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REDACTED LETTER-BRIEF AND APPENDIX,  
DA. 001- 089  
ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-003713-22T01

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal From a Dismissal of
	:	a Petition for Post-Conviction
	:	Relief in the Superior
v.	:	Court of New Jersey, Law
	:	Division, Atlantic County.
JEREMIAH JACKSON,	:	Ind. No. 12-08-01955I
Defendant-Appellant.	:	
	:	Sat Below:
	:	Hon. William Todd Miller, J.S.C.

**DEFENDANT IS CONFINED**

Your Honors: This letter-brief is submitted pursuant to R. 2:6-2(b).

**TABLE OF CONTENTS**

	<b><u>PAGE NO</u></b>
<b>PROCEDURAL HISTORY .....</b>	<b>1</b>
<b>STATEMENT OF FACTS .....</b>	<b>6</b>
<b>LEGAL ARGUMENT. ....</b>	<b>6</b>

**POINT ONE**

**THE PCR JUDGE ERRED IN SUMMARILY DISMISSING WITH PREJUDICE MR. JACKSON’S SECOND PCR PETITION (Da 086) . 6**

- A. Mr. Jackson’s PCR should be remanded for further proceedings because the dismissal of the PCR prior to submissions and oral argument is premature. ....8**
- B. Mr. Jackson’s PCR raises grounds that are not subject to the one year time bar in R. 3:22-12(a)(2)(C) ..... 11**
- C. The Court should find exceptional circumstances exist to relax the second PCR time bar in the interests of justice.....14**

**POINT TWO**

**NEW JERSEY COURT RULE 3:22-12(a) (2) (C) SHOULD BE INTERPRETED TO START THE ONE YEAR FILING REQUIREMENT FROM THE DATE OF WHICH THE JUDGMENT BECOMES FINAL BY THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME SEEKING SUCH REVIEW, AKIN TO FEDERAL HABEAS LAW 28 U.S. CODE § 224 WHICH WOULD THUS RENDER MR. JACKSON’S SECOND PCR TIMELY (Da 086)<sup>1</sup>..... 17**

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1 Court below did not issue written opinion addressing all issues raised, only issued order dismissing with prejudice the PCR petition. See Da 083 for PCR counsel raising issue in submissions to the Court.



**TABLE OF JUDGMENTS, ORDERS, AND RULINGS**

Judgment of Conviction . . . . . Da. 024-027

Order to Assign Counsel.....Da. 060

Order Denying Petition for PCR . . . . . Da. 086

## INDEX TO APPENDIX

Atlantic County Indictment 12-08-1955I .....	Da. 001-017
Jury Verdict .....	Da. 018-023
Judgment of Conviction .....	Da. 024-027
August 1, 2018 Order Denying 1 <sup>st</sup> PCR .....	Da. 028
<i>Pro Se</i> Petition for 2 <sup>nd</sup> PCR <sup>2</sup> .....	Da. 029-039
<u>State v. Jackson</u> . .....	Da. 040-058
January 17, 2020 Letter and Order to Assign Counsel .....	Da. 059-060
Notice of Appearance .....	Da. 061
January 7, 2021 Order of Dismissal .....	Da. 062
Pro Se Petition for Certification. ....	Da. 063-065
July 6, 2021 Order Denying Petition .....	Da. 066
August 23, 2021 E-Court Entry Re-filing PCR .....	Da. 067
August 15, 2022 PCR Scheduling Order .....	Da. 068
June 22, 2022 Order to Compel Discovery .....	Da. 069-070
December 6, 2022 Order to Compel Discovery .....	Da. 071
December 6, 2022 Order Denying Motion to Compel. ....	Da. 072

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<sup>2</sup> This is tantamount to a complaint and thus is required to be included in the appendix pursuant to Rules 2:6-1a(1)(a),(b).

June 16, 2023 PCR Counsel’s Letter to the Court <sup>3</sup> .....	Da.073-074
Petitioner’s Brief Filed June 22, 2023 (appendix omitted) <sup>4</sup> . . . . .	Da.075-085
June 29, 2023 Order Dismissing with Prejudice Mr. Jackson’s Petition for PCR . . . . .	Da.086
Notice of Appeal . . . . .	Da. 087-089

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3 Part of the record below, thus permitting inclusion in the appendix pursuant Rule 2:6-1(a)(2).

4 Part of the record below, thus permitting inclusion in the appendix pursuant Rule 2:6-1(a)(2).

## **PROCEDURAL HISTORY**

Atlantic County Indictment 12-08-01955I charged Mr. Jeremiah Jackson, the Appellant, with fifteen counts including burglary, robbery, conspiracy to commit burglary and robbery, firearms offenses, tampering and murder. (Da.01-17).<sup>5</sup>

On June 19, 2013, following a jury trial, Mr. Jackson was convicted of second-degree burglary (two counts), second-degree conspiracy to commit burglary, first-degree murder and felony murder, second-degree conspiracy to possess a firearm for an unlawful purpose and second-degree possession of a firearm for an unlawful purpose. (Da 18-23, Da 24-27, 1T-9T).<sup>6</sup> On September 24, 2013, The Honorable Mark Sandson, J.S.C., imposed an aggregate sentence of fifty (50) years subject to 85% parole ineligibility under the No Early Release Act. (Da 024) (10T).

Mr. Jackson filed, *pro se*, a first petition for post-conviction relief, on April 28, 2016. (Da 047). Counsel was appointed through the Public Defender's office.

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<sup>5</sup>Da-Defendant's Appendix to this brief.

<sup>6</sup> The transcript designations are as follows:

1T – Trial June 11, 2013 Volume I

2T - Trial June 11, 2013 Volume II

3T – Trial June 12, 2013 Volume I

4T – Trial June 12, 2013 Volume II

5T – Trial June 13, 2013 Volume I

6T – Trial June 13, 2013 Volume II

7T – Trial June 17, 2013

8T – Deliberations June 18, 2013

9T – Verdict June 19, 2013

10T – Sentencing September 13, 2013

11T – Motion June 22, 2022

12T – Motion December 6, 2022

Following oral argument, Mr. Jackson's first PCR petition was denied on August 18, 2018. (Da 028). Mr. Jackson appealed this denial. (Da 040-058). While his appeal was pending, and upon conclusion of authoring his pro se appeal brief on the appeal, he wrote a second PCR petition and filed it to preserve his rights to a second PCR. (Da 029-039).

On December 3, 2019, the Court received Mr. Jackson's second petition for post-conviction relief, alleging in his pro se petition ineffective assistance of his prior appellate and PCR counsel, issues with his sentencing, and Constitutional issues including potential Brady violations, due process chain of custody and violations of the Confrontation Clause. (Da 034-039). Mr. Jackson signed this petition on November 18, 2019. (Da 031). In referring this petition to the Office of the Public Defender's Conviction Integrity Unit, the Court determined that Mr. Jackson's petition constituted "good cause" for assignment of counsel. (Da 0590-060).

Mr. Jackson's first PCR appeal was not decided until March 11, 2020. State v. Jackson, No. A-0708-18T4, 2020 WL 1170797, (N.J. Super. Ct. App. Div. Mar. 11, 2020)(Da 040-058). The Appellate Division affirmed the denial of his first PCR. (Da 058).

Mr. Jackson filed a pro se petition for certification with the New Jersey Supreme Court on March 25, 2021. (Da 063-065). As the first PCR appeal remained



pending, the PCR Court issued an order dismissing Mr. Jackson's second PCR without prejudice, pending the conclusion of the Supreme Court's review. (Da 062). In this order, the Court preserved Mr. Jackson's filing date so he could refile his second PCR at the conclusion of his first PCR appeal. (Da 062). Following the denial of his petition for certification on July 6, 2021, Mr. Jackson's second PCR was reinitiated via e-courts filing by his appointed attorney on August 23, 2021. (Da 029-39, Da 067). The Court issued a scheduling order on March 15, 2022, as the litigation was back before the Court in the sole and proper jurisdiction. (Da 068). No challenges to Mr. Jackson's second PCR petition were made, and counsel continued to represent him and build his case on PCR.

On May 5, 2022, PCR Counsel filed a motion to compel discovery, seeking discovery pertaining to the State's DNA evidence presented at trial. (See Da 069, 11T). In that motion, PCR counsel indicated she had requested DNA materials from the prosecutor's office and the New Jersey State Police Lab on several occasions, starting July 11, 2020, to support Mr. Jackson's PCR claim that prior PCR counsel was ineffective for failing to hire a DNA expert. In support of this motion, PCR Counsel submitted a letter from DNA expert Charlotte J. Word, Ph.D., who was already retained on Mr. Jackson's PCR, regarding what she would require to complete her assessment of Mr. Jackson's case. This motion to compel discovery was

granted by the Court on June 22, 2022. (See Da 069, 12T).

PCR Counsel then filed two more motions to compel discovery from the State. The first was a request for the personnel and other records pertaining to Sergeant Michael Mattioli of the Atlantic County Prosecutor's Office. (See Da 070-071). On December 6, 2022, the Court found that "the Defense has sufficiently demonstrated that the Defendant's targeted requests are based on allegations of misconduct on the part of Sgt. Mattioli..." and granted *in camera* review of the officer's personnel files including his "IA files regarding discipline, civil lawsuits and complaints." (Da 070-071). The third request for discovery, relating to Mr. Jackson's PCR claim of Confrontation Clause violations, sought documentation of the cooperation agreements between the State and testifying witness Tyree Kelly, and informant, [REDACTED]. (See Da 072). The Court denied this motion to compel on December 6, 2022, but requested that the State "as a courtesy to the Defense...confirm that there are no such documents in existence, including emails, office notes and similar records." (Da 072).

On February 23, 2023, PCR Counsel made a fourth motion to compel discovery, requesting all communications data and evidence that was testified about and presented to the jury at trial and/or was used by law enforcement to support the Communications Data Warrant. In response, the State provided several documents.

On June 12, 2023, the Atlantic County Prosecutor assigned a new prosecutor to the case. On June 14, 2023, the State moved for the Court to decide as to the timeliness of the Defendant's second petition for post-conviction relief. PCR Counsel responded both with a letter and full brief providing the Court with the reasons why the submissions on the PCR substantively would greatly inform the procedural questions in the case, requesting that the Court wait to review the PCR in its entirety before deciding on procedural bars. (Da 073-074, 075-085). These submissions also served to put the Court on notice that Mr. Jackson planned to raise a variety of issues with different applicable time bars. (Da 075-085).

On June 29, 2023, the Court "Dismissed with prejudice" the second petition for timeliness, over four years after the Court accepted the petition and ordered the Office of the Public Defender to assign counsel. (Da 086). The Court summarily dismissed with prejudice while discovery orders were still unfulfilled, while counsel was working on the case, absent full submissions, and prior to oral argument on substantive issues. The Court issued no opinion, just an order dismissing Mr. Jackson's post-conviction relief petition with prejudice. (Da 086).

On December 14, 2023, the Office of the Public Defender filed a notice of appeal from Judge W. Todd Miller's order dismissing with prejudice Mr. Jackson's second PCR. (Da 087-089).

## **STATEMENT OF FACTS**

Mr. Jackson's PCR attorney, Ruth Hunter, worked for four years on Mr. Jackson's case, only for the State to move to dismiss for lack of timeliness, instead of complying with discovery orders. (Das 074-075, 075-085, 086). The State's request is out of time and moot, as the Court had already requested the CIU assign counsel in January 2020. Regardless, the State moved to deny Mr. Jackson's PCR prior to any formal submissions from his attorney advancing his claims. Despite Mr. Jackson's counsel representing to the Court that discovery request fulfillment and investigations were ongoing, and that claims raised in final briefing included claims that had different procedural time bars including illegal sentence and motion for new trial based on newly discovered evidence, the Court prematurely dismissed with prejudice Mr. Jackson's PCR without submissions and without oral argument. (Das 074-075, 075-085, 086). In denying this PCR prior to submission of final amended PCR arguments, the Court deprived Mr. Jackson of his ability to present his claims to the Court in defiance of Court rules and standing case law. This appeal follows.

## **LEGAL ARGUMENT**

### **POINT ONE**

**THE PCR JUDGE ERRED IN SUMMARILY DISMISSING WITH PREJUDICE MR. JACKSON'S SECOND POST CONVICTION RELIEF PETITION (Da 086).**

A PCR petition is New Jersey’s analogue to the federal writ of habeas corpus,” State v. Afanador, 151 N.J. 41, 49 (1997), and is a “meaningful procedure” to root out injustice. State v. Feaster, 184 N.J. 235, 249 (2005). Post-conviction relief proceedings play a critical role in our criminal justice system. State v. Quixal, 431 N.J. Super. 502, 513 (App. Div. 2013). A petition for post-conviction relief “is a safeguard to ensure that a defendant was not unjustly convicted,” Afanador, 151 N.J. at 49. Post Conviction Relief “is a defendant’s last chance to raise constitutional error that may have affected the reliability of his or her criminal conviction.” State v. Rue, 175 N.J. 1, 18 (2002). In State v. Nash, 212 N.J. 518, 526 (2013), our Supreme Court highlighted that “our rules governing post-conviction relief are the last line of defense against a miscarriage of justice.” .

In State v. Parker, our Court reemphasized “the significance of a petition for post-conviction relief and ... that a hearing on such a petition is not a pro forma exercise, but a meaningful procedure to root out mistakes that cause an unjust result either in a verdict or sentence. ” State v. Parker, 212 N.J. 269, 279 (2012). Parker emphasizes “the need for each judge to remain constantly aware that each such matter involves not just docket numbers but individuals who have turned to the courts seeking relief from what they perceive as unfairness and injustice.” Id. at 273.

**A. Mr. Jackson’s PCR should be remanded for further proceedings because the dismissal of the PCR prior to submissions and oral argument is premature.**

On January 17, 2020, the PCR Court determined that “good cause” existed for the assignment of counsel on Mr. Jackson’s PCR petition. (Da 059-060).

N.J. Court Rule 3:22-6(b) states,

Assignment of Counsel on Cause Shown. Upon any second or subsequent petition filed pursuant to this Rule attacking the same conviction, the matter shall be assigned to the Office of the Public Defender only upon application therefor and showing of good cause. N.J. Court R. 3:22-6(b)

Good cause exists only “when the court finds that a substantial issue of fact or law requires assignment of counsel and when a second or subsequent petition alleges on its face a basis to preclude dismissal under R. 3:22-4.” N.J. Court R. 3:22-6(b).

Once good cause has been found, the petition for post-conviction relief should be fully litigated by assigned counsel on petitioner’s behalf. State v. McIlhenny, 333 N.J. Super. 85 (App. Div. 2000). In McIlhenny, the Court agreed that satisfying the time bar may be a challenge for the petitioner, but ultimately determined that, “nevertheless, where the trial court has found "good cause" and assigned counsel, pursuant to R. 3:22-6(b), the defendant is entitled to have counsel endeavor to sustain the burden.” Id. The Court also stated, “while neither our

caselaw nor rules require the assignment of counsel for second or subsequent P.C.R. petitions, there can be no question that a defendant is entitled to effective and competent assistance of counsel when the court finds "good cause" to make the assignment." Id. at 87

Here, the Court provided an order to assign counsel to the Office of the Public Defender's Conviction Integrity Unit (CIU). (Da 059-060). In compliance with that order, the CIU assigned attorney Ruth Hunter, Esq., who entered her appearance with the Court on June 17, 2020. (Da 061).

This case was opened and proceeded as a second PCR while Mr. Jackson's first PCR appeal was still pending. Once the Appellate Division denied Mr. Jackson's first PCR appeal, and Mr. Jackson filed a petition for certification, the PCR court entered an Order on January 7, 2021, dismissing defendant's second PCR petition without prejudice pending the Supreme Court's decision on defendant's pending petition and preserving the December 3, 2019 filing date. (Da 062).

Since PCR Counsel's assignment on or about June 17, 2020, counsel made several representations to the Court that she was investigating the case, hiring experts and making discovery requests of the State. (See Das 068, 069-070, 071, 072, 073-074, 075-085). By procedurally barring defendant's petition without

allowing counsel to present the merits, the PCR court failed to satisfy the legal requirements of State v. Rue, 175 N.J. 1, 18 (2002), State v. Webster, 187 N.J. 254 (2006), and State v. Parker, 212 N.J. 269 (2012). The PCR court's decision to procedurally bar the petition and deprive defendant the opportunity to submit his substantive claims on post-conviction relief was fundamentally unfair, unjust, and inappropriate. McIlhenny, *supra*.

The PCR court should have substantively reviewed the merits of defendant's PCR petition even if it ultimately decided to apply a procedural bar. In State v. McQuaid, the Supreme Court stated that "notwithstanding the arguments advanced by the State for imposing a procedural bar to defendant's second PCR petition, we elect to address the petition on the merits." State v. McQuaid, 147 N.J. 464, 495 (1997). (See also State v. Johns, 111 N.J. Super. 574, 576 (App. Div. 1970) (where the procedural bar, "bar of ground expressly adjudicated," applied, the court found "that the constitutional problem presented is of sufficient import to call for relaxation of the rules so that we may consider the question on its merits.")

PCRs must be given full and substantial consideration. State v. Porter, 216 N.J. 343, 355 (2013) ("Even a suspicious or questionable affidavit supporting a PCR petition 'must be tested for credibility and cannot be summarily rejected.'" quoting State v. Allen, 398 N.J. Super. 247, 258 (App. Div. 2008)).



The PCR court must hear oral argument on all of defendant's claims. See Parker, 212 N.J. at 282. Parker determined that PCR claims "should be approached with the view that oral argument should be granted." Id. A complete and robust evaluation by this Court is also necessary for meaningful appellate review. See, e.g., State v. Pierre-Louis, 216 N.J. 577, 579 (2014) (concluding that the court's findings were not sufficient on either prong of the Strickland/Fritz standard to allow for a definitive ruling on defendant's PCR petition or appellate review of that decision.); State v. Harris, 181 N.J. 391, 416 (2002) (noting that an appellate court can remand PCR proceedings to a trial court to "generate a new record and render fresh factual findings and legal conclusions" when necessary.)

Ultimately, once good cause is found on a second petition for PCR and referred to the Office of the Public Defender for assignment of counsel, PCR case law dictates that submissions on both procedural and substantive issues, as well as oral argument, must be considered by the court before the PCR is decided.

Dismissing with prejudice prior to submissions and argument is summarily dismissing the petition without factual findings and legal consideration, which is prohibited under court rules and case law.

**B. Mr. Jackson's PCR raises grounds that are not subject to the one-year time bar in R. 3:22-12(a)(2)(C).**

In the brief submitted to the PCR court, PCR counsel informed the court that

Mr. Jackson intended to raise multiple claims that are not subject to any time limitations set forth in R. 3:22-12. (Da 075-085). Mr. Jackson's pro se petition also alleges a variety of Constitutional issues other than ineffective assistance of counsel, including violations of Brady and the Confrontation Clause. (Da 034).

R. 3:22-12(a)(2)(B) provides for a filing deadline of one year from "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." Thus, the one-year deadline under these circumstances does not begin from the "denial" of the first PCR petition but instead, from the discovery of the underlying factual predicate, which is based on the specific circumstances of the case. The circumstances of Mr. Jackson's case are contingent upon and informed by the ongoing investigations. Defendant will present all his claims once these investigations are completed, the State complies with discovery orders and PCR counsel's obligations are fulfilled.

PCR Counsel attempted to alert the Court to the PCR issues that do not include ineffective assistance of counsel, but rather new evidence that would be timely based on new factual predicates. (Da 080-082). Mr. Jackson intended to argue that a new trial is warranted for "newly discovered evidence," which is governed by the test set forth in State v. Carter, 85 N.J. 300, 314 (1981), and for

potential violations under Brady v. Maryland, 373 U.S. 83 (1963).

Similarly, in State v. Tormasi, 443 N.J. Super. 146, 149 (App. Div. 2015), the Appellate Division reversed the denial of a second PCR petition, which was filed over two years after the Supreme Court denied certification of the denial of the first PCR petition and remanded for further proceedings based on the trial court's incorrect findings regarding the authenticity of a witness statement that the defendant contended was "newly discovered evidence." The Appellate Division also remanded for "further consideration of defendant's ineffective-assistance contention that an unwaivable conflict arose when his father paid defendant's trial attorney." Id. at 157 n. 4. Moreover, Mr. Tormasi subsequently filed a motion to correct an illegal sentence, regarding which, after being denied in the trial and appellate courts, the Supreme Court "summarily remanded to the trial court for resentencing." State v. Tormasi, 250 N.J. 6, 6 (2022).

In Nash, on review of the denial of a PCR petition where defendant had been convicted in 2002, the Court remanded for a new trial based on "newly discovered evidence" where the "integrity of the verdict had been cast in doubt." Nash, 212 N.J. at 527.

Here, in a letter to the Court, PCR counsel represented that it was petitioner's intention to advance the argument that his sentence is constitutionally prohibited.

Notably, applications to correct an illegal sentence can be made “at any time.” See State v. Zuber, 227 N.J. 422, 437 (2017); State v. Acevedo, 205 N.J. 40, 47 n.4 (2011); R. 3:21-10(b)(5).

Mr. Jackson’s PCR motion contains additional PCR claims which are not subject to the time bar that can prohibit raising ineffective assistance of first PCR counsel. see R. 3:22-12(a)(2)(C). As advanced in Point IA, The PCR Court could not competently decide the timeliness of defendant’s PCR petition without knowing the substantive issues because the substantive issues necessarily frame the procedural ones. For all these reasons, this Court cannot rule upon procedural issues without knowing all the substantive issues, and thus dismissing the petition with prejudice without reviewing those submissions and hearing legal argument is clearly premature.

**C. The Court should find exceptional circumstances exist to relax the second PCR time bar in the interests of justice.**

The Court should relax the second PCR time bar to permit Mr. Jackson’s second PCR because Mr. Jackson’s case, filed just three months over one year, constitutes exceptional circumstances.

Despite the language in R. 3:22-12, time bars can be relaxed. On post-conviction relief, “a court should only relax the bar of Rule 3:22-12 under exceptional circumstances. The court should consider the extent and cause of the

delay, prejudice to the State, and the importance of the petitioner's claim in determining whether there has been an 'injustice' sufficient to relax the time limits." State v. Mitchell, 126 N.J. 565, 580 (1992). The Court in Mitchell states that the State's ability to bring its case must be weighed and balanced against the interests of the petitioner. "If the petitioner articulates facts that demonstrate a serious question about his or her guilt or the propriety of the sentence imposed and is prepared to provide factual evidence to support it, then sufficient grounds for relaxing the Rule might exist." Id.

Courts have relaxed PCR time bars if adherence would result in an injustice. McQuaid, 147 N.J. at 477, 485 (stating in a case where a second PCR petition was filed four years after the denial of the first PCR petition and two years after the appeal was dismissed that "notwithstanding Rule 3:22-12, ... a court may relax the time bar if adherence to it would result in an injustice."). New Jersey Courts have repeatedly emphasized that procedural rules "are not an end unto themselves, but a means of serving the ends of justice." State v. Preciose, 129 N.J. 451, 474 (1992).

Here, Mr. Jackson was convicted of our law's most serious crime of murder. He has valid claims that were not properly addressed on his first PCR, due to the ineffective assistance of his first PCR counsel. (See Da 029-039, Da 075-085). The Appellate Division, in denying Mr. Jackson's first PCR noted, "Defendant also

claims his trial attorney was deficient because he failed to challenge the State's DNA evidence. However, he did not provide the PCR court with an affidavit or certification from a qualified DNA expert, setting forth an opinion with the basis upon which the State's DNA evidence could have been challenged.” State v. Jackson, No. A-0708-18T4, 2020 WL 1170797, at \*6 (N.J. Super. Ct. App. Div. Mar. 11, 2020) (Da 052). The Appellate Division found that Mr. Jackson's first PCR counsel failed to make the proper record to support petitioner's claims on his first PCR. Id. The proper procedure for Mr. Jackson to raise ineffective assistance of his first PCR counsel is a second PCR petition.

Second PCR Counsel has hired the assistance of a DNA expert to establish that trial counsel was ineffective in failing to do so and obtained internal affairs documents showing discipline to a police officer involved in the investigation that goes directly to witness credibility that was not advanced at trial due to trial counsel's ineffectiveness. More investigations into this case remain incomplete. These PCR grounds raise questions as to the constitutionality of Mr. Jackson's conviction.

Additionally, Mr. Jackson's second PCR filing was not egregiously out of time. In some cases, the Courts have hesitated to relax time bars to accommodate filings that are decades late, but that is not the case here. See State v. Afanador, 151

N.J. 41, 52 ( 1997); State v. Milne, 178 N.J. 486, 495-96 (2004) (noting that a “stronger” substantive claim would be needed to relax a procedural bar concerning a sixteen-year old conviction.)

The Court should err on the side of hearing and litigating Mr. Jackson’s PCR claims, instead of turning a blind eye to a potential miscarriage of justice. Enforcing a strict time bar Mr. Jackson missed by only three months, while his first PCR appeal was still pending before the Courts is not justice. Mr. Jackson’s case constitutes exceptional circumstances to relax the time bar, as Mr. Jackson’s case should not be hindered by his prior counsels’ failures. Alternatively, this Court should require on remand that the PCR Court make findings regarding exceptional circumstances as it pertains to relaxing the procedural bar, as well as addressing all substantive issues raised (See *Supra, IA*).

## **POINT TWO**

**NEW JERSEY COURT RULE 3:22-12(a) (2) (C) SHOULD BE INTERPRETED TO START THE ONE YEAR FILING REQUIREMENT FROM THE DATE OF WHICH THE JUDGMENT BECOMES FINAL BY THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME SEEKING SUCH REVIEW, AKIN TO FEDERAL HABEAS LAW 28 U.S. CODE 224, WHICH WOULD THUS RENDER MR. JACKSON’S SECOND PCR TIMELY. (Da 086) <sup>7</sup>**

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<sup>7</sup> Court below did not issue written opinion addressing all issues raised, only issued order dismissing with prejudice the PCR petition. See Da 083 for PCR counsel raising issue in submissions to the Court.

New Jersey Courts have failed to extend a bright line rule for relaxation on second PCR petition time bars. State v. Jackson, 454 N.J. Super 284 (App. Div. 2018). However, this Court should reconsider the current interpretation of NJ Court Rule 3:22-12(a)(2)(C) and allow second and subsequent PCR filings to be filed within one year of their denial in the Appellate Courts, akin to the federal habeas laws.

The one-year deadline pursuant to this subsection is from “the date of the denial” of the PCR petition. This rule provides,

“Notwithstanding any other provision ins this rule, no second...petition shall be filed more than one year after...the date of the denial of the first ... application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first ... application for post-conviction relief is being alleged.”  
N.J. Court Rule 3:22-12(a)(2)(C).

The language of Rule 3:22-12 (a)(2)(C) is not specific to the denial by the trial court, as compared to the five-year deadline under R. 3:22-12(a)(1), which specifies five years from the date of the judgment of conviction that is being challenged. N.J. Court Rule 3:22-12(a)(1). A second or subsequent PCR petition, therefore, should not be considered “denied” until the conclusion of the appellate process, similar to the one-year deadline to file a habeas petition, which is one year from the denial by the State’s highest court. See 28 U.S.C.S. § 2244(d)(1)(A)



(“(1)A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of— (A)the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;”)

It logically follows that the R. 3:22-12(a)(2)(C) one-year deadline be akin to the one-year deadline set forth in habeas rules, as the post-conviction process is New Jersey’s “analogue” to the habeas process. See State v. Jones, 219 N.J. 298, 310 (2014) (“In New Jersey, PCR is our analogue to the federal writ of habeas corpus.”) (citing State v. Afanador, 151 N.J. 41, 49 (1997); Preciose, 129 N.J. at 459).

Interpreting the rule to mean conclusion of appellate review also provides for judicial efficiency. As it stands, many timely second PCRs are held in abeyance while the first PCR appeal remains active in the Appellate Division. PCR courts are unsure how to proceed as the PCR appeal pends, with no rule guiding the proper handling of a second PCR. This lack of guidance in the rules is especially difficult when the second PCR petition often contains overlapping issues to the first PCR appeal. It is a waste of judicial resources to have separate concurrent matters in different courts about the same subject matter. In fact, the Court Rules do not

permit this same overlap to occur where a direct appeal is pending, and a first PCR is filed. See R. 3:22-3 (a PCR petition may not be filed while a direct appeal is pending.)

This Court should reconsider its interpretation of Court Rule 3:22-12(a)(2)(C) to clarify that second and subsequent PCR petitions must be filed within one year of the conclusion of direct review of the first PCR, akin to federal habeas law.

### **CONCLUSION**

For the foregoing reasons, Mr. Jackson asks this Court to reverse the decision of the PCR Court and remand his petition for post-conviction relief so PCR Counsel can investigate, prepare, and submit supporting documents to support his PCR claims.

Respectfully submitted,

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Public Defender  
Attorney for Defendant-Appellant

By: /s/ Kathryn Ann Marron  
Kathryn Ann Marron  
Deputy Public Defender

DATED: July 9, 2024



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July 18, 2024

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Letter Brief

## LETTER IN LIEU OF BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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.  
JEREMIAH JACKSON (Defendant-Appellant)  
Docket No. A-3713-22T01  
Indictment No. 12-08-1955-I

Criminal Action: On Appeal From An Order Dismissing a  
Petition for Post-Conviction Relief of the Superior Court of New  
Jersey, Law Division, Atlantic County

Sat Below: Hon. William Todd Miller, J.S.C.

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Honorable Judges:

Pursuant to Rule 2:6-4(a), this letter is submitted in lieu of a formal brief on  
behalf of the State of New Jersey.

## **TABLE OF CONTENTS**

<u>TABLE OF JUDGEMENTS, ORDERS, AND RULINGS</u> .....	i
<u>STATEMENT OF PROCEDURAL HISTORY</u> .....	1
<u>COUNTERSTATEMENT OF FACTS</u> .....	3
<u>LEGAL ARGUMENT:</u>	
<u>POINT 1:</u>	
THE DEFENDANT’S PETITION WAS UNTIMELY UNDER THE RULE AND DISMISSAL WAS THEREFORE REQUIRED.....	3
<u>POINT 2:</u>	
SUBJECT MATTER JURISIDICITION CANNOT BE WAIVED.....	8
<u>POINT 3:</u>	
GOOD CAUSE FOR APPOINTMENT OF COUNSEL AND PRIMA FACIE CASE.....	9
<u>POINT 4:</u>	
THE RULE IS NON-RELAXABLE AND THE CITED-TO CASE LAW PREDATES TODAY’S RULE.....	11
<u>CONCLUSION</u> .....	14

## **TABLE OF JUDGEMENTS, ORDERS, AND RULINGS**

Order issued by Hon. William Miller, J.S.C., denying the PCR Petition, dated June 29, 2023.....	Da 86
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## **STATEMENT OF PROCEDURAL HISTORY**

On August 15, 2012, an Atlantic County Grand Jury returned a true bill for Indictment No. 12-08-1955, charging Jeremiah Jackson (hereinafter Defendant) with the following: Count one: second degree burglary, contrary to N.J.S.A. 2C:18-2; count two, second degree conspiracy, contrary to N.J.S.A. 2C:5-2; count three, second degree burglary, contrary to N.J.S.A. 2C:18-2; count four, first degree robbery, contrary to N.J.S.A. 2C:15-1; count five, second degree conspiracy, contrary to N.J.S.A. 2C:5-2; count six, first degree murder, contrary to N.J.S.A. 2C:11-3a(1)(2); count seven, first degree felony murder, contrary to N.J.S.A. 2C:11-3a(3); count eight, first degree felony murder, contrary to N.J.S.A. 2C:11-3a(3); count nine, second degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a; count ten, second degree conspiracy, contrary to N.J.S.A. 2C:5-2; count eleven, second degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a; count twelve, second degree conspiracy, contrary to N.J.S.A. 2C:5-2; count thirteen, second degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5c(1); count fourteen, second degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b and; count

fifteen, fourth degree tampering with evidence, contrary to N.J.S.A. 2C:28-6(1). (Da<sup>1</sup> 001).

The Defendant was convicted at a jury trial on counts 1, 2, 3, 6, 7, 10, and 12. (Da 024). The Defendant was subsequently sentenced to fifty years, subject to NERA. (Da 024). The Defendant filed his first petition for post-conviction relief of April 28, 2016, which was denied on August 18, 2018. (Da 041). He then appealed the denial, and the Appellate Division affirmed on March 11, 2020. (Da 040). The Defendant then petitioned the Supreme Court on March 25, 2021, (Da 065), which was denied on July 6, 2021. (Da 066). IN the interim, the Defendant filed his second PCR, on December 3, 2019. (Da 033). The trial court dismissed the petition on January 7, 2021, as the case was pending before the Supreme court. (Da 062). The Petition was then refiled on August 23, 2021. (Da 33). Several motions to compel discovery were filed. On June 14, 2023, the State requested the court make a threshold determination as to the timeliness of the petition. (Da 073). The court then dismissed the petition with prejudice, in an order and letter decision dated June 29, 2023. (Da 086).

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<sup>1</sup> "Da" refers to Defendant's Appendix.

## **COUNTERSTATEMENT OF FACTS**

The Defendant's second petition alleged on its face "ineffective assistance of PCR Counsel's & Appeal counsel John Y. Molitor Theodore Baker & Andrew M. Duclair, both failed to find issues of there own and issues I wanted to review witch are sentencing, confidential informant, third party guilt, lesser included offenses, questionable chain of custody, brady material from the state, confrontation clause, signd certifications that was not done, statement of a joey killian & john Jackson." (Da 034, #8). Notably, questions #3 and #4, pertaining to prior proceedings, were left blank. That small paragraph was intended to be the basis of the court's determination on both good cause, and timeliness.

## **LEGAL ARGUMENT**

### **POINT I:**

#### **THE DEFENDANT'S PETITION WAS UNTIMELY UNDER THE RULE AND DISMISSAL WAS THEREFORE REQUIRED.**

The Court Rules governing timely petitions state:

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

(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. Further:

A second or subsequent petition for post-conviction relief shall be dismissed unless:

(1) it is timely under R. 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.

R. 3:22-4. “[T]he Supreme Court made clear that the late filing of a second or subsequent PCR petition could not be excused in the same manner as the late filing of a first PCR petition.” State v. Jackson, 454 N.J. Super. 284, 293 (App. Div. 2018). The Appellate Division has previously held that,

...a PCR judge has an independent, non-delegable duty to question the timeliness of the petition, and to require that defendant submit competent evidence to satisfy the standards for relaxing the rule's time restrictions pursuant to Rule 3:22-12. Absent sufficient competent evidence to satisfy this standard, the court does not have the authority to review the merits of the claim.

State v. Brown, 455 N.J. Super. 460, 470 (App. Div. 2018). Although the Court in Brown discussed this duty as it relates to an initial PCR, it applies equally to a second petition. This initial determination is of perhaps even greater significance when addressing a second or subsequent petition because there is no relaxation of the time bar. As such, if the petition is untimely, the Court lacks jurisdiction to hear it.

The Defendant's initial PCR was denied in an order dated August 1, 2018.

The Defendant's second PCR has a handwritten date of November 18, 2019 and a Court filing date of December 3, 2019. The Defendant's *pro se* filing indicates that his claim pertains to:

Ineffective assistance of PCR counsel's & Appeal Counsel John Molitor, Theodore Baker & Andrew M. Duclair both failed to find any issues of there own. And issues I wanted to review, witch are sentencing, confidential informant, third party guilt, lesser included offenses, questionable chain of custody, brady material from the state, confrontation clause, signed certifications that was not done. Statement of a Joey Killian & John Jackson.

(Da 034).

Here, the Defendant filed his second PCR while an appeal was pending. However, the Defendant did not file it within the one-year time frame of the denial. Absent a timely filing, the Court does not have jurisdiction to dismiss the petition without prejudice while awaiting the outcome of the appeal and furthermore, the Court in fact did not dismiss the petition at the time of that filing. Even if the Court had found that the appeal warranted dismissal without prejudice despite the late filing, the statute requires that the Defendant re-file within ninety (90) days of the Appellate Division's decision which was issued on March 11, 2020.<sup>2</sup> The ninety-day mark fell on June 9, 2020. The Defendant did not petition the Supreme Court

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<sup>2</sup> Noting that the Court did not dismiss the petition without prejudice during appeal.

until nearly sixty (60) days **after** the ninety-day window had elapsed. The Court did dismiss the motion without prejudice on January 7, 2021, citing that the case was pending cert before the Supreme Court after the Defendant petitioned the Supreme Court on August 5, 2020, and that order preserved the **late** filing date of December 2019, which is prohibited by the rule. Further, it is the State's position that an appeal of the denial of a first PCR is not a "direct appeal" for purposes of the rule.

It is the State's position that this second PCR was untimely filed, that the non-relaxable time bar under the Rule removes jurisdiction of the Court to dismiss the petition without prejudice when an appeal is pending if the actual petition is filed outside of the one-year period, and that even if the appeal acted as an extension under the rule, the Defendant missed the ninety-day window months before filing a petition to the Supreme Court. As such, the initial filing was barred, and the Court lacked jurisdiction to later dismiss without prejudice.

It is also worth noting that the Defendant's filing does not allege on its face any grounds for relief outside of ineffective assistance of PCR counsel as required by R. 3:22-4.

**POINT II:**

**SUBJECT MATTER JURISDICTION CANNOT BE WAIVED**

Counsel raises the claim that the State had the opportunity to raise the jurisdictional issue at any time and did not. This is irrelevant. “The principle is well established that a court cannot hear a case as to which it lacks subject matter jurisdiction even though all parties thereto desire an adjudication on the merits.” Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 65 (1978) (Citing State v. Osborn, 32 N.J. 117, 122 (1960)). “Subject matter jurisdiction **cannot be waived** by the parties' failure to object, nor conferred upon the court by the parties' agreement.” Murray v. Comcast Corp., 457 N.J. Super. 464, 470 (App. Div. 2019). Furthermore, “Whether presiding over a case or deciding an appeal, judges have an independent, non-delegable duty to raise and determine whether the court has subject matter jurisdiction over the case whenever there is a reasonable basis to do so.” Id.

Therefore, a mistake made earlier in the timeline of proceedings cannot later bestow subject matter jurisdiction on the court to address a case, and neither can the failure to object. It is irrelevant that counsel was appointed, or that motions were filed, if the court had lacked jurisdiction the entire time, even if not discovered until later. Further, it is plainly illogical for Defense

counsel to argue that the finality of prior court rulings, despite being contrary to the rule, should now be upheld despite any deficiencies—even as it relates to jurisdiction—while simultaneously arguing that certain other prior rulings, even a jury verdict, were flawed and should therefore be overturned.

**POINT III:**

**GOOD CAUSE FOR APPOINTMENT OF COUNSEL AND PRIMA FACIE CASE**

The State continues to dispute the notion that counsel should have been appointed at all. The Court Rule governing assignment of counsel in a second or subsequent PCR states:

Upon any second or subsequent petition filed pursuant to this Rule attacking the same conviction, the matter shall be assigned to the Office of the Public Defender only upon application therefor and showing of good cause. For purposes of this section, good cause exists only when the court finds that a substantial issue of fact or law requires assignment of counsel **and when a second or subsequent petition alleges on its face a basis to preclude dismissal under R. 3:22-4.**

R. 3:22-6.

The Defendant's late November 18, 2019 filing does not allege on its face a basis precluding dismissal. In fact, counsel for the Defendant repeatedly acknowledges this. Even the Defendant's appellate brief states:

Regardless, the State moved to deny Mr. Jackson's PCR prior to any formal submissions from his attorney advancing his claims. Despite Mr. Jackson's counsel representing to the Court that discovery request fulfillment and investigations were ongoing, and that claims raised in final briefing included claims that had different procedural time bars including illegal sentence and motion for new trial based on newly discovered evidence...

(DB<sup>3</sup>, 6). Claims raised in a final brief, or "intended to raise" (DB, 12) cannot rationally satisfy the rule.

Therefore, under the Rule, Counsel should not have been assigned in the first place. Counsel argued that because she was still "conducting an investigation" and seeking discovery, all legal claims that will be raised are not yet known. This runs counter to the unrelaxable time bar which requires the Defendant to assert a cognizable claim as a basis to preclude dismissal. If the claims are not yet known, then they cannot support the filing of a PCR and therefore cannot satisfy the requirement to assign counsel, nor can they support a finding of timeliness in a late petition. The fact that a petition must show **on its face** a reason to preclude dismissal in order to **even have counsel appointed**, makes it completely clear that the rule refers to the pro se petition, not counsel's later arguments after a four-year

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<sup>3</sup> "DB" refers to Defense brief

fishing expedition. Counsel's representations and arguments cannot exist until after counsel is appointed, by which point the showing must have already been made.

Further, an untimely petition for which the Court lacks jurisdiction logically cannot support a finding of good cause. Therefore, the State asserts that the Defendant should not have been assigned counsel, and that further discovery was not warranted as the requested information cannot rationally be tied to a cognizable claim under the rule due to the petition being untimely. The strict rule regarding second or subsequent PCR's is designed to preclude these sorts of claims, wherein counsel repeatedly seeks discovery in search of a cognizable claim.

#### **POINT IV**

#### **THE RULE IS NON-RELAXABLE AND THE CITED-TO CASE LAW PREDATES TODAY'S RULE.**

Defense Counsel's reliance on State v. McQuaid is misplaced. The Court in that 1997 case was addressing a five-year procedural bar, which allowed for certain exceptions. "A final procedural bar to PCR review is set forth in Rule 3:22-12, which establishes a five-year time limit for petitioning for PCR." 147 N.J. 464, 485 (1997). The Rule as applied today has been modified and includes the unrelaxable bar which removes jurisdiction.

Note: Source--R.R. 3:10A-13. Caption added and text designated as paragraph (a), and new paragraph (b) added July 12, 2002 to be effective September 3, 2002; paragraph

(a) amended and new paragraph (c) adopted July 16, 2009 to be effective September 1, 2009; former paragraph (a) amended and allocated into subparagraphs (a)(1), (a)(3), and (a)(4), captions adopted for subparagraphs (a)(1), (a)(3), and (a)(4), and new subparagraph (a)(2) caption and text adopted January 14, 2010 to be effective February 1, 2010; paragraph (a)(1) amended, paragraph (b) deleted, and paragraph (c) redesignated paragraph (b) July 28, 2017 to be effective September 1, 2017.

N.J. Ct. R. 3:22-12. The pertinent and current rule states, “these time limitations shall not be relaxed, except as provided herein.” Unlike the rules addressed in McQuaid, untimely second petitions have no such excusable neglect or fundamental injustice exception.

To the extent that counsel argues that new evidence claims were being raised, one has to wonder what those claims are and what the new evidence is. It is hard to contemplate how he could meet his burden with a yet-undisclosed claim. Further, the Defendant’s allegation that he intends to put forth an illegal sentence claim is also without merit. While illegal sentences may be corrected at any time, they are done so in a motion to correct an illegal sentence. It would completely undermine the PCR time bar if Defendants were permitted to salvage untimely PCRs by bootstrapping them to illegal sentence motions, which have no bar. It is unclear how the Defendant’s *pro se* petition contained PCR claims not subject to the time bar. (Db 14). If the only burden a



Defendant need meet is to write “confrontation clause” on a petition, one could not be blamed for thinking the rule rather pointless.

In addressing the Defendant’s final two points, the State would just note that the fundamental injustice and exceptional circumstances exceptions explicitly do not apply to the second PCR time bar. Further, an interpretation completely rewriting the pertinent rules to permit the Defendant to pursue endless litigation regarding his fourteen-year-old case is unwarranted. Many defendants manage to comply with the rules and succeed in having second and subsequent PCRs addressed. Endless litigation does not increase judicial efficiency. The rule is easily understood. If you are alleging ineffective assistance of PCR counsel, it must be filed within a year of the date of denial. To be sure, the law division denial is a denial, which is why the Appellate court can affirm the denial.

The reasons for waiting for the completion of state review before moving into federal court are completely different than presuming appellate review of a denial of a PCR. That logic presumes every PCR denial should be appealed and completely ignores the truth which is that second petitions are treated as the exception, not the rule. This much is made plain by the fact that defendants are not entitled to counsel for second petitions. The rule is meant to

encourage all claims to be brought forth in direct appeals and first petitions and to discourage perpetually litigating decades' old cases.

### **CONCLUSION**

For the reasons expressed, the State respectfully requests that the Appellate Division affirm the law division's order dismissing the Defendant's PCR.

Respectfully submitted,

/s/ Matthew T. Mills

Matthew T. Mills

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