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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-2039-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSEPH DAVIS, a/k/a ISAAC
BARLOW, ISSAIC C. BARLOW,
COREY PERSON, and CHIN,

Defendant-Appellant.

Submitted April 17, 2018 – Decided May 24, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
95-07-0790.

Joseph E. Krakora, Public Defender, attorney
for appellant (Jamie P. Clouser, Designated
Counsel, on the brief).

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Laura C. Sunyak,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant appeals from a December 6, 2016 Law Division order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant argues his plea counsel rendered ineffective assistance of counsel by failing to explain to him the elements of the charges against him, thereby pressuring him to accept guilty pleas. Defendant further argues his plea counsel provided ineffective assistance in failing to file a suppression motion. Finally, defendant argues that Rule 3:22-12 should not apply to bar his claim as untimely because he sufficiently established excusable neglect. We affirm.

I

On December 9, 1993, defendant pled guilty to an accusation charging him with third-degree possession of a controlled dangerous substance (CDS) with intent to distribute. In exchange for defendant's guilty plea, the State recommended a sentence of probation and imposition of a fine. On May 10, 1994, the trial judge sentenced defendant to a three-year probationary term, 100 hours of community service, and forfeiture of \$310.

In July 1995, a grand jury returned an indictment charging defendant with: (1) third-degree possession of CDS; (2) second-degree possession of CDS with intent to distribute; and (3) third-degree possession of CDS with intent to distribute on or near school property. In December 1995, a grand jury returned an

indictment charging defendant with: (1) third-degree possession of CDS; (2) third-degree possession of CDS with intent to distribute; and (3) third-degree possession of CDS with intent to distribute on or near school property.

On February 13, 1996, defendant pled guilty to the July and December charges for third-degree possession of CDS with intent to distribute on or near school property. In exchange for his plea, the State recommended concurrent four year prison terms with twenty-one months minimum parole ineligibility. On May 2, 1997, the trial judge sentenced defendant in accordance with his plea agreement as well as for his violation of parole. Defendant subsequently appealed his sentence, and we affirmed.

In January 2008, a federal court sentenced defendant following his conviction of numerous non-violent CDS offenses. Because defendant's prior convictions constituted predicate offenses, the court sentenced him to life in prison without possibility of parole.

On April 13, 2014, defendant filed the PCR petition under review – seventeen years after his conviction – asserting ineffective assistance of plea counsel and excusable neglect. On December 6, 2016, following oral argument, the PCR judge rendered an oral decision denying the petition on procedural and substantive grounds; to wit: the judge found defendant's petition procedurally

time barred under Rule 3:22-12, and further found defendant failed to present a prima facie claim of ineffective assistance of counsel. This appeal followed.

II

Defendant raises the following arguments on appeal:

POINT I

THE PCR COURT ERRED BY NOT FINDING THAT PETITIONER HAD ALLEGED DEFICIENT PLEA COUNSEL PERFORMANCE OR AN INVOLUNTARY PLEA[.]

A. PLEA COUNSELS FOR PETITIONER NEVER EXPLAINED THE BASIC NATURE OF THE CHARGES HE WAS FACING – NOR DID THE COURT OR THE CHARGING PAPERWORK[.]

B. PETITIONER'S CLAIM OF INNOCENCE IS SUPPORTED BY PLAUSIBLE FACTS AND THE DECEMBER 3, 1993 PLEA HEARING TRANSCRIPT[.]

C. THE DEFECTIVE FACTUAL BASIS ELICITED FROM PETITIONER AT HIS PLEA ALLOCUTION BOLSTERS HIS ARGUMENT THAT PLEA COUNSELS WERE INEFFECTIVE[.]

POINT II

THE PCR COURT ERRED TO THE EXTENT IT FOUND THAT PETITIONER HAD NOT MADE A SHOWING OF PREJUDICE UNDER STRICKLAND V. WASHINGTON[.]¹

POINT III

PETITIONER'S PLEA ATTORNEYS WERE ADDITIONALLY INEFFECTIVE FOR NOT DISCUSSING THE STRENGTHS AND WEAKNESSES OF HIS CASE AND FOR NOT FILING

¹ 466 U.S. 668 (1984).

A SUPPRESSION MOTION. THIS IS EVIDENCED BY
THE PLEA COLLOQUY FOR THE FIRST CHARGE[.]

POINT IV

IT WAS ERRONEOUS FOR THE PCR COURT TO DISMISS
THE PETITION AS TIME-BARRED IN THE ABSENCE OF
AN EVIDENTIARY HEARING THAT WOULD DEMONSTRATE
THE INJUSTICE BEING SUFFERED BY PETITIONER[.]

After carefully considering the record and the briefs, we conclude defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by the PCR judge in her oral opinion. We add the following comments.

A defendant must bring a PCR petition within five years of judgment or sentence, unless the petition alleges that the delay was due to defendant's excusable neglect and there is a "reasonable probability" that a "fundamental injustice" would result from the time bar if the assertions within the petition were true. R. 3:22-12(a)(1). Rule 1:1-2(a) also permits the court to disregard the time bar when defendant demonstrates an injustice by a preponderance of the credible evidence. State v. Mitchell, 126 N.J. 565, 579 (1992). However, the Rule 3:22-12 time bar should be relaxed "only under exceptional circumstances," and the court should take into account "the extent and cause of the delay, the prejudice to the State, and the importance of the petitioner's claim" when making this determination. State v. Goodwin, 173 N.J.

583, 594 (2002) (citation and internal quotation marks omitted). Additionally, a defendant "is generally barred from presenting a claim on PCR that could have been raised at trial or on direct appeal, [Rule] 3:22-4(a), or that has been previously litigated, [Rule] 3:22-5." State v. Nash, 212 N.J. 518, 546 (2013) (footnotes omitted).

Here, the PCR judge correctly found defendant's PCR petition was procedurally and substantively barred. The trial court imposed defendant's sentence in 1996, but defendant did not file his PCR petition until April 2014 – seventeen years after his sentencing. The PCR judge also correctly noted defendant failed to meet his burden in establishing excusable neglect.

However, even if not procedurally barred, defendant failed to establish a prima facie case of ineffective assistance of counsel. In order to establish an ineffective assistance claim, a defendant is required to demonstrate counsel's performance was deficient, and the deficiency prejudiced his right to a fair trial. Strickland, 466 U.S. at 687; State v. Fritz, 105 N.J. 42, 58 (1987).

The record does not support defendant's contention that his plea counsel were ineffective and violated his constitutional rights. Defendant argues if he understood the elements of "intent to distribute," he would never have pled guilty, but rather would

have mounted a defense and proceeded to trial. However, as the PCR judge noted, defendant provided adequate factual bases for his pleas and demonstrated he understood the nature of the charges against him. Therefore, plea counsel did not act unreasonably in allowing defendant to accept the then-favorable plea offers.

Because the PCR judge correctly found defendant's petition was procedurally and substantively barred, and defendant is unable to demonstrate a reasonable likelihood of meeting either Strickland prong, we conclude PCR was properly denied without an evidentiary hearing.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION