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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-3202-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

IVON MACAYZA,

Defendant-Appellant.

Submitted May 2, 2022 – Decided May 12, 2022

Before Judges Fasciale and Petrillo.

On appeal from the Superior Court of New Jersey,
Law Division, Middlesex County, Municipal
Appeal No. MA-13-21.

Ivon Macayza, appellant pro se.

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

PER CURIAM

Defendant Ivon Macayza appeals from a May 21, 2021 Law Division order denying her petition for post-conviction relief (PCR). PCR was sought and denied after defendant pled guilty in Perth Amboy Municipal Court to a reduced charge of obstructing the flow of traffic, N.J.S.A. 39:4-67. The Law Division judge conducted a de novo review, rendered a detailed written opinion, and (like the municipal court judge) rejected defendant's arguments that newly discovered evidence warranted vacating her conviction, setting aside her guilty plea, or remanding for a trial. We affirm.

I.

Defendant was charged with three moving violations by the Perth Amboy Police Department in November 2018. In March 2019, after multiple municipal court appearances, defendant eventually pled guilty to one charge, obstructing the flow of traffic, which was amended to a count of careless driving. The other charges were dismissed. At the time she entered her plea of guilty on the record it appears she was represented by counsel.¹

¹ Although we do not have the transcript from the hearing at which defendant pled guilty, when the municipal judge ruled on the PCR he noted that the terms of the guilty plea were acknowledged by defendant on the record and that she was represented by counsel at that time.

On October 20, 2020, defendant filed for PCR in Perth Amboy Municipal Court seeking to vacate her guilty plea ostensibly based on newly discovered evidence. Defendant filed the PCR petition because after pleading guilty she learned that the officers who issued the summonses were subpoenaed on five previous occasions without appearing for trial. In her PCR, she argued she was unaware of the subpoenas and of her right to have requested dismissal based on the officers' failure to appear; had she known this information she would not have pled guilty. The petition was denied. The municipal court noted that defendant too had failed to appear on at least one occasion and had been accommodated in that regard and, moreover, her after the fact awareness about the subpoenas was not evidence.

Defendant appealed that PCR denial to the Law Division solely on the basis of newly discovered evidence. On May 21, 2021, after conducting a de novo review, the Law Division found no grounds to reverse the municipal court. The Law Division concluded the newly discovered evidence, i.e., the right to seek dismissal for failure of the police officer to appear, did not meet the three criteria of State v. Bey, 161 N.J. 233, 287 (1999).

The judge ruled that the evidence (that the officer was subpoenaed and that defendant could have asked for dismissal because of his absence) was not

"material" as it did not go to the heart of the case; that the evidence could have been discovered beforehand; and nothing about the character of the evidence was likely to have changed the outcome.²

On appeal, defendant apparently seeks that this court revisit the decision below, simply stating in her Notice of Appeal "5/21/2021 My appeal was dismissed, and I am still waiting on Perth Amboy to correct this and I don't understand why my appeal was dismissed."

II.

When reviewing a Law Division order arising from an appeal from a municipal tribunal we "consider only the action of the Law Division and not that of the municipal court." State v. Oliveri, 336 N.J. Super. 244, 251 (App. Div. 2001) (citing State v. Joas, 34 N.J. 179, 184 (1961)). "Our review of the factual record is . . . limited to determining whether there is sufficient credible evidence in the record to support the Law Division judge's findings." State v. Powers, 448 N.J. Super. 69, 72 (App. Div. 2016) (first citing State v. Johnson, 42 N.J. 146, 161-62 (1964); and then citing State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005)). Review of the Law Division's legal conclusions is

² The court noted, and we agree, that the third prong did not come into play in the strictest sense as defendant pled guilty.

plenary. State v. Goodman, 415 N.J. Super. 210, 225 (App. Div. 2010) (citing State v. Handy, 412 N.J. Super. 492, 498 (App. Div. 2010)). A decision to deny a PCR petition without an evidentiary hearing in the Law Division is reviewed for abuse of discretion. State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013) (citing State v. Marshall, 148 N.J. 89, 157-58 (1997)). In a case such as this where no evidentiary hearing was conducted, we "may review the factual inferences the court has drawn from the documentary record de novo." State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016).

It is against this well-established standard that we undertake our review of this appeal. In considering this matter, the Law Division relied on Bey, the exact authority applicable to the question before it. 161 N.J. 233. The court considered whether the newly discovered evidence submitted to the municipal court warranted PCR and thus the vacation of defendant's guilty plea.

As already mentioned, the judge explained that newly discovered evidence warrants relief only when (1) the evidence is material to the issue and not merely cumulative or impeaching or contradictory; (2) the evidence was discovered since the trial and was not discoverable by reasonable diligence beforehand; and (3) the evidence would probably change the jury's verdict if a

new trial were granted. Id. at 287. The judge applied each factor individually, explaining his reasoning along the way.

The judge explained that material evidence was evidence that went to the heart of the case and explained why the newly discovered evidence advanced by defendant did not constitute such evidence. State v. Henries, 306 N.J. Super. 512, 530 (App. Div. 1997). The judge found that the failure of the officers to appear for court did not have any bearing on defendant's guilt or innocence and was not material to the violations that were issued to her. The court correctly observed that defendant and her attorney could have earlier made inquiry about the officers' whereabouts and with little effort could have learned about the subpoenas. The court found that all of this could have occurred before defendant pled guilty. As such, the court concluded defendant could not satisfy the requirement that the newly discovered evidence was not discoverable with reasonable diligence. Lastly, the court found that the third criteria, while not directly implicated in its analysis because of defendant's plea of guilty, could not be satisfied as the newly discovered evidence was not at all the type of evidence that would change a jury's verdict.

The court concluded that defendant's newly discovered evidence did not meet the requirements for PCR and therefore defendant was not entitled to post-

conviction relief. We see no reason to depart from the court's methodically considered decision. The record supports the court's PCR denial based on defendant's claim of newly discovered evidence.³ We are thus satisfied that there is ample "sufficient credible evidence in the record to support the Law Division judge's findings." Powers, 448 N.J. Super. at 72.

To the extent we have not specifically addressed any of defendant's remaining arguments, we conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed. We do not retain jurisdiction.

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



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³ To be clear, our opinion is limited to defendant's only argument presented to the Law Division. If defendant has other reasons to vacate the plea and remand for trial, then she can file a new petition. To the extent defendant argues issues not raised below, we decline to address them. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).