

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-0870-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

REGGIE A. BROWN,

Defendant-Appellant.

Submitted May 3, 2023 – Decided May 11, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 98-03-0201.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Kaili E. Matthews, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Reggie A. Brown appeals from the Law Division's April 1, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

These are the salient facts. On June 15, 1998, defendant pled guilty to third-degree endangering the welfare of a child (non-parent), N.J.S.A. 2C:24-4(a). As part of his plea agreement, defendant acknowledged in his plea form that the trial court would impose a special sentence of Community Supervision for Life (CSL). On August 21, 1998, the court sentenced defendant in accordance with his agreement to three years of probation. The court also advised defendant he would be subject to the requirements of Megan's Law. Unfortunately, the judgment of conviction (JOC) did not specifically state that defendant was subject to CSL.

The prosecutor subsequently discovered the mistake and, on November 9, 1999, sent a letter to the court asking that the JOC be amended to reflect the required CSL portion of the sentence. See N.J.S.A. 2C:43-6.4 (requiring the trial court to impose a sentence of supervision for life upon defendants convicted of violating N.J.S.A. 2C:24-4(a)). The prosecutor sent a copy of this letter to defendant's attorney. On November 16, 1999, the court issued a corrected JOC stating that defendant was "subject to community supervision for life."

On August 10, 2005, defendant violated a condition of CSL when he was arrested on new charges. At that time, a parole officer stated in the warrant materials that defendant had "read and signed a copy of his [CSL] certificate" on February 25, 2003. Defendant subsequently pled guilty to two counts of first-degree armed robbery, third-degree aggravated assault, and fourth-degree violation of the conditions of his CSL. State v. Brown, No. A-3691-12 (Aug. 10, 2015) (slip op. at 2). The court sentenced defendant to a fifteen-year aggregate term, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. Id. at 2-3.¹

Defendant later challenged his sentence and, after considering his contentions on this court's Excessive Sentence Calendar under Rule 2:9-11, we affirmed the sentence. Id. at 3; See also State v. Brown, Docket No. A-2105-08 (App. Div. Mar. 11, 2010), certif. denied, State v. Brown, 203 N.J. 438 (2010). In 2012, defendant filed a petition for PCR concerning the 2006 convictions. Ibid. The trial court denied defendant's petition, and we affirmed this decision in 2015. Id. at 5. Significantly, defendant never challenged the trial court's

¹ The court imposed a nine-month concurrent term for defendant's violation of the conditions of CSL. Id. at 3.

imposition of CSL as part of his original sentence in 1998 in any of these subsequent proceedings.

On September 9, 2019, nearly twenty years after the amended JOC was issued in November 1999, defendant filed a petition for PCR concerning that conviction. Defendant asserted that his plea attorney provided him with ineffective assistance because he: (1) failed to apprise him that CSL was a condition of his sentence, and (2) failed to object to the amendment of the JOC. Defendant also alleged that the JOC should not have been corrected.

Following oral argument, the PCR judge rendered a thorough written decision concluding that defendant's petition was untimely under Rule 3:22-12(a)(1) because it was filed more than five years after the date of defendant's 1998 conviction. The judge found that defendant failed to demonstrate any circumstances that would excuse his neglect in filing a timely petition. In this regard, the court noted that even if defendant was not aware of the 1999 amendment to the JOC, defendant signed a CSL acknowledgment form in 2003 and was charged with violating a condition of CSL in 2005. Yet, he did nothing to challenge the imposition of this condition until 2019.

Despite this procedural bar, the judge also considered defendant's substantive arguments and found that defendant failed to satisfy the two-prong

test of Strickland v. Washington, 466 U.S. 668, 687 (1984), which requires a showing that trial counsel's performance was deficient and that, but for the deficient performance, the result would have been different. Defendant's plea attorney had defendant read and sign the standard plea form which advised him that CSL would be part of his sentence. Because the attorney apprised defendant of this requirement, his performance was not deficient. Moreover, because the imposition of CSL was required by N.J.S.A. 2C:43-6-4, the court would have had to amend the JOC to reflect this fact even if defendant's attorney had objected to the prosecutor's request for an amendment.

On appeal, defendant raises the same arguments he unsuccessfully presented to the PCR judge. Defendant contends:

POINT ONE

THE IMPOSITION OF [CSL] MUST BE
ELIMINATED FROM [DEFENDANT'S]
SENTENCE.

POINT TWO

IN THE ALTERNATIVE, [DEFENDANT] IS
ENTITLED TO AN EVIDENTIARY HEARING ON
HIS CLAIM THAT COUNSEL RENDERED
INEFFECTIVE ASSISTANCE REGARDING THE
IMPOSITION OF [CSL].

POINT THREE

THE PCR COURT ERRONEOUSLY RULED THAT [DEFENDANT'S] PETITION WAS TIME-BARRED BECAUSE ANY DELAY IN FILING THE PETITION WAS DUE TO THE DEFENDANT'S EXCUSABLE NEGLIGENCE AND 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.

Defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). The time restrictions of Rule 3:22-12 cannot be relaxed absent evidence sufficient to satisfy the two-prong standard of "excusable neglect" and "reasonable probability" that "enforcement of the time bar would result in a fundamental injustice." R. 3:22-12(a)(1). Our Supreme Court has made clear that this two-prong standard must be strictly construed. State v. McQuaid, 147 N.J. 464, 485 (1997); See also R. 1:3-4. "Absent compelling, extenuating circumstances, the burden of justifying a petition filed after the five-year period will increase with the extent of the delay." State v. Mitchell, 126 N.J. 565, 580 (1992).


Defendant waited almost twenty years to file his PCR petition. Defendant presented no compelling, extenuating circumstances to justify this extraordinary delay. Defendant knew from his plea form that CSL was part of his sentence.

Even if this were not the case, defendant signed a CSL acknowledgment form in 2003, and was charged with violating a condition of CSL in 2005. Yet, defendant did not file his petition until September 9, 2019. We perceive no basis to disturb the PCR judge's conclusion that defendant's petition was barred by Rule 3:22-12(a)(1).

Defendant's remaining arguments also lack merit. CSL was a mandatory component of defendant's sentence. Therefore, the trial court properly granted the State's request for an amendment of the JOC to reflect this fact. Any objection to this correction by defendant's attorney would have been futile. Because defendant did not establish a prima facie case of ineffective assistance of counsel under Strickland, the PCR judge did not abuse his discretion when he denied defendant's request for an evidentiary hearing. State v. Preciose, 129 N.J. 451, 462 (1992); R. 3:22-10(b).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION