

RECORD IMPOUNDED

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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-3634-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HARRY J. GANTHIER,

Defendant-Appellant.

Submitted May 8, 2018 – Decided June 1, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment Nos.
05-03-0716, 05-04-1016, and 05-05-1504.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kevin G. Byrnes, Designated
Counsel, of counsel and on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Mary R.
Juliano, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Harry J. Ganthier appeals from a March 2, 2017
order denying his petition for post-conviction relief (PCR)

without an evidentiary hearing. We affirm because defendant's petition was time-barred under Rule 3:22-12(a)(1), and otherwise lacks merit.

I.

In December 2005, defendant pled guilty to three different crimes under three different indictments. Specifically, he pled guilty to second-degree sexual assault, N.J.S.A. 2C:14-2(c)(4); third-degree possession of cocaine, N.J.S.A. 2C:35-10(a)(1); and second-degree eluding, N.J.S.A. 2C:29-2(b). In connection with his guilty pleas, defendant reviewed and signed a number of plea forms, including forms explaining parole supervision for life and advising him that he could be civilly committed because of the sexual offense. The judge who took defendant's guilty pleas confirmed that defendant had reviewed those forms with his attorney and that he understood the questions on each of the forms. The judge iterated to defendant that his sentence would include parole supervision for life and the possibility of civil commitment. Defendant acknowledged that he understood those components of his anticipated sentence.

In pleading guilty, defendant admitted that when he was twenty years old he digitally penetrated the vagina of a thirteen-year-old girl. He also admitted to possessing cocaine. Finally, he admitted that he had been driving his motorcycle, was aware that

the police wanted to stop him, but had fled and tried to elude the police. Based on defendant's testimony, the judge found that defendant's guilty pleas were made voluntarily, knowingly, and intelligently. The judge, therefore, accepted the guilty pleas.

On May 5, 2006, defendant was sentenced to four years in prison on each of the convictions. The sentencing court declined to impose the aggregate fifteen-year sentence recommended by the State. Instead, the court directed that the sentences for the sexual assault and eluding convictions would run consecutive to each other, and the sentence for possession of cocaine would run concurrent to those sentences. Thus, defendant's aggregate sentence was eight years in state prison. In connection with his conviction for sexual assault, defendant was also sentenced to Megan's Law registration, and parole supervision for life.

Defendant did not file a direct appeal. Instead, over nine years after his sentence, on January 5, 2016, defendant filed a self-represented petition for PCR. Defendant alleged that his guilty plea was not knowing or voluntary because he did not understand the full ramifications of being sentenced to parole supervision for life. He also alleged that his counsel had been ineffective in explaining civil commitment and parole supervision for life.

Defendant was assigned PCR counsel, and on March 2, 2017, the PCR court heard oral arguments. That same day, the court entered an order denying the petition and explained the reasons for its rulings on the record. The PCR court found that defendant's petition was time-barred and lacked substantive merit.

II.

On appeal, defendant makes four arguments, which he articulates as follows:

POINT I — THE DEFENDANT DID NOT WAIVE HIS RIGHTS KNOWINGLY; THEREFORE, THE GUILTY PLEA MUST BE VACATED

POINT II — THE DEFENDANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE *UNITED STATES CONSTITUTION* AND ART. I, PAR. 10 OF THE *NEW JERSEY CONSTITUTION*

POINT III — THE DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING

POINT IV — THE PROCEDURAL BAR SHOULD NOT APPLY DUE TO EXCUSABLE NEGLIGENCE

We reject defendant's arguments because his petition is time-barred. Moreover, defendant's PCR petition lacks substantive merit.

Rule 3:22-12(a)(1)(A) precludes PCR petitions filed more than five years after entry of a judgment of conviction unless the delay was "due to defendant's excusable neglect and . . . there is 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." Our Supreme Court has stated that "[t]he time bar should be relaxed only 'under exceptional circumstances' because '[a]s time passes, justice becomes more elusive and the necessity for preserving finality and certainty of judgments increases.'" State v. Goodwin, 173 N.J. 583, 594 (2002) (quoting State v. Afanador, 151 N.J. 41, 52 (1997)).

To establish "excusable neglect," a defendant must demonstrate "more than simply . . . a plausible explanation for a failure to file a timely PCR petition." State v. Norman, 405 N.J. Super. 149, 159 (App. Div. 2009). Factors to be considered include "the extent and cause of the delay, the prejudice to the State, and the importance of the [defendant's] claim in determining whether there has been an 'injustice' sufficient to relax the time limits." Afanador, 151 N.J. at 52.

Here, defendant was sentenced on May 5, 2006. His petition for PCR, however, was filed over nine years later on January 5, 2016. Defendant argues that there was excusable neglect because his plea counsel failed to advise him of the five-year time limitation for PCR petitions. Ignorance of the time bar, by itself, does not establish excusable neglect. See, e.g., State v. Brewster, 429 N.J. Super. 387, 400 (App. Div. 2013) ("If excusable neglect for late filing of a petition is equated with

incorrect or incomplete advice, long-convicted defendants might routinely claim they did not learn about the deficiencies in counsel's advice on a variety of topics until after the five-year limitation period had run.").

Moreover, to obtain relief on PCR, a defendant must establish entitlement to that relief. State v. Weil, 421 N.J. Super. 121, 131 (App. Div. 2011). Here, defendant has failed to demonstrate a reasonable probability that enforcement of the time bar would result in a fundamental injustice. Nowhere in defendant's certification does he allege that he was innocent of the three crimes to which he pled guilty. Instead, the record establishes that defendant knowingly, voluntarily, and intelligently pled guilty.

Even if we were to consider the merits, defendant has failed to establish a prima facie showing of ineffective assistance of counsel. To prevail on an ineffective assistance of counsel claim, defendant must demonstrate (1) that counsel's performance "fell below an objective standard of reasonableness," and (2) "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 688, 694 (1984); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland standard in New Jersey). To set aside a guilty plea based on

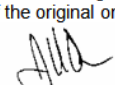
ineffective assistance of counsel, a defendant must show "that there is a reasonable probability that, but for counsel's errors, [defendant] would not have pled guilty and would have insisted on going to trial." State v. DiFrisco, 137 N.J. 434, 457 (1994) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

Here, in both the plea forms and at the plea colloquy, defendant was informed that his sentence for sexual assault would include parole supervision for life and the possibility of civil commitment. Defendant acknowledged that he understood those components of his anticipated sentence. Indeed, at his sentencing, defendant was reminded that he was being placed on parole supervision for life and that if he violated his parole conditions, he could be incarcerated. Accordingly, defendant's claim that his plea counsel was ineffective because he did not fully understand the components of his sentence for sexual assault is not supported by the record.

Finally, there was no showing that required an evidentiary hearing on defendant's PCR petition. A defendant is entitled to an evidentiary hearing on a PCR petition if he or she establishes a prima facie case in support of the petition. R. 3:22-10(b). As we have just summarized, defendant did not present a prima facie showing.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION