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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0848-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANGELO SILLETTI,

Defendant-Appellant.

Submitted May 16, 2023 – Decided June 27, 2023

Before Judges Geiger and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 97-02-0215.

Joseph E. Krakora, Public Defender, attorney for appellant (Monique Moyse, Designated Counsel, on the brief).

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

PER CURIAM

Twenty-one years and six additional convictions after pleading guilty to receiving stolen property, and without directly appealing his conviction, defendant Silletti filed a petition for post-conviction relief (PCR) which was denied as being untimely. Silletti appeals, contending his claims were not time-barred and that he was either entitled to withdraw his plea or obtain an evidentiary hearing. After carefully reviewing the record and applicable law, we affirm.

Silletti was born in Italy and moved to the United States in 1960, when he was nine years old. He is now seventy-one years old. His mother was born in the United States and moved to Italy as a child, and later married his father, who was an Italian citizen. Silletti claims his mother told him he was a United States citizen. He further claims, that in the 1970s his mother took his siblings to a federal building in New York to obtain citizenship papers, but he did not go because he was working. Silletti also claims that he learned for the first time he was not a United States citizen in 2017 when an Immigration and Customs Enforcement agent visited him in prison to inform him he would be deported. In August 2019, the United States Department of Homeland Security presented Silletti with removal papers.

After pleading guilty to third-degree receiving stolen property, Silletti was sentenced to three years imprisonment on January 26, 1998.¹ The plea agreement asked: "Do you understand that if you are not a United States citizen or national, you may be deported by virtue of your plea of guilty?" Silletti answered, "N/A." Over the next twenty years he incurred six other convictions. He then filed his PCR application on October 19, 2019, claiming he would not have pleaded guilty had he known he was not a citizen and that his attorney was ineffective.

After reviewing briefs and having oral argument, the PCR judge issued an order and written opinion denying Silletti's PCR application without an evidentiary hearing. The judge, citing State v. Mitchell, 126 N.J. 565, 579 (1992), concluded Silletti failed to show excusable neglect sufficient to permit his PCR petition be heard outside the five-year time bar established by Rule 3:22-12. The judge next analyzed whether there were exceptional circumstances sufficient enough to show injustice under the Rule. The judge concluded that it had been twenty-three years and six convictions since the original sentencing date, that the State would be greatly prejudiced, and that there was no evidence

¹ Due to the passage of time, the plea and sentencing transcripts have been destroyed.

proffered by Siletti to support his claim that the court should relax the five-year time limit. Finding Silletti had not proven excusable neglect or injustice, the judge concluded his PCR claims simply did not vault the five-year time bar under Rule 3:22-12 and thus Silletti failed to show a prima facie claim of ineffective assistance of counsel.

On appeal, Silletti argues the following points:

- I. The PCR court erroneously ruled that Mr. Silletti's claim was time-barred.
- II. Mr. Silletti is entitled to relief or an evidentiary hearing on his motion to withdraw his plea.²

We reject Silletti's claims and affirm substantially for the reasons expressed by the PCR judge. We add the following comments.

We review the legal conclusions of a PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). The de novo standard additionally applies to mixed questions of law and fact. Id. at 420. Finally, we use a de novo

² A motion to withdraw a guilty plea under Rule 3:21-1 and State v. Slater, 198 N.J. 145 (2009), was never filed by Silletti. Defendant has asserted no colorable claims of innocence, nor has he established any manifest injustice entitling him to such relief.

standard of review when a PCR court does not conduct an evidentiary hearing. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016) (citing Harris, 181 N.J. at 421).

When petitioning for PCR, the defendant must establish, by a preponderance of the credible evidence, that he is entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013); State v. Preciose, 129 N.J. 451, 459 (1992). To sustain that burden, the defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." Mitchell, 126 N.J. at 579.

Rule 3:22-12 states in pertinent part:

[N]o petition shall be filed pursuant to this rule more than [five] years after the date of entry pursuant to R. 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[.]

[R. 3:22-12(a)(1)(A).]

PCR is not a substitute for direct appeal, and its various procedural bars work to further the public policy of promoting "finality in judicial proceedings." State v. Peoples, 446 N.J. Super. 245, 254 (App. Div. 2006) (quoting State v.

Echols, 199 N.J. 344, 357 (2009)). The five-year time bar "should be relaxed only 'under exceptional circumstances' because [a]s time passes, justice becomes more elusive and the necessity for preserving finality and certainty of judgments increases." State v. Goodwin, 173 N.J. 583, 594 (2002) (alteration in original) (quoting State v. Afanador, 151 N.J. 41, 52 (1997)). In assessing whether excusable neglect justifies relaxation of the time bar for PCR petitions set forth in Rule 3:22-12(a)(2), we "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." State v. Norman, 405 N.J. Super. 149, 159 (App. Div. 2009) (quoting State v. Afanador, 151 N.J. 41, 52 (1997)). More than "a plausible explanation for [the defendant's] failure to file a timely PCR petition" is required. Ibid.

Even assuming the truth of Silletti's claims, they would not constitute excusable neglect for his belated filing. Ignorance of the law and court rules does not qualify as excusable neglect. State v. Merola, 365 N.J. Super. 203, 218 (Law. Div. 2002), aff'd o.b., 365 N.J. Super. 82 (App. Div. 2003). Silletti cannot successfully assert excusable neglect simply because he claims he did not know he was not a citizen. Likewise, he cannot claim that he had mis-advice or ineffective assistance of counsel because his counsel relied on Silletti's assertion

that he was a citizen. See State v. Brewster, 429 N.J. Super. 387, 400 (App. Div. 2013). Silletti's counsel was not responsible for discovering Silletti's mistaken belief he was a citizen. Likewise, the delay in the filing of the petition was significant and the State would be substantially prejudiced if it would be required to oppose the petition or to try this matter, as both Silletti and plea counsel do not remember the plea and the transcript from both the plea and sentence has been destroyed due to time. State v. Dugan, 289 N.J. Super. 15, 22 (App. Div. 1996). Our review of the record shows defendant failed to demonstrate excusable neglect, or allege suitable facts establishing "compelling, extenuating circumstances," or "exceptional circumstances." Both elements which must be proven in order to relax the time bar under Rule 3:22-12(a)(1)(A).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing and the defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant evidentiary hearings and make determinations on the merits only if the defendant presents a prima facie claim of ineffective assistance, material issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. Rule 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013). We

review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland v. Washington, 466 U.S. at 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding, United States v. Cronin, 466 U.S. 648, 659 n.26 (1984). The guilty plea was entered prior to the United States Supreme Court rendering its decision in Padilla v. Kentucky, 559 U.S. 356 (2010), which held that defense attorneys "must advise their clients of potential immigration consequences of pleading guilty or risk providing a constitutionally deficient assistance of counsel," State v. Gaitan, 209 N.J. 339, 346 (2012). But the holding of Padilla is applied only prospectively. Chaidez v. United States, 568 U.S. 342, 358 (2013). Therefore, these claims are decided on the prior law under State v. Nunez-Valdez, 200 N.J.

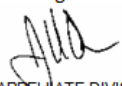
129 (2009), which focused on whether counsel provided mis-advice. Silletti never claimed his counsel mis-advised him, but instead asserted a claim of misimpression regarding his citizenship. There was no ineffective assistance of counsel.

The PCR judge also correctly determined that an evidentiary hearing was not required. Defendant's judgment of conviction was filed on January 26, 1998. He filed his petition for PCR on October 9, 2019, more than sixteen years past the five-year time bar in the Rule. As stated above, a PCR hearing must be held when a defendant presents a prima facie case for relief. If the existing record is not sufficient to resolve the claims, then the court decides whether a hearing is required. Porter, 216 N.J. at 354-55. In this case, the existing record was sufficient to resolve defendant's claims. Moreover, as we have concluded, defendant failed to present a prima facie case for relief.

In sum, we discern no abuse of discretion in the PCR judge's consideration of the timeliness issues, or in his decision to deny the petition without an evidentiary hearing. To the extent that we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. 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