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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0281-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN A. DENOFA,

Defendant-Appellant.

Submitted October 29, 2024 – Decided January 6, 2025

Before Judges Gilson and Augostini.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 01-05-0600.

Jennifer N. Sellitti, Public Defender, attorney for appellant (Ruth E. Hunter, Designated Counsel, on the brief).

LaChia L. Bradshaw, Burlington County Prosecutor, attorney for respondent (Alexis R. Agre, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant John Denofa appeals from a modified order entered on July 19, 2022, which denied his third petition for post-conviction relief (PCR) and a motion for a new trial.¹ We affirm the order denying defendant's third PCR petition and motion substantially for the reasons set forth in the comprehensive written opinion issued by Judge Edward J. McBride, Jr. on June 28, 2022.

We do, however, reinstate defendant's direct appeal, limited to his argument that his life sentence was excessive. That sentencing argument was raised on defendant's direct appeal but was never addressed on its merits. Therefore, defendant's direct appeal, limited to his excessive sentencing contention, is reinstated and is placed on the sentencing only calendar of Part E on February 11, 2025.

I.

In 2002, a jury convicted defendant of the first-degree murder of Rachel Siani, N.J.S.A. 2C:11-3(a)(1), (2). Several months later, in 2003, defendant was sentenced to life imprisonment, with thirty years of parole ineligibility.

Following his conviction, defendant filed a direct appeal, three petitions for PCR, including numerous amendments to those petitions, and, in federal

¹ The record reflects that defendant is sometimes referred to as John DeNofa. For consistency, we will refer to defendant as John Denofa, as it appears on the Department of Corrections' Database.

court, a petition for habeas corpus. We briefly summarize the twenty years of appeals and petitions defendant has pursued following his conviction in 2002 and the denial of his third PCR petition in 2022. The facts concerning defendant's conviction are summarized in the New Jersey Supreme Court opinion on defendant's direct appeal. State v. Denofa, 187 N.J. 24 (2006).

In 2003, defendant filed a direct appeal of his conviction and sentence. In that appeal, he raised four arguments, contending (1) the trial court erred in not instructing the jury on the jurisdictional issue of whether Rachel Siani was murdered in New Jersey; (2) the trial court erred in admitting suggestive identifications of defendant; (3) the trial court failed to instruct the jury on the lesser included charge of aggravated manslaughter; and (4) his sentence was excessive. State v. Denofa, 375 N.J. Super. 373, 376 (App. Div. 2005). We rejected defendant's second and third arguments but reversed his conviction on the jurisdictional issue. Id. at 376-77. We did not address defendant's excessive sentencing argument.

In 2006, the New Jersey Supreme Court reversed our decision and reinstated defendant's murder conviction. Denofa, 187 N.J. at 48. The Court held that "the trial evidence did not clearly indicate that the location of the murder was at issue, and there was sufficient evidence to support the conclusion

that the crime was committed in New Jersey." Id. at 29. The Court then remanded the matter "to the trial court for the entry of judgment consistent with [its] opinion." Id. at 48. Apparently, no new judgment of conviction was entered. Instead, the record reflects that the judgment of conviction entered on February 21, 2003, was either left in place or reinstated.

In 2008, defendant filed his first petition for PCR. The first petition was denied by the Law Division, and we affirmed that decision on appeal. State v. Denofa, No. A-2006-08 (App. Div. Sept. 19, 2012). The Supreme Court denied defendant's request for certification to review that decision. State v. DeNofa, 215 N.J. 482 (2013).

While the appeal of the denial of his first PCR petition was still under review, defendant filed a second petition. Following an appeal and a remand for consideration of all of defendant's contentions,² on December 17, 2021, Judge McBride denied defendant's second PCR petition.

Prior to the trial court's consideration of defendant's second PCR petition, however, defendant filed a petition for a writ of habeas corpus in the federal court. That habeas petition was denied.

² State v. Denofa, No. A-1779-17 (App. Div. Apr. 22, 2019).

In 2021, while his second petition was on remand, defendant filed a third PCR petition. Judge McBride initially denied that petition without prejudice. After denying the second petition, Judge McBride reinstated the third petition and heard argument on that petition on April 1, 2022.

On June 28, 2022, Judge McBride issued an order and written opinion denying defendant's third PCR petition. In a comprehensive opinion, Judge McBride reviewed and analyzed defendant's twelve claims of ineffective assistance of the PCR counsel who had represented defendant on his second petition. Judge McBride rejected all those claims without an evidentiary hearing, with one exception. The exception was defendant's claim that one of his prior counsel should have moved to reinstate his direct appeal to consider his argument that his sentence was excessive.

Judge McBride also considered and rejected defendant's application for a new trial based on the alleged cumulative errors at his trial. Judge McBride found that the claims for a new trial were procedurally barred and lacked substantive merit.

On July 19, 2022, Judge McBride modified the order denying defendant's third PCR petition and his motion for a new trial. Defendant now appeals from the modified July 19, 2022 order.

II.

On this appeal, defendant presents two primary arguments with various sub-arguments. Specifically, defendant articulates his arguments on this appeal as follows:

POINT I: THE PCR COURT'S FINDINGS THAT THERE WERE NO MATERIAL ISSUES OF DISPUTED FACTS AND THAT AN EVIDENTIARY HEARING WAS NOT WARRANTED WERE NOT BASED ON CREDIBLE, OBJECTIVE EVIDENCE IN THE RECORD AND WERE ALSO IMPERMISSIBLY BASED ON CREDIBILITY DETERMINATIONS.

- A. Defendant's Claim That His Counsel Were Ineffective With Regard to the Plea Offers Was a Prima Facie Case of Ineffective Assistance of Counsel Pursuant to Lafler v. Cooper, 566 U.S. 156 (2012), and Concerned Material Issues of Disputed Facts.
- B. There Were Material Issues of Disputed Facts Contained In Defendant's 2021 Petition and Trial Counsel's Late-Filed and Previously Unchallenged 2008 Certification.
- C. There Were Material Issues of Disputed Facts Concerning Territorial Jurisdiction.
- D. There Were Material Issues of Disputed Facts As Shown By Lisa DeNofa's Certification.
- E. The PCR court Erred in Finding That Defendant's 2008 Petition and 2021 Petition Were Inconsistent.

POINT II: THIS COURT SHOULD REMAND FOR
RESENTENCING BECAUSE THE SENTENCING
COURT FAILED TO PERFORM THE REQUIRED
QUALITATIVE ANALYSIS AND DID NOT
JUSTIFY A LIFE SENTENCE.

A. The Third PCR Petition and Motion for a New Trial.

When a PCR court does not conduct an evidentiary hearing, appellate courts review the denial of the PCR petition de novo. State v. Harris, 181 N.J. 391, 420-21 (2004); State v. Lawrence, 463 N.J. Super. 518, 522 (App. Div. 2020). The PCR court's decision to proceed without an evidentiary hearing is reviewed for an abuse of discretion. State v. Vanness, 474 N.J. Super. 609, 623 (App. Div. 2023) (citing State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013)).

Having conducted a de novo review of defendant's contentions of ineffective assistance of counsel, we reject them and affirm substantially for the reasons set forth in Judge McBride's well-reasoned written opinion. We also affirm Judge McBride's denial of defendant's motion for a new trial, again for the reasons set forth in his thorough opinion. We add one brief overview comment.

Defendant was obviously convicted of a serious crime and was sentenced to life in prison. He was entitled to, and indeed exercised his right to, appeal

and to file PCR petitions. The history of those appeals and the decisions on his PCR petitions and appeals establish that defendant was given the opportunity to raise many different arguments and to have all those arguments thoroughly considered. That procedural history also reflects, however, that defendant engendered some confusion by filing various applications while prior appeals, petitions, or applications were still pending. Nevertheless, our review of the numerous motions, applications, and appeals, satisfies us that, with one exception, all the arguments defendant raised were carefully and thoroughly considered but ultimately rejected.

As noted at the outset of this opinion, there is one issue that has not been considered substantively: defendant's contention that his sentence was excessive.

B. The Reinstatement of Defendant's Direct Appeal.

In his direct appeal, defendant raised an argument that his sentence was excessive. Because we reversed his conviction, we did not address that sentencing argument on his direct appeal. Denofa, 375 N.J. Super. at 376-77. As Judge McBride correctly noted, none of defendant's prior counsel made an application with us to reinstate the appeal to address the excessive sentencing issue. Defendant did, however, move before the Supreme Court to reopen his

appeal and address the sentencing issue.³ State v. DeNofa, 252 N.J. 621 (2023).

In January 2023, the Court granted the motion for leave to appeal, but denied the motion for remand, without prejudice "to the issue being raised in the appeal pending" in this matter. Ibid.

To avoid another appeal, motion, or application, we now reinstate defendant's direct appeal, limited to his contention that his sentence was excessive. In that regard, we note that by reinstating defendant's direct appeal we should avoid another PCR petition alleging ineffective assistance concerning a failure to move to reinstate the direct appeal to address the sentencing issue.

The sentencing issue will be heard on Part E's sentencing only calendar on February 11, 2025. Defendant's current counsel can file a brief and supporting appendix on or before January 24, 2025. The State can file a responding brief and appendix on or before February 7, 2025. No reply papers will be permitted.

Affirmed and other.

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


CLERK OF THE APPELLATE DIVISION

³ The record before us does not disclose when defendant filed that motion with the Supreme Court. Given that the order is dated January 24, 2023, the motion appears to have been filed after Judge McBride issued his orders in 2022.