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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-1119-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMIL HEARNS, a/k/a JAY L.
LOVE, JAMIL L. HEARNS,
JAYSON LOVE, JAMES HOLMES,
KHALIL HEARNS, and JAMEEL
HEARNS,

Defendant-Appellant.

Submitted January 19, 2023 – Decided February 15, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Indictment No. 11-08-0827.

Joseph E. Krakora, Public Defender, attorney for
appellant (Kathryn Ann Sylvester, Deputy Public
Defender, on the brief).

William A. Daniel, Union County Prosecutor, attorney
for respondent (Milton S. Leibowitz, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jamil Hearn appeals from the September 16, 2021 and January 13, 2022 orders of the Law Division dismissing his first petition for post-conviction relief (PCR) without an evidentiary hearing. We vacate the orders and remand for further proceedings.

In 2014, a jury found defendant guilty of first-degree murder, N.J.S.A. 2C:11-3(a)(1), and four other counts. The trial court sentenced defendant to an aggregate term of forty-five years of imprisonment.

Although we initially reversed defendant's convictions and sentence in a consolidated appeal with his co-defendant, State v. Fowler, 453 N.J. Super. 499 (App. Div. 2018), the Supreme Court reversed our judgment, reinstated his convictions, and remanded the matter for consideration of arguments not reached in the prior disposition. State v. Fowler, 239 N.J. 171 (2019). We subsequently considered the remaining issues and affirmed defendant's convictions and sentence. State v. Fowler, No. A-3393-14, No. A-4789-14 (App. Div. July 13, 2020). On October 20, 2020, the Supreme Court denied certification. State v. Fowler, 244 N.J. 305 (2020).

Defendant thereafter filed his first petition for PCR in the Law Division, along with a motion for appointment of counsel. On September 16, 2021, the

trial court, without having appointed counsel for defendant, entered an order dismissing the petition as untimely filed. In a written opinion, the court found that the petition was filed on September 13, 2021, more than five years after entry of the judgment of conviction on December 19, 2014, see R. 3:22-12(a)(1), and that there were no facts alleged in the petition suggesting the delay in filing was due to excusable neglect. The court also noted that even if the petition was considered to have been filed on August 18, 2020, as argued by defendant, it would be time barred.¹

Defendant subsequently sent a letter to the court seeking reconsideration of the September 16, 2021 order. He argued that the complex procedural history of his direct appeal and the uncertainty with respect to whether he would receive a new trial, constituted excusable neglect for the late filing of his petition.

On January 13, 2022, the court issued a written opinion rejecting defendant's arguments and entered an order denying the relief he requested.²

¹ Defendant contends he put the petition in the custody of the mailroom of the prison in which he is incarcerated on August 18, 2020. He produced receipts indicating that he paid the prison mailroom postage for legal mail sent to the Criminal Division manager of the court and the Public Defender's office on August 18, 2020. In writing on both receipts is the notation "(PCR)."

² The January 13, 2022 written opinion characterizes defendant's letter as a second PCR petition. We interpret the January 13, 2022 order as either a denial

This appeal follows. Defendant argues that it was error for the court to dismiss his petition without appointing counsel to represent him. See State v. Rue, 175 N.J. 1, 13 (2002) (recognizing the right to counsel for indigent defendants on first PCR petitions); R. 3:22-6(a) (affording indigent defendant's appointment of counsel for a first PCR petition challenging a conviction of an indictable offense). The State agrees and concedes that the orders on appeal should be vacated and the matter remanded for the appointment of counsel and consideration of defendant's petition. We see no reason to deny the relief sought by the parties and note that defendant's petition may be amended after counsel is appointed. See R. 3:22-9.

The September 16, 2021 and January 13, 2022 orders are vacated. The matter is remanded for appointment of counsel and further proceedings consistent with this opinion. We offer no view on the merits of defendant's claims for PCR. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION

of defendant's motion for reconsideration of the September 16, 2021 order or as a second dismissal of defendant's first PCR petition.