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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2055-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HORACE BRANCH,

Defendant-Appellant.

Submitted December 6, 2022 – Decided April 11, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment Nos. 87-07-3091 and 93-12-4344.

Joseph E. Krakora, Public Defender, attorney for appellant (Kayla E. Rowe, Designated Counsel, on the briefs).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Emily M. M. Pirro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Horace Branch appeals from the order denying his petition for post-conviction relief (PCR) without oral argument or an evidentiary hearing. We vacate the order and remand for the court to reconsider the petition after conducting oral argument.

On September 17, 1993, defendant pled guilty to Indictment No. 87-07-3091 (first indictment), first-degree robbery for robbing the individual who sold him drugs. The plea followed defendant's successful appeal of his conviction for the same charge, in which we reversed and remanded for retrial, because the jury found him guilty without determining the grade of the robbery offense. State v. Branch, No. A-5857-89 (App. Div. June 11, 1993) (slip op. at 8). As a result of the plea, defendant was sentenced to time served.

Two months later, defendant was charged under Indictment No. 93-12-4344 (second indictment) for offenses related to felony murder. A jury found him guilty of aggravated manslaughter and weapons offenses. Defendant was sentenced in 1994 to an extended term as a "persistent offender," N.J.S.A. 2C:44-3(b). The predicate offense was the first-degree robbery conviction stemming from the first indictment.

In 2018, approximately twenty-five years after his first-degree robbery conviction, defendant filed an illegal sentence motion. The trial court denied the motion, noting in its order that the issues raised were appropriate for a PCR petition.

Defendant subsequently filed a PCR petition, claiming his trial counsel was ineffective in advising him to plead to first-degree robbery, which, in turn, resulted in an extended term sentence for aggravated manslaughter and weapons offenses. Thus, defendant argued that if PCR was granted, the first-degree robbery conviction would be vacated, and there would be no basis for his extended term sentence. The PCR court denied defendant's petition on the papers, rejecting his requests for an oral argument and an evidentiary hearing.

On appeal, defendant argues:

POINT I

THE COURT SHOULD NOT HAVE FOUND [DEFENDANT]'S PCR PETITION TO BE TIME-BARRED, BECAUSE THERE WERE REPEATED FAILURES OF THE CRIMINAL JUSTICE SYSTEM TO ADVISE HIM OF HIS PCR RIGHTS, SUCH THAT HE COULD EXERCISE THEM IN A TIMELY MANNER.

POINT II

JUSTICE DEMANDS, AT A MINIMUM, ORAL ARGUMENT, PURSUANT TO STATE V. PARKER, 212 N.J. 269 (2012).

POINT III

[DEFENDANT] WAS ENTITLED TO AN EVIDENTIARY HEARING.

POINT IV

PLEA COUNSEL WAS INEFFECTIVE IN ADVISING [DEFENDANT] TO PLEAD GUILTY TO FIRST-DEGREE ROBBERY, WHICH HE HAD JUST GOTTEN REVERSED, AND TO ACCEPT AN ILLEGAL SENTENCE.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Afanador, 151 N.J. 41, 49 (1997) (citing State v. Preciose, 129 N.J. 451, 459 (1992)). "It is a safeguard to ensure that a defendant was not unjustly convicted." Ibid. (citing State v. McQuaid, 147 N.J. 464, 482 (1997)). This avenue provides a final opportunity for a defendant to raise a legal error or constitutional issue that may have caused an unjust result, including, as is the case here, alleged violations of the right to the effective assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution. State v. Hess, 207 N.J. 123, 144-46 (2011); see also Afanador, 151 N.J. at 49 (citing McQuaid, 147

N.J. at 482-83) ("Ordinarily, PCR enables a defendant to challenge the legality of a sentence or final judgment of conviction by presenting contentions that could not have been raised on direct appeal.").

When determining whether to grant oral argument, a PCR court should consider "the apparent merits and complexity of the issues raised, . . . whether argument of counsel [would] add to the written positions . . . , and in general, whether the goals and purposes of the post-conviction procedure are furthered by oral argument." State v. Mayron, 344 N.J. Super. 382, 387 (App. Div. 2001). These factors should be assessed through a "generous lens" with "the view that oral argument should be granted." State v. Parker, 212 N.J. 269, 282 (2012).

We recognize the decision about "whether oral argument is granted on a petition for post-conviction relief remains within the sound discretion of the [PCR] court." Mayron, 344 N.J. Super. at 387. Still, there is a strong presumption in favor of oral argument, which arises even if there is no specific request for oral argument and should be allowed except in clearly meritless cases. Parker, 212 N.J. at 282-83; Mayron, 344 N.J. Super. at 387-88. If the PCR court determines oral argument is unwarranted, it should "provide a statement of reasons that is tailored to the particular application, stating why the

judge considers oral argument unnecessary." Parker, 212 N.J. at 282. Here, the PCR court provided no such statement.

Defendant presented ineffective assistance of counsel claims that may be enhanced by oral argument. See Mayron, 344 N.J. Super. at 387. This is important, especially considering defendant also contends the PCR court was unequipped to make its ruling on the petition because it was missing sufficient documentation—two pro se certifications—which were provided in this appeal. The first is dated March 30, 2019, and the second is dated May 26, 2019. Both addressed alleged excusable neglect, which, if found, would lift the time bar on defendant's claim. It is unclear why this issue was not raised in defendant's initial merits brief. Apparently, these two certifications were not presented to the PCR court before it issued its order and written decision.

Oral argument provides additional opportunity to respond to the State's arguments, and it also affords the PCR court an opportunity to ask questions that may aid the court's analysis of whether defendant has established a prima facie case and whether an evidentiary hearing is appropriate, see ibid., because "there are material issues of disputed fact that cannot be resolved by reference to the existing record, . . .," R. 3:22-10(b).

Due to absence of oral argument, coupled with no explanation by the PCR court as to why oral argument was unwarranted, we are constrained to vacate the denial of defendant's petition and remand for reconsideration after conducting oral argument. Given our remand, we do not address the merits of defendant's PCR claims, including his request for an evidentiary hearing.

Vacated and remanded for further proceedings consistent with this opinion. 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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