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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-0190-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DENNIS OBADO a/k/a
DENNIS ABADO,

Defendant-Appellant.

Submitted February 6, 2017 – Decided February 22, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
90-01-0240.

Dennis Obado, appellant pro se.

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Brian D. Gillet,
Deputy First Assistant Prosecutor, of counsel
and on the brief).

PER CURIAM

Defendant Dennis Obado appeals from an August 8, 2014 Law
Division order denying his fourth petition for post-conviction
relief ("PCR"). We affirm.

On August 16, 1990, defendant pled guilty to third-degree possession of cocaine near or on school property, N.J.S.A. 2C:35-7(a). On October 1, 1990, the trial judge sentenced defendant in accordance with the negotiated plea agreement to 364 days in county jail and four years of probation. Defendant did not file a direct appeal from his conviction and sentence.

Almost eight years later, defendant filed his first petition for PCR, which the trial court denied as untimely on December 7, 1998. See R. 3:22-12(a)(1) (providing that a defendant's first petition for PCR must be filed no more than five years after the entry of the judgment of conviction). We affirmed the trial court's decision and the Supreme Court denied certification. State v. Obado, No. A-3254-98 (App. Div. Sept. 11, 2000), certif. denied, 169 N.J. 605 (2001).

On May 31, 2002, defendant filed a petition for habeas corpus pursuant to 28 U.S.C.A. § 2254, which the federal district court dismissed because defendant was no longer in custody. Obado v. New Jersey, 328 F.3d 716, 717 (3d Cir. 2003). On May 9, 2003, the Third Circuit denied defendant's application for a certificate of appealability. Id. at 718.

On September 27, 2004, almost fourteen years after his conviction, defendant filed his second petition for PCR. In this petition, defendant asserted that his plea attorney was

ineffective because he did not properly advise defendant of the deportation consequences of his guilty plea in 1990. On April 13, 2005, the trial court denied defendant's petition. Defendant appealed and we again affirmed. State v. Obado, A-4996-04 (Jan. 19, 2007), certif. denied, 192 N.J. 71 (2007).

On July 3, 2010, defendant filed his third petition for PCR. On December 6, 2010, the trial court dismissed defendant's petition without prejudice at defendant's request.

On April 6, 2011, defendant filed his fourth petition for PCR. In this petition, defendant again argued that his attorney was ineffective because he did not properly advise him of the deportation consequences of his August 16, 1990 guilty plea.¹ Following oral argument, the trial judge rendered a thorough oral opinion denying defendant's petition. The judge noted that defendant's fourth petition for PCR had been filed over twenty years after his judgment of conviction. Therefore, the petition was untimely under Rule 3:22-12(a)(1) and (2).

In addition, the judge observed that when defendant filed his second petition for PCR in September 2004, he claimed that his attorney was ineffective because he did not properly advise

¹ Defendant subsequently filed several unrelated motions in the trial court, but he subsequently withdrew them and, therefore, they are not at issue in this appeal.

defendant of the deportation consequences of his plea. Because defendant's fourth petition was therefore identical to the one that the trial court and this court rejected in April 2005 and January 2007, respectively, the judge found that defendant's fourth petition was also procedurally barred under Rule 3:22-5.² This appeal followed.

On appeal, defendant raises the following contentions:

POINT ONE

[DEFENDANT]'S POST[-]CONVICTION APPEAL IS NOT BARRED BY TIME BAR OF RULE 3:22-12, BASED ON "EXCUSABLE NEGLECT["], "ILLEGAL SENTENCE," "NEWLY DISCOVERED" EVIDENCE OF SERVICE OF "NOTICE TO APPEAR" IN IMMIGRATION REMOVAL PROCEEDINGS ON AUGUST 8, 2013 FOR THE FIRST TIME, AND SEMINAL RETROACTIVE (2012)[] U.S.[] SUPREME COURT, AND NEW JERSEY SUPREME COURT CASES REGARDING EFFECTIVE ASSISTANCE OF COUNSEL IN THE PLEA CONTEXT, WHICH WAS NOT DISCOVERABLE PREVIOUSLY WITH DUE DILIGENCE, SINCE THESE RELEVANT CASES DID NOT EXIST UNTIL 2009, AND 2012, AFTER [DEFENDANT]'S FIRST TWO POST-CONVICTION RELIEF PETITIONS WERE FILED IN 1998, AND 2005.

POINT TWO

[DEFENDANT]'S GUILTY PLEA SHOULD BE WITHDRAWN, AND INDICTMENT DISMISSED, SINCE 1990 PLEA COUNSEL "AFFIRMATIVELY MISADVISED[] [DEFENDANT] INTO PLEADING GUILTY REGARDING THE DEPORTATION CONSEQUENCES OF PLEADING GUILTY,

² In pertinent part, Rule 3:22-5 states that "[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction of in any post-conviction proceeding brought pursuant to this rule[,] . . . or in any appeal taken from such proceedings."

AND BREACHED THEIR PLEA "PROMISE," BY NOT DISCLOSING "PROMISE" THAT DEPORTATION WAS "NOT APPLICABLE" IN THE RECORDED PLEA PROCEEDINGS, BUT ADVISED THE SAME ON PLEA FORM, WHICH WAS AFFIRMATIVELY MISLEADING, SINCE [DEFENDANT] WAS RECENTLY SUBJECT TO IMMIGRATION REMOVAL AS OF AUGUST 8, 2013 BY ICE, VIA NOTICE TO APPEAR IN IMMIGRATION REMOVAL PROCEEDINGS, BY ICE.

POINT THREE

[DEFENDANT]'S POST-CONVICTION APPEAL ATTORNEYS OF 2005, AND 2014, WERE INEFFECTIVE, FOR FAILING TO PROVIDE [DEFENDANT] WITH HIS SIXTH AMENDMENT RIGHT TO "EFFECTIVE ASSISTANCE["] OF COUNSEL ON APPEAL, BY FAILING TO OBTAIN SWORN AFFIDAVITS FROM AVAILABLE 1990 PLEA COUNSEL, AND ORIGINAL PUBLIC DEFENDER, FOR LEGAL SUPPORT FOR AN EVIDENTIARY HEARING ON ISSUE OF "AFFIRMATIVE MISADVICE" OF DEPORTATION CONSEQUENCES OF PLEADING GUILTY.

POINT FOUR

THE[] 2005, AND 2014 POST[-]CONVICTION APPEAL JUDGE, MISAPPLIED DISCRETION FOR DENYING [DEFENDANT] AN EVIDENTIARY HEARING, ON GROUNDS OF "AFFIRMATIVE MISADVICE" OF DEPORTATION CONSEQUENCES OF PLEADING GUILTY, BY [DEFENDANT]'S 1990 COUNSEL, AND ERRONEOUSLY RELYING ON 2005 PCR JUDGE['S] . . . MISAPPLICATION OF THE INCORRECT STANDARD FOR "AFFIRMATIVE MISADVICE" OF DEPORTATION CONSEQUENCES OF PLEADING GUILTY IN 1990, WHERE THE "DIRECT VS. COLLATERAL DICHOTOMY["] DID NOT APPLY FOR "AFFIRMATIVE MISADVICE."

POINT FIVE


ALL POST[-]CONVICTION APPEAL JUDGES MISAPPLIED STRICKLAND STANDARD REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL, BY FAILING TO CONSIDER "PROFESSIONAL NORMS" OF ATTORNEY REPRESENTATION IN THE PLEA CONTEXT IN 1990,

WITH REGARD TO AFFIRMATIVE MISADVICE OF
DEPORTATION CONSEQUENCES, AND CREDIBILITY OF
TRIAL RECORD.

Our review of the record convinces us that the trial judge acted properly in denying defendant's fourth petition for PCR. Defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We therefore affirm.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION