

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." 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-0007-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

P.L.M.,¹

Defendant-Appellant.

Submitted April 25, 2022 – Decided May 18, 2022

Before Judges Rose and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 03-10-1298.

P.L.M., appellant pro se.

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Joie D. Piderit, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

¹ We use initials to protect the privacy of the minor victim. R. 1:38-3(c)(9).

Defendant P.L.M., a self-represented litigant, appeals from the August 6, 2020 order denying his second petition for post-conviction relief (PCR) as untimely pursuant to Rule 3:22-12(a)(2). Following our review of the record and applicable legal principles, we affirm.

We review de novo a decision to deny a petition for PCR without an evidentiary hearing. State v. Harris, 181 N.J. 391, 419-21 (2004); see also State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018) (applying a de novo standard of review to the denial of a second petition for PCR).

I.

In April 2005, a jury convicted defendant of multiple offenses stemming from a Middlesex County indictment, including first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a), second-degree sexual assault, N.J.S.A. 2C:14-2(b), second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a), and third-degree terroristic threats, N.J.S.A. 2C:12-3(a). In October 2005, the trial judge sentenced defendant to three consecutive terms of sixteen years imprisonment with eighty-five percent parole ineligibility pursuant to N.J.S.A. 2C:43-7.1 for the first-degree aggravated sexual assault convictions. The remaining convictions were merged for sentencing purposes. Defendant appealed, and we remanded for a hearing regarding one of the child victims.

State v. P.L.M., No. A-2368-05 (App. Div. June 18, 2007). Thereafter, defendant appealed again, and we affirmed defendant's convictions. State v. P.L.M., No. A-2368-05 (App. Div. Apr. 17, 2009). The Supreme Court denied defendant's petition for certification in October 2010. 204 N.J. 41 (2010).

Defendant filed an initial PCR petition in October 2010. The PCR court denied defendant's petition, and we affirmed. State v. P.L.M., No. A-1703-11 (App. Div. Feb. 3, 2014). The Supreme Court denied the subsequent petition for certification in February 2015. 220 N.J. 572 (2015).

Defendant filed a second PCR petition in February 2020. Defendant argued when he filed his first PCR application he simply copied the issues advanced in his direct appeal because he could not read or write in English. He further contended his trial and PCR counsel did not investigate a third-party guilt defense. Finally, defendant asserted his trial counsel did not contest the issue of an excessive sentence, permitted the case to go to trial without discovery, and that he received new evidence from a witness.

Judge Michael A. Toto denied the second PCR petition in an order dated August 6, 2020, accompanied by a written decision. He rejected the ineffective assistance of PCR counsel claim because it was not made within one year from when the first PCR petition was denied. Because defendant did not provide any

information as to when he discovered the new evidence, Judge Toto also found that claim untimely. He further indicated most of defendant's claims involved his trial counsel and, therefore, did not satisfy the requirements for a second PCR petition. Similarly, the judge rejected defendant's claims regarding his inability to read or write in English. Because defendant was represented by counsel on his first PCR petition, PCR counsel would have advanced proper arguments on defendant's behalf. There is also no indication defendant ever raised this issue with PCR counsel. Lastly, Judge Toto stated defendant did not provide any evidence that he presented PCR counsel with any information regarding his third-party guilt defense. Nor did defendant elaborate on the contents of the alleged new evidence in the affidavit and failed to demonstrate that it could not have been discovered earlier through the exercise of reasonable diligence. This appeal followed.

Defendant essentially renews the same claims before us. Specifically, defendant raises the following grounds for consideration:

POINT I

THE PCR COURT ERRED WHEN IT DENIED A
SECOND PETITION FOR [PCR] DUE TO A
PROCEDURAL BAR. (Not raised below)

POINT II

PETITIONER'S DUE PROCESS RIGHTS [WERE] VIOLATED BY THE PCR COURT WHEN THAT COURT REFUSED TO EXAMINE WITNESS CERTIFICATIONS THROUGH AN EVIDENTIARY HEARING. (Not raised below)

II.

Rule 3:22-4(b)(1) requires dismissal of a second PCR petition if untimely under Rule 3:22-12(a)(2). Specifically, under Rule 3:22-4(b):

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

(1) it is timely under [Rule] 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.

Under Rule 3:22-12(a)(2), a second or subsequent petition for PCR must be filed within 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.

A 2009 amendment to Rule 3:22-12 makes clear the one-year limitation for second or subsequent PCR petitions is non-relaxable. See R. 3:22-12(b); Jackson, 454 N.J. Super. at 293; see also R. 1:3-4(c) (prohibiting the court and the parties from enlarging the time to file a petition for PCR under Rule 3:22-12).

Application of these rules establishes Judge Toto correctly dismissed defendant's second PCR petition as untimely or otherwise deficient. We affirm substantially for the reasons expressed by Judge Toto in his written opinion. To

the extent we have not otherwise addressed defendant's arguments, they lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION