

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2123-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARVIN M. WATSON,

Defendant-Appellant.

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Submitted May 16, 2022 – Decided June 2, 2022

Before Judges Sabatino and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Salem County, Accusation No. 08-11-0064.

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

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Debra G. Simms, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Marvin M. Watson appeals from a January 10, 2020 Law Division order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

In 2008, defendant was charged by way of accusation with third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). He was also charged under a separate complaint with second-degree sexual assault, N.J.S.A. 2C:14-2(c)(4).

Defendant thereafter appeared before Judge William L. Forester, waived his right to proceed by way of indictment, and pled guilty to the endangering offense in exchange for the State's promise to dismiss the sexual assault charge. The State also agreed to recommend a three-year term of imprisonment rather than seek an extended term.<sup>1</sup>

At that hearing, defendant provided a factual basis for his plea, stating that he engaged in "sexual conduct" with "a sixteen-year-old girl." He also testified that he was pleading guilty voluntarily, was advised of the terms of the plea

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<sup>1</sup> Defendant was extended term eligible under N.J.S.A. 2C:44-3(a) as he qualified as a "persistent offender" due to his multiple convictions and last release from confinement being within ten years of the endangering offense.

agreement by his counsel, and confirmed he signed his plea forms after reviewing them with his counsel.

Defendant stated he "underst[ood] that there is also . . . a requirement and a provision in the law called community supervision for life [(CSL)]," which required that he would "have a parole officer for life after [his release] from [s]tate[] [p]rison." Judge Forester also addressed the parole consequences of defendant's plea, indicating that as a part of defendant's "parole supervision for life [(PSL)]" he would "be subject to some conditions of parole post-release," which "would be established by parole."<sup>2</sup> As the pre-sentence report confirmed defendant was the biological father of the victim's child, the parties also discussed at the plea hearing whether defendant would be allowed to have contact with the child.

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<sup>2</sup> Prior to 2004, N.J.S.A. 2C:43-6.4 provided for CSL as a "special sentence" that was "designed to protect the public from recidivism by sexual offenders." State v. Perez, 220 N.J. 423, 436-37 (2015) (first quoting N.J.S.A. 2C:43-6.4(a); then citing J.B. v. N.J. State Parole Bd., 443 N.J. Super. 327, 336 (App. Div. 2013)). Originally, an individual subject to CSL was "supervised as if on parole" and any violation would be punishable as a fourth-degree crime. Id. at 441 (quoting N.J.S.A. 2C:43-6.4(b)). The statute's 2003 amendment replaced all references to CSL with those to PSL as well as made "substantive change[s] to the CSL post-sentence supervisory scheme." Id. at 429, 437. In accordance with those changes, a PSL violation "may be prosecuted as a fourth-degree offense, N.J.S.A. 2C:43-6.4(d), but it may also be treated as a parole violation, N.J.S.A. 2C:43-6.4(b)." Id. at 441.

Defendant also completed and signed plea forms including a supplemental document titled "Additional Questions for Certain Sexual Offenses." On the standard plea form, defendant indicated that his agreed-upon sentence included a CSL condition. When completing the supplemental form, however, defendant answered "N/A" to a question addressing CSL. Defendant did answer five questions noting he would be subject to PSL. In doing so, defendant confirmed his understanding that "if [he] violate[s] a condition of [PSL], [his] parole may be revoked and [he] can be sent to prison for [twelve] to [eighteen] months for each revocation that occurs while [he] [is] being supervised."

Defendant later appeared before Judge Forester, who sentenced him in accordance with his plea agreement. During that hearing, defense counsel stated that defendant would "be on [CSL]." The judge did not refer to CSL, but instead stated "[PSL]" is a "lifetime event[]" and included "parole supervision" when issuing defendant's sentence. The court then entered a judgment of conviction that specified defendant would be subject to PSL. Defendant never appealed his conviction or sentence.

Defendant served twenty-one months in prison before his release. Shortly before his release, defendant signed a certificate listing the conditions of his PSL.

Thereafter, on four occasions in 2013, 2014, 2016, and 2018, the New Jersey State Parole Board (Parole Board) conducted hearings and determined defendant violated the conditions of his PSL. On the latter three occasions, the Parole Board revoked defendant's parole and imposed terms of imprisonment of twelve months, fourteen months, and sixteen months, respectively. Defendant also signed additional certificates listing the conditions of his PSL in 2013, 2015, 2017, and 2019.

On January 14, 2019, defendant filed a pro se petition for PCR. Defendant's appointed PCR counsel later filed an Amended Verified Petition for PCR and a supporting brief. In his amended petition, defendant asserted his trial "attorney did not advise [him] that [he] would be subject to PSL" at the time he pled guilty, and that he "would never have accepted a plea" that required he "be on parole for life." He also claimed his trial "attorney failed to inform [him] that [he] could be returned to prison by the Parole Board if [he] violated parole."

In his brief, defendant first argued his "counsel was ineffective for misinforming [him] about the consequences of [his] guilty plea." He contended specifically that his counsel incorrectly told him he would be subject to CSL, as opposed to PSL, and failed to inform him of PSL's underlying conditions. Defendant argued further that "[PSL] is unconstitutionally vague and violates

separation of powers," and he was entitled to an evidentiary hearing. Finally, he asserted his "petition should not be denied for procedural reasons," and claimed in support that he "was not advised about his right to file a PCR petition."

After hearing oral arguments, Judge Sandra Lopez issued a July 17, 2020 order and comprehensive thirty-five-page written opinion denying defendant's petition. She determined the petition was time barred by Rule 3:22-12(a)(1),<sup>3</sup> and defendant "failed to allege sufficient facts that demonstrate excusable neglect resulting in a fundamental injustice that would warrant relaxing that time bar."

The judge explained "[d]efendant's basis for excusable neglect rests on the assertion that he was never informed by counsel that he was subject to PSL in

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<sup>3</sup> Subject to exceptions not applicable here, Rule 3:22-12(a)(1) provides:

[N]o petition shall be filed pursuant to this rule more than [five] years after the date of entry pursuant to Rule 3:21-5 of the judgment of conviction that is being challenged unless:

(A) it alleges facts showing that the delay beyond said time was due to defendant's excusable neglect and that 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 . . . .

his plea agreement." She reasoned "even if [d]efendant's plea counsel neglected to inform him of his PSL status . . . [t]he 'grounds' for PCR should have been made aware to [d]efendant, at the latest, when he first signed the certificate of PSL in 2010, nine . . . years before he filed his initial PCR petition." Judge Lopez also noted that defendant did not file his PCR petition until six years after his first PSL violation. Further she explained that "[e]ven assuming . . . [d]efendant had no reason to be aware of his PSL status, his petition [would] still be time-barred" because his "ignorance of the law" could not justify the delay.

Judge Lopez also concluded defendant failed to establish that enforcing the time bar would result in a fundamental injustice, which he claimed he suffered due to the amount of jail time imposed for his PSL violations and because he was "not informed of his right to file a PCR petition." She found that "the extent of the delay was great[,] and the cause of the delay was unjustified" and the State would suffer substantial prejudice if the time bar were relaxed, due to the possibility it would have to prosecute a crime that occurred thirteen years earlier. Judge Lopez acknowledged that defendant's claims raised "important constitutional issues" but also reasoned that they lacked merit. Further, the judge determined defendant's claims of injustice were unfounded

because his additional terms of imprisonment were the result of his own conduct and, again, his ignorance of the law could not justify his delay in filing a PCR petition.

Despite finding defendant's petition was procedurally barred, Judge Lopez addressed and rejected his substantive claims on the merits. As to his ineffective assistance of counsel claim, she concluded defendant failed to present a prima facie case under the two-part test detailed in Strickland v. Washington, 466 U.S. 668, 687 (1984),<sup>4</sup> and an evidentiary hearing was therefore not required.

Regarding the first Strickland prong, Judge Lopez found that "[d]efendant knew he was subject to PSL as part of his sentence and . . . generally understood the ramifications of PSL" and "to the extent that plea counsel may have misadvised [him], it appears to be in name only." In support, she reasoned that "the record contradict[ed] [d]efendant's claim." She explained that "[w]hile the plea form states [d]efendant is subject to [CSL] . . . [d]efendant and plea counsel completed a supplemental plea form indicating that CSL was not applicable" and "properly completed the PSL section," which "acknowledged that the court

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<sup>4</sup> To establish ineffective assistance of counsel, a convicted defendant must satisfy the two-part test enunciated in Strickland, 466 U.S. at 687, by demonstrating that: 1) counsel's performance was deficient, and 2) the deficient performance actually prejudiced the accused's defense. The Strickland test has been adopted in New Jersey. See State v. Fritz, 105 N.J. 42, 58 (1987).



would impose a special sentence of [PSL]" and that "violations of PSL may result in a parole revocation and period of incarceration for each revocation." Further, she noted that "[d]efendant [made] no argument that plea counsel advised him that violations of supervision could only be punished as a new crime rather than as a parole revocation—the most significant distinction between CSL and PSL."

Judge Lopez also concluded that defendant failed to establish the second Strickland prong, finding that "[w]hile [d]efendant averred that he never would have accepted the plea he did, he does not allege any facts supporting that such a decision would be reasonable under the circumstances." She explained that defendant's argument "disregard[ed] the benefits of [his] plea bargain" including the State's agreement "to dismiss the second-degree charge of [s]exual [a]ssault" and "not to seek an extended term of imprisonment." Further, the judge reasoned that "[a]ssuming [d]efendant's argument that he believed he would be sentenced to CSL rather than PSL is true, he still would have been supervised for life as if on parole" and "if [d]efendant had been convicted at trial, he . . . would have been subject to PSL."

Judge Lopez also determined defendant was not entitled to an evidentiary hearing. She reasoned that "[d]efendant did not allege specific facts about how

plea counsel failed to advise or misadvised him" and "provid[ed] no supporting affidavits, certifications, or any other evidence concerning discussions that occurred off the record."

Judge Lopez also found no merit in defendant's arguments regarding the constitutionality of N.J.S.A. 2C:43-6.4. She concluded that the statute was not unconstitutionally vague facially or as applied to defendant, a decision that defendant does not challenge on appeal.

Judge Lopez then rejected defendant's argument that "the interconnected statutory and regulatory schemes that permit the Parole Board to summarily return a defendant to prison upon the violation of a PSL condition is a violation of the separation of powers doctrine." She explained that "each of [d]efendant's PSL violations was handled as a parole violation rather than being prosecuted as a criminal offense" and "[a]s a result judicial adjudication was not required." In support, she cited State v. Black, 153 N.J. 438, 448-49 (1998) (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)) for the propositions that "parole revocation . . . is not part of a criminal prosecution" and "the 'full panoply of rights' due a defendant in a criminal proceeding does not apply to parole revocations."

Next, Judge Lopez relied on State v. Bond, 365 N.J. Super. 430, 443 (App. Div. 2003) and explained that "the Legislature did not violate the separation of powers doctrine by delegating authority to the Parole Board to promulgate conditions and procedures applicable to persons placed on [CSL]." She quoted our reasoning in Bond that "[t]he Legislature necessarily was fully aware of the Parole Board's supervisory scheme when it delegated authority to the Board to set forth the conditions of CSL," ibid., and explained that "[u]nder that rationale, the Legislature must have remained fully aware of that supervisory scheme when it amended N.J.S.A. 2C:43-6.4(b) to change CSL to PSL." Thus, Judge Lopez concluded that N.J.S.A. 2C:43-6.4(b) provided proper guidance to the Parole Board, and defendant "failed to meet his burden of demonstrating that the PSL regulations are arbitrary, capricious, unreasonable, or exceeded the agency's delegated authority."

This appeal followed in which defendant raises the following arguments:<sup>5</sup>

#### POINT ONE

THE TIME BAR OF R. 3:22-12 SHOULD HAVE BEEN RELAXED IN ORDER TO AVOID A FUNDAMENTAL INJUSTICE

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<sup>5</sup> We have reorganized defendant's point headings to address first whether defendant's PCR petition was procedurally barred.

POINT TWO

THE PCR COURT IMPROPERLY DENIED DEFENDANT'S CLAIM THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF HIS PLEA COUNSEL WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS FOR INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS AND PETITIONS FOR [PCR].

B. DEFENDANT ESTABLISHED A PRIMA FACIE CLAIM FOR [PCR] BASED ON INEFFECTIVENESS OF HIS PLEA COUNSEL, ENTITLING HIM TO AN EVIDENTIARY HEARING

C. DEFENDANT ESTABLISHED A PRIMA FACIE CLAIM FOR [PCR] ON THE CLAIM THAT THE PAROLE SUPERVISION FOR LIFE PROGRAM VIOLATES THE CONSTITUTIONAL SEPARATION OF POWERS DOCTRINE

Having considered defendant's arguments in light of our de novo review of the record and applicable legal principles, State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018), we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm for the reasons expressed in Judge Lopez's comprehensive and well-reasoned written

opinion and add the following comments to amplify our decision as it pertains to the arguments in defendant's points I and II.B.

Defendant failed to establish any basis to relax Rule 3:22-12's time bar. He argues before us that his delay in filing was the result of excusable neglect because he was unaware of the availability of PCR and that he will suffer fundamental injustice if the time bar is not relaxed due to the "significant constitutional issues" raised in his petition. We disagree.

We observe that when defendant was sentenced, the court was not required to inform defendants of the time within which a PCR petition had to be filed, as presently required by Rule 3:21-4(i). Further, as noted by Judge Lopez, defendant's ignorance of the law regarding the availability of PCR is insufficient to establish excusable neglect. See State v. Dugan, 289 N.J. Super. 15, 22 (App. Div. 1996) (holding a misunderstanding of the meaning of Rule 3:22-12 does not constitute excusable neglect); State v. Merola, 365 N.J. Super. 203, 218 (Law Div. 2002) ("Ignorance of the law and rules of court does not qualify as excusable neglect."); see also State v. Brewster, 429 N.J. Super. 387, 400 (App. Div. 2013) (finding defendant failed to establish excusable neglect and stating "[i]f 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").

Defendant also failed to demonstrate that enforcing the time bar would result in fundamental injustice. "[T]o succeed on a claim of fundamental injustice, the petitioner must show that the error 'played a role in the determination of guilt.'" Brewster, 429 N.J. Super. at 400 (quoting State v. Nash, 212 N.J. 518, 546 (2013)). Defendant's petition makes no such claim, and his contentions lack substantive merit in any event.

Further, defendant's extreme delay in filing his petition weighs heavily against relaxing Rule 3:22-12's time bar. See State v. Afanador, 151 N.J. 41, 52 (1997) ("Absent compelling, extenuating circumstances, the burden to justify filing a petition after the five-year period will increase with the extent of the delay."). Defendant failed to file his PCR petition until nearly ten years after his judgment of conviction was filed, over eight years after he first signed a certificate listing the conditions of his PSL, and over five years after the Parole Board first determined he violated PSL.

Notwithstanding the procedural bar of defendant's PCR petition, we have considered defendant's claim on the merits and agree with Judge Lopez that he failed to satisfy either the performance or prejudice prong of the two-part

Strickland test. First, defendant's assertion that his plea counsel rendered deficient performance by failing to advise him that he would be subject to PSL is contradicted by the record.

We acknowledge that defendant's plea form listed his sentence as including CSL and that defense counsel referenced CSL at defendant's plea and sentencing. In completing his supplemental plea form, however, defendant clearly indicated that CSL was not applicable and confirmed his understanding that he would be subject to PSL and its underlying conditions. See State v. Herman, 47 N.J. 73, 77 (1966) (explaining that execution of plea forms "weighs heavily against a contention that the plea was not entered voluntarily and understandingly"). The judge also correctly referenced PSL at defendant's plea hearing and sentencing. As such, we conclude defendant was adequately notified that he would be subject to PSL as a part of his plea agreement.

Second, defendant also clearly failed to demonstrate that any deficiency in his counsel's performance prejudiced him. Even were we to accept (which we do not) defendant's argument that his plea counsel misinformed him regarding the PSL consequences of his plea, it would not have been rational for him to reject the plea agreement. See Padilla v. Kentucky, 559 U.S. 356, 372 (2010) ("a petitioner must convince the court that a decision to reject the plea

bargain would have been rational under the circumstances." ). Defendant's plea agreement was clearly beneficial to him, as it disposed of his second-degree sexual assault charge and ensured he would not be subject to an extended term, for which he was eligible. Further, defendant's guilt was irrefutable as he fathered his victim's child, and had he rejected the plea agreement and been convicted, defendant would have been subject to PSL in any event.

Defendant's remaining arguments, to the extent we have not addressed them, 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