

# **RECORD IMPOUNDED**

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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-2119-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARC S. GOODSON, a/k/a  
TALIB A. GOODSON,

Defendant-Appellant.

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Submitted March 28, 2022 – Decided May 9, 2022

Before Judges Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Salem County, Indictment No. 01-10-0483.

Joseph E. Krakora, Public Defender, attorney for appellant (Phuong V. Dao, Designated Counsel, on the brief).

Kristin J. Telsey, Salem County Prosecutor, attorney for respondent (David Galemba, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Marc S. Goodson appeals from the August 25, 2020 Law Division order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

The following facts encompassing defendant's underlying conviction are pertinent to the claims raised in this PCR petition. On July 4, 2001, when cleaning his car, a Salem police officer discovered a video cassette (video) depicting defendant and a fourteen-year old female (N.B.)<sup>1</sup> engaging in oral and vaginal intercourse. Defendant and N.B. were known by the Salem Police Department. Approximately one week later, defendant was escorted to the police station, where he was read and waived his Miranda<sup>2</sup> rights. Defendant admitted making the video with N.B. in November 2000 when she was fifteen years old, as well as having been in a "relationship" with N.B. since April 1997, which continued into October 2001.

On October 16, 2001, defendant was charged and indicted with first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a) (count one); third-degree endangering the welfare of a child, N.J.S.A. 2C:24-49(a) (counts two and four);

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<sup>1</sup> We use initials to protect the privacy of the victim. R. 1:38-3(d)(10).

<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

second-degree sexual assault, N.J.S.A. 2C:14-2(c) (count three) and; second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(3) (count five).

On April 16, 2002, the trial court conducted a Rule 104 hearing to authenticate the video depicting the sexual acts committed by defendant against N.B. On at least five occasions, N.B. "plead the Fifth" and refused to answer questions pertaining to her relationship with defendant. On each occasion, the trial judge engaged in a colloquy with N.B. regarding her understanding of the Fifth Amendment and explaining that the Fifth Amendment privilege was not applicable because she had not committed a crime. Defense counsel objected to any questions posed to N.B. about the purported "relationship" with defendant, and requested that the judge assign counsel to N.B. After a brief recess, the trial judge asked N.B. if she wished to proceed. She expressed her willingness to continue without the advice of counsel. N.B. thereafter provided testimony regarding her sexual relationship with defendant, including the video.

At the conclusion of the hearing, the judge ruled the video admissible. Based on the admission of the video, defendant entered a negotiated guilty plea<sup>3</sup> to second-degree sexual assault, N.J.S.A. 2C:14-2(a), with a recommended

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<sup>3</sup> Because of the court's ruling, the court found changed circumstances which permitted defendant to accept the State's prior plea offer after the offer expired.

sentence of eight years imprisonment, registration under Megan's Law, N.J.S.A. 2C:43-6.4, community supervision for life, and dismissal of the remaining counts. Defendant reserved the right to appeal the ruling on the authentication motion. On August 22, 2002, the judge sentenced defendant in accordance with the plea agreement.

Defendant filed a direct appeal limited to the sentence imposed. On March 11, 2013, this court vacated the portion of the sentence requiring the payment of a \$800 penalty and affirmed the sentence in all other aspects.

Defendant did not appeal his conviction or move to withdraw his guilty plea.

Over sixteen years after he was sentenced, on April 25, 2019, defendant filed a pro se petition, claiming ineffective assistance of counsel, requested an evidentiary hearing and sought to withdraw his guilty plea. On February 28, 2020, assigned defense counsel filed an amended petition and supporting brief. Defendant asserted the following grounds for relief: ineffective assistance of counsel for the failure to seek dismissal of the charges against defendant after N.B. invoked her Fifth Amendment right against self-incrimination, N.B. was forced to testify against him which resulted in a forced guilty plea, and the

cumulative errors deprived him of his Sixth Amendment right to effective assistance of counsel.

Following oral argument, in an August 25, 2020, order and twenty-four page written opinion, the PCR judge denied defendant's petition without an evidentiary hearing, finding the petition was time-barred under Rule 3:22-12(a)(1)(A). The PCR judge found defendant "set[] forth no facts in his pro se petition or brief in support of his post-conviction relief explaining why [d]efendant waited over sixteen years to file his petition, and thus [has] failed to establish excusable neglect." He also determined that "[d]efendant [did] not allege any facts – or even address – the delay in filing the petition after the five-year period." The PCR judge concluded "[defendant] ha[d] not established excusable neglect and cannot claim relief under this exception. [Thus], [h]is petition is time-barred."

The court next explained that "[d]efendant also failed to show that enforcement of the time bar would result in a fundamental injustice." The PCR judge reiterated that defendant provided no justification for the sixteen-year delay in filing the PCR. The court further stated, relying on State v. Nash, 212 N.J. 518, 546 (2013), that defendant "provided no evidence that the judicial system has denied a 'defendant with fair proceedings leading to a just outcome'

or when 'inadvertent errors mistakenly impacted a determination of guilt or otherwise wrought a miscarriage of justice.'"

The PCR judge rejected defendant's claim that "PCR should be considered because it is subject to evolving Fifth Amendment law which should be applied retroactively to his case pursuant to Rule 3:22-12(a)(1)(A)." The PCR judge found that defendant did not point to any specific cases that recognized such a new constitutional right; "namely, that a complainant witness with no risk of incrimination may claim the Fifth Amendment privilege against self-incrimination." Nor did he cite to any case law recognizing a new right under the Fifth Amendment. Defendant also failed to assert any case law with a retroactive application to cases on collateral review. Lastly, none of the cases cited by defendant initially recognized "a right within one year prior to [defendant's petition filing]." The PCR judge further explained that defendant's case had to be decided on or after April 25, 2018 for this sub-subsection to apply.

In addressing the merits of defendant's PCR petition, the PCR judge held that defendant failed to establish a *prima facie* case of ineffective assistance of counsel and was not entitled to an evidentiary hearing. The PCR judge addressed the two-prong standard articulated in Strickland v. Washington, 466

U.S. 668, 687 (1984), adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987).

Under the first prong, a defendant must demonstrate "counsel's representation fell below an objective standard of reasonableness." Strickland 466 U.S. at 688. Thus, "th[e] test requires [a] defendant to identify specific acts or omissions that are outside the wide range of reasonable professional assistance . . ." State v. Jack, 144 N.J. 240, 249 (1996) (citation and internal quotation marks omitted). "Reasonable competence does not require the best of attorneys, but certainly not one so ineffective as to make the idea of a fair trial meaningless." State v. Davis, 116 N.J. 341, 351 (1989).

To meet the second prong, "[a] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Ibid. The court must consider the facts in the light most favorable to the defendant to determine if a defendant has established a *prima facie* claim. State v. Preciose, 129 N.J. 451, 462-63 (1992).

The PCR judge noted defendant's failure to demonstrate trial counsel's deficient performance when trial counsel repeatedly objected and expressed

concern regarding N.B.'s invocation of her Fifth Amendment right at the Rule 104 hearing. Citing to the plea record, the PCR judge stated, "the record shows that the court found the witness was not entitled to the Fifth Amendment privilege, and despite trial counsel's multiple requests that the witness be afforded the opportunity to consult with an attorney on that issue, she chose to proceed with testifying without the advice of counsel." The PCR judge concluded, "[d]efendant's assertions that trial counsel did not sufficiently object to the witness's testimony are undermined by the record."

The PCR judge held that defendant made no showing that trial counsel's conduct prejudiced his case under the second prong. The court explained:

[N.B.] repeatedly was unable to articulate a reason, and repeatedly acknowledged that she did not believe she had committed any crime. Indeed, she was the *victim* in the matter, and specifically a juvenile victim. Rather, it "clearly appear[ed]" that a cause for apprehension did not exist, and accordingly the privilege against self-incrimination did not apply. See N.J.R.E. 502; see also N.J.S.A. 2A:84A-18. As defense counsel correctly pointed out, the repeated invocation of the Fifth Amendment appeared to simply be an expression of her wish not to testify.

Finally, the PCR judge held that defendant had not shown that the absence of N.B.'s testimony would have altered the Rule 104 hearing's outcome. Trial counsel's performance ultimately fell "within the wide range of reasonable

professional assistance." Strickland, 466 U.S. at 689; Fritz, 105 N.J. at 52-53.

The PCR judge therefore found defendant could not demonstrate that, but for defense counsel's actions, the court would not have admitted the video.

Defendant also failed to establish that trial counsel coerced him into waiving his right to trial. The PCR judge noted the plea colloquy in which defendant admitted that he was pleading voluntarily, without force or coercion from counsel or anyone else. The PCR judge stated, "[d]efendant's own sworn words at the plea hearing and his responses on the plea form belie his much belated claim that counsel forced him to plead guilty." Those facts, combined with defendant's admissions, refute a claim of coercion. Accordingly, defendant failed to satisfy both prongs of the Strickland test.

Finally, the PCR judge disagreed with defendant's argument that the plea record was "replete with errors committed by defense counsel which cumulatively deprived him of a fair trial and appeal." The PCR judge agreed with the State's position that the theory of cumulative errors generally applies only when a defendant was convicted at trial and, because, defendant entered a guilty plea, this theory is inapplicable. State v. Weaver, 219 N.J. 131, 155 (2014). She reiterated that defendant "failed to allege specific facts that indicate that any alleged errors by defense counsel, standing alone or in combination

with others, caused [d]efendant prejudice sufficient to warrant a remand and trial." This appeal followed.

On appeal, defendant raises the following points for consideration:

### POINT I

DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF MEETS THE EXCEPTION DUE TO EXCUSABLE NEGLECT, AND SHOULD THEREFORE BE CONSIDERED.

### POINT II

BECAUSE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, HE WAS DENIED A JURY TRIAL, AND THEREFORE, HE IS ENTITLED TO POST-CONVICTION RELIEF.

- (a) Trial counsel's inaction of not filing an emergent appeal basically forced defendant into pleading guilty.

### POINT III

DEFENDANT HAS MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND THUS, THE PCR COURT ERRED IN NOT GRANTING AN EVIDENTIARY HEARING.

## II.

"We review the legal conclusions of a PCR judge de novo," State v. Reevey, 417 N.J. Super. 134, 146 (App. Div. 2010), but "we review under the abuse of discretion standard the PCR court's determination to proceed without

an evidentiary hearing." State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013).

We first consider defendant's significant delay in filing the petition. Rule 3:22-12(a)(1) requires that a first petition for PCR must be filed within five years of the date of the judgment of conviction. Except as provided in the rule, this time limitation "shall not be relaxed." R. 3:22-12(b).

"A late filing may be considered if the petition itself shows excusable neglect for the late filing and that a fundamental injustice will result if defendant's claims are not considered on their merits." Brewster, 429 N.J. Super. at 400; R. 3:22-12(a)(1). However, the time bar may be "relaxed only under truly exceptional circumstances." State v. Cummings, 321 N.J. Super. 154, 168 (App. Div. 1999) (citations omitted).

In determining whether to relax the time bar, a court should consider "'the extent and cause of the delay, the prejudice to the State, and the importance of the petitioner's claim in determining whether there has been an "injustice" sufficient to relax the time limits.'" State v. McQuaid, 147 N.J. 464, 485 (1997) (quoting State v. Mitchell, 126 N.J. 565, 580 (1992)). Absent compelling extenuating circumstances, the burden to justify filing a petition after the five-year period will increase with the extent of the delay. State v. Afanador, 151 N.J. 41, 52 (1997).

"Where the deficient representation of counsel affected 'a determination of guilt or otherwise wrought a miscarriage of justice,' a procedural rule otherwise barring post-conviction relief may be overlooked to avoid a fundamental injustice." Brewster, 429 N.J. Super. at 400 (quoting Mitchell, 126 N.J. at 587).

"[A] PCR judge has an independent, non-delegable duty to question the timeliness of the petition, and to require the rule's time restrictions pursuant to Rule 3:22-12. Absent sufficient competent evidence to satisfy this standard, the court does not have the authority to review the merits of [defendant's] claim." State v. Brown, 455 N.J. Super. 460, 470 (App. Div. 2018).

Rule 3:22-10(b) provides that a defendant is entitled to an evidentiary hearing only if: (1) the defendant establishes a prima facie PCR claim; (2) "there are material issues of disputed fact that cannot be resolved by reference to the existing record"; and (3) "an evidentiary hearing is necessary to resolve the claims for relief." State v. Preciose, 129 N.J. at 462; see also State v. Porter, 216 N.J. 343, 354 (2013). Indeed, "[i]f the court perceives that holding an evidentiary hearing will not aid the court's analysis of whether the defendant is entitled to post-conviction relief, . . . then an evidentiary hearing need not be granted." Brewster, 429 N.J. Super. at 401 (second alteration in original) (quoting State v. Marshall, 148 N.J. 89, 158 (1997)).

The mere raising of PCR does not entitle the defendant to an evidentiary hearing, State v. Cummings, 321 N.J. Super. at 170, because the court reviewing claims of ineffective assistance has the discretion to grant an evidentiary hearing only if the defendant makes a prima facie showing in support of the requested relief.

### III.

Based upon our review of the record and the application of these foundational principles, we find the PCR judge properly determined that defendant failed to overcome the procedural hurdle of R. 3:22-12(a)(1). Here, the record demonstrates that the delay in filing the petition was not "due to defendant's excusable neglect." R. 3:22-12(a)(1). Defendant timely appealed the sentence imposed and refrained, for whatever reason, from filing a petition. Defendant was aware of N.B.'s testimony at the Rule 104 hearing well in advance of the expiration of the five-year period. Yet, the petition presently before us was filed thirteen years later. He offers no plausible or reasonable rationale for the delay in filing the pro se petition or brief in support of the PCR. Defendant neither alleged nor addressed any facts for the prolonged delay and therefore failed to establish that the belated petition should be excused.

We also agree with the PCR judge that "enforcement of the time bar [did not] result in a fundamental injustice." R. 3:22-12(a)(1). Despite defendant's argument

that it was fundamentally unjust that N.B.'s testimony was unchallenged and resulted in guilty plea, there is prejudice to the State caused by the significant passage of time, faded memories, and lost or unattainable evidence caused by the extraordinarily delayed filing. Mitchell, 126 N.J. at 575.

#### IV.

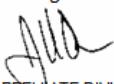
Defendant's argument that trial counsel provided ineffective assistance of counsel because he was denied a jury trial upon acceptance of the "forced" guilty plea is likewise time-barred and without merit. Defendant's claims are merely bald assertions and are insufficient to establish a claim of ineffective assistance of counsel under Strickland. Furthermore, defendant's argument is unsupported by the record. The plea colloquy with the trial court belies defendant's claims that his guilty plea was not knowingly entered. On the contrary, the PCR judge's findings are fully supported by the record in view of defendant's plea admissions.

Measured by the Strickland/Fritz standard, we find that PCR judge properly determined that defendant failed to establish that he received ineffective assistance of trial counsel. Defendant's bare assertions were insufficient to establish ineffective assistance of counsel entitling him to an evidentiary hearing. See Cummings, 321 N.J. Super. at 70; see also State v. Jones, 219 N.J. 298, 311-12 (2014).

To the extent that we have not addressed any of defendant's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION