

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-2192-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL WENK,

Defendant-Appellant.

Submitted September 28, 2022 – Decided October 6, 2022

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 07-10-1754.

Joseph E. Krakora, Public Defender, attorney for appellant (Karen A. Lodeserto, Designated Counsel, on the brief).

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Debra G. Simms, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant appeals from an order denying his post-conviction relief (PCR) petition. We affirm.

In 2008, pursuant to a negotiated agreement with the State, defendant pleaded guilty to second-degree sexual assault of a minor, N.J.S.A. 2C:14-2(c)(4). In accordance with the agreement, the court sentenced defendant to a seven-year prison term and parole supervision for life, subject to the provisions of Megan's Law, N.J.S.A. 2C:7-1 to -23. Defendant appealed only his sentence. We affirmed. State v. Wenk, No. A-2665-08 (App. Div. Feb. 8, 2010).

In 2019, defendant filed pro se a PCR petition, which his appointed counsel later supplemented. After hearing oral argument, Judge Guy P. Ryan denied defendant's PCR petition in a nineteen-page decision and corresponding order.

Defendant raises the following arguments on appeal:

POINT ONE

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR POST-CONVICTION RELIEF WITHOUT GRANTING AN EVIDENTIARY HEARING AS TESTIMONY IS NEEDED FROM PRIOR COUNSEL REGARDING HIS FAILURE TO ADVISE [DEFENDANT] OF THE REQUIREMENTS, PROVISIONS, AND DURATION OF PAROLE SUPERVISION FOR LIFE.

POINT TWO

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR POST-CONVICTION RELIEF WITHOUT GRANTING AN EVIDENTIARY HEARING AS TESTIMONY IS NEEDED FROM PRIOR COUNSEL REGARDING HIS FAILURE TO ARGUE MITIGATING FACTORS AND CHALLENGE AGGRAVATING FACTORS.

POINT THREE

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR POST-CONVICTION RELIEF WITHOUT GRANTING AN EVIDENTIARY HEARING AS THE FIVE-YEAR TIME BAR SHOULD BE RELAXED DUE TO EXCUSABLE NEGLIGENCE AND/OR THE INTERESTS OF JUSTICE.

We affirm the order denying defendant's PCR petition substantially for the reasons set forth in Judge Ryan's comprehensive, written decision. Because defendant failed to establish a prima facie showing of ineffective assistance of counsel, he was not entitled to an evidentiary hearing. See State v. Porter, 216 N.J. 343, 355 (2013); R. 3:22-10.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION