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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-5276-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FRAN PLLUMBAJ,

Defendant-Appellant.

Submitted March 13, 2017 – Decided March 23, 2017

Before Judges Yannotti and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Morris County, Indictment No.
94-10-1009.

Joseph E. Krakora, Public Defender, attorney
for appellant (Monique Moyse, Designated
Counsel, on the brief).

Fredric M. Knapp, Morris County Prosecutor,
attorney for respondent (Paula Jordao,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Fran Pllumbaj appeals from an order entered by the Law Division on July 1, 2016, denying his first petition for post-conviction relief (PCR). We affirm.

In September 1994, a Morris County grand jury returned Indictment No. 94-10-1009, charging defendant with second-degree conspiracy to commit robbery and other offenses, N.J.S.A. 2C:5-2, N.J.S.A. 2C:15-1, N.J.S.A. 2C:18-1, N.J.S.A. 2C:13-2, N.J.S.A. 2C:30-3 (count one); first-degree robbery, N.J.S.A. 2C:15-1 (count two); second-degree burglary, N.J.S.A. 2C:18-2 (count three); third-degree criminal restraint, N.J.S.A. 2C:13-2 (count four); and third-degree theft, N.J.S.A. 2C:20-3 (count five).

On February 9, 1995, defendant pled guilty to second-degree conspiracy (count one), and first-degree robbery (count two). The State agreed to recommend a fifteen-year custodial sentence and dismissal of the other charges. The State also agreed that, if defendant provided extensive cooperation to law enforcement authorities, it would recommend a concurrent sentence in the second-degree range on any probation violation.

In December 1996, apparently as the result of defendant's continued cooperation, the State and defendant entered into another plea agreement. Defendant then pled guilty to an amended charge of third-degree burglary (count three), and third-degree theft (count five). The State agreed to recommend a sentence of

probation, and dismissal of the other counts of the indictment. On December 23, 1996, the court sentenced defendant to three years of probation, and time previously served in the county jail.

In 2006, defendant allegedly learned that he was subject to deportation because of his criminal convictions. In May 2010, defendant filed a motion to amend the judgment of conviction (JOC) dated December 23, 1996. The court granted the motion and entered an amended JOC dated June 2, 2010, to reflect that defendant had been convicted of third-degree burglary and third-degree theft. Sometime thereafter, plaintiff's immigration attorney allegedly advised him that he remained subject to deportation because burglary and theft are aggravated felonies under federal law.

On July 28, 2015, defendant filed a pro se petition for PCR, in which he stated that he wanted to have his convictions vacated. The court appointed counsel to represent defendant, and thereafter, counsel filed a brief and a certification from defendant in support of the petition.

In his certification, defendant alleged that he had not been effectively represented by counsel. He claimed that he was under duress when he committed the offenses, and that he did not understand the ramifications of pleading guilty because counsel failed to provide him with an interpreter to translate relevant terms into his native language, which is Albanian. He also claimed

that his attorney did not properly advise him of the deportation consequences of his plea. Defendant acknowledged that his petition was untimely, but asserted that his attorney never advised him of his rights to appeal or seek PCR.

The PCR court filed a written opinion in which it concluded that the petition was barred by Rule 3:22-12(a)(1) because defendant had not filed the petition within five years of the date upon which the JOC was entered. The court determined that defendant had not shown excusable neglect for failing to file a timely petition, and that enforcement of the time bar would not result in an injustice.

The PCR court also found that defendant had not presented a prima facie case of ineffective assistance of counsel. The court noted that when defendant entered his plea, his attorney did not have a duty to advise him of the potential deportation consequences of his plea, and there was no evidence that defendant had been misinformed regarding possible deportation. The court determined that, under the circumstances, defendant was not entitled to an evidentiary hearing.

The court entered an order dated July 1, 2016, denying PCR. This appeal followed.

On appeal, defendant raises the following arguments:

POINT ONE

MR. PLLUMBAJ IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL.

POINT TWO

THE PCR COURT ERRONEOUSLY RULED THAT MR. PLLUMBAJ'S PETITION WAS TIME BARRED BECAUSE ANY DELAY IN FILING THE PETITION WAS DUE TO EXCUSABLE NEGLIGENCE AND 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.

We have thoroughly considered defendant's arguments in light of the applicable law and conclude that defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm the order denying PCR substantially for the reasons stated by the PCR court in its written opinion of July 1, 2016. We add the following comments.

Rule 3:22-12(a)(1) provides, in pertinent part, that a PCR petition must be filed within five years after the date upon which the JOC was entered, unless the defendant shows excusable neglect for the delay, and "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." Ibid.

On appeal, defendant argues that he established excusable neglect for failing to file a timely PCR petition because his

attorney allegedly did not inform him about the deportation consequences of his plea within the five years prescribed by the court rule for the filing of a PCR petition. He argues that the PCR court should have conducted an evidentiary hearing on his petition. We disagree.

Here, the PCR court rejected defendant's claim that he did not know he needed to file a PCR petition until he was advised by immigration authorities that he could be deported as a result of his convictions. The court noted that the plea forms that defendant signed stated that, as a result of his plea, he could be subject to deportation proceedings.

The court found that, although defendant claimed he did not understand the proceedings "due to translation issues," there was nothing in the record suggesting that defendant was unable to comprehend the plea form and the proceedings. The court also noted that other documents in the record belie defendant's claim that he could not communicate in English and did not fully understand the proceedings that led to his plea and convictions.

In addition, the PCR court rejected defendant's claim that his failure to file a timely petition should be excused because of allegedly faulty advice provided to him by his attorney regarding the possibility of deportation. The court correctly observed that when defendant entered his plea, his attorney did

not have a duty to advise him of the potential deportation consequences of his plea. See State v. Gaitan, 209 N.J. 339, 361 (2012), cert. denied, __ U.S. __, 133 S. Ct. 1454, 185 L. Ed. 2d 361 (2013). Accord State v. Brewster, 429 N.J. Super. 387, 394-95 (App. Div. 2013).

The PCR court also correctly found that relaxation of the five-year time bar was not warranted in the interests of justice. The court noted that defendant has not received a manifestly improper sentence. Moreover, defendant had not established a prima facie case of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668, 687-94, 104 S. Ct. 2052, 2064-68, 80 L. Ed. 2d 674, 693-98 (1984).

The record supports the court's finding that defendant was properly advised of the potential for deportation, and defendant's counsel never misinformed him of the potential immigration consequences of the plea. Defendant failed to show that his attorney's advice regarding the potential for deportation was in any way deficient.

Therefore, the PCR court correctly determined that defendant had not shown excusable neglect for his failure to file a petition within the time required by Rule 3:22-12(a)(1). Moreover, defendant did not establish that his delay in filing the petition

was due to excusable neglect, or that enforcement of the time bar would result in an injustice.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION