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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0109-23**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JONATHAN NORMAN,

Defendant-Appellant.

Submitted May 28, 2024 – Decided June 13, 2024

Before Judges Sabatino and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Cumberland County, Indictment No. 04-04-0452.

Hegge & Confusione, LLC, attorneys for appellant (Michael James Confusione, of counsel and on the brief).

Jennifer Webb-McRae, Cumberland County Prosecutor, attorney for respondent (Stephen Christopher Sayer, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jonathan Norman appeals from the Law Division's September 11, 2023 order denying his application for post-conviction relief ("PCR") without an evidentiary hearing. Based on our review of the record and the applicable legal principles, we affirm.

I.

The parties are familiar with the facts, which are detailed in our prior opinion regarding defendant's direct appeal. State v. Norman, No. A-6020-05 (App. Div. July 7, 2008). Therefore, we will only set forth those facts necessary to our analysis.

Defendant and his ex-girlfriend Taneka Milbourne together had a child, Jayda. On August 2, 2003, Milbourne arrived at defendant's apartment to drop off sixteen-month-old Jayda for parenting time. When defendant raised concerns about bruises and scratches on Jayda's face, defendant and Milbourne had a verbal dispute, which turned physical. After pushing Milbourne to the kitchen floor, Milbourne threatened that defendant would lose his job as a corrections officer and never see Jayda again. At that point, defendant retrieved a gun from the living room, returned to the kitchen, and stood over Milbourne as she rolled over to try to push herself up from the floor. Defendant then shot her in the back of the head, killing her.

Defendant proceeded to write a two-page note explaining his reasons for killing Milbourne. He left the note on her body.¹ Later that day, at his mother's urging, defendant turned himself in to the police, acknowledging that he had shot and killed Milbourne. He also gave a videotaped statement admitting to the shooting.

In April 2004, a Cumberland County jury indicted defendant, charging him with first-degree murder, N.J.S.A. 2C:11-3(a)(1) or (2) (count one); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-4(a) (count two); and

¹ Defendant's note, in part, stated:

What I did, I felt had to be done. . . . When I met [Milbourne], she was on welfare making no money, stressed out all the time. . . . I tried to show her love and put stability in her life. In return I was showed hate and resentment because I could no longer tolerate her evil . . . ways. . . . The only reason she had [Jayda] was to do exactly what she's doing. Manipulating my life because of the love I have for my daughter. . . . But even though I want to do all I can for [Jayda] and see her as much as I can, I can't because her mother . . . won't allow me to be [a part] of her life the way I should be. When I see [Jayda], she has bruises and cuts on her that [Milbourne] claim[s] she do[es]n't know how they got there. . . . My baby, [Milbourne's other] kids, and the rest of the world is better off without her. (She must die).

fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(4) (count three). Defendant entered a plea of not guilty and proceeded to trial in March 2016.

At trial, defendant admitted he shot Milbourne but claimed he did so in the heat of passion. The jury rejected the passion/provocation manslaughter defense and found defendant guilty of murder along with the other counts in the indictment. On April 21, 2006, he was sentenced to thirty years in prison with a thirty-year parole ineligibility period on the murder charge.² He further received a five-year period of parole supervision upon release pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. We affirmed defendant's sentence and conviction in 2008.

On January 12, 2023, defendant filed his first PCR petition, asserting that a minute or two before the shooting Milbourne "taunted" him, indicating he was not really the father of Jayda and that she had doctored a paternity test. Milbourne, who was also a corrections officer, further provoked defendant by stating she had cheated on him with an inmate, who was the real father. Defendant alleges his trial counsel told defendant "not to bring this information up during [his] testimony" before the jury. He asserts his trial counsel's advice to not testify regarding "this taunting" right before he shot Milbourne was an

² The other charges merged into count one.

error. He contends, "[h]ad the jury hear this part of what happened, I firmly believe that the jury would have credited that I did act in the heat of passion when I snapped and shot my girlfriend." Defendant claims his trial counsel committed a serious error because his mental state was the only issue the jury had to address since he admitted intentionally shooting Milbourne in the back of the head. He asserts that if the jury had heard that it was not simply "Milbourne's threats [that he would] lose his job and not see his daughter," but also her comments regarding the fake paternity test, the jury would have had more substantial ground to find he acted in the heat of passion.

With respect to the significant delay in presenting his claim for ineffective assistance of counsel, defendant certified he was a corrections officer prior to the shooting and had never been in trouble before. He was "thrown into prison and into complete despair and disarray." He claimed he was "depressed" and "abandoned" by his friends and family. It was not until sometime in early 2022 that he "began to feel better and capable of looking at [his] case again." He further asserts that he was not aware that his trial counsel's advice not to talk about Milbourne's taunting was incorrect. He further argues that had the jury been aware of this additional taunting by Milbourne, it would have only found

him guilty of passion/provocation manslaughter, and he likely would only have spent ten years in prison as opposed to his current sentence.

The trial court, as discussed more fully below, denied defendant's PCR petition without an evidentiary hearing on the grounds it was untimely. This appeal followed.

II.

Defendant raises the following point on appeal:

The [PCR] court erred in denying substantive review of defendant's ineffective assistance of counsel claim that impacted the heart of the fairness of defendant's first-degree murder conviction and [thirty-]year prison sentence.

Defendant asserts he demonstrated sufficient excusable neglect under Rule 3:22-12(a)(1)(A) to warrant relaxing the Rule's five-year deadline. Defendant essentially reprises the arguments raised before the PCR court. More particularly, defendant maintains he had "no ability to even think about" a PCR application because he was depressed and abandoned by his friends and family. It was not until early 2022 that he began to feel better and received financial support from a family member to hire an attorney to review his case. He further asserts fundamental fairness demands that this court correct the manifest injustice in this matter.

Defendant claims his trial counsel's instruction that he should not raise the issue of Milbourne taunting him about not being Jayda's father before the jury was a serious error. He asserts that trial counsel's purported refusal to bring this additional taunting issue before the jury was not reasonable performance by defense counsel under the circumstances in this case.³ He contends there is a reasonable probability that but for counsel's unprofessional error, the result of the proceeding would have been different. He also claims the judge should have held an evidentiary hearing to determine if defendant's trial counsel in fact gave this advice. Defendant reiterates that his conduct was not in question but rather his mental state. He further argues that despite the case being "ancient," he should still be entitled to a hearing to address this important issue.

We review the legal conclusions of a PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). The de novo standard additionally applies to mixed questions of law and fact. Id. at 420. Finally, we use a de novo

³ Despite defendant's contention that he raised this issue with his attorney prior to trial, the note he wrote immediately after Milbourne was killed—in which he articulated the reasons for killing her—makes no mention of anything resembling his current allegations. Moreover, as noted below, ordinarily words alone are not sufficient to "constitute adequate provocation to reduce murder to manslaughter." State v. Viera, 346 N.J. Super. 198, 215 (App. Div. 2001) (citing State v. Cristanos, 102 N.J. 265, 274 (1986)).

standard of review when a PCR court does not conduct an evidentiary hearing. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016) (citing Harris, 181 N.J. at 421).

Rule 3:22-12 states in pertinent part:

[N]o petition shall be filed pursuant to this rule more than [five] years after the date of entry pursuant to [Rule] 3:21-5 of the judgment of conviction that is being challenged unless:

(A) it alleges facts showing that the delay beyond said time was due to defendant's excusable neglect and that 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 bar may be relaxed only under the specified circumstances set forth in Rule 3:22-12(a)(1)(A). In assessing whether excusable neglect justifies relaxation of the time bar for PCR petitions set forth in Rule 3:22-12, we "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. Norman, 405 N.J. Super. 149, 159 (App. Div. 2009) (quoting State v. Afanador, 151 N.J. 41, 52 (1997)). More than "a plausible explanation for [the defendant's] failure

to file a timely PCR petition" is required. Ibid. Our Supreme Court has required a showing of "compelling, extenuating circumstances," State v. Milne, 178 N.J. 486, 492 (2004) (quoting Afanador, 151 N.J. at 52), or alternatively, "exceptional circumstances." State v. Murray, 162 N.J. 240, 246 (2000). "'Fundamental injustice' will be found if the prosecution or the judiciary abused the process under which the defendant was convicted or, absent conscious abuse, if inadvertent errors mistakenly impacted a determination of guilt or otherwise 'wrought a miscarriage of justice for the individual defendant.'" State v. Mitchell, 126 N.J. 565, 587 (1992) (quoting State v. Laurick, 120 N.J. 1, 10 (1990)). A failure to demonstrate excusable neglect or fundamental injustice will result in a dismissal of a petition under Rule 3:22-12(a)(1).

Here, the PCR court determined defendant failed to provide sufficient facts to establish excusable neglect or a fundamental injustice. The PCR court noted that defendant's asserted reason for his delay in filing the PCR application was "his inability to think about his case due to depression resulting from the circumstances surrounding his lengthy incarceration. He also claims he did not understand the underlying facts could potentially provide a basis for relief." The PCR court observed, however, defendant "himself claims to have provided the information to trial counsel," and the issue of passion/provocation was raised at

trial and on appeal. Accordingly, the PCR court was unconvinced that defendant was unaware that this information could have assisted his case. Moreover, the court noted that even if it accepted defendant's statements as true, "the petition fails to allege facts that support a finding of excusable neglect."

The PCR court further noted that even if defendant were able to establish excusable neglect, "he has not shown fundamental injustice would occur if the time bar was enforced." It referenced our prior decision on appeal where we noted "there was substantial credible evidence upon which the jury could have found defendant guilty of murder and not passion/provocation manslaughter . . . the jury properly rejected defendant's passion/provocation defense and properly returned the correct verdict." Norman, slip. op. at 5.

The PCR court also noted defendant "failed to provide transcripts from the trial establishing [trial counsel's] failure to bring up the taunting at trial." The court continued, "[e]ven if the court were to take [defendant's] allegations as true, it is well[-]settled law that 'ordinarily, words alone, no matter how offensive or insulting, do not constitute adequate provocation to reduce murder to manslaughter.'" Viera, 346 N.J. Super. at 215 (citing Cristanos, 102 N.J. at 274)." (Citations reformatted). The PCR court concluded defendant "failed to allege facts establishing an injustice impacting the determination of his guilt at

trial. Absent compelling, extenuating circumstances, [defendant's] burden to justify his delay increased significantly after [seventeen] years. After such . . . delay, the necessity for finality and certainty of the judgment increased alongside the elusiveness of justice." The court commented, "[r]etrying the case after [seventeen] years would be substantially prejudicial to the State." Accordingly, the court determined defendant failed to establish the exceptional circumstances required by Rule 3:33-12 to overcome the burden of relaxing the time bar. Because the court dismissed the case on procedural grounds, it made "no determinations as to the substantive merits of [defendant's] claim."

We are unpersuaded by defendant's contentions and affirm substantially for the reasons expressed in the comprehensive and cogent opinion of the PCR court. Defendant's judgment of conviction was April 21, 2006. He did not file his PCR petition until January 2023—nearly seventeen years after his conviction—and almost twelve years past the five-year time period set forth in Rule 3:22-12(a)(1)(A). "As time passes, justice becomes more elusive and the necessity for preserving finality and certainty of judgments increases." State v. Goodwin, 173 N.J. 583, 594 (2002) (quoting Afanador, 151 N.J. at 52).

Defendant's delays were entirely attributable to him, and the State would be severely prejudiced being forced to retry this case seventeen years after

defendant's conviction. We agree with the PCR court that defendant neither established excusable neglect nor a fundamental injustice to warrant relaxing the five-year time bar under Rule 3:22-12. Putting aside that defendant has not produced the transcripts from the trial, which may or may not have corroborated his allegations that this "taunting" issue was not raised previously, he has failed to demonstrate facts constituting compelling, extenuating, or exceptional circumstances required under the case law to justify relaxing the time bar under Rule 3:22-12. In light of our conclusion that the five-year time bar precludes defendant's application for relief, we decline to address the merits of defendant's arguments.

To the extent that we have not addressed them, any remaining arguments raised by defendant 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