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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-2166-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAHIDE LESAINE,

Defendant-Appellant.

Submitted May 16, 2017 – Decided May 31, 2017

Before Judges Koblitz and Summers.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 06-
02-0450.

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

Carolyn A. Murray, Acting Essex County
Prosecutor, attorney for respondent (Barbara
A. Rosenkrans, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant Jahide Lesaine appeals from a November 20, 2015 order denying his petition for post-conviction relief (PCR) after an evidentiary hearing. Although we do not disturb the findings of the PCR judge, we remand for a determination as to whether defendant requested a direct appeal that was not processed by defense counsel.

We set forth the procedure in this matter in our prior unpublished opinion reversing and remanding for a plenary hearing. State v. Lesaine, No. A-3510-10 (App. Div. April 22, 2013). Defendant pled guilty to a series of ten armed robberies and related charges on the same date, and received a twelve-year custodial sentence subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. No direct appeal was filed. In his PCR petition, defendant presented an exculpatory certification of a co-defendant. We directed that a hearing take place to determine whether, as defendant alleged, his lawyer had not investigated his co-defendant's exculpatory evidence nor provided him with discovery. Defendant, his plea attorney and his exculpating co-defendant testified at length in a three-day PCR hearing. The PCR hearing judge found defense counsel credible, while finding defendant and his co-defendant incredible.

Defendant raises the following issues on appeal:

POINT I: THE COURT SHOULD REVERSE THE LAW
DIVISION'S DECISION TO DENY DEFENDANT'S
PETITION FOR POST-CONVICTION RELIEF.

We see no reason to disturb the factual and credibility findings of the PCR hearing judge substantially for the reasons expressed in the judge's comprehensive oral opinion of November 20, 2015.

In our 2013 remand, we specifically opined that an inquiry into the processing of defendant's appeal would be unnecessary given his inability to demonstrate a meritorious issue on appeal. Lesaine, supra, slip. op. at 8-9. After our opinion, the law was clarified to entitle defendants to file a late appeal if a timely request was ignored, regardless of the merits of the appeal. State v. Jones, 446 N.J. Super. 28, 34-35 (App. Div.), certif. denied, ___ N.J. ___ (2016) (relying on Roe v. Flores-Ortega, 528 U.S. 470, 484, 120 S. Ct. 1029, 1038-39, 145 L. Ed. 2d 985, 999-1000 (2000)). We are therefore constrained to remand for a further evidentiary hearing for the PCR judge to determine whether defendant asked for a direct appeal that was not filed. A review of defendant's attorney's file may reveal whether such a request was made. Alternatively, the State may wish to concede the failure to file the requested direct appeal.

If a direct appeal was sought and not provided, the PCR court should enter an order allowing defendant to file an appeal within

forty-five days of the order. See State v. Perkins, ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 5).

Reversed and remanded.

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



CLERK OF THE APPELLATE DIVISION