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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-0225-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HAIM DANY,

Defendant-Appellant.

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Submitted October 4, 2022 – Decided November 7, 2022

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law  
Division, Atlantic County, Indictment No. 962-75-M.

Robert J. De Groot, attorney for appellant (Oleg  
Nekritin, on the brief).

Matthew J. Platkin, Attorney General, attorney for  
respondent (Regina M. Oberholzer, Deputy Attorney  
General, of counsel and on the brief).

PER CURIAM

Haim Dany appeals from an August 4, 2021 order denying his petition for post-conviction relief (PCR) following a limited evidentiary hearing. Because the petition was filed more than thirty years after Dany's conviction and there was no showing of excusable neglect, we affirm.

In 1977, Dany pled guilty to possession of marijuana with the intent to distribute, N.J.S.A. 24:21-20(a)(4) (1971) (repealed by L. 1987, c. 106, § 25).<sup>1</sup> Over thirty-two years later, in November 2019, Dany filed a PCR petition, contending that his plea counsel had been ineffective in advising him that his criminal plea would not affect his immigration status. In support of his petition, Dany, who was represented by counsel, filed a certification. The PCR court heard argument, allowed Dany to supplement the record, and conducted a limited evidentiary hearing during which Dany testified. That record established certain material undisputed facts.

Dany is an Israeli citizen. In 1975, he entered the United States on a tourist visa to attend his brother's wedding but did not leave when the visa expired. In 1976, Dany was arrested in Atlantic City and charged with three crimes related to his possession of a large quantity of marijuana. The following

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<sup>1</sup> Danny's indictment and plea predated the 1978 adoption of the current criminal code set forth in Title 2C.

year, Dany pled guilty to possession of marijuana with the intent to distribute and he was sentenced to a three-month suspended sentence and one year of probation.

In 1977, Dany voluntarily returned to Israel, married, and raised a family. Twelve years later, in 1989, Dany and his immediate family came to the United States. In 2001, Dany obtained a green card and became a permanent legal resident. Two years later, Dany's green card expired and for several years thereafter he tried to renew his green card. During that process, Dany consulted with several attorneys, and he was repeatedly advised that he could not renew his green card because of his criminal conviction from 1977.

In late 2017, Dany asked federal immigration officials if he could travel to and from Israel. He was told that if he traveled outside the United States, he might be denied re-entry because of his 1977 criminal conviction. Federal immigration officials have not initiated or threatened to initiate proceedings to remove Dany or otherwise acted regarding his residency in the United States.

Based on those undisputed facts, the PCR judge, Judge Sarah Beth Johnson, denied Dany's petition finding that it was filed well beyond the five-year limitation for PCR petitions. See R. 3:22-12(a)(1). Judge Johnson found that Dany had shown no excusable neglect for his long delay. The judge also

found that Dany had not shown that enforcing the time bar would result in a fundamental injustice. See R. 3:22-12(a)(1)(A).

Judge Johnson explained the reasons for her ruling in a cogent written opinion. In that opinion, the judge applied the undisputed material facts to the well-established governing law. We affirm substantially for the reasons explained in Judge Johnson's well-reasoned opinion. Specifically, we affirm Judge Johnson's ruling that Dany's petition was time-barred. Given that ruling, we need not and do not address Judge Johnson's alternative reason where she found that the petition was moot.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION