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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0372-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAMON VILLALTA,

Defendant-Appellant.

Submitted June 26, 2017 – Decided July 6, 2017

Before Judges Fisher and Fasciale.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County,
Indictment No. 01-05-1372.

Joseph E. Krakora, Public Defender, attorney
for appellant (Suzannah Brown, Designated
Counsel, on the brief).

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for respondent (Elizabeth R. Rebein,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

On September 24, 2001, defendant pleaded guilty to third-
degree receiving stolen property. In executing a plea form,

defendant acknowledged he understood the charges and that a guilty plea could bring about his deportation. On December 7, 2001, the court sentenced defendant to a one-year probationary term, which was terminated a year later when defendant pleaded guilty to a probation violation. Defendant did not file a direct appeal.

In April 2015, defendant was arrested and detained in federal immigration custody. The following month, defendant moved to vacate his conviction – an application viewed by the trial court as a post-conviction relief (PCR) petition. Defendant claimed he was denied the effective assistance of counsel because his lawyer: misinformed him about the charges and the potential immigration ramifications; coerced him to plead guilty; and refused to file a direct appeal.¹

The PCR judge conducted an evidentiary hearing. Defendant's former attorney testified that he recalled defendant but did not specifically remember reviewing the plea form with him. The attorney testified, however, that his usual practice was to review a plea form in detail with his client, including, when applicable, the immigration consequences of a guilty plea. Defendant testified by telephone from his place of incarceration in Buffalo, New York, and disputed much of his attorney's testimony.

¹ Defendant has not here renewed his argument about counsel's failure to file a direct appeal.

The PCR judge found defendant's application both time-barred and without merit. In oral and written opinions, the judge reasoned that defendant's failure to understand the PCR process was not a ground for relaxing the bar, and that his attorney, consistent with his usual conduct during many years of criminal practice, reviewed the plea form in detail with defendant to ensure defendant understood the consequences of his guilty plea.²

Defendant appeals, arguing:

I. THE PCR COURT ERRED IN HOLDING THAT [DEFENDANT'S] [PCR] PETITION . . . WAS TIME-BARRED.

II. THE PCR COURT ERRED IN DENYING [DEFENDANT'S] CLAIM THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE TRIAL COUNSEL FAILED TO ADVISE HIM HE COULD BE DEPORTED AS A RESULT OF HIS GUILTY PLEA.

Because we find insufficient merit in defendant's Point II, we need not reach Point I.³

² According to the judge's findings, the attorney gave advice as was his custom and practice at the time. As the attorney explained, he routinely gave advice that if the defendant was "not legally in this country [he would be] facing deportation," but also that he was "not an immigration attorney" and if the defendant had "any question[s] [he] should consult with an immigration attorney."


³ According to Rule 3:22-12(a)(1), a PCR petition must be filed within five years of the judgment of conviction absent "excusable neglect" for the delay and "a reasonable probability that if the defendant's factual assertions were found to be true enforcement of the time bar would result in a fundamental injustice." We need not determine whether defendant's sudden incarceration and

In Point II, defendant essentially argues that the PCR judge erred by finding his former counsel's testimony more credible than his, and defendant maintains that his former counsel failed to adequately inform him about the consequences of his guilty plea. An appellate court, however, must give deference to a judge's credibility findings and resolution of factual disputes so long as the judge's findings are supported by the evidence. State v. Pierre, 223 N.J. 560, 576, 579 (2015). Moreover, because defendant's guilty plea was entered prior to Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), only negligent legal advice could support the relief sought by defendant in his PCR petition. State v. Gaitan, 209 N.J. 339, 361-62 (2012), cert. denied, ___ U.S. ___, 133 S. Ct. 1454, 185 L. Ed. 2d 361 (2013); accord Chaidez v. United States, 568 U.S. ___, ___, 133 S. Ct. 1103, 1107, 185 L. Ed. 2d 149, 155 (2013). In applying these principles, we conclude that defendant failed to establish a prima facie case of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674, 693, 698 (1984).

threatened deportation so many years after the conviction constitutes a ground for finding "excusable neglect" for not moving for post-conviction relief within the five-year timeframe, or whether we would adhere to another panel's assessment, in State v. Brewster, 429 N.J. Super. 387, 398-401 (App. Div. 2013), of the time-bar in similar circumstances.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION