

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2007-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL T. HUDSON,

Defendant-Appellant.

Submitted January 24, 2018 – Decided February 15, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Accusation No. 06-
10-1650.

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

Joseph D. Coronato, Ocean County Prosecutor,
attorney for respondent (Samuel Marzarella,
Chief Appellate Attorney, of counsel; Roberta
DiBiase, Supervising Assistant Prosecutor, on
the brief).

PER CURIAM

Defendant Michael Hudson appeals from an October 7, 2016
order denying his petition for post-conviction relief without an

evidentiary hearing. We affirm because defendant's petition was untimely filed.

On October 23, 2006, defendant pled guilty to an accusation charging him with second-degree sexual assault, N.J.S.A. 2C:14-2(c)(4), in exchange for a recommendation that he be sentenced as a third-degree offender to a four-year flat prison term. Defendant signed or initialed each page of the plea forms, including a form entitled "Additional Questions for Certain Sexual Offenses," which confirmed he understood he would be subjected to specified registration, address verification, parole supervision for life (PSL), and internet posting requirements of Megan's Law, N.J.S.A. 2C:7-2.

At the plea hearing, defendant testified he could read, write, and understand English. He indicated he understood the nature of the second-degree charge, which arose from consensual sexual intercourse with a younger girl. He stated he understood his sentencing exposure and the recommended sentence. He testified he was satisfied with his trial counsel's services, had enough time to talk to counsel, was entering the plea freely and voluntarily, without force or threats being made against him, and was waiving his right to an indictment and jury trial and the rights associated with same. Defendant further testified he understood he would be required to undergo a psychological

evaluation to determine whether his conduct was repetitive and compulsive.

Defendant testified he understood he would be required to register under Megan's Law and would be placed on PSL, his attorney had explained it to him, he had answered all the questions on the plea forms with regard to Megan's Law and PSL, and he had no questions at all. He also confirmed he had no questions about the plea forms and had no reservations about entering into the plea. Defendant then gave a factual basis for his plea, admitting to having sexual intercourse with the female victim who was between thirteen and sixteen years old while defendant was at least four years older than her. He again confirmed he had no questions.

In addition to finding defendant entered into the plea freely and voluntarily, the judge found defendant understood the parameters of the plea bargain, understood he had pled guilty to a Megan's Law offense, understood he could be charged with an offense punishable by up to eighteen months incarceration if he failed to register, and understood he was subject to PSL and all other aspects of Megan's Law.

On March 17, 2007, defendant was sentenced to a four-year flat prison term, subject to Megan's Law and PSL, in accordance with the recommendation. Before imposing the sentence, the judge stated defendant was "going to be under parole supervision for

life." After imposing the sentence, the judge told defendant: "You are also subject to all of the terms of Megan's Law requiring registration." Defendant's reply indicated he was aware of that requirement and understood he could seek relief from that requirement after ten years. The judge reiterated: "And you're also subject to parole supervision for life." Defendant responded: "Understood." The judge further informed defendant:

My understanding is also that, as far as the Megan's Law requirements, that will include registration with local law with local law enforcement, address notification, and notification of release from prison. And, the parole supervision for life now includes that your personal characteristics will be posted on the internet according to the information I have.

The judge reminded defendant: "But remember, your parole supervision is lifetime, okay?" The judge then stated this was another reason she was accepting the plea bargain, "because he will be dealing with this for the rest of his life."

Defendant did not move to withdraw his plea either before or after sentencing. Nor did he file a direct appeal from his conviction or sentence.

Defendant was released from prison on April 17, 2009. He subsequently committed several PSL violations. On August 18, 2009, defendant was sentenced to a one-year prison term for violating PSL and was released on August 17, 2010. On April 16,

2012, he was sentenced to a fourteen-month prison term for a second violation of PSL and was released on October 15, 2013. On November 26, 2013, defendant was sentenced to a sixteen-month prison term for a third violation of PSL and was released on March 25, 2013. On May 6, 2015, defendant was sentenced to an eighteen-month prison term for a fourth violation of PSL.

Defendant's petition arises from his March 16, 2007 conviction for second-degree sexual assault. Defendant filed his petition on September 16, 2015, more than eight years after he was convicted, and was assigned PCR counsel. In his petition, defendant claimed ineffective assistance of counsel, alleging his attorney failed to advise him of the specific requirements of PSL and, therefore, his sentence was illegal. He also argued his petition was not time-barred because he only became aware of the procedural requirements for filing a petition after he learned of the ramifications of PSL.

