

**NOT FOR PUBLICATION WITHOUT THE  
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-3280-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN WESLEY POTEAT,  
a/k/a JOHNATHAN WESLEY  
POTEAT,

Defendant-Appellant.

---

Submitted September 27, 2023 – Decided October 10, 2023

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey,  
Law Division, Cape May County, Indictment No. 96-  
10-0575.

John Wesley Poteat, appellant pro se.

Jeffrey H. Sutherland, Cape May County Prosecutor,  
attorney for respondent (Gretchen A. Pickering,  
Senior Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant John Wesley Poteat appeals pro se from a May 27, 2022 order denying his latest application for post-conviction relief (PCR) without an evidentiary hearing. Because the petition is untimely under Rule 3:22-12(a)(2), we affirm.

Convicted of killing a tavern patron and robbing the bartender in 1997, defendant is serving a double-life sentence plus twenty-five years, with a sixty-six-and-one-half-year parole disqualifier. We affirmed defendant's convictions and sentence, State v. Poteat, No. A-7163-96 (App. Div. May 21, 1999), and the Supreme Court denied certification, 163 N.J. 76 (2000). Defendant thereafter filed a litany of PCR applications, including five petitions, a motion for a new trial, and a writ of habeas corpus filed in federal court – all of which were denied.

In his fifth and present petition, defendant asserted his assigned counsel failed to appeal the denial of his first PCR petition, notwithstanding defendant's request to do so.<sup>1</sup> To support his petition, defendant submitted: (1) an August 28, 2007 letter from the Office of the Public Defender (OPD), advising no appeal was pending at that time, but noting that PCR counsel had

---

<sup>1</sup> Filed on May 9, 2022, defendant's fifth PCR petition was sworn on May 3, 2022, six days before defendant's fourth PCR petition was denied.

indicated "an appeal brief was submitted on [defendant's] behalf"; (2) his May 27, 2008 letter to the OPD claiming his assigned attorney informed the PCR court that he would appeal from the court's order denying the petition as "time barred";<sup>2</sup> and (3) a May 11, 2008 letter from the court's criminal case management office indicating no appeal had been filed.

Notably, however, defendant did not file his second PCR petition until March 2014. Moreover, in that petition, defendant did not assert PCR counsel was ineffective for failing to appeal from the denial of his first petition. In our decision affirming the PCR court's denial of defendant's second petition, we summarized his contentions as follows:

Defendant filed this second PCR petition pro se on March 13, 2014, almost seventeen years after his conviction. He generally alleged that all the attorneys who represented him previously had been ineffective, but he did not set forth the particulars of their alleged ineffective representation. Instead, much of the petition alleged insufficiency of the evidence presented at his trial, thus indicating that defendant primarily contend[ed] that his attorneys' lack of success in defending him against the charges demonstrated their ineffectiveness. Defendant also attempted to adopt by incorporation all prior arguments made in his direct appeal and in his first PCR petition. Finally, he alleged his sentence was

---

<sup>2</sup> The May 16, 2006 order denying PCR did not state the appeal was denied or dismissed as untimely.

illegal because of its severity as compared to lesser sentences statutorily authorized for his crimes.

[State v. Poteat, No. A-4219-13 (App. Div. June 15, 2015)].

In his written decision that accompanied the May 27, 2022 order denying defendant's present petition, the PCR judge accurately summarized the procedural history of defendant's prior PCR applications and squarely addressed the issues raised in view of the governing law. The judge succinctly concluded:

[Defendant] cannot use his fifth PCR application as a substitute for an appeal of his first [p]etition, which was denied in May of 2006. The present application is time-barred under R[ule] 3:22-12(a)(1) and R[ule] 3:22-12(a)(2)(B). [Defendant] does not any make any specific allegations alleging violations of due process or ineffective assistance of counsel during his trial.

This appeal followed.

On appeal, defendant reprises the following arguments raised before the PCR judge:

POINT I

THE PCR COURT ERRED IN DENYING [DEFENDANT]'S PCR CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL NEVER FILED AN APPEAL AND THERE ARE DOCUMENTS SUPPORTING THIS CLAIM. THE

PCR COURT SHOULD HAVE GRANTED AN EVIDENTIARY HEARING IN THIS MATTER.

POINT II

[DEFENDANT] HAS ESTABLISHED A PRIMA FACIE SHOWING SUFFICIENT TO WARRANT THE ORDERING OF AN EVIDENTIARY HEARING.

POINT III

[DEFENDANT] IS NOT PROCEDURALLY (OR OTHERWISE) BARRED FROM RAISING THE CLAIMS ADVANCED HEREIN.

We have considered defendant's contentions in view of the governing law and conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(2). We add only the following comments.

Rule 3:22-4(b) places strict limitations on second and subsequent petitions for PCR. The Rule compels dismissal of a subsequent PCR petition unless the defendant can satisfy the time requirement under Rule 3:22-12(a)(2), and alleges the following grounds for relief:

(A) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or

(B) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts

underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable probability that the relief sought would be granted; or

(C) that the petition alleges a prima facie case of ineffective assistance of counsel that represented the defendant on the first or subsequent application for [PCR].

[R. 3:22-4(b).]

In turn, Rule 3:22-12(a)(2) imposes a time limitation for subsequent PCR petitions. Under the Rule, a second or subsequent petition for PCR must be filed within one year after the latest of:

(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey, if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or

(B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence; or

(C) the date of the denial of the first or subsequent application for [PCR] where ineffective assistance of counsel that represented the defendant on the first or subsequent application for [PCR] is being alleged.

[R. 3:22-12(a)(2).]

Although the time limitations are not absolute and may be waived to prevent a fundamental injustice, the rules must be viewed in light of their dual key purposes: "to ensure . . . the passage of time does not prejudice the State's retrial of a defendant" and "to respect the need for achieving finality." State v. DiFrisco, 187 N.J. 156, 166-67 (2006) (citation omitted). However, the Rule makes it clear that this relaxation rule only applies to first PCR petitions, not to second or subsequent ones. See R. 3:22-12(b); State v. Jackson, 454 N.J. Super. 284, 293 (App. Div. 2018); see also R. 1:3-4(c) (prohibiting the court and the parties from enlarging the time to file a petition for PCR under Rule 3:22-12).

In the present matter, by May 2008 – at the very latest – defendant was notified that the appeal from the denial of his first petition had not been filed. Yet, defendant did not file his second petition until 2014, and in that petition, he did not assert PCR counsel was ineffective for failing to file an appeal from the denial of his first petition. We conclude, as did the PCR judge, that defendant's present petition was time-barred. See R. 3:22-12(a)(2)(B).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION