

**NOT FOR PUBLICATION WITHOUT THE  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-0865-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAMONA P. MERCADO-  
VASQUEZ, a/k/a RAMONA P.  
MERCADO and RAMONA P.  
VASQUEZ,

Defendant-Appellant.

---

Submitted November 16, 2022 – Decided January 26, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law  
Division, Bergen County, Indictment No. 14-12-1883.

Ramona P. Mercado-Vasquez, appellant pro se.

Mark Musella, Bergen County Prosecutor, attorney for  
respondent (William P. Miller, Assistant Prosecutor, on  
the brief).

PER CURIAM

Defendant Ramona Mercado-Vazquez appeals from the October 21, 2021 order of the Law Division denying her second petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

We derive the following facts from the record. In September 2013, defendant befriended codefendant Jorge Valencia, the superintendent of her building. He informed her and other codefendants that a resident of the building had money and jewelry valued at \$5 million in his apartment, to which Valencia had access as superintendent. Defendant and the others formulated a plan to steal those items and split the proceeds. Defendant agreed to a plan in which her codefendants would go into the victim's apartment at night while he was sleeping armed with a gun provided by Valencia.<sup>1</sup> The codefendants would threaten the victim, steal the goods, and summon the doorman to the apartment on a pretext, where they would restrain him while they disposed of the building's surveillance video. Defendant's role was to wait in her apartment to receive the stolen loot. She never renounced the plan and participated in a test run during which she propped open a side door to the building with a magazine.

---

<sup>1</sup> Valencia had previously stolen the gun from the victim and stored it in defendant's apartment.

In November 2013, defendants and her codefendants carried out the plan, leaving both the victim and the doorman bound by ropes in the apartment. Valencia brought the stolen items to defendant's apartment. He stashed the goods in the electrical panel of her jacuzzi. Defendant later moved the stolen items from the tub, and hid them among her child's clothing, in the laundry room, and inside a closet.

A grand jury later returned a fifteen-count indictment against defendant. Ultimately, she entered a guilty plea to first-degree armed robbery, N.J.S.A. 2C:2-6 and N.J.S.A. 2C:15-1, and second-degree conspiracy to commit kidnapping, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:13-1(b). Pursuant to a plea agreement, the court sentenced defendant to a fourteen-year term of imprisonment for armed robbery, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and a concurrent eight-year term of imprisonment for conspiracy.

Defendant appealed only the length of her sentence. We affirmed the sentence, but remanded for amendment of the judgment of conviction. State v. Mercado-Vasquez, No. A-1665-15 (App. Div. May 24, 2016).

Defendant thereafter filed her first PCR petition. She alleged her trial counsel was ineffective for: (1) failing to request a Spanish language interpreter throughout the trial court proceedings; (2) pressuring her to plead guilty; (3)

misrepresenting her sentencing exposure; and (4) not providing her with full discovery. On September 25, 2019, the trial court issued an order denying the petition without an evidentiary hearing.

We affirmed. State v. Mercado-Vasquez, No. A-1408-19 (App. Div. Mar. 18, 2021). The Supreme Court denied certification. State v. Mercado-Vasquez, 247 N.J. 226 (2021).

On September 28, 2021, defendant filed her second PCR petition. She alleged ineffective assistance of trial court at her plea and sentencing proceedings and ineffective assistance of counsel on her first PCR petition for not raising various claims. She did not seek an order vacating her guilty plea, asking only to be resentenced.

On October 21, 2021, the trial court issued an order dismissing defendant's second petition as untimely pursuant to Rule 3:22-12(a)(2)(C) because it was filed more than a year after dismissal of her first petition. The court also denied defendant's motion for the appointment of counsel.

This appeal followed. Defendant makes the following arguments.

#### POINT ONE

THE TRIAL COURT ERRED IN DENYING  
DEFENDANT'S SECOND POST-CONVICTION  
RELIEF PETITION AND ASSIGNMENT OF  
COUNSEL AND THE APPELLATE DIVISION

SHOULD REVERSE THE TRIAL COURT'S DECISION.

POINT TWO

THE TRIAL COURT ERRED IN DENYING APPELLANT'S PETITION ON PROCEDURAL GROUNDS PURSUANT TO RULE 3:22-12(a)[(2)]([C]).

POINT THREE

INEFFECTIVE ASSISTANCE OF COUNSEL BASED UPON THE FAILURE OF COUNSEL [TO] ARGUE AND DEFEND APPELLANT REGARDING THE INACCURATE PLEA COLLOQUIES OF HER CO-DEFENDANTS.

POINT FOUR

INEFFECTIVE ASSISTANCE OF COUNSEL BASED UPON THE FAILURE OF COUNSEL TO ARGUE AND DEFEND APPELLANT DURING THE SENTENCING HEARING.

POINT FIVE

INEFFECTIVE ASSISTANCE OF COUNSEL BASED UPON THE MITIGATING FACTORS N.J.S.A. 2C:44-1[(b)](13), N.J.S.A. 2C:44-1[(b)](4) AND N.J.S.A. 2C:44-1[(b)](8).

POINT SIX

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL BASED UPON THE FAILURE OF TRIAL COUNSEL TO OBJECT TO THE SENTENCING COURT'S FAILURE TO CLEARLY ARTICULATE HOW THE

AGGRAVATING AND MITIGATING FACTORS WERE BALANCED TO ARRIVE AT THE SENTENCING DETERMINATION.

POINT SEVEN

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL BASED UPON THE FAILURE OF COUNSEL TO ADVOCATE FOR A LESSER SENTENCE BASED UPON THE DELAYED DEVELOPMENT OF THE ADOLESCENT BRAIN, IN CONJUNCTION WITH THE APPELLANT'S PAST SOCIAL AND PSYCHOLOGICAL HISTORY.

POINT EIGHT

INEFFECTIVE ASSISTANCE OF COUNSEL BASED UPON THE CUMULATIVE EFFECT OF THE ERRORS CITED ABOVE.

## II.

We review de novo the trial court's legal conclusion that defendant's second PCR petition was untimely filed. State v. Harris, 181 N.J. 391, 419 (2004). According to Rule 3:22-4(b),

[a] second or subsequent petition for [PCR] shall be dismissed unless:

(1) it is timely under [Rule] 3:22-12(a)(2); and

(2) it alleges on its face either:

(A) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the

Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or

(B) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable probability that the relief sought would be granted; or

(C) that the petition alleges a prima facie case of ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief.

A second PCR petition is untimely if it is filed "more than one year after,"

the following:

(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey, if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or

(B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence; or

(C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief is being alleged.

[R. 3:22-12(a)(2).]

The time limits established in the Rule "shall not be relaxed, except as provided herein." R. 3:22-12(b).

Defendant does not allege she is entitled to relief based on a newly recognized constitutional right. Her second petition, therefore, does not fall within subsection (A) of the rule. Nor does defendant allege that her second petition is based on facts she recently discovered, which were not available to her under the exercise of reasonable diligence within the time in which to file a timely second petition. Her second petition, therefore, does not fall within subsection (B) of the rule.

Defendant's second petition alleges she was denied the effective assistance of counsel with respect to her first petition. Subsection (C) of the rule requires that a second petition alleging such claims must be filed no more than a year after the date of the denial of the first petition. Defendant's first petition was denied on September 25, 2019. She did not file her second petition until September 28, 2021, more than two years later. As the trial court correctly concluded, defendant's second petition is time barred under subsection (C).<sup>2</sup>

---

<sup>2</sup> We recognize that the trial court analyzed the timeliness of defendant's second petition only under subsection (C) of the rule.



Defendant acknowledges that her second petition was untimely filed. She argues that the late filing should be overlooked because restrictions at the prison in which she is housed related to the Covid-19 pandemic prevented her from filing the petition in a timely fashion. This argument, raised for the first time on appeal, is unconvincing. Defendant produced no evidence that Department of Corrections officials prevented inmates at defendant's facility from sending mail to the courts for a year and a half after the commonly known start of Covid-19 restrictions in March 2020. Nothing in the record suggests such drastic measures were imposed on outgoing mail at defendant's prison.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION