

Adonis Thomas #979516-B
New Jersey State Prison
P.O. Box 861
Trenton, NJ 08625

Superior Court of New Jersey
Appellate Division
Docket No. A-003602-23T1

State of New Jersey,	:	
Plaintiff-Respondent,	:	<u>Criminal Action</u>
v.	:	On Appeal from an Order of the Superior Court of New Jersey, Law Division, Essex County, Denying a Second Petition for Post- Conviction Relief
Adonis Thomas,	:	
Defendant-Appellant.	:	Sat Below: Hon. Arthur Batista, J.S.C.
	:	

Pro se Brief on
Behalf of Defendant-Appellant

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Procedural History¹

Appellant was charged with the offense(s) of: Two counts of knowing or purposeful murder (counts one and two); attempted murder (count three); second-degree aggravated assault (count four); third-degree burglary (count five); fourth-degree theft by unlawful taking (count six); third-degree unlawful possession of a weapon (count seven); and second-degree possession of a weapon, the same handgun, with an unlawful purpose.

On June 10, 1998, appellant appeared before the Honorable Jared D. Honigfeld, J.S.C. Appellant was tried in Essex County, under indictment numbers 97-11-4695 & 97-11-4698.

On June 26, 1998 appellant was convicted of all counts contained in both indictments.

On July 10, 1998 the trial judge found appellant guilty of the disorderly persons offense of theft.

On July 10, 1998 the court granted the state's motion for imposition of an extended term, for appellant being a second time offender with a firearm.

¹ The following designations codes are used in this brief:

AA refers to Appellant's appendix.

1T refers to the transcripts of the June 17, 1998, trial proceedings;

2T refers to the transcripts of the July 21, 2004, PCR proceedings;

3T refers to the transcripts of the May 8, 2008, PCR proceedings;

4T refers to the transcripts of the July 2, 2008, PCR proceedings;

5T refers to the transcripts of the May 2, 2024, Reconsideration motion.

The court sentenced appellant to two consecutive life terms with 30-year parole bars on counts one and two (murder). On count three (attempted murder) the court imposed an extended term of life with a 25 year parole bar to run consecutive. In total, appellant was sentenced to 85 years in the aggregate.

Appellant's convictions were affirmed by the Appellate Division, on January 11, 2001. Appellant's certification was denied by the Supreme Court on March 27, 2001.

On or around April 25, 2001 appellant's Post Conviction Relief (PCR) motion was filed, and denied on July 30, 2004.

On or around July 2005 appellant filed a discovery motion, that was labeled a "second PCR", which was dismissed without prejudice.

On October 24, 2006, the Appellate Division remanded appellant's first PCR back to the Law Division for an Evidentiary Hearing. On March 12, 2010, appellant's evidentiary hearing was denied.

Appellant proceeded to the Superior Court of New Jersey, Appellate Division, where Appellant appealed the Law Division's March 12, 2010 ruling which denied Appellant's evidentiary hearing. The Law Division's ruling was affirmed. Appellant petitioned for certification to Supreme Court of New Jersey, which declined to review the Appellate Division's ruling.

Appellant proceeded to the federal courts, with all negative results from the New Jersey District Court, and the United States Court of Appeals, for the 3rd Circuit.

On June 14, 2018, appellant filed a motion to correct an illegal sentence pursuant to *R. 3:21-10(b)(4)(5)*. The motion was denied on November 26, 2018.

On March 9, 2023, Appellant filed a *pro se* second PCR pursuant to *R. 3:22-1*, based on a conflict of interest at Appellant's trial. (AA-7) – (AA-18)..

On June 20, 2023, Appellant filed a motion for a sentence reduction. On July 13, 2023, the motion was denied by the Law Division, Essex County.

The Law Division denied Appellant's second PCR application on August 22, 2023. (AA-42) – (AA-47). On September 5, Appellant filed a notice of appeal to the Appellate Division related to the July 13, 2023, denial of his motion for a sentence reduction. On September 11, 2023, Appellant filed a motion for reconsideration of the court's August 22, 2023 order denying the second PCR. (AA-48) – (AA-51).

On June 19, 2024, the Law Division denied the reconsideration motion. (AA-75) – (AA-86).

Appellant filed a notice of appeal on or around July 25, 2025. (AA-87) – (AA-88).

Statement of Facts²

On or around December 1997, appellant met assigned counsel Janine Beer, Esq., (Beer) for the first time. Beer was employed by the Office of the Public Defender, (OPD) Trial Region, Essex County.

State's eye witness Lonnie McNeal a.k.a. Lonnie Neal had a pending case, (State v. Lonnie Neal), Indictment No. 97-10-04101, stemming from a June 23, 1997 arrest. (AA-110) – (AA-111). Lonnie Neal was represented by Peter Ligouri, (Ligouri).

Ligouri was employed by the Office of the Public Defender, Essex County, in 1998. Ligouri and Beer were co-workers at the same Office of the Public Defender, Trial Region in Essex County. (AA-6).

On March 6, 1998, appellant and Beer appeared before the Hon. Jared D. Honigfeld, J.S.C. for a Rule 3:9-1(e) Trial Memorandum.

On March 30, 1998, Neal appeared before the Hon. Francine A. Schott, J.S.C., George Tosi, assistant prosecutor and Ligouri, Neal was accepted into PTI. (AA-37) – (AA-41).

² Appellant adopts the Statement of Facts set forth by the Appellate Division in the unpublished opinion dated January 11, 2011. State of New Jersey v. Adonis Thomas, No. A-3428-98T4. Nonetheless, the above facts relate to the conflict of interest which covers some of State's witness Lonnie McNeal, and Appellant's Evidentiary hearings from May 27, 2008 and July 2, 2008 PCR proceedings.

Appellant started trial on June 10, 1998, during the trial proceedings, a material witness warrant was issued for Lonnie McNeal aka Lonnie Neal. (AA-112).

On June 17, 1998, McNeal testified for the state against appellant. Neal was the state's main eye witness in appellant's double murder case. (AA-1) – (AA-4). Neal also testified under the name "Lonnie McNeal". Therefore, the defense did not know McNeal was actually Neal with the pending charges, the defense could not impeach McNeal. Beer spoke of McNeal being a possible suspect in the case at Appellant's evidentiary hearing. (T3 10-3 to 4).

Appellant did not have knowledge of Neal's case, or the OPD simultaneous representation of the state's chief witness (Neal) and Appellant.

On or around June 2021, appellant's friend hired Investigator Patrick DeFrancisci, (Inv. DeFrancisci) of the "The Gideon Group". (AA-16).

Inv. DeFrancisci obtained Lonnie Neal's PTI Acceptance transcripts, dated March 30, 1998, through the Administration of the Courts. (AA-6).

On June 20, 2022, Neal's PTI acceptance transcripts were forwarded to Ligouri for his review. (AA-6).

While being interviewed, Ligouri did not specifically recall the PTI proceedings, but did confirm he was a co-worker of Janine Beer. (AA-6).

Two follow-up calls were made to Ligouri after the PTI transcripts were forwarded to Ligouri. Ligouri never returned the phone calls. (AA-6).

Legal Argument

Point I

Appellant's Sixth Amendment Right to Counsel was Violated by the Simultaneous Representation of the Public Defenders Office of Appellant and a State Witness, in Violation of Appellant's Sixth Amendment Right to Counsel. (AA-62).

The United States and New Jersey Constitutions provide that a criminal defendant has the right to the assistance of counsel. *U.S. Const. amend. VI*; *N.J. Const. art. I, P10*. The right to counsel encompasses the right to effective counsel. *Glasser v. United States*, 315 U.S. 60, 70, 62 S. Ct. 457, 465, 86 L. Ed. 680, 699 (1942); *State v. Land*, 73 N.J. 24, 372 A.2d 297 (1977). Effective counsel must provide the client with undivided loyalty and representation that is "untrammelled and unimpaired" by conflicting interests. *State v. Bellucci*, 81 N.J. 531, 538, 410 A.2d 666 (1980) (quoting *Glasser, supra*, 315 U.S. at 70, 62 S. Ct. at 465, 86 L. Ed. at 699, and citing *Land, supra*, 73 N.J. at 31, 36, 372 A.2d 297, and other cases).

However, "not every potential attorney conflict rises to such an unacceptable level that it deprives a defendant of the right to effective assistance of counsel." *State v. Murray, supra*, 162 N.J. at 249-50, 744 A.2d 131. Nor do all forms of association among attorneys give rise to the presumption of prejudice. In

State v. Bell, 90 N.J. 163, 447 A.2d 525 (1982), the Supreme Court refused to apply *Bellucci's* per se rule to the representation of co-defendants in the same criminal action by separate attorneys of the Public Defender's Office, finding that such an association did not give rise to the presumption of prejudice. The Court in *Bell* concluded that where circumstances "demonstrate a potential conflict of interest and a *significant likelihood* of prejudice, the presumption of both an actual conflict of interest and actual prejudice will arise, without the necessity of proving such prejudice." *Id.* at 171, 447 A.2d 525 (emphasis added). The state's star witness, McNeal did not share a common interest with Appellant. In fact McNeal's interest was adverse to that of Appellant in that he was called by the state to prove Appellant's guilt. Therefore, McNeal did not share the same interest of Appellant, but did demonstrate a potential conflict of interest and a *significant likelihood* of prejudice. In fact, McNeal's interest was very adverse to Appellant's interest in every demonstrable way. (Emphasis added).

As the Law Division court focused on the *Bell* standard (AA-64), since it deals with public defenders. The current case is distinguished from the *Bell* standard, because the *Bell* court dealt with co-defendants, as this current case deals with a defendant, and a state eyewitness (both being represented by the OPD), and therefore should be analyzed under the *Bellucci* standard.

In *State v. Norman*, 151 N.J. 5, 10-11, 697 A.2d 511 (1997), the Court explained that *Bellucci* created "a two-tier system for evaluating conflict-of-interest claims." *Id.* at 24, 697 A.2d 511. Under the first tier, "[i]f a private attorney, or any lawyer associated with that attorney, is involved in simultaneous dual representations of codefendants, a per se conflict arises, and prejudice will be presumed, absent a valid waiver." *Id.* at 24-25, 697 A.2d 511. "Otherwise," under the second tier, "the potential or actual conflict of interest must be evaluated and, if significant, a great likelihood of prejudice must be shown in that particular case to establish constitutionally defective representation of counsel." *Id.* at 25, 697 A.2d 511 (citing *State v. Bell*, 90 N.J. 163, 171, 447 A.2d 525 (1982)). One can easily presume that Appellant suffered a great deal of prejudice from a state witness being represented simultaneously by the same OPD, trying Appellant's case, while representing, a testifying eye-witness' pending case.

Furthermore, if the court applies the *Bell* standard, the court must consider *N.J. Ct. R. 3:8-2* which requires an attorney or law firm to move before trial for permission to represent more than one defendant in a criminal trial. Pretrial representation of several co-defendants by one attorney prevent the attorney from representing any one of them at trial. It is an improper conflict for an attorney to represent one defendant while a partner or associate represents other criminal co-

defendants. Although this case does not deal with co-defendants, but deals with a defendant, and a state witness³ who share different interests.

McNeal's connection to the OPD continued after his testimony, wherefore McNeal's sentencing Judge informed him, "you can still be prosecuted on this if you fail to observe the conditions of PTI⁴, fail to pay the fines or penalties, or find yourself in trouble." (AA-39). McNeal did ultimately violate his PTI, and was sent to state prison. (AA-110) – (AA-111). If a defendant successfully completes the program, the criminal charges are dismissed. *See N.J.S.A. 2C:43-13(d); R. 3:28(c)*. The terms of McNeal's admission into the PTI program required him to comply with all of the terms.

In *State v. Cottle*, 194 N.J. 449, the New Jersey Supreme Court dealt with an attorney dealing with a conflict of interest, who failed to notify his client of his PTI status with in the same county. The Court commented on, "an indictment is still pending during the period a defendant is enrolled in a PTI program." McNeal was sentenced to three (3) years of PTI. (AA-111). *See N.J.S.A. 2C:43-13(b); R. 3:28(b)-(c)*. An indictment is dismissed only after successful completion of the

³ Appellant has never been provided with conditions of McNeal's PTI agreement, such as any conditions that applied to his deal on rather to testify against Appellant, to satisfy any agreements.

⁴ PTI is a statewide program that allows eligible defendants charged with first-time, non-violent offenses to avoid prosecution by receiving supervisory or rehabilitative treatment for a period not to exceed three years. *N.J.S.A. 2C:43-12(a) and -13(c)*.

program, and then by order of the court, "with the consent of the prosecutor,"
N.J.S.A. 2C:43-13(d); R. 3:28(c)(1).

Wherefore Appellant suffered an enormous amount of prejudice by not having a third-party guilt defense advance on the state's witness, and his convictions should be reversed for a new trial.

Point II

The Rules of Professional Conduct 1.7(a)(1) and (a)(2) Were Violated, and Under *State v. Bell*, a Reversal is Required. (AA-67).

Appellant asserts that the Rules of Profession Conduct (*RPC*) 1.7(a)(1) and (2) were violated for the Public Defender's Office (PDO) to represent Appellant, while already representing the State's witness Lonnie McNeal on his pending criminal charge.

The *RPC* 1.7. Conflict of interest: general rule states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyers responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Here, the OPD was first working on McNeal's pending criminal matter from June of 1997. Appellant's criminal matter occurred on September 14, 1997, with McNeal being an eye witness against Appellant in his September criminal matter. Therefore establishing that McNeal was the OPD's client first, Appellant should

have been appointed a pool attorney, without conflicting interest. *RPC* 1.7 (a)(1) is impacted because the OPD was representing McNeal first. Clearly, the representation of McNeal is directly adverse to Appellant's case.

RPC 1.7 (a)(2) is also impacted, because "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer." The third person in this matter is Peter Ligouri, (Ligouri) who represented McNeal in his criminal matter. Appellant's trial attorney worked in the same office as Ligouri. Therefore impacting *RPC* 1.7 (a)(2).

Public Defenders are not different from private attorneys with respect to the circumstances of the current case. Ligouri and Beer represented competing interests. These considerations have led courts to hold that the Sixth Amendment and a lawyer's professional responsibility are violated when two public defenders from the same office represent conflicting interests, even in the absence of the economic consideration present when a private firm is involved. *Borden v. Borden* (D.C. Ct. App. 1971); *Turner v. State*, 340 So.2d 132 (Fla. Dist. Ct. App. 1976).

Here the Office of the Public Defender, Essex County trial region, did not have a screening process to ferret out McNeal's representation, and Appellant was not able to waive any conflicts under *R.* 3:8-2.

The opinion in *Bellucci* gave several reasons for the conclusion that representation by private partners would be equated to single-attorney representation. They were: (1) ready access to confidential information among members of a law firm, (2) shared economic interests of the entire firm, (3) and the erosion of public confidence if conduct proscribed for a lawyer could be performed by his partner. In a footnote, 81 *N.J.* at 542 n.3, the court observed that: "These considerations have led courts to hold that the Sixth Amendment and a lawyer's professional responsibility are violated when two public defenders from the same office represent *conflicting* interests, even in the absence of the economic consideration present when a private firm is involved." (Emphasis added). Two authorities are cited for this statement: *Borden v. Borden*, 277 A.2d 89 (D.C. Ct. App. 1971); *Turner v. State*, 340 So. 2d 132 (Fla. Dist. Ct. App. 1976).

In *Borden* the District of Columbia Court of Appeals found an ethical violation existed where lawyers employed by the Neighborhood Legal Services Program represented opposing parties to a contested divorce proceeding, citing as authority in part New Jersey Advisory Committee on Professional Ethics, Opinion No. 155, 92 *N.J.L.J.* 9 (1969).

In *Turner* the Florida Court of Appeals held that where "a conflict of interest between the defense of petitioner and one of the other co-defendants" in a burglary case existed, "separate attorneys within the public defender's office"

could not properly represent all. *Ibid.* The Florida court stated: "We view the public defender's office of a given circuit as a 'firm' within the discipline of this canon. [DR5-105]" Both *Borden* and *Turner* were cases of clear conflicts potentiating for real prejudice to clients.

This rule is easily applied in the context of litigation. See Kevin H. Michels, *New Jersey Attorney Ethics - The Law of New Jersey Lawyering*, 19:2-1 at 407 (2012) ("*RPC 1.7(a)(1)* clearly prohibits the representation of opposing parties in the same litigation."). See also *N.J. Advisory Comm. on Professional Ethics Op. 362* (1977) (holding a lawyer representing both a union and an individual member of that union had to withdraw from representation of both clients upon the individual's filing a grievance against the union). We conclude the rule's proscriptions must equally apply to transactional matters, and a concurrent conflict of interest arises when "the representation of one client will be directly adverse to another client." *RPC 1.7(a)(1)*.

"*RPC 1.7* is rooted in the concept that '[n]o man can serve two masters,' Raymond L. Wise, *Legal Ethics* 272-73 (1970), and, it has been suggested that employment should be declined if there is a question whether the representation will create an adversity of interest between two clients." *State ex rel. S.G.*, 175 N.J. 132, 139, 814 A.2d 612 (2003). This principle applies here.

RPC 1.7(a)(1) and (2) conflicts with Appellant's right to counsel under the *Bell* theory, and since Appellant's right to counsel supersedes, rather a public defender or private counsel are actually the same, where the same rules apply to both.

See also *United States v Daugerdas*, 735 F. Supp. 2d 113, in a very similar case, where the Government moved to disqualify a law firm from representing a defendant based on the law firm's simultaneous representation of a cooperating witness.

The Court ruled, "[t]his undertaking creates a clear conflict of interest. See *United States v. Jiang*, 140 F.3d 124, 127 (2d Cir. 1998) (per curiam) ("A showing that two attorneys are partners . . . whose interests overlap in the acceptance of clients and in the sharing of fees is sufficient to ground a conflict of interest claim, assuming that there is proof that the clients' interests may have been in conflict."

Although the current case deals with the Public Defender's Office, where no financial funds were at issue, the Court in *Cuyler v. Sullivan*, 100 S.Ct. 1708, 1716 (1980), reasoned that, "A rule which would apply one fourteenth amendment test to assigned counsel and another to retained counsel would produce the anomaly that the non-indigent, who must retain an attorney if he can afford one, would be entitled to less protection The effect upon the defendant-confinement a as a

result of an unfair state trial – is the same whether the inadequate attorney was assigned or retained.” Id. at 1716.

Appellant should receive a new trial to protect his right to counsel, and his right to an effective counsel.

Point III

Appellant's Right to Counsel Claim
Falls Within the Per Se Exception
Outlined in *State v. Bellucci*, and
State v. Alexander.
(Not Raised Below).

At Appellant's trial, Appellant suffered from an actual conflict of interest. An actual conflict of interest exists when the attorney's and the defendant's interests diverge with respect to a material factual or legal issue or to a course of action, or when the attorney's representation of the defendant is impaired.

The Court has limited the per se conflict on constitutional grounds to cases in which a private attorney, or any lawyer associated with that attorney, is involved in simultaneous dual representations of codefendants. In all other cases, the potential or actual conflict of interest must be evaluated and, if significant, a great likelihood of prejudice must be shown in that particular case to establish constitutionally defective representation of counsel. Although the Court refers to the application of the rule when attorneys represent co-defendants, that is not a literal requirement.

In *State v. Alexander*, 403 N.J. Super. 250, the court reversed the denial of defendant's post-conviction relief petition upon applying the *per se* rule that a conflict of interest was created by the dual representation, despite trial counsel being a pool attorney. The court held that because the conflict arose between the

entry of a guilty plea but before sentencing, there was no cause to disturb the plea, but that defendant was entitled to be resentenced following a determination of what might have occurred had defendant sought to cooperate with law enforcement regarding his alleged cohort. The court found a per se violation of the pool attorney.

Appellant invokes the accepted principle that a criminal defendant has the right to counsel "whose representation is unimpaired and whose loyalty is undivided." *State v. Murray*, 162 N.J. 240, 249, 744 A.2d 131 (2000).

"[A] non-indigent defendant's Sixth Amendment right to counsel encompasses the right to be represented by the counsel of his [or her] choosing, as the Sixth Amendment 'commands . . . that the accused be defended by the counsel he [or she] believes to be best.'" *State v. Hudson*, 443 N.J. Super. 276, 283, 128 A.3d 739 (App. Div. 2015) (quoting *U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 146, (2006), 126 S. Ct. 2557, 165 L. Ed. 2d 409). However, a defendant's right to choose counsel is not absolute. *State v. Kates*, 426 N.J. Super. 32, 45, 42 A.3d 929 (App. Div. 2012), *aff'd*, 216 N.J. 393, 81 A.3d 662 (2014). The "right to choose counsel is circumscribed by the court's power to guard against conflicts of interest, and to vindicate the court's independent interest in ensuring that the ethical standards of the profession and legal proceedings appear fair to all who

observe them." *Ibid.* (quoting *Wheat v. U.S.*, 486 U.S. 153, 160 (1988), 108 S. Ct. 1692, 100 L. Ed. 2d 140).

In the Supreme Court's decision in *State v. Cottle*, 194 N.J. 449, 465-70, 946 A.2d 550 (2008), the Court summarized our jurisprudence when criminal defense attorneys engage, whether intentionally or not, in the dual representation of individuals with competing interests. When a per se conflict has been found, "prejudice is presumed in the absence of a valid waiver, and the reversal of a conviction is mandated." *Id.* at 467, 946 A.2d 550; *see also State v. Norman*, 151 N.J. 5, 24-25, 697 A.2d 511 (1997); *State v. Bellucci*, 81 N.J. 531, 543, 410 A.2d 666 (1980). The Court went on to describe the existing parameters of this rule: Thus far, we have limited the per se conflict on constitutional grounds to cases in which "a private attorney, or any lawyer associated with that attorney, is involved in simultaneous dual representations of codefendants." In all other cases, "the potential or actual conflict of interest must be evaluated and, if significant, a great likelihood of prejudice must be shown in that particular case to establish constitutionally defective representation of counsel." [*Cottle, supra*, 194 N.J. at 467-68, 946 A.2d 550 (citations and footnote omitted).] The *Cottle* Court recognized that it had "rejected extending the per se conflict approach to cases in which staff attorneys in the same public defender's office represent codefendants in the same criminal action," citing *State v. Bell*, 90 N.J. 163, 167, 447 A.2d

525 (1982), and "in which two private attorneys representing codefendants discussed forming a partnership, but did not establish the partnership until after the trial," citing *Norman, supra*, 151 N.J. at 29-30. *Cottle, supra*, 194 N.J. at 467 n.8. Neither of these circumstances has application here. Furthermore, Appellant did not have a co-defendant. The State's witness was not a co-defendant in this matter at all.

Although the Court referred to the application of the rule when attorneys represent "codefendants," it is clear that this is not a literal requirement. Indeed, the Court applied the per se rule to the circumstance where defense counsel was the target of a criminal investigation in the same county in which he represented defendant. *Cottle, supra*, 194 N.J. at 468-69, 946 A.2d 550. *Cottle* and his attorney were not "codefendants."

Even if the courts utilize the *Bell* theory, Appellant still prevails under this theory. The *Bell* Court commented: "...should the circumstances demonstrate a potential conflict of interest and a significant likelihood of prejudice, the presumption of both an actual conflict of interest and actual prejudice will arise, without the necessity of proving such prejudice. See *State v. Land, supra*, 73 N.J. at 24; cf. *State v. Bellucci, supra*, 81 N.J. at 547 (Handler, J., concurring in result but disagreeing as to per se rule)...." *Id* at 90 N.J. at 171.

Furthermore, under the appearance of impropriety standard at the time of Appellant's trial in 1998, the Rules of Professional Conduct, (RPC), prohibited the Public Defender's Office from representing a defendant, and a state witness, simultaneously. It is from the "viewpoint of the public from which [the New Jersey Supreme] Court has chosen to judge whether particular conduct would constitute the appearance of impropriety." *Opinion 569, supra*, 103 N.J. at 331, 511 A.2d 119. As the Supreme Court observed, "[a]ppearances too are a matter of ethical concern, for the public has an interest in the repute of the legal profession." *In re Abrams*, 56 N.J. 271, 277, 266 A.2d 275 (1970).

Appellant is protected by the ex post facto clause. Both the United States and New Jersey Constitutions forbid the legislative branch from passing *ex post facto* laws. The purpose of the prohibition "is to guarantee that criminal statutes 'give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.'" *State v. Muhammad*, 145 N.J. 23, 56, 678 A.2d 164 (1996) (quoting *Weaver v. Graham*, 450 U.S. 24, 28-29, 101 S. Ct. 960, 964, 67 L. Ed. 2d 17, 23 (1981)). Thus, for a statute to violate the *ex post facto* ban, it "must either (1) punish as a crime an act previously committed, which was innocent when done; (2) make more burdensome the punishment for a crime, after its commission; or (3) deprive a defendant of any defense available according to the law at the time when the crime was committed." *Muhammad, supra*, 145 N.J.

at 56, 678 A.2d 164. On the other hand, "[t]here is no *ex post facto* violation . . . if the change in the law is merely procedural and does not increase the punishment, nor change the ingredients of the offense or the ultimate facts necessary to establish guilt." *State v. Natale*, 184 N.J. 458, 491, 878 A.2d 724 (2005) (quoting *Miller v. Florida*, 482 U.S. 423, 433, 107 S. Ct. 2446, 2452-53, 96 L. Ed. 2d 351, 362 (1987)) (internal citations omitted).

Point IV

Rule 3:22-4(b)(2)(B) Permits Review
of Barred Claims to Prevent Fundamental
Injustices.
(AA-32) - (AA-33).

On or around June 2021, Appellant's friend (Nelson Long) hired
Investigator Patrick DeFrancisci, (Inv. DeFrancisci) of the, "The Gideon Group".
(AA-5) to (AA-6).

Inv. DeFrancisci obtained Lonnie Neal's PTI Acceptance transcripts, dated
March 30, 1998 through the Administration of the Courts. (AA-6).

On June 20, 2022, the Neal's PTI Acceptance transcripts were forwarded to
Ligouri for his review. While being interviewed, Ligouri did not specifically
recall the PTI proceedings, but did confirm he was a colleague of Janine Beer.
(AA-6).

Appellant filed this second PCR petition, while relying on *R. 3:22-
4(b)(2)(B)*, which reads:

(b) Second or Subsequent Petition for Post-
Conviction Relief. A second or subsequent petition for
post-conviction relief shall be dismissed unless:

(2) it alleges on its face either:

(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; (omissions).

The Supreme Court reasoned that, our Jurisprudence makes clear that our Rules of Court governing post-conviction relief petitions and proceedings do not render our courts "powerless to correct a fundamental injustice." *State v. Nash*, 212 N.J. at 547.

Thus, Rule 3:22-4 permits judicial review to correct a fundamental injustice or to provide relief for a claim of constitutionally ineffective assistance of counsel. A conflict of interest is a ineffective assistance of counsel claim.

A fundamental injustice occurs "when the judicial system has denied a 'defendant with fair proceedings leading to a just outcome' or when 'inadvertent errors mistakenly impacted a determination of guilt or otherwise wrought a miscarriage of justice.'" *Id.* at 546 (quoting *State v. Mitchell*, 126 N.J. 565, 587, 601 A.2d 198 (1992)). To demonstrate a fundamental injustice, a defendant must show "that an error or violation 'played a role in the determination of guilt.'" *Id.* at 547 (quoting *Mitchell*, 126 N.J. at 587).

Appellant's ineffective assistance of counsel played a major role in his conviction, where a viable third party guilt defense existed, and the actual conflict of interest prevented this line of defense. This actual conflict of interest prevented Appellant from exercising his right to counsel. The Office of the Public Defender

created exceptional circumstances by representing McNeal and Appellant, therefore justifying filing of this late second PCR petition, where the facts were not disclosed.

Point V

Even if This Court Does Not Find
a Per Se Conflict of Interest Requiring
Reversal, Appellant has Met the Standard
for a Evidentiary Hearing.
(AA-34) – (AA-35).

In order for a claim of ineffective assistance of counsel to entitle a PCR petitioner to an evidentiary hearing, "bald assertions" are not enough, rather the defendant "must allege facts sufficient to demonstrate counsel's alleged substandard performance." *Porter, supra*, 216 N.J. at 355, 80 A.3d 732 (quoting *State v. Cummings*, 321 N.J. Super. 154, 170, 728 A.2d 307 (App. Div.), *certif. denied*, 162 N.J. 199, 743 A.2d 851 (1999)).

Appellant is in compliance with the Court Rules, which require that factual assertions in a petition for post-conviction relief be made by affidavit or certification in order to secure an evidentiary hearing. *See R. 3:22-10(c)*.

Appellant had submitted a Trial Memorandum, dated March 6, 1998; Sentencing transcript of Lonnie Neal, aka Lonnie McNeil; Affidavit of Inv. Patrick DeFrancisci, (AA-5) – (AA-6); and Evidentiary Hearing Transcript.

Rule 3:22-10(b) establishes that: A defendant shall be entitled to an evidentiary hearing only upon the establishment of a prima facie case in support of PCR, material issues of disputed facts that cannot be resolved by reference to the existing record. To establish a prima facie case, defendant must demonstrate a

reasonable likelihood that the claim, viewing the facts alleged in light most favorable to the defendant, will ultimately succeed on the merits.

The trial court erred in failing to grant an evidentiary hearing on this second PCR. The conflict of interest was clear. However, if prejudice is required to be shown in addition to the conflict, then Appellant should be allowed to show that simultaneous representation of the adverse witness and Appellant prejudiced his case. Specifically McNeal should be called to explain his understanding of what he would gain by testifying for the state while his open PTI case was pending. His counsel, Peter Ligouri should be called to testify whether the PTI acceptance hinged on any promises by the State. Mr. Ligouri can be required or subpoenaed to produce the public defender's file on McNeal, which should contain notes as to any deals regarding his PTI acceptance.

Appellant produce Inv. DeFrancisci affidavit, where he obtained Lonnie Neal's PTI Acceptance transcripts, dated March 30, 1998 through the Administration of the Courts. Inv. DeFrancisci forwarded Neal's PTI Acceptance transcripts to Ligouri for his review. (AA-6).

Inv. DeFrancisci interviewed Ligouri about McNeal's PTI proceedings. (AA-6). Although he did not remember the case from the bare-bones transcript, he did confirm he was a co-worker of Janine Beer. An evidentiary hearing on ineffective assistance of counsel claim is required only where the defendant has


shown a prima facie case and the facts on which he relies are not already of record. See *State v. Murray*, 162 N.J. 240 (2000).

Significantly, Appellant was also prejudiced by Janine Beer's failure to properly investigate witness McNeal and perform a conflict of interest check. Had she done so, Appellant would have been advised of the conflict and a proper cross-examination of McNeal could have taken place by a pool attorney.

Conclusion

For all of the aforementioned reasons appellant submits he should be granted a new trial.

Dated: August 29, 2025


Adonis Thomas

OFFICE OF THE ESSEX COUNTY PROSECUTOR

THEODORE N. STEPHENS, II
ESSEX COUNTY PROSECUTOR

Tel: (973) 621-4700

Fax: (973) 621-4668

ALEXANDER B. ALBU
FIRST ASSISTANT PROSECUTOR



MITCHELL G. McGUIRE III
CHIEF OF PROSECUTOR'S DETECTIVES

Matthew E. Hanley No. 007152005
Assistant Prosecutor
Appellate Section
Appellate@njecpo.org

Of Counsel and on the Brief

November 24, 2025

LETTER BRIEF AND APPENDIX ON BEHALF OF THE STATE

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent) v.
Adonis Thomas (Defendant-Appellant)
Docket No. A-003602-23 Team 01

Criminal Action: On Appeal from an Order Denying a Second Petition
for Post-Conviction Relief, entered in the Superior Court of New Jersey,
Law Division, Essex County.

Sat Below: Hon. Arthur Batista, J.S.C.

Honorable Judges:

Pursuant to R. 2:6-2(b), please accept this letter in lieu of a formal brief
on behalf of the State.

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Preliminary Statement

The defendant is serving two life sentences for murdering two people in 1997. His petition is based on his discovery after trial that one of the witnesses had an unrelated pending criminal charge that neither the defendant nor the defendant's attorney knew about. Because the witness and the defendant were represented by the Office of the Public Defender, the defendant now claims that he was denied his right to counsel.

The defendant ignores the strength of the evidence against him, including another witness who testified that she saw him shoot and kill two people. The defendant also ignores the outcome of the witness's criminal charges: he received no preferential treatment as a result of his testimony in this case and ended up with a prison sentence. The defendant was not denied his right to counsel because there was no conflict of interest between him and the witness.

Counterstatement of Facts

This statement of facts is distilled from Appellate Division's opinion in State v. Thomas, 2011, N.J. Super. Unpub. LEXIS 1282 (App. Div. 2011), attached hereto as (Pa 25-31).

On September 13, 1997, three men came out of a nightclub in Newark to find that their car had been broken in to. When they asked Lonnie McNeil, a

bystander, if he had seen anything, the defendant appeared with a gun and shot two of the men, killing them. McNeil and a neighbor, Crystal Roberson, identified the defendant as the shooter at trial.

After the trial, the defendant discovered that McNeil was arrested for a unlawful possession of a handgun before the trial. He was admitted into PTI after the trial. He failed to appear for PTI, pleaded guilty, and was sentenced to three years in prison.

Counterstatement of Procedural History

In 1997, an Essex County Grand Jury indicted the defendant for two counts of murder, attempted murder, aggravated assault, burglary, theft, unlawful possession of a handgun, possession of a handgun for an unlawful purpose, and possession of a handgun by a convicted felon. (Pa 1-11).

In 1998, a jury convicted the defendant convicted on all counts. The defendant was sentenced to two consecutive life sentences. (Pa 12-17).

In 2001, the Appellate Division affirmed the defendant's convictions on direct appeal. (Pa 18-24). The Supreme Court of New Jersey denied certification.

In 2001, the defendant filed a first petition for PCR, which was denied in 2004. In 2006, the Appellate Division reversed the denial and remanded for an evidentiary hearing.

In 2008, the PCR Court conducted a two-day evidentiary hearing. The PCR Court denied petition for PCR and subsequently denied a motion for reconsideration.

In 2011, the Appellate Division affirmed the denial and the Supreme Court of New Jersey denied certification. (Pa 25-31).

In 2015, the United States District Court for the District of New Jersey denied the defendant's petition for a writ of habeas corpus.

In 2016, the defendant applied to the United States Court of Appeals for the Third Circuit for a certificate of appealability, which was denied.

On March 9, 2023, the defendant filed a second petition for PCR, which was denied on August 22, 2023. (Aa 42). This appeal followed.

Legal Argument

Point I

The defendant received effective representation from competent counsel.

The defendant argues that his right to counsel was violated when the Office of the Public Defender represented him at trial as well as eyewitness Lonnie McNeil, who had a pending charge at the time of trial.

To the extent that the defendant argues that his constitutional rights were infringed, that claim should have been raised on direct appeal and not on PCR. R. 3:22-4 generally precludes review of claims raised for the first time in PCR

petitions that could have been raised on direct appeal. There is also no reason why he could not have raised this issue in his first PCR petition, filed in 2001.

To establish a prima facie claim of ineffective assistance of counsel, the defendant must show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987). The defendant must “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 694. There is a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. at 690. To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits. R. 3:22-10(b).

The defendant failed to establish a prima facie case of ineffective assistance of counsel and was not entitled to a hearing. The defendant’s contention fails both prongs of the Strickland standard: there is no evidence that the defendant’s attorney was deficient and the defendant cannot prove that any deficiency on the part of his attorney prejudiced him in any way. The

defendant has also failed to establish that but for the alleged deficiency of his attorney, the outcome of the case would have been different.

First, in its decision on the defendant's first petition for PCR, the Appellate Division noted that there was no evidence that either the assistant prosecutor who tried the case or the defendant's attorney knew that McNeil had a pending charge at the time of trial, likely because he used a different name when arrested. The defendant has failed to set forth what actions his attorney could have taken. To the extent he is repeating the same claims raised in his first PCR, those are barred by R. 3:22-5.

Second, the defendant cannot show that the outcome of his trial would have been different if his attorney had cross-examined McNeil with that information. Even if the jury did not find him credible, there was a second eyewitness, Crystal Roberson, who testified that she saw the defendant shoot the two men.

Because the defendant cannot show that his attorney was ineffective and cannot show how any alleged ineffectiveness prejudiced his right to a fair trial, his claim fails.

Point II

The defendant's attorney did not violate any Rules of Professional Conduct.

The defendant argues that the Office of the Public Defender violated the Rules of Professional Conduct related to conflicts of interest when they represented him at trial as well as eyewitness Lonnie McNeil, who had a pending charge at the time of trial.

As discussed above in Point I, the defendant is unable to show that his attorney was deficient in any way and fails to show how his attorney's alleged deficiency affected the outcome of the trial.

In addition, no conflict existed because the defendant cannot show that he and McNeil had competing interests in the trial. The record shows that neither the prosecutor nor the defendant's trial attorney knew that McNeil had a pending charge. Therefore the defendant cannot show how McNeil expected to benefit in any way from his testimony. Without any expected benefit, the defendant cannot show how his interests were different than McNeil's and no conflict of interest existed.

Point III

The defendant's claim does not fall within the per se exception.

The defendant's reliance on State v. Alexander, 403 N.J. Super. 250 (App. Div. 2008), is not persuasive. That case involved a single attorney who represented both a defendant and his co-defendant concurrently. The Court held that the defendant in that case did not have to show actual prejudice, or likelihood of prejudice, to warrant relief because there was a per se conflict of interest.

In the present case, there was no conflict of interest because the interests of the defendant and the witness, McNeil, did not diverge. McNeil was charged in a separate, unrelated incident. Although both McNeil and the defendant were represented by the Office of the Public Defender, the defendant's attorney was not aware of McNeil's charges because McNeil had a separate attorney.

The defendant's reliance on State v. Bellucci, 81 N.J. 531 (1980), is also misplaced. In Bellucci, one attorney represented three defendants: two of whom pleaded guilty and one of whom went to trial. The Court found an actual conflict of interest because the two defendants who pleaded guilty had not been sentenced at the time of the trial. Conversely, the present case does

not involve codefendants and no actual conflict of interest existed between the defendant and the witness.

Examining the defendant's claim in the context of ineffectiveness: the defendant's attorney was not ineffective because he did not know that the witness had pending charges at the time he testified. And even if the defendant's attorney had known, McNeil would have simply been assigned a different attorney. He would not have testified any differently and the outcome of the case would not have been any different.

Point IV

The defendant's petition was properly dismissed as untimely.

The defendant's second petition for PCR was properly denied as untimely and procedurally barred. R. 3:22-4(b)(1) provides that "[a] second or subsequent petition for post-conviction relief shall be dismissed unless: (1) it is timely under [R.] 3:22-12(a)(2)[.]" In pertinent part, R. 3:22-12(a)(2) provides:

Notwithstanding any other provision in this rule, no second or subsequent petition shall be filed **more than one year after** the latest of:

. . . .

(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.

[(emphasis added.)]

"Neither the parties nor the court may . . . enlarge the time specified by [R.] 3:22-12[.]" R. 1:3-4(c); see R. 3:22-12(c); see also In re Rosenthal, 118 N.J. 454, 458 (1990); State v. Jackson, 454 N.J. Super. 284, 287 (App. Div. 2018).

The defendant's first petition for PCR was denied in 2004. After the Appellate Division remanded for an evidentiary hearing, it was denied again in 2008. His second petition for PCR was not filed until 2023. Thus, his petition was properly denied as time-barred.

The defendant relies on R. 3:22-4, which states that the statutory time bar should not be enforced if it would result in a "fundamental injustice." To succeed on a fundamental-injustice claim, the petitioner must make some showing that an error or violation played a role in the determination of guilt. State v. Nash, 212 N.J. 518, 547 (2013).

The defendant has failed to demonstrate that a "fundamental injustice" played a role in the determination of guilt in this case. The defendant has simply pointed out that a witness at his trial had a pending charge that the

defendant's attorney was not aware of and that the witness was represented by the Office of the Public Defender at the same time as the defendant. The defendant cannot show that the witness's interests were any different from the defendant's or that the witness benefitted from his testimony in any way.

Point V

The defendant's petition was properly denied without an evidentiary hearing.

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing, and the defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). Rather, trial courts should grant an evidentiary hearing and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance. State v. Preciose, 129 N.J. 451, 462 (1992).

To establish a prima facie claim of ineffective assistance of counsel, the defendant must show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland, 466 U.S. at 687. The defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 694.

There is a strong presumption that counsel "rendered adequate assistance and

made all significant decisions in the exercise of reasonable professional judgment.” Id. at 690. To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits. R. 3:22-10(b).

The defendant failed to establish a prima facie case of ineffective assistance of counsel. The defendant’s claims all rest on the basic premise that he did not receive a fair trial because one of the witnesses who identified him as the shooter at trial had a pending charge at the time he testified that neither he nor his attorney knew about. But the cannot show how the outcome of his trial would have been any different if the witness had a different attorney. The evidence against the defendant was very strong and he would have been convicted even if the witness had not testified. His claim fails and no hearing was necessary.

Conclusion

The defendant failed to establish a prima facie case of ineffective assistance of counsel. His petition was properly denied by the PCR court without a hearing. This Court must affirm the denial.

Respectfully submitted,

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT

s/ Matthew E. Hanley – No. 007152005
Assistant Prosecutor
Appellate Section

Of Counsel and on the Brief