Judge James M. Blaney issued a comprehensive fourteen-page written decision denying defendant's petition. Judge Blaney held the petition was time-barred by Rule 3:22-12(a), finding defendant had not established excusable neglect. The judge concluded that "[t]he fact that [p]etitioner did not know the law regarding time to file is not an exceptional circumstance compelling enough to constitute excusable neglect to allow [p]etitioner to file after

the five-year period; therefore, [p]etitioner's claim is time-barred pursuant to [Rule] 3:22-12(a)." The judge further concluded there would be substantial prejudice to the State if defendant were granted PCR. The judge also noted defendant did not assert a colorable claim of innocence. Addressing the merits of the petition, the judge determined defendant's trial counsel "was not ineffective because the [c]ourt finds that [p]etitioner was informed of the consequences of PSL, and would not have proceeded to trial anyway." This appeal followed.

Defendant presents the following argument for our consideration:

POINT ONE

MR. HUDSON 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. HUDSON'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.

POINT THREE

MR. HUDSON INCORPORATES THE OTHER ARGUMENTS RAISED BELOW THAT WERE RULED ON BY THE PCR COURT, ASKING THIS COURT TO FIND THAT THE PCR COURT ERRED AND THAT HE IS ENTITLED TO RELIEF.

Having reviewed the record on appeal, we affirm substantially for the reasons expressed by Judge Blaney in his comprehensive and well-reasoned written decision. We add the following comments.

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-part Strickland test by demonstrating "counsel's performance was deficient," that is, "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed [to] the defendant by the Sixth Amendment," and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); accord State v. Fritz, 105 N.J. 42, 58 (1987).

Merely raising a claim for PCR does not entitle a defendant to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). A court reviewing a PCR petition based on ineffective assistance of counsel has the discretion to grant an evidentiary hearing only if a defendant establishes a prima facie showing. State v. Preciose, 129 N.J. 451, 462 (1992). The court should only conduct a hearing if there are disputed issues as to material facts regarding entitlement to PCR that cannot be resolved based on the existing record supported by "specific facts

and evidence supporting his allegations." State v. Porter, 216 N.J. 343, 355 (2013).

In order to establish a prima facie case, a defendant's petition must satisfy the time limits for filing a claim. See State v. Echols, 199 N.J. 344, 357 (2009). Rule 3:22-12(a)(1) requires a defendant's first petition for PCR be filed no more than five years after the entry of the judgment of conviction. However, Rule 3:22-12(a)(1)(A) allows a court to relax the five-year time bar if the petition alleges facts showing the delay was due to defendant's excusable neglect and there is a reasonable possibility that, if defendant's factual assertions were found to be true, enforcement of the time-bar would result in a fundamental injustice.

"The concept of excusable neglect encompasses more than simply providing a plausible explanation for a failure to file a timely PCR petition." State v. Norman, 405 N.J. Super. 149, 159 (App. Div. 2009). "[A] court should relax Rule 3:22-12's bar only under exceptional circumstances." State v. Mitchell, 126 N.J. 565, 580 (1992). "If the petitioner does not allege sufficient facts, the Rule bars the claim." Id. at 576. A defendant's unfamiliarity or lack of sophistication in the law does not satisfy the exceptional circumstances required by Mitchell. See State v. Murray, 162 N.J. 240, 246 (2000). Thus, neither misunderstanding


the meaning of Rule 3:22-12, State v. Dugan, 289 N.J. Super. 15, 22 (App. Div. 1996), nor ignorance of the law and rules of court, State v. Merola, 365 N.J. Super. 203, 218 (Law Div. 2002), constitutes excusable neglect.

Here, the judgment of conviction was entered on April 17, 2009, and defendant's first and only PCR was filed over eight years later on September 16, 2015. The record amply supports Judge Blaney's conclusion that defendant has not demonstrated excusable neglect for not raising his claim within five years of his conviction.

The time-bar imposed by Rule 3:22-12(a)(1) does not apply to claims of illegality of sentence. Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 3:22-12 (2018). Relief from an illegal sentence is by motion pursuant to Rule 3:21-10(b)(5), which may be filed "at any time." Defendant argues his sentence is illegal because PSL violates the double jeopardy clause, imposes conditions that are unconstitutionally vague, and violates the separation of powers doctrine. These arguments 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