep you there. You're a
20 violent and dangerous individual.

21 I've also reviewed the mitigating
22 circumstances contained in the code and find that
23 absolutely none of them come close to existing.

24 Mr. Collins has a total contempt for
25 our laws, so the sentence of the Court will be on

1 possession with intent to distribute, Count 2 --

2 This narcotics had a varying degree of
3 value. It had one value in New York where you went
4 to buy it, and then as you cross the George
5 Washington Bridge, you get to Newark, it went up
6 one hundred thousand dollars. And then when you
7 got down to Trenton, it went up another one hundred
8 thousand dollars. When you get to Washington, it
9 goes up another one hundred thousand dollars. So,
10 it's worth at least two hundred fifty thousand
11 dollars according to the testimony here in this
12 area. A quarter of a million dollars, and more
13 valuable as you went south.

14 On the possession with intent to
15 distribute pursuant to the statute, you'll be
16 committed to the custody of the Commissioner of the
17 Department of Corrections for a period of life.
18 And, you'll be ineligible for parole for a period
19 of twenty-five years. I'm imposing a term of
20 parole ineligibility because I'm clearly convinced
21 that the aggravating circumstances substantially
22 outweigh the non-existent mitigating circumstances.

23 This is an extremely serious case and
24 you are an extremely dangerous, violent person and
25 you deserve the maximum allowed by law so that

1 society can be protected.

2 For Count 1, I'm not merging possession
3 because you possessed these narcotics here in New
4 Jersey and you possessed them with the intent to
5 distribute them in another state, so they are
6 separate offenses and do not merge.

7 But, if you'll wait a minute, I have to
8 get something.

9 Sentence of the Court will be that you
10 will be committed to the custody of the
11 Commissioner of the Department of Corrections for a
12 period of seven years, which sentence is to run
13 consecutive to Count 2

14 On Count 3, unlawful possession of a
15 weapon, third degree offense, the sentence of the
16 Court would be that you be committed to the custody
17 of the Commissioner of the Department of
18 Corrections for a period of five years; said
19 sentence to run consecutively to Count 1 and
20 consecutively to Count 2.

21 Well, pursuant to Yarbough, I'll make
22 that concurrent.

23 Count 4 is dismissed and merged into
24 Count 3.

25 There will be a penalty of thirty

1 dollars on Count 1, Count 2 and Count 3 payable to
2 the Violent Crimes Compensation Board. That's a
3 total of ninety dollars.

4 You have the right to appeal the
5 verdict of the jury and my sentence within
6 forty-five days to the Appellate Division, New
7 Jersey Superior Court. If you can't afford an
8 attorney to effectuate the appeal, Ms. Barbaczk
9 will make known to you the procedure to be followed
10 to have the Office of Public Defender effectuate
11 your appeal.

12 You may go.

13 (At which time the sentence was concluded.)

14

15 * * * * *

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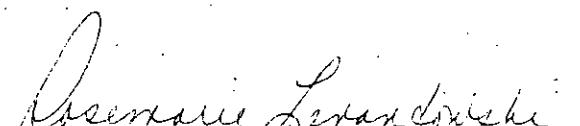
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6 C E R T I F I C A T E
7
89 I, ROSEMARIE LEVANDOWSKI, C.S.R., an Official
10 Court Reporter and Notary Public of the State of
11 New Jersey, do hereby certify the foregoing to be a
12 true and accurate transcript of my original
13 stenographic notes to the best of my ability taken
14 at the place hereinbefore set forth.15
16

17

18 ROSEMARIE LEVANDOWSKI
19 Official Court Reporter
20 License No. 994
21
22 DATED: 11-28-89
23
24
25
ROSEMARIE LEVANDOWSKI, C.S.R.
Official Court Reporter
License No. 994

POINT II - THE TROOPER'S PROTECTIVE SEARCH FOR WEAPONS WITHIN THE CAR WAS NOT OBJECTIVELY REASONABLE AND THUS IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONS AND THE EVIDENCE SEIZED MUST BE SUPPRESSED.

POINT III - THE DEFENDANT'S WAIVER OF HIS RIGHT TO COUNSEL WAS NOT KNOWING OR INTELLIGENT AND THUS HE WAS DEPRIVED OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHT TO COUNSEL.

POINT IV - THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING THE LAB REPORT AND THE TURNPIKE TOLL TICKET INTO EVIDENCE.

A. THE STATE FAILED TO ESTABLISH THE CHAIN OF CUSTODY AS TO THE HEROIN DESCRIBED IN THE LAB REPORT.

B. THE SLIGHT RELEVANCE OF THE TOLL TICKET WAS SUBSTANTIALLY OUTWEIGHED BY UNDUE PREJUDICE.

POINT V - THE COURT BELOW ERRED BY RULING THAT THE DEFENDANT'S PRIOR CONVICTIONS WERE ADMISSIBLE.

POINT VI - THE SENTENCE IMPOSED MUST BE MODIFIED BY THIS COURT ON SEVERAL GROUNDS.

A. THIS SENTENCE MUST RUN CONCURRENTLY WITH THE FEDERAL (SIC) DEFENDANT IS SERVING.

B. THE CONVICTION FOR POSSESSION MUST MERGE WITH THE CONVICTION FOR POSSESSION WITH INTENT TO DISTRIBUTE.

C. THE DEFENDANT MUST BE GIVEN THE OPPORTUNITY TO ELECT TO BE SENTENCED UNDER THE CORA.

With the exception of Point VI B, we find all of the defendant's contentions to be clearly without merit. R. 211-

In determining whether defendant validly waived his right to counsel we, like the trial judge, can only make that determination based upon the particular facts and circumstances of this case, including its background, and defendant's experience and conduct. State v. Guerino, 208 N.J. Super. 527, 533 (App. Div. 1988), cert. denied, 479 U.S. 1086, 107 N.J. 1289, 94 L. Ed. 2d 145 (1987). Defendant was given every opportunity to obtain counsel. He is a ringwise criminal attempting to invoke every technicality to whipsaw the criminal justice system.

Affirmed in part, reversed in part. Remanded to the Law Division for merger of the count for possession of heroin into the count for possession with intent to distribute, and for amendment of the judgment of conviction and the sentence imposed pursuant thereto.

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


CLERK OF THE APPELLATE DIVISION

Fallo

CLS

NR 11/2/92 *Vernon*

State of New Jersey

v.

AMENDED JUDGMENT
COUNTS ONLY

New Jersey Superior Court

L-95 Mercer County
Law Division - Criminal

VERNON COLLINS

 Judgment of Conviction

Citation: (Specify Complete Name)

 Order for Commitment

N/A

SBI:

3/24/85

DATE OF ARREST

ADJUDICATION BY:

DATE

8/19/86

DATE INDICTMENT FILED

 GUILTY PLEA

1/12/87

DATE OF ORIGINAL PLEA

 JURY TRIAL

12/6/88

 NOT GUILTY GUILTY

ORIGINAL PLEA

 NON-JURY TRIAL

ORIGINAL CHARGES

Incident No.	Count	Description	Date	Status
86-03-0769	1	POSSESSION CDS (HERCIN)	24:21-20a; 20:2-5	
	2	POSSESSION CDS W/I DISTRIBUTE	24:21-19a(1); 20:2-5	
	3	UNL POSS OF A WEAPON	20:39-5b; 20:2-6	
	4	POSS OF A PROH DEVICE	20:39-3f; 20:2-6	

FINAL CHARGES

FINAL CHARGE GUILTY COUNTS 1,2,3,4 OF INDICTMENT

Nov 25

GARDEN STATE

CLASSIFICATION

RECEIVED

CENTRAL FACILITY

11/30/88

DEPARTMENT OF

It is, therefore, on 9/14/92 ORDERED and ADJUDGED that the defendant be sentenced as follows:

UNDER COUNT 2 COMMITTED TO THE CUSTODY OF THE COMMISSIONER DEPARTMENT OF CORRECTIONS FOR A TERM OF LIFE WITH A MINIMUM PAROLE INVESTIGATION OF 25 YEARS.

UNDER COUNT 3 COMMITTED TO THE CUSTODY OF THE COMMISSIONER DEPARTMENT OF CORRECTIONS FOR A TERM OF 5 YEARS TO RUN CONCURRENT WITH COUNT 2.

ALL TERM ON THIS INDICTMENT ARE TO RUN CONSECUTIVE WITH ANY OTHER PRISON TERMS IMPOSED BY THE STATE OF MARYLAND.

COUNT 4 IS MERGED WITH COUNT 2 AND DISMISSED.

COUNT 1 IS MERGED WITH COUNT 2 AND DISMISSED

It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Defendant is to receive credit for time spent in custody.

TOTAL 00 DAYS

3/24/88 TO 3/25/88/

DATES FROM / TO

6/30/88 TO PRESENT

DATES FROM / TO

CDC LIFE & 5 YEARS