

RECORD IMPOUNDED

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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-2100-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHANON E. GOODEN,

Defendant-Appellant.

Submitted January 23, 2018 – Decided March 1, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Accusation No.
07-12-3920.

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

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Linda A. Shashoua,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Shanon E. Gooden appeals from a December 1, 2016
order denying his petition for post-conviction relief (PCR)

without an evidentiary hearing. We affirm because the petition was time-barred.

I.

In August 2007, defendant was charged with two counts of second-degree sexual assault, N.J.S.A. 2C:14-2(b), and two counts of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). Those charges were based on allegations that defendant had purposely exposed his penis to an eleven-year-old boy and a ten-year-old girl.

In December 2007, defendant pled guilty to one count of third-degree endangering the welfare of a child. Under a negotiated plea agreement, the State agreed to recommend that defendant be sentenced to four years in state prison and all other charges be dismissed.

At his plea hearing, defendant testified that he reviewed his plea forms, which included forms explaining that he would be subject to parole supervision for life, and that following his sentence, he could be civilly committed under the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. Defendant also acknowledged that he reviewed the plea forms with his counsel, that he was satisfied with his counsel's services, that he understood the charge to which he was pleading guilty, and that his plea was being given voluntarily. Defendant then testified

that he purposely exposed his penis to two children. The trial court found that defendant's plea was given knowingly and voluntarily and accepted the plea.

On March 28, 2008, defendant was sentenced in accordance with the plea agreement to four years in state prison. He was also sentenced to restrictions under Megan's Law, N.J.S.A. 2C:7-1 to -11. At his sentencing, defendant was advised of his right to appeal. Defendant did not directly appeal his conviction or sentence.

On February 26, 2016, defendant, representing himself, filed a petition for PCR. He was assigned counsel and the PCR judge, Judge Michele M. Fox, heard oral argument.

On December 1, 2016, Judge Fox entered an order denying the petition and issued a written opinion explaining the ruling. Judge Fox first found that defendant's petition was time-barred under Rule 3:22-12. In that regard, Judge Fox noted that defendant was sentenced in March 2008, but waited over eight years before filing his PCR petition. Judge Fox also found that there was no excusable neglect in defendant waiting beyond the five-year time limitation.

Judge Fox also analyzed defendant's allegations of ineffective assistance of counsel. Defendant contended that his trial counsel had been ineffective in failing to provide him with discovery, failing to file a motion to suppress his statement,

failing to file a motion for a Michaels hearing concerning the reliability of the victims' statements,¹ and failing to properly advise him about parole supervision for life and civil commitments under the SVPA. Judge Fox analyzed each of these allegations and found that none of them presented a prima facie showing of ineffective assistance of counsel. Judge Fox also found that defendant was not entitled to an evidentiary hearing.

II.

On this appeal, defendant makes two arguments which he articulates as follows:

POINT ONE — THE TRIAL COURT ERRED IN CONCLUDING THAT DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WAS TIME BARRED BECAUSE DEFENDANT'S FAILURE TO FILE HIS PETITION WITHIN FIVE YEARS OF HIS CONVICTION WAS DUE TO EXCUSABLE NEGLIGENCE AND ENFORCEMENT OF THE TIME BAR WOULD RESULT IN A FUNDAMENTAL INJUSTICE

POINT TWO — DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL

¹ In State v. Michaels, 136 N.J. 299 (1994), our Supreme Court held that if a defendant establishes sufficient evidence that a child witness is unreliable, or that investigators used coercive or suggestive tactics when interviewing the child witness, the court should hold a hearing and the State would need to prove the reliability of the child witness' statement by clear and convincing evidence. Id. at 303.

Having reviewed defendant's arguments in light of the record, we affirm substantially for the reasons explained by Judge Fox in her well-reasoned and comprehensive thirty-five-page written opinion. Judge Fox's finding that defendant made no showing of excusable neglect is supported by substantial credible evidence in the record. Just as importantly, Judge Fox's finding that defendant made no showing that enforcement of the time bar would result in a fundamental injustice is also supported by substantial credible evidence in the record. See R. 3:22-12(a)(1)(A); State v. Goodwin, 173 N.J. 583, 594 (2002); State v. Norman, 405 N.J. Super. 149, 159 (App. Div. 2009).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION