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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-1060-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VERNON SMITH,

Defendant-Appellant.

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Submitted February 13, 2018 – Decided March 16, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey,  
Law Division, Monmouth County, Indictment No.  
05-12-2254.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Lee March Grayson, Designated  
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County  
Prosecutor, attorney for respondent (Lisa  
Sarnoff Gochman, of counsel and on the brief).

PER CURIAM

Defendant Vernon Smith appeals from an August 31, 2016 order denying his petition for post-conviction relief (PCR), without an evidentiary hearing. We affirm because defendant's petition was

time-barred under Rule 3:22-12(a)(1) and is otherwise without merit.

Defendant was indicted for ten crimes related to two separate armed robberies. The counts were severed and he was tried separately on each of the robberies. This appeal relates to one of the robberies. The evidence at trial established that defendant and a companion encountered a group of young men drinking beer in a cemetery. Defendant pulled out a gun and demanded money from one of the young men. The man smacked the gun away, and defendant shot him in the leg. Defendant then ran away.

Several weeks after the shooting, the police interviewed defendant on an unrelated matter and he confessed to shooting the man as part of a robbery. Defendant also gave a written statement. At trial, however, defendant testified and told a different story. He claimed that he thought the man was reaching for something so he took out his gun and shot him.

The jury convicted defendant of first-degree armed robbery, N.J.S.A. 2C:15-1; third-degree aggravated assault with a deadly weapon, N.J.S.A. 2C:12-1(b)(2); third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b). In January 2007, defendant was sentenced. His convictions for aggravated

assaults and possession of a weapon for an unlawful purpose were merged into the conviction for first-degree armed robbery. Defendant was then sentenced to sixteen years in prison subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Defendant also was sentenced to a concurrent five years in prison on the conviction for unlawful possession of a weapon.

On direct appeal, we affirmed defendant's convictions and sentence. State v. Smith, No. A-3982-06 (App. Div. Mar. 26, 2009).

On January 30, 2015, defendant, who was self-represented, filed a petition for PCR. He was assigned counsel, and counsel filed a supplemental brief. The PCR judge, Judge Joseph W. Oxley, heard oral argument, and on August 31, 2016, he entered an order and sixteen-page written opinion denying defendant's petition.

In his opinion, Judge Oxley summarized the well-established law governing PCR petitions. He then analyzed each of defendant's arguments. He found that defendant's petition was time-barred under Rule 3:22-12(a)(1), and that defendant had not shown excusable neglect for the delay in filing the petition. In that regard, Judge Oxley pointed out that defendant contended that he had no knowledge of the five-year time limit for filing a PCR because he had not been informed of that limitation by his counsel or the sentencing court. Judge Oxley, however, cited to the established principle that ignorance of the law does not establish

excusable neglect. See State v. Murray, 162 N.J. 240, 246 (2000); State v. Merola, 365 N.J. Super. 203, 218 (App. Div. 2002). Judge Oxley also found that enforcement of the procedural time bar would not result in a fundamental injustice. R. 3:22-4(a)(2); State v. Reevey, 417 N.J. Super. 134, 153 (App. Div. 2010), certif. denied, 206 N.J. 64 (2011).

Judge Oxley then evaluated defendant's claims of ineffective assistance of counsel on the merits. He found that those claims did not satisfy either prong of the Strickland test governing claims of ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 687 (1984); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the two-part Strickland test). Finally, Judge Oxley found that defendant had failed to establish a prima facie claim in support of his allegations of ineffective assistance of counsel and, therefore, he was not entitled to an evidentiary hearing. State v. Bringham, 401 N.J. Super. 421, 436-37 (App. Div. 2008).

On this appeal, defendant presents three arguments for our consideration:

POINT I – THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED AND THE CASE REMANDED FOR A FULL EVIDENTIARY HEARING BECAUSE THE DEFENDANT MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE STRICKLAND/FRITZ TEST.

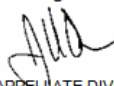
POINT II — THE PCR COURT'S RULING THAT THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WAS PROCEDURALLY BARRED BY THE FIVE-YEAR TIME BAR OF R. 3:22-12 WAS CONTRARY TO THE CRITERIA CONTROLLING THE EXCUSABLE NEGLECT EXCEPTION.

POINT III — THE PCR COURT ERRED BY NOT GRANTING AN EVIDENTIARY HEARING.

Having reviewed the record in light of defendant's arguments and the law, we conclude that defendant's contentions are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons explained by Judge Oxley in his well-reasoned opinion.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION