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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2184-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAHID REEVES,
a/k/a JAHID REED,

Defendant-Appellant.

Submitted March 16, 2022 – Decided April 5, 2022

Before Judges Gooden Brown and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 05-11-2717 and Accusation No. 06-04-0488.

Joseph E. Krakora, Public Defender, attorney for appellant (Karen A. Lodeserto, Designated Counsel, on the brief).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Lucille M. Rosano, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from an August 28, 2020 Law Division order denying without an evidentiary hearing his petition for post-conviction relief (PCR) filed almost thirteen years after he had been sentenced in accordance with a plea agreement. On appeal, defendant raises the following points for our consideration:

POINT ONE

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR [PCR] WITHOUT GRANTING AN EVIDENTIARY HEARING AS TESTIMONY IS NEEDED FROM PRIOR COUNSEL REGARDING HIS FAILURE TO INTERVIEW PATRICIA GREEN^[1] AND FILE A SUPPRESSION MOTION BASED ON HER STATEMENT.

POINT TWO

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR PCR WITHOUT GRANTING AN EVIDENTIARY HEARING AS TESTIMONY IS NEEDED FROM PRIOR COUNSEL REGARDING WHY HE PRESSURED [DEFENDANT] TO PLEAD GUILTY.

POINT THREE

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR [PCR] WITHOUT GRANTING AN EVIDENTIARY HEARING AS THE

¹ The name appears alternately in the record as Greene.

FIVE-YEAR TIME BAR SHOULD BE RELAXED
DUE TO EXCUSABLE NEGLIGENCE AND/OR THE
INTERESTS OF JUSTICE.

We affirm substantially for the reasons stated in Judge Martin Cronin's oral opinion.

We glean these facts from the record. On December 19, 2005, defendant entered a negotiated guilty plea to four counts of an eight-count indictment charging him with third-degree possession of a controlled dangerous substance (CDS) with intent to distribute within 1,000 feet of school property, N.J.S.A. 2C:35-7 (count three); fourth-degree aggravated assault, as amended, N.J.S.A. 2C:12-1(b)(9) (count five); third-degree unlawful possession of a firearm, N.J.S.A. 2C:39-5(b) (count six); and fourth-degree obstructing the administration of law, N.J.S.A. 2C:29-1 (count eight).

On April 25, 2006, when he appeared for sentencing on the indictment, defendant entered a negotiated guilty plea to two counts of a six-count accusation charging him with third-degree possession of CDS with intent to distribute within 1,000 feet of school property (count three), and third-degree unlawful possession of a firearm (count four). On the same date, defendant was sentenced on the indictment to an aggregate term of four years' imprisonment, with an eighteen-month period of parole ineligibility, and, on the accusation, to

an aggregate term of three years' imprisonment, with a twelve-month period of parole ineligibility, to run consecutive to the sentence on the indictment. All remaining charges were dismissed pursuant to the plea agreement. Defendant did not file a direct appeal on any of the underlying convictions.

As Judge Cronin stated in recounting the procedural history of the cases:

[D]efendant was released after serving [four] years, [ten] months [in] New Jersey State Prison Nearly seven years later on August, 22, 2018, [defendant] was charged with federal offenses Defendant entered a guilty plea with federal authorities on his federal charges in March of 2020.

The agreement . . . calls for a sentencing recommendation of [eight] to [ten] years in federal prison. . . . And . . . defendant was advised that he had a career offender status, which is an enhancement under federal law

Under the career offender statute, if there's an offense committed once someone is older than [eighteen] years of age and it is . . . either a drug distribution offense or a violent offense, . . . they're subject to the career offender [status] which enhances the sentence.

. . . .

. . . So, [defendant's] two drug offenses were predicates for subsequent federal enhancement.

On May 1, 2019, defendant filed a pro se petition for PCR asserting that he received ineffective assistance of counsel (IAC) because "[his] attorney

persuaded [him] to plead guilty with the promise to get the charges [to] run concurrent," and "did not inform [him] that a guilty plea had potential . . . ramifications if [defendant] was charged with a crime in the future." Specifically, defendant stated, "[he] was not advised that [his] guilty plea could result in hi[m] being designated as a '[c]areer [o]ffender' in the future."

After he was assigned PCR counsel, defendant submitted an amended petition adding his attorney was ineffective because he failed "to file a motion to suppress the handgun seized by law enforcement under [the] [i]ndictment" despite the fact that defendant informed his attorney "he was not in possession of a weapon" as alleged in count six. Further, defendant asserted he had asked his attorney to "locate and interview Patricia Green," a witness "who was present at the scene" and would have corroborated defendant's account that he "was not in possession of a handgun at the time of the incident" but his attorney failed to act. Additionally, according to defendant, "he was coerced into pleading guilty by plea counsel's conduct."

Defendant claimed that his failure to file a timely petition was "due to excusable neglect." In support, defendant averred, "he was unaware of his right to file a petition for [PCR] until he was arrested by the [FBI] on his current [f]ederal charges" and "only became aware that the plea agreements . . . would

subject him to enhanced penalties on the [f]ederal charges after he was taken into custody by the [FBI]."

On August 28, 2020, the judge conducted oral argument. In an order entered on the same date, Judge Cronin denied defendant's petition without an evidentiary hearing. Explaining his reasons on the record, the judge determined the petition was time barred pursuant to Rule 3:22-12 because it "was filed eight years beyond" the five-year limitation period for PCR applications contained in the rule. Further, the judge concluded there was no showing of excusable neglect as required under Rule 3:22-12(a)(1)(A) and defendant failed to establish that enforcement of the time bar would result in a fundamental injustice.

In that regard, the judge expounded:

[Defendant] has failed to establish why this [c]ourt should relax the time bar for the present PCR. [Defendant] asserts that his delay was due to excusable neglect because, one, there was an extended period . . . between his conviction and the time that he learned that he was subject to the classification . . . of career offender, and two, that he did not know he could make an application . . . to have his guilty plea vacated on [IAC grounds] . . . until the time he was apprehended on federal charges.

Both . . . arguments . . . lack merit.

In support, the judge relied on State v. Wilkerson, 321 N.J. Super. 219, 223 (App. Div. 1999), where we held there is "no constitutional requirement that a defense attorney must advise a . . . defendant" in connection with a plea agreement "that if he or she commits future criminal offenses that there may be adverse consequences by way of enhancement of the penalty." Instead, we noted, "generally individuals should be aware as a matter of common sense that a continuing course of anti-social or criminal conduct may lead to increased penalties." Ibid.

Further, the judge determined defendant "c[ould not] establish [that] the failure to relax the time bar w[ould] result in a fundamental injustice" because defendant could not show that any "error played a role in the determination of guilt." The judge explained:

New Jersey courts will find . . . fundamental injustice where the judicial system has denied the defendant . . . a fair proceeding leading to a just outcome or when inadvertent errors mistakenly impacted a determination of guilt or otherwise wrought a miscarriage of justice. There's been no showing of any of that here.

. . . [T]he enhancement claim . . . has nothing to [do with] the factual guilt of the defendant at the time that . . . he entered the guilty plea. It only goes to a collateral consequence of that guilty plea. So, for both lack of excusable neglect and lack of establishing a fundamental injustice, all of [defendant's] claims are time barred.

For the sake of "completeness," the judge also addressed each of defendant's claims on the merits, concluding defendant failed to establish a prima facie claim of IAC. Specifically, "view[ing] the facts in the light most favorable to . . . defendant," State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999), Judge Cronin found defendant failed to show "by a preponderance of the evidence," State v. Gaitan, 209 N.J. 339, 350 (2012), that counsel's performance fell below the objective standard of reasonableness set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 49-53 (1987). Further, the judge found defendant failed to show that the outcome would have been different without the purported deficient performance as required under the second prong of the Strickland/Fritz test.² See State v. DiFrisco, 137 N.J. 434, 456 (1994)

² The judge addressed defendant's four claims that his attorney was ineffective because he: (1) failed to advise him that he would have been subject to a sentencing enhancement if he committed a subsequent offense; (2) failed to file a suppression motion in connection with the warrantless seizure of the gun charged in count six of the indictment; (3) failed to investigate Patricia Greene; and (4) coerced him into pleading guilty. As to the sentencing enhancement claim, the judge determined Wilkerson was dispositive. As to the Fourth Amendment claim, the judge evaluated the merits of a suppression motion and concluded such a motion would have failed. See State v. Fisher, 156 N.J. 494, 501 (1998) ("[W]hen counsel fails to file a suppression motion, the defendant not only must satisfy both parts of the Strickland test but also must prove that his Fourth Amendment claim is meritorious."). The judge also rejected the

(applying the Strickland test "to challenges of guilty pleas based on [IAC]" (citing Hill v. Lockhart, 474 U.S. 52, 58 (1985))). The judge also concluded defendant was not entitled to an evidentiary hearing. This appeal followed.

In State v. Brewster, 429 N.J. Super. 387 (App. Div. 2013), we explained that:

Rule 3:22-12(a)(1) sets a five-year time limitation for the filing of a PCR petition, unless the petition itself shows excusable neglect for the late filing and fundamental injustice if defendant's claims are not considered on their merits. By its subsection (a)(2), Rule 3:22-12 allows an additional one-year limitation period if the courts recognize a new constitutional right or defendant discovers a previously unknown factual predicate justifying relief from the conviction.

[Id. at 398.]

failure to investigate claim because "it[was] not supported by a certification or an affidavit by Ms. Greene." See Cummings, 321 N.J. Super. at 170 ("[W]hen a petitioner claims his trial attorney inadequately investigated his case, he must assert the facts that an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification."). Additionally, in rejecting the claim that his attorney coerced him into pleading guilty and misinformed him about the consecutive nature of the sentences, the judge painstakingly reviewed the respective plea transcripts and determined defendant's claim was belied by the record. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("[T]he representations of the defendant . . . as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings."). Moreover, after balancing the four factors enunciated in State v. Slater, 198 N.J. 145, 157-58 (2009), to justify a plea withdrawal, the judge determined defendant failed to meet his burden to substantiate the request.

In State v. McQuaid, 147 N.J. 464, 485 (1997), our Supreme Court reaffirmed and "emphasized the important policy underlying the requirement that PCR petitions be timely filed" as follows:

There are good reasons for [Rule 3:22-12]. As time passes after conviction, the difficulties associated with a fair and accurate reassessment of the critical events multiply. Achieving "justice" years after the fact may be more an illusory temptation than a plausibly attainable goal when memories have dimmed, witnesses have died or disappeared, and evidence is lost or unattainable. . . . Moreover, the Rule serves to respect the need for achieving finality of judgments and to allay the uncertainty associated with an unlimited possibility of relitigation. The Rule therefore strongly encourages those believing they have grounds for post-conviction relief to bring their claims swiftly, and discourages them from sitting on their rights until it is too late for a court to render justice.

[Ibid. (alterations in original) (quoting State v. Mitchell, 126 N.J. 565, 575-76 (1992)).]

Although "a court may relax the time bar if the defendant alleges facts demonstrating that the delay was due to the defendant's excusable neglect or if the 'interests of justice demand it,'" State v. Goodwin, 173 N.J. 583, 594 (2002) (quoting Mitchell, 126 N.J. at 576), "a court should only relax the bar of Rule 3:22-12 under exceptional circumstances," State v. Afanador, 151 N.J. 41, 52 (1997). In that regard, a "court 'should consider the extent and cause of the delay, the prejudice to the State, and the importance of the petitioner's claim in

determining whether there has been an "injustice" sufficient to relax the time limits." Goodwin, 173 N.J. at 594 (quoting Afanador, 151 N.J. at 52). "Absent compelling, extenuating circumstances, the burden to justify filing a petition after the five-year period will increase with the extent of the delay" because "[a]s time passes, justice becomes more elusive and the necessity for preserving finality and certainty of judgments increases." Afanador, 151 N.J. at 52.

"Mindful of these policy considerations," in State v. Brown, 455 N.J. Super. 460, 470 (App. Div. 2018), we held:

[W]hen a first PCR petition shows it was filed more than five years after the date of entry of the judgment of conviction, . . . a PCR judge has an independent, non-delegable duty to question the timeliness of the petition, and to require that defendant submit competent evidence to satisfy the standards for relaxing the rule's time restrictions pursuant to Rule 3:22-12. Absent sufficient competent evidence to satisfy this standard, the court does not have the authority to review the merits of the claim.

[Ibid.]


"[W]e review under the abuse of discretion standard the PCR court's determination to proceed without an evidentiary hearing." Brewster, 429 N.J. Super. at 401. "If the court perceives that holding an evidentiary hearing will not aid the court's analysis of whether the defendant is entitled to post-

conviction relief, . . . then an evidentiary hearing need not be granted." State v. Marshall, 148 N.J. 89, 158 (1997).

Here, Judge Cronin correctly denied defendant's PCR petition as untimely, and we discern no abuse of discretion in denying the petition without an evidentiary hearing. We agree with the judge that defendant failed to show by competent evidence that the delay was due to excusable neglect, and we are satisfied enforcement of the time bar will not result in a fundamental injustice. See State v. Milne, 178 N.J. 486, 492-93, 495 (2004) (finding "no compelling reason to relax the procedural bar of Rule 3:22-12" where the defendant had "opportunities to assert his claims in a timely fashion but failed to do so," "the State would be significantly prejudiced if now forced to relitigate issues pertaining to crimes and a trial that occurred nearly two decades ago," and the judiciary would be faced "with the prospect of evaluating the propriety of a sixteen-year-old criminal conviction").

Having found defendant's PCR petition to have been untimely filed, we need not address defendant's substantive arguments to a greater extent than was necessary to determine the applicability of Rule 3:22-12.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION