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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-1857-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANDRE D. DENNIS,

Defendant-Appellant.

Submitted February 14, 2023 – Decided March 1, 2023

Before Judges Susswein and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 06-11-2533.

Joseph E. Krakora, Public Defender, attorney for appellant (Andrew R. Burroughs, Designated Counsel, on the brief).

Raymond S. Santiago, Acting Monmouth County Prosecutor, attorney for respondent (Monica do Outeiro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant was convicted in 2009 of first-degree felony murder and other offenses, for which he received a term of life in prison subject to an eighty-five percent period of parole ineligibility; he was also convicted of being a person not permitted to be in possession of a weapon, for which he received a consecutive ten-year prison term. Defendant appealed and, other than directing a minor correction to the judgment of conviction, we affirmed. State v. Dennis, No. A-1052-09 (App. Div. Mar. 1, 2012). The Supreme Court denied certification. 211 N.J. 608 (2012).

Defendant filed a timely post-conviction relief (PCR) petition that was denied on January 8, 2014. He appealed, claiming he was entitled to an evidentiary hearing on his ineffectiveness claims, which included an assertion that his trial attorney failed to properly advise him about his right to testify at a Miranda¹ hearing, and failed to sufficiently investigate or prepare for trial. Defendant also asserted on appeal that his PCR attorney was ineffective for failing to properly investigate or otherwise make certain arguments. We rejected

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

defendant's arguments and affirmed. State v. Dennis, No. A-3418-13 (App. Div. Jan. 19, 2016). The Supreme Court denied certification. 224 N.J. 528 (2016).

On February 22, 2017, defendant filed a second PCR petition. After a few procedural dismissals, defendant's second PCR petition was argued; no evidentiary hearing was conducted. Judge Michael A. Guadagno denied relief for reasons expressed in his written opinion. The second PCR petition raised ineffectiveness issues concerning defendant's trial attorney that were either raised or could have been raised in the first PCR petition. Judge Guadagno also determined, for reasons thoroughly discussed in his comprehensive written opinion, that defendant's allegations about the effectiveness of his PCR trial and appellate attorneys were time-barred.

In appealing, defendant argues through his attorney:

I. THE IMPOSITION OF PROCEDURAL BARS TO DENY DEFENDANT'S SECOND PCR APPLICATION WAS FUNDAMENTALLY UNFAIR GIVEN THE UNIQUE SET OF CIRCUMSTANCES OF THE CASE (Partially raised below).

II. AS THE PCR COURT ERRED WHEN IT FOUND DEFENDANT'S CLAIMS OF INEFFECTIVE ASSISTANCE OF FIRST PCR APPELLATE COUNSEL WERE ALSO TIME BARRED, THIS MATTER SHOULD, AT A MINIMUM, BE REMANDED TO ADJUDICATE THESE SPECIFIC CLAIMS.

III. AS THERE IS A GENUINE ISSUE OF MATERIAL FACT IN DISPUTE THE MATTER SHOULD BE REMANDED FOR AN EVIDENTIARY HEARING.

Defendant also filed a pro se brief in which he argues:

I. THE PCR COURT ERRED BY FAILING TO HAVE SPECIFIC FINDINGS AS TO ALL OF DEFENDANT'S CONTENTIONS AS REQUIRED BY R. 1:7-4(a) THUS, THE DEFENDANT'S SECOND PCR MUST BE REMANDED TO ALLOW THE COURT TO FULFILL ITS OBLIGATION TO MAKE SPECIFIC FINDINGS OF FACTS AND STATING ITS CONCLUSIONS OF LAWS AS TO ALL OF THE DEFENDANT'S ARGUMENTS, ESTABLISHING A SUFFICIENT DEVELOPED COURT RECORD FOR APPEAL PURPOSES.

II. THE PCR COURT ERRED WHEN IT DENIED DEFENDANT'S SECOND PCR PETITION FOR FAILING TO MEET THE FILING REQUIREMENTS OF R. 3:22-12(a)(2), AFTER THE CRIMINAL PRESIDING JUDGE RELAXED THE TIME BAR UPON DEFENDANT'S CONTENTIONS OF EXCUSABLE NEGLECT AND FUNDAMENTAL INJUSTICE WHEN FAILING TO MEET FILING REQUIREMENTS.

We find insufficient merit in all defendant's arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(2), and we affirm the order denying his second PCR petition substantially for the reasons set forth in Judge Guadagno's thoughtful written decision.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION