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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-3437-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES RICHARDSON,

Defendant-Appellant.

Submitted March 14, 2022 – Decided June 8, 2022

Before Judges Sabatino and Rothstadt.

On appeal from the Superior Court of New Jersey, Law
Division, Passaic County, Indictment No. 07-02-0168.

Charles Richardson, appellant pro se.

Camelia M. Valdes, Passaic County Prosecutor,
attorney for respondent (Mark Niedziela, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Charles Richardson appeals from the March 11, 2020 denial of
his second petition for post-conviction relief (PCR). Judge Ronald B. Sokalski

denied defendant relief for the reasons stated in his nine-page written decision that accompanied his order denying relief. On appeal defendant asserts the following three points:

POINT I

THE PCR COURT ERRED WHEN IT DENIED A SECOND PETITION FOR POST-CONVICTION RELIEF DUE TO A PROCEDURAL BAR.

POINT II

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FROM FIRST PCR COUNSEL BECAUSE HE REPEATED THE SAME ERROR AND/OR OMISSIONS AS TRIAL COUNSEL.

POINT III

PETITIONER'S DUE PROCESS RIGHTS [WERE] VIOLATED BY THE PCR COURT WHEN [IT] REFUSED TO EXAMINE WITNESS CERTIFICATIONS THROUGH AN EVIDENTIARY HEARING.

We are not persuaded by defendant's contentions. We affirm substantially for the reasons stated by Judge Sokalski in his thorough written opinion.

In an earlier unpublished opinion affirming his conviction, we previously set forth the facts leading to defendant's arrest and conviction for having committed first-degree murder and related weapons offenses, for which he

received an aggregate fifty-year term subject to a parole ineligibility period under the No Early Release Act, N.J.S.A. 2C:43-7.2. State v. Richardson (Richardson I), A-1467-10 (App. Div. July 15, 2013) (slip op. at 6 to 10). Thereafter, we affirmed the denial of defendant's first petition for PCR, again in an unpublished opinion. State v. Richardson (Richardson II), A-0718-16 (App. Div. June 18, 2018).

As noted in Richardson II, in his first PCR petition filed in 2014, defendant asserted "ten different reasons why he received ineffective assistance of counsel during his trial," and we delineated each of those reasons. Id., slip op. at 2. We also noted that in a subsequently filed amended petition, defendant raised "additional claims that trial counsel was ineffective," and there again we delineated the additional reasons. Id., slip op. at 3. We also described the reasoning behind the first PCR court's denial of defendant's petition. Id., slip op. at 3-5. We also addressed the specific points raised on appeal from that determination and concluded that they were unpersuasive. We affirmed "for the reasons expressed by the PCR court in its comprehensive oral decision." Id., slip op. at 6. The Supreme Court denied defendant's petition for certification from our affirming the denial of his first PCR petition. State v Richardson, 236 N.J. 362 (2019).

Thereafter, in December 2019, defendant filed his second petition, asserting again that he received ineffective assistance of counsel based on his trial attorney's failure to "object when the [p]rosecutor made comments that referenced facts outside the record[] and exceeded fair comments in his summation." He also asserted that his "constitutional right to the effective assistance of counsel was violated by PCR counsel when he failed to investigate, interview and present witnesses to support a defense theory of self-defense and/or the lesser included offense of passion/provocation manslaughter." He further asserted that his "constitutional right to due process was violated when the State - by means of threats and intimidation - obtained statements from two eyewitnesses that incriminated petitioner, but contradicted earlier exculpatory statements"; "when the State violated established photo-identification guidelines and counsel failed to object to the tainted, unduly suggestive subsequent identification"; and when the first PCR court "denied his first petition for PCR without an evidentiary hearing."

According to defendant, "[o]ne of [his] claims was based on a certification presented by an eyewitness. The [c]ourt improperly failed to hold an evidentiary hearing to evaluate the certification; instead dismissing them as without merit based upon [the] sole fact of a previous conviction." He also argued his

"constitutional right to due process and the effective assistance of counsel was violated when the State's prosecutor – at sentencing – played a video-recorded DVD memorial of the victim that violated the standards enunciated in State v. Hess,^[1] which governs the content of such video memorials."

As noted, on March 11, 2020, Judge Sokalski issued an order denying defendant relief, setting forth his reasons in his written decision. In that decision, the judge initially determined that the second petition was "time barred" under Rule 3:22-12(a)(2), which barred the filing of a second or subsequent petition if it was filed more than one year after the denial of his first petition. The judge pointed out that the initial petition was denied on July 6, 2016, and the second petition was not filed until December 11, 2019. Relying upon Rule 3:22-12(a)(2) and State v. Jackson, 454 N.J. Super. 284 (App. Div. 2018), the judge found that the time bar under Rule 3:22-12 cannot be extended. The judge also found that the second petition was barred by Rule 3:22-4(b) because it did not meet any of the criteria for a second petition.

Despite the procedural bars, the judge addressed each of the points raised by defendant. The judge referenced specific portions of the trial transcript, the findings made by the first PCR court, and the legal conclusions we reached in

¹ State v. Hess, 207 N.J. 123 (2011).

Richardson I and found that the claims being made in defendant's second PCR petition were barred also by Rule 3:22-5 as it applied to matters that were previously adjudicated or which could have been raised in earlier proceedings. The judge concluded that in any event, defendant's contentions lacked any merit or were belied by the record and that defendant failed to establish "good cause" as required by Rule 3:22-6(b). For that reason, the judge did not assign counsel to represent defendant and denied the second PCR petition.

As already noted, we affirm the denial of defendant's second petition for PCR, substantially for the reasons expressed by Judge Sokalski. We are not persuaded otherwise by defendant's contentions on appeal as we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2-11(e)(2). We only note that we previously addressed defendant's claims about the failure to call witnesses in Richardson II and affirmed the PCR court for the reasons expressed in its decision and concluded that defendant's arguments on this point were unpersuasive. Id., slip op. at 3-4, 6.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION