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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-0435-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDGAR TORRES,

Defendant-Appellant.

Submitted October 3, 2022 – Decided November 10, 2022

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 12-09-1539.

Joseph E. Krakora, Public Defender, attorney for appellant (Steven M. Gilson, Designated Counsel, on the brief).

Lori Linskey, Acting Monmouth County Prosecutor, attorney for respondent (Monica do Outeiro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from the denial of his petition for post-conviction relief (PCR). Because defendant failed to file this second PCR petition in a timely manner and has not shown good cause for the delay, we affirm.

In 2012, defendant was found guilty by a jury of three counts of first-degree robbery, N.J.S.A. 2C:15-1, and three counts of second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a). The court sentenced defendant to an aggregate forty-year prison term, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. We affirmed defendant's convictions and sentence. State v. Torres, No. A-3096-12 (App. Div. May 7, 2015).

Defendant filed his first petition for PCR in December 2015 alleging ineffective assistance of counsel for failing to perform any pretrial investigation and to call an unspecified witness. The PCR court denied the petition in August 2017. We affirmed. State v. Torres, No. A-0505-17 (App. Div. Oct. 9, 2018).

In July 2019, defendant filed a second petition for PCR, contending again that trial counsel was ineffective for failing to investigate, and asserting the ineffectiveness of appellate and PCR counsel regarding the issue of unspecified witnesses that trial counsel should have called at trial. Defendant acknowledged the petition was filed more than a year after the decision in the first PCR.

In determining defendant did not present any arguments to allow the filing of the untimely petition, the PCR court noted defendant did not claim any newly recognized constitutional right, therefore Rule 3:22-12(a)(2)(A) did not apply. Nor did defendant base his claim on any evidence or information that could not have been discovered earlier through the exercise of reasonable diligence, as required under Rule 3:22-12(a)(2)(B). Therefore, the court dismissed the petition on August 13, 2021.

Defendant presents the following issues on appeal:

POINT I

THE DEFENDANT'S SECOND PCR PETITION
SHOULD NOT HAVE BEEN TIME-BARRED.

POINT II

THIS MATTER MUST BE REMANDED FOR AN
EVIDENTIARY HEARING BECAUSE THE
DEFENDANT ESTABLISHED A PRIMA FACIE
CASE OF TRIAL, APPELLATE AND FIRST PCR
COUNSELS' INEFFECTIVENESS.

We review the legal conclusions of a PCR judge de novo. State v. Harris, 181 N.J. 391, 419 (2004). Under Rule 3:22-12(a)(2), a second or subsequent PCR petition must be filed within one year of the date on which a new constitutional right is recognized by the courts, "the date on which the factual predicate for the relief sought was discovered," or "the date of the denial of the first or subsequent application for [PCR] where ineffective assistance of counsel

that represented the defendant on the first or subsequent application for [PCR] is being alleged." A subsequent PCR petition must be dismissed unless it complies with Rule 3:22-12(a)(2), and pleads, on its face, one of the three criteria under Rule 3:22-12(a)(2). R. 3:22-4(b).

We are satisfied that defendant's PCR petition is untimely under Rules 3:22-12(a)(2) and 3:22-4(b). His first PCR petition, filed in 2015, alleged ineffective assistance of counsel regarding pretrial investigation and trial strategy. We addressed and rejected that argument in affirming the denial of that petition.

Additionally, under Rule 3:22-12(a)(2)(B) to (C), defendant was required to file a subsequent PCR petition within one year of the denial of his first petition because he was aware of the factual predicate at the time of his first petition. However, defendant did not file the instant PCR petition until July 2019, almost two years later. As a result, defendant's second petition was properly barred as untimely. See R. 3:22-4(b). The remainder of defendant's arguments lack sufficient merit to warrant discussion in a written opinion. 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