SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1824-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARUDUTT J. PATEL,

Defendant-Appellant.

Submitted February 5, 2018 – Decided March 20, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Municipal Appeal No. MAM-39-2016.

The Rotolo Law Firm, attorneys for appellant (Victor A. Rotolo, of counsel and on the brief; E. Carr Cornog, III and William E. Reutelhuber, on the briefs).

Andrew C. Carey, Middlesex County Prosecutor, attorney for respondent (Patrick F. Galdieri, II, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Charudutt Patel appeals from a Law Division order, entered after de novo review of orders entered in the Piscataway Municipal Court, denying his request for post-conviction relief (PCR) under State v. Laurick, 120 N.J. 1 (1990), from a 1994 conviction for driving while intoxicated (DWI), N.J.S.A. 39:4-50, and his motion for reconsideration. Based on our review of the record in light of the applicable law, we affirm.

I.

In April 1994, defendant was charged with DWI. The police reports show defendant was behind the wheel of his parked vehicle, with the engine running. He admitted he "had been drinking," and parked his vehicle because he "felt unable to drive further." The officer smelled a "strong odor of alcohol," and found four beers in the vehicle. Defendant failed the field sobriety tests, and chemical breath tests showed a blood alcohol content (BAC) of .13% and .12%.

On May 19, 1994, defendant pleaded guilty to DWI in the Piscataway Municipal Court. The court files are no longer available because they were destroyed fifteen years after the conviction in accordance with the court's practice.

In 2010, defendant was charged with DWI in North Brunswick. He retained counsel, and on July 29, 2010, pleaded guilty to a second DWI offense.

On January 18, 2015, defendant was charged with DWI in Tewksbury Township. While that charge was pending, defendant was charged with DWI in Hillsborough. The charges were consolidated for disposition in the Tewksbury Municipal Court.

Prior to the disposition of the two DWI charges, defendant moved under Laurick for PCR from his 1994 conviction in the Piscataway Municipal Court. Defendant relied on a January 4, 2016 certification asserting he was not represented by counsel when he pleaded guilty to DWI in 1994, and was not advised by the court he had a right to retain an attorney. Defendant also filed a February 3, 2016 supplemental certification stating that at the time of his 1994 DWI arrest, he was unemployed, did not have money to hire an attorney, and that his wife was paying the rent because he was unable to do so.

The municipal court judge denied defendant's request for Laurick relief and subsequent motion for reconsideration. On defendant's appeal to the Law Division, the court found it unnecessary to decide whether defendant's Laurick PCR petition was barred because it was not filed within the five-year time limit under Rule 7:10-2(g). Instead, the court denied defendant's request because he failed to sustain his burden of establishing that if he had been advised of his right to counsel and had obtained counsel, the outcome of the 1994 proceeding would have

been different. The court observed that the 1994 police reports showed defendant admitted drinking alcohol and driving his vehicle, there were intoxicating liquors found in his car, and he had a BAC of .12%, and that defendant's "certifications [were] silent on the issue of having a viable defense to the 1994 charge and that as a result the outcome would have been different."

Defendant appealed the Law Division's order denying his request for relief. He presents the following arguments for our consideration:

> POINT I
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> STANDARDS OF REVIEW AS TO AN APPELLATE DIVISION REVIEW OF A MUNICIPAL COURT APPEAL TO THE LAW DIVISION.
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> POINT II
>
> CHARUDUTT PATEL HAS SHOWN THAT HE IS CLEARLY ENTITLED TO THE LIMITED LAURICK RELIEF OF AVOIDING A CUSTODIAL JAIL TIME ENHANCEMENT DUE TO A PRIOR 1994 UNCOUNSELED DWI CONVICTION IN THE PISCATAWAY MUNICIPAL COURT.
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> POINT III
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> [THE] LAW DIVISION JUDGE . . . COMMITTED LEGAL ERROR BY HOLDING THAT CHARUDUTT PATEL WAS NOT ENTITLED TO THE LIMITED LAURICK RELIEF OF AVOIDING A JAIL [SENTENCE] ENHANCEMENT DUE TO A PRIOR UNCOUNSELED DWI CONVICTION IN THE PISCATAWAY MUNICIPAL COURT.
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> POINT IV
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> STATE V. HRYCAK AND ITS PROGENY CONTAIN A MAJOR DOCTRINAL ERROR AS TO THE LIMITED

LAURICK RELIEF OF AVOIDING A CUSTODIAL JAIL ENHANCER AND, IF THIS COURT DOES NOT CONTINUE TO PROPAGATE SUCH ERROR, CHARUDUTT PATEL WOULD EVEN MORE CLEARLY BE ENTITLED TO RELIEF [FROM] ENHANCED JAIL TIME DUE TO THE PRIOR UNCOUNSELED 1994 PISCATAWAY DWI CONVICTION.

II.

On an appeal taken from the Law Division's final decision, our review "is limited to determining whether there is sufficient credible evidence present in the record to support the findings of the Law Division judge, not the municipal court." State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005) (citing State v. Johnson, 42 N.J. 146, 161-62 (1964)). We review de novo the Law Division's legal determinations or conclusions based upon the facts. State v. Goodman, 415 N.J. Super. 210, 225 (App. Div. 2010).

In Laurick, the Court held that "an uncounseled conviction without waiver of the right to counsel is invalid for the purpose of increasing a defendant's loss of liberty." Laurick, 120 N.J. at 16; see also State v. Hrycak, 184 N.J. 351, 354 (2005) (reaffirming the holding in Laurick). For a defendant facing convictions for repeat DWI offenses, "this means that the enhanced administrative penalties and fines may constitutionally be imposed" but the maximum jail sentence "may not exceed that for any counseled DWI convictions. For example, a third-offender with

one prior uncounseled conviction could not be sentenced to more than ninety days' imprisonment." Laurick, 120 N.J. at 16. "This is typically referred to as a 'step-down' sentence." State v. Weil, 421 N.J. Super. 121, 128 (App. Div. 2011).

The defendant has the burden of establishing entitlement to the relief afforded under Laurick. Id. at 363: see also Weil, 421 N.J. Super. at 133 (finding defendant seeking Laurick relief must "establish a prima facie case for relief" and an entitlement "to relaxation of Rule 7:10-2(g)(2)'s time limit"); State v. Bringhurst, 401 N.J. Super. 421, 434 (2008) (finding the "defendant was obligated to submit sufficient proof in the petition to establish a prima facie case for [Laurick] relief").

Relying on Hrycak and Laurick, we have defined the parameters of a defendant's burden as follows:

> [T]o establish entitlement to the step-down sentence for a second or subsequent DWI:
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> 1. Indigent defendants must establish that they were not given notice of their right to counsel and advised that counsel would be provided for them if they could not afford one.
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> 2. Non-indigent defendants must establish that they were not advised of their right to counsel and that they were unaware of such right at the time they entered the uncounseled pleas.
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> 3. Defendants who establish that they were not adequately noticed of their right to counsel

> must then demonstrate that if they had been represented by counsel, they had a defense to the DWI charge and the outcome would, in all likelihood, have been different. Police reports, witness statements, insurance investigations and the like may be used to submit proofs that the outcome would have been different if the defendant had the benefit of counsel before pleading guilty.
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> [State v. Schadewald, 400 N.J. Super. 350, 354-55 (App. Div. 2007).]

A defendant's application for PCR relief under Laurick must also meet the timeliness requirement of Rule 7:10-2(b)(2). See R. 7:10-2(g)(2) (providing that petitions for relief from enhanced custodial terms based on prior convictions must be filed within the time limits in Rule 7:10-2(b)(2)). Laurick PCR petitions therefore must be filed no later than "five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect." R. 7:10-2(b)(2); see also Weil, 421 N.J. Super. at 128.

Here, the court correctly determined defendant failed to sustain his burden of establishing entitlement to Laurick relief. Defendant's certifications are bereft of any evidence showing he had a defense to the DWI charge or in all likelihood the result would have been different if he had counsel for his 1994 DWI proceeding. See Schadewald, 400 N.J. Super. at 354-55. His

failure to make such a showing required the court's denial of his Laurick petition. See ibid.; see also Bringhurst, 401 N.J. Super. at 435 (finding the defendant's Laurick petition was deficient because he did not present evidence showing that if he had representation, he would have had a defense to the DWI charge or in all likelihood the result of the uncounseled DWI proceeding would have been different).

Because defendant's failure to demonstrate that the result of the 1994 DWI proceeding would have been different if he had received proper notice of his right to counsel requires rejection of his Laurick petition, we agree with the Law Division that it is unnecessary to address any other issues related to defendant's petition. We therefore do not express an opinion as to whether defendant's certifications are sufficient to establish he was indigent at the time of the 1994 DWI proceeding, or whether defendant sufficiently demonstrated excusable neglect under Rule 7:10-2(b)(2) to permit the filing of his petition more than sixteen years after the Rule's five-year time limit. See Weil, 421 N.J. Super. at 131-34 (applying the five-year time limit for the filing of Laurick petitions under Rule 7:10-2(g)(2)); see also Bringhurst, 401 N.J. Super. 432-33 (discussing application of the

five-year time limit for filing a Laurick petition under Rule 7:10-2(g)(2)).[1]

In Bringhurst, we found it unnecessary to resolve fact issues as to the defendant's claims he was indigent and not properly advised of his right to counsel because he did not demonstrate that had he been counseled, the result of the proceeding would have been different. Bringhurst, 401 N.J. Super. at 434-36. Similarly, we found that "critical to" the determination of whether the five-year time limit should be relaxed is a showing by defendant that had he been properly advised of his right to counsel, the outcome of the proceeding in all likelihood would have been different. Id. at 435. Therefore, where, as here, a defendant does not make a showing that had he been properly notified of this right to counsel in all likelihood the result of the proceeding would have been different, it is unnecessary to

[1] We note that when we decided Weil and Bringhurst, Rule 7:10-2(b)(2) made the five-year time limitations in Rule 3:22-12 applicable to the filing of Laurick petitions. See generally Bringhurst, 401 N.J. Super. at 431-34 (discussing application of the Rule 3:22-12 time limitation to the filing of Laurick petitions). A subsequent 2009 amendment to Rule 7:10-2(b)(2) made the five-year time limit in Rule 7:10-2(b)(2) applicable to the filing of Laurick petitions. Rule 7:10-2(b)(2) imposes a five-year time limit for the filing of a petition, "unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect." As noted, however, we find it unnecessary to determine if defendant's petition was barred because it was filed beyond the five-year time limitation in Rule 7:10-2(b)(2).

decide whether defendant was indigent, properly advised of the right to counsel, or there was otherwise excusable neglect for his filing of the petition beyond the five-year time limit under Rule 7:10-2(g)(2). Id. at 434-36.

We have considered defendant's contention that the Court in Hrycak misinterpreted, misstated and misapplied its holding in Laurick. We find that contention, which is raised for the first time on appeal, and defendant's other arguments we have not expressly addressed, are without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.