STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MATTHEW J. QUAMMIE,

Defendant-Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL PART
MONMOUTH COUNTY

Indictment No. 15-12-2175
Case No. 15004100

OPINION

Argued April 28, 2025 – Decided April 30, 2025

Michael Pastacaldi, Esq., for defendant,

Melinda A. Harrigan, Assistant Prosecutor, for the State, (Raymond S. Santiago, Monmouth County Prosecutor).

GUADAGNO, J.A.D. (retired and temporarily assigned on recall)

In a case of first impression, this court must determine whether a defendant who has had a marijuana conviction expunged by operation of law can vacate that expungement in order to challenge the underlying conviction through a petition for post-conviction relief (PCR).

Defendant Matthew J. Quammie came to the United States from Trinadad in 1996 at the age of five with his parents and sister. The family resided in Eatontown, initially on visitor visas. Defendant's parents obtained legal permanent residency and

are now United States citizens. Defendant and his sister were granted status under the Deferred Action for Childhood Arrivals (DACA), an immigration program announced in 2012 by the Department of Homeland Security (DHS) allowing certain unauthorized aliens who entered the United States as children to apply for a two-year forbearance of removal, thus becoming eligible for work authorization. Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 8-9 (2020). In 2014, defendant married Tabitha Quammie who continues to reside in Monmouth County.

On August 14 and 24, 2015, defendant sold marijuana to an undercover detective in Eatontown. On both occasions, the detective wore a recording device and the transactions were recorded. On September 22, 2015, defendant was arrested and charged with distribution of marijuana. At the time of his arrest, marijuana was seized from defendant's residence.

A Monmouth County grand jury returned an eight-count indictment charging defendant with four counts of distribution of CDS (marijuana), N.J.S.A. 2C:35-5(b)(12), and four counts of distribution of marijuana within 500 feet of a public park, N.J.S.A. 2C:35-7.1.

On May 31, 2016, defendant, represented by Joy Anderson, Esq., appeared before Judge Ronald Lee Reisner and pled guilty pursuant to a plea agreement to distribution of marijuana. On September 30, 2016, defendant was sentenced by Judge Reisner to probation consistent with the plea agreement.

In December 2019, defendant was arrested on warrants from Long Branch and Oceanport. Subsequently, Monmouth County grand juries returned three separate indictments charging defendant with, inter alia, burglary and tampering with evidence; possession of heroin; and possession of more than 2 ounces of marijuana with intent to distribute.

On July 28, 2021, defendant entered guilty pleas in all three indictments. On the first indictment, defendant admitted that on May 4, 2019, in Long Branch he possessed in excess of two ounces of marijuana with intent to distribute. On the second indictment, defendant admitted that on November 7, 2019, he broke into an apartment through a window in the Stoney Hill complex in Eatontown and threatened the occupant with violence. After his arrest on those charges, he contacted a woman and instructed her to delete data on a phone pertaining to the burglary. Finally, on the third indictment, defendant admitted that on December 1, 2019, he was in possession of heroin in Oceanport.

In return for the guilty pleas the State agreed to recommend concurrent five-year terms for the burglary and drug charges. Sentencing was scheduled for September 24, 2021, but was postponed. On February 24, 2022, defendant testified as a witness for the State in a criminal case.

After completing his testimony in that case, defendant, who remained in custody, appeared before Judge Escandon for sentencing on May 24, 2022. Judge

Escandon stated that defendant had been accepted into Recovery Court and would be released from custody on May 26, 2022, to attend the Unity Place treatment facility. However, before defendant could be released, a detainer was lodged by the United States Immigration and Customs Enforcement Agency (ICE). Defendant was transferred to ICE custody. Court records indicate that bench warrants were subsequently issued for defendant's arrest for failure to appear on all three indictments and those warrants remain outstanding.

In February 2021, the New Jersey Legislature passed the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 2C:52-6-1, which directed the automatic expungement of prior convictions for certain marijuana offenses. In passing CREAMMA, the Legislature intended to redress many of the adverse consequences to people who were disparately affected by marijuana offenses. State v. Gomes, 253 N.J. 6, 11 (2023). In a bizarre twist, the expungement of defendant's marijuana conviction would later prevent him from seeking post-conviction relief.

On August 26, 2022, defendant appeared with counsel before an immigration judge and conceded his removability but sought relief from removal in the form of an adjustment of status. The immigration judge conducted a hearing and noted that defendant's 2016 conviction for distribution of marijuana might make him ineligible

for adjustment of status under 8 U.S.C. §1255(a).[1] Defendant's immigration counsel indicated that if defendant decided to apply for voluntary departure, she would submit an application. The immigration judge gave defendant's counsel 20 days to file the application.

On September 21, 2022, defendant filed a motion for a continuance so she could file a petition seeking post-conviction relief from defendant's 2016 conviction. On October 25, 2022, the immigration judge granted the government's motion to transfer venue to the Batavia Immigration Court in upstate New York.

On November 8, 2022, a different immigration judge noted that a visa petition filed for defendant was initially denied.[2] The judge then questioned defendant's counsel as to the status of the PCR petition. Counsel acknowledged that defendant had been convicted of possession with intent to distribute a controlled substance but noted that the law in New Jersey with respect to marijuana offenses had been changed and rendered defendant's conviction "no longer valid." Even though the prior deadline had passed, the judge gave defendant's counsel until November 22, 2022, to file an application for relief.

On December 12, 2022, the immigration judge noted that defendant failed to file any application for relief by the deadline and dismissed defendant's appeal. The

[1] It does not appear from the record before this court that the immigration judge was aware of defendant's more recent convictions.

[2] The visa petition was ultimately approved on March 15, 2023.

judge entered an order finding that defendant was removable under section 237(a)(1)(B) of the Immigration and Nationality Act (INA), 8 U.S.C.A. 1227(a)(1)(B).

Defendant appealed, and on June 20, 2023, Appellate Immigration Judge Hunsucker found that even though defendant's visa petition had subsequently been approved, defendant had not shown that he was "statutorily eligible for relief" due to his 2016 criminal conviction. In re Matthew Joel Eric Quammie, No. A204 758 988 (B.I.A. June 20, 2023), aff'g No. A204 758 988 (Immigr. Ct. Batavia Dec. 12, 2022). Judge Hunsucker dismissed defendant's appeal.

Defendant appealed this dismissal arguing that New Jersey's decriminalization of marijuana in 2021 meant that he is no longer inadmissible based on his drug conviction. On June 4, 2024, the Second Circuit Court of Appeals rejected this argument finding that the change in state law had no effect on defendant's conviction for immigration purposes:

> Quammie cannot demonstrate prejudice. To adjust his status, Quammie had to be "admissible to the United States for permanent residence." 8 U.S.C. § 1255(a). But his New Jersey drug conviction renders him inadmissible. See 8 U.S.C. §1229a(c)(4)(A) (placing burden on applicant to demonstrate eligibility for relief from removal). Quammie v. Garland, No. 23-6698, 2024 U.S. App. LEXIS 13414, at 4 (2d Cir. June 4, 2024), citing Vasquez v. Garland, 80 F.4th 422, 434 (2d Cir. 2023); and Saleh v. Gonzales, 495 F.3d 17, 25 (2d Cir. 2007).

On March 21, 2023, while still detained, defendant file a pro se PCR petition

claiming he was not informed by his plea counsel in 2016 that his marijuana distribution conviction would affect his immigration status.[3] On April 25, 2023, the petition was dismissed.[4]

Defendant, represented by the Office of the Public Defender, filed a motion to vacate the expungement and reinstate the conviction. An order was entered granting that relief on April 29, 2024, on the basis that the expungement occurred "without notification to the defendant nor a chance to raise a petition for [PCR] challenging the conviction." Defendant was deported in April 2024 and now resides in Trinidad.

On June 19, 2024, defendant filed the current PCR petition. Appointed counsel filed a brief raising the following points:

POINT I

PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL, AND THEREBY HIS DUE PROCESS RIGHTS WHEN HIS TRIAL COUNSEL FAILED TO PROPERLY REPRESENT PETITIONER IN THESE PROCEEDINGS BY PROVIDING INACCURATE IMMIGRATION ADVICE.

POINT II

PETITIONER'S PLEA SHOULD BE VACATED DUE TO THE "MANIFEST INJUSTICE" ASSOCIATED WITH THE PLEA AND DEFENDANT'S PTI ELIGIBILTY.

[3] In his certification, defendant claims he filed a pro se petition for PCR in September 2022 but presents no evidence to confirm that filing.

[4] The Order indicated that the petition was dismissed because defendant "was not sentenced." Apparently, there was an assumption that the petition related to defendant's 2021 guilty pleas to the 2019 charges and not the 2016 marijuana conviction.

1) The State v. Slater Analysis

2) The Petitioner's Pre-trial Intervention Eligibility

POINT III

THE PETITIONER HAS DEMONSTRATED EXCUSEABLE NEGLECT JUSTIFYING A RELAXATION OF THE FIVE YEAR FILING PERIOD UNDER N.J. RULE 3:22-12.

POINT IV

THE PETITIONER IS ENTITLED TO AN EVIDENTIARY HEARING.

ORDER VACATING EXPUNGMENT

This court first considers the effect of the initial expungement and the order purporting to vacate it. N.J.S.A. 2C:52-1 defines expungement as

> the extraction, sealing, impounding, or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

It should be noted that there is no provision in the expungement statute to vacate a prior valid expungement order. The singular exception, which does not pertain here, is when the court is made aware of some statutory disqualification that existed at the time of the initial petition for expungement. See N.J.S.A. 2C:52:-26. Given this explicit limitation, it is reasonable to assume that the Legislature did not

foresee a situation where a request to vacate an expungement would be made by someone like defendant, in whose favor the expungement was originally entered.

No published cases address this issue but in an unpublished opinion, State v. Lopez, No. A-3602-11T2 (App. Div. Nov. 2, 2012), the Appellate Division faced a similar issue where a defendant facing deportation sought to vacate an order expunging his conviction in order to pursue a PCR petition. The panel noted that "[n]o provision in the expungement statutes is made for vacatur of a prior valid expungement order." Id., slip op. at 9. Ultimately, the court did not reach the vacatur issue but suggested, without deciding, that the "constitutional dimension of [this] claim, alone, may very well trump any statutory obstacle to defendant's attempt to vacate the expungement order and thereby facilitate its resolution." Ibid.

In State v. Gomes, 253 N.J. 6, 27 (2023), the Court observed that defendants do not need to file any petition or request for expungement; expungement simply happens by operation of law. Also, "there is no discretion for a court to refuse to expunge certain records, no mechanism for the State to object to the expungement of a particular marijuana offense, and no way the specified marijuana convictions or marijuana-related conditional discharges can be reinstated based on later criminal activity." (emphasis supplied). This calls into question whether there was authority to enter the April 29, 2024 order vacating the expungement.

When this court raised the question of whether a judge has the authority to

vacate an expungement, defendant provided AOC Directive #25-21 which addresses judicial review of cases enumerated in the Marijuana Decriminalization Law, N.J.S.A. 2C:35-23.1 and N.J.S.A. 2C:52-6.1, "that were captured or not captured in the Judiciary's automated proceeded to dismiss, vacate, and/or expunge cases." The Directive addresses:

> 1. Requests for Judicial Review to Dismiss/Vacate the Case;
>
> 2. Requests by Defendants or Juveniles for Judicial Review to Expunge the Case; and
>
> 3. Requests by the State for Judicial Review of a Case that Should Not Have Been Dismissed/Vacated/Expunged.

The third section suggests that an expungement may be vacated on motion by the State. Although this portion of the Directive appears untethered to any specific part of the expungement legislation, it implements the Supreme Court's constitutional power to promulgate rules governing practice and procedure and the administration of the courts, therefore it has "the force of law." In re D.L.B., 468 N.J. Super. 397, 402 (App. Div. 2021). Nowhere does the Directive suggest that an expungement may be vacated on motion by a defendant.

As in Gomes, this court must now attempt to harmonize the key aspects of CREAMMA and the expungement statutes, applying the principle that the judicial construction of statutes must always seek as its "paramount goal" to carry out the

Legislature's apparent intent. Gomes, 253 N.J. at 28, quoting, Branch v. Cream-O-Land Dairy, 244 N.J. 567, 587 (2021).

In Gomes the Court observed that the legislative intent in passing CREAMMA was "to adopt a new approach to our marijuana policies . . . in a similar fashion to the regulation of alcohol for adults." Id. at 25, quoting N.J.S.A. 24:6I-32(a). In conjunction with CREAMMA's automatic expungement provisions, the Attorney General issued Attorney General Law Enforcement Directive No. 2021-1, on February 22, 2021, which ordered that any guilty plea, verdict, placement in diversionary program, or other entry of guilt prior to that date for a qualified marijuana-related offense be fully vacated "by operation of law." It is clear that the Legislative intent in CREAMMA in making the expungement of qualifying marijuana convictions automatic "by operation of law," was meant to spare individuals from having to take "affirmative steps to file an expungement petition with a court or prove rehabilitation to obtain relief." Gomes, at 30.

It seems inconceivable that the Legislature intended to bar PCR relief through automatic expungement to an individual in defendant's position. As the panel in Lopez astutely observed, "it is reasonable to assume that the Legislature did not foresee a situation where a request to vacate an expungement would be made by one in whose favor the order was originally entered. It would seem counter-intuitive to posit otherwise." Lopez, slip op. at 7. For purposes of considering defendant's

petition, this court will treat the order vacating the expungement of defendant's conviction as valid.

TIMELINESS

The State maintains that defendant's petition is time-barred. Pursuant to Rule 3:22-12(a)(1), a first petition for PCR must be filed no more than five years after the date of entry of the judgment of conviction that is being challenged unless defendant establishes the delay in filing "was due to defendant's excusable neglect 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." R. 3:22-12(a)(1)(A). The five-year time limitation runs from the date of the conviction or sentencing, "whichever the defendant is challenging." State v. Milne, 178 N.J. 486, 491 (2004) (quoting State v. Goodwin, 173 N.J. 583, 594 (2002)).

Defendant's petition was filed on June 19, 2024, more than seven years after his September 30, 2016, conviction. Defendant claimed in his certification that he attempted to file a pro se PCR petition in September 2022 but was informed by someone in the clerk's office that his conviction had been expunged which precluded the filing of a PCR petition. Even if this court were to accept the earlier date, the petition is still untimely.

Defendant claims that he has established excusable neglect and argues that enforcement of the time bar would result in fundamental injustice. Given the sea

change in New Jersey law regarding marijuana, the "automatic" expungement which eliminated the opportunity for someone in defendant's position to challenge the underlying conviction through PCR, the confusion resulting in the dismissal of defendant's 2023 PCR petition, and the unsettled question over whether a defendant could vacate the expungement in order to file PCR, all lead this court to conclude that exceptional circumstances exist and the interests of justice demand that the bar of Rule 3:22-12 be relaxed in order to consider this petition.

DISCUSSION

When a defendant claims ineffective assistance of counsel as the basis for relief, he must satisfy the two-pronged test formulated in Strickland v. Washington, 466 U.S. 668, 687 (1984), which was adopted by our Court in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show that counsel's performance was deficient . . . . Second, the defendant must show that the deficient performance prejudiced the defense." Strickland, 466 U.S. at 687. Bare assertions are "insufficient to support a prima facie case of ineffectiveness." State v. Blake, 444 N.J. Super. 285, 299 (App. Div. 2016) (quoting State v. Cummings, 321 N.J. Super. 154, 171 (App. Div. 1999)). A defendant seeking PCR based on an ineffective-assistance-of-counsel claim "bears the burden of proving his or her right to relief by a preponderance of the evidence." State v. Gaitan, 209 N.J. 339, 350 (2012). If a defendant fails to sustain this burden under either prong of the standard, the ineffective-assistance-of-counsel

claim fails. See Strickland, 466 U.S. at 687.

Under the first Strickland prong, a defendant must show "counsel's acts or omissions fell outside the wide range of professionally competent assistance considered in light of all the circumstances of the case." State v. Allegro, 193 N.J. 352, 366 (2008) (quoting State v. Castagna, 187 N.J. 293, 314 (2006)). Under the second Strickland prong, a defendant must "affirmatively prove" "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Strickland, 466 U.S. at 693-94). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Ibid. (quoting Strickland, 466 U.S. at 694). Proof of prejudice under the second prong of Strickland "is an exacting standard." Ibid. (quoting Allegro, 193 N.J. at 367). A defendant "must 'affirmatively prove prejudice'" in a PCR petition to satisfy the second prong of the Strickland standard. Ibid. (quoting Strickland, 466 U.S. at 693). "[A] conviction is more readily attributable to deficiencies in defense counsel's performance when the State has a relatively weak case than when the State has presented overwhelming evidence of guilt." Id. at 557.

PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity[,]" Jones, 219 N.J. at 312, "facts sufficient to demonstrate counsel's alleged substandard performance,"

Cummings, 321 N.J. Super. at 170. "[F]actual assertions in a [PCR petition must] be made by affidavit or certification in order to secure an evidentiary hearing." Jones, 219 N.J. at 312 (citing R. 3:22-10(c)).

Where the PCR involves a plea bargain, "a defendant must prove that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." Gaitan, 209 N.J. at 351 (quoting State v. Nunez-Valdez, 200 N.J. 129, 139 (2009)). A defendant can establish ineffective assistance of counsel if his attorney provided false or inaccurate advice that the plea would not result in deportation. Nuñez-Valdéz, 200 N.J. at 139-42.

Defendant maintains that plea counsel represented that since this was a fourth-degree offense, "it will not subject him to deportation." However, the record does not support this claim. During defendant's plea colloquy, Judge Reisner asked defendant if he was a citizen of this Country. When defendant said he was not, the following exchange occurred:

> THE COURT: It says in your Plea Form that you were born in Trinidad.
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you understand that if you are not a citizen of this, of the United States, that your plea of guilty may result in your being deported or involuntarily removed from this country? Do you understand that?
>
> THE DEFENDANT: Yes.

> THE COURT: If you are in this country legally, do you understand that your plea of guilty may result in your being deported or involuntarily removed or may result in a denial of any application by you for United States citizenship? Do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you also understand that if you are in this country illegally, that your plea of guilty most probably will result in your being deported or involuntarily removed? Do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you understand that if your plea of guilty is to a crime considered to be an aggravated felony under federal law, that you will be subject to deportation or removal? Do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And do you also understand that you have the right to seek legal advice on your immigration status before you enter this guilty plea? Do you understand that?
>
> THE DEFENDANT: Yes.

The assistant prosecutor then placed on the record that defendant had consulted with an immigration attorney regarding the consequence of his guilty plea. On the plea form, defendant acknowledged that he discussed this guilty plea with Marti Lou, Esq., an immigration attorney, and indicated that after being advised of the possible immigration consequences and receiving legal advice on the same he still wished to plead guilty.

It is clear from this record that between plea counsel and the immigration attorney, defendant was provided with enough information so that he had a a clear understanding of the deportation consequences of his guilty plea. This court rejects defendant's claim that he received ineffective assistance from plea counsel.

In addition, defendant has not shown prejudice under the second prong of Strickland by proving a reasonable probability that, but for counsel's "errors," he would not have pled guilty and would have insisted on going to trial. Had defendant gone to trial he was facing compelling evidence with two sales to an undercover police officer wearing a recording device followed by a seizure of additional marijuana in his home at the time of his arrest.

Defendant next seeks to have his guilty plea vacated due to the "misrepresentation" by plea counsel. Putting aside this court's finding that there was no such misrepresentation, Rule 3:21-1 governs the withdrawal of guilty pleas and provides that a post-sentencing motion to withdraw a plea of guilty can only be granted to correct a manifest injustice. In State v. Slater, 198 N.J. 145, 156 (2009), our Supreme Court directed trial courts to consider the following factors in evaluating motions to withdraw a guilty plea:

> (1) whether the defendant has asserted a colorable claim of innocence;
>
> (2) the nature and strength of defendant's reasons for withdrawal;

(3) the existence of a plea bargain; and

(4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused.

[Id. at 150].

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In defendant's brief, he skips over the first two factors, but it is clear that defendant makes no claim of innocence as to the undercover sales or the possession charge. Defendant seems to suggest that 2016 conviction caused his deportation. However, an argument can be made that defendant did not come to the attention of ICE until he went on a crime spree in 2019 resulting in three indictments. It was only after he pled guilty to charges in all three indictments that ICE lodged a detainer against him.

Defendant's plea was pursuant to a plea agreement and the prejudice to the State in trying a nine-year old case is obvious. Defendant has not satisfied the Slater factors to justify withdrawal of his guilty plea and that motion is denied.

Finally, defendant argues that this court should grant an evidentiary hearing. However, defendant is not entitled to an evidentiary hearing "if the 'allegations are too vague, conclusory, or speculative to warrant an evidentiary hearing[.]'" State v. Porter, 216 N.J. 343, 355 (2013), quoting State v. Marshall, 148 N.J. 89, 158, cert. denied, 522 U.S. 850 (1997). An evidentiary hearing will be granted only "if a defendant has presented a prima facie claim in support of [PCR]." State v. Preciose,

129 N.J. 451, 462 (1992).

Considering defendant's contentions indulgently and viewing the facts in the light most favorable to him, this court must conclude that defendant has failed to establish a prima facie claim of ineffective assistance of plea counsel. Defendant's PCR petition and his motion to withdraw his guilty plea are denied without a hearing.