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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-3817-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD J. FOULKS, JR., a/k/a
RICHARD JOHN FOULKS,

Defendant-Appellant.

Submitted December 13, 2017 – Decided February 5, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Accusation No.
08-12-3827.

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

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Maura Murphy
Sullivan, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Richard Foulks appeals from the denial of his post-conviction relief (PCR) petition. Defendant contends ineffective

assistance of counsel, asserting he was not advised that he would be subject to parole supervision for life (PSL) as a condition of his guilty plea. He states that he would not have pled guilty if he was aware of that condition. Because we find that the PCR petition was not filed within the required timeframe under Rule 3:22-12, we affirm.

Defendant was charged in 2008 with third-degree endangering the welfare of a child (non-parent), contrary to N.J.S.A. 2C:24-4(a). The eleven-year-old victim and defendant were both living as transients in a motel. At the plea hearing, defendant was advised by the judge that the maximum sentence was a five-year prison term. The prosecutor and the judge also informed defendant that the nature of the offense subjected him to the requirements of Megan's Law.¹

Defendant pled guilty to the charge and was sentenced to four years probation, conditioned upon 364 days in the county jail. The Judgment of Conviction (JOC), entered April 3, 2009, stated: "[D]efendant shall comply with all registration requirements of Megan's law and is subject to Parole Supervision for life."

¹ The transcript of the plea colloquy states that the audio "cut out entirely" for a 42-second portion of the judge's instruction when he referenced Megan's Law. The transcript picked up again with the judge stating "no contact with the victim, B.C. All of the Megan's Law requirements apply; I just read them to you."

After completing his jail sentence in May 2009, defendant signed a form entitled "General Conditions" of "Parole Supervision for Life," in which he acknowledged that his sentence included a special sentence of PSL. In January 2013, defendant violated several conditions of PSL and he was ordered to serve a twelve-month prison term. He violated the conditions of PSL a second time in August 2014, for which he received a fourteen-month prison term.

Defendant's PCR petition was stamped "received" by the trial court on November 5, 2014, and filed on January 14, 2015. At the evidentiary hearing, defendant testified that he was never advised by trial counsel either prior to accepting the plea offer, during the plea hearing, or at sentencing that he would be subject to PSL. Although he acknowledged signing the PSL form in May 2009, defendant advised that he did not read it. He testified as to the details of his PSL violations and subsequent prison terms but continued to deny that he was ever apprised of PSL. Even though defendant was represented by counsel at the second hearing, who argued that his use of the computer was not a PSL violation, defendant said he never told the attorney that he had not agreed to PSL.

Defendant learned of the opportunity to present a PCR petition from another inmate in September 2014, while serving his prison

term on the second PSL violation. That inmate testified at the evidentiary hearing, telling the judge that he helped defendant fill out his PCR petition. The inmate said that the prison law library has PCR packets it provides to inmates upon request. He was able to obtain those forms and fill them out for defendant within several weeks of making the request.

In a written decision of March 22, 2016, the PCR judge denied defendant's petition, finding that it was untimely under Rule 3:22-12 and that defendant had not shown excusable neglect for the delay. The judge noted that the JOC had apprised defendant that he was subject to PSL, he received an order terminating him from probation that stated he was sentenced to PSL, and he signed the PSL form when he met with his probation officer in May 2009. The judge stated: "It is the court's conclusion that as of the date of the sentence as set forth in the JOC (April 3, 2009), defendant was aware of the PSL requirement."

The following issues are presented in this appeal:

POINT I: THE PCR COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF AS THE DEFENDANT MET HIS BURDEN OF PROOF AT THE EVIDENTIARY HEARING THAT HE WAS NEVER INFORMED BY HIS TRIAL ATTORNEYS NOR THE PLEA AND SENTENCING JUDGES THAT A GUILTY PLEA WOULD SUBJECT HIM TO PAROLE SUPERVISION FOR LIFE AND HAD THE DEFENDANT KNOWN ABOUT THE MANDATORY PROVISION, HE WOULD NOT HAVE PLED GUILTY.

POINT II: THE PCR COURT ERRED IN DETERMINING THAT THE DEFENDANT FAILED TO SHOW EXCEPTIONAL CIRCUMSTANCES FOR THE DELAY IN FILING THE POST-CONVICTION MOTION WITHIN THE FIVE YEAR TIMEFRAME AND THE STATE WOULD [NOT] BE PREJUDICED IF THE PCR APPLICATION WAS GRANTED.

Rule 3:22-12(a)(1) states a defendant's first petition for PCR shall be filed no more than five years after the entry of the judgment of conviction. However, a court may relax the five-year time bar if the petition alleges facts showing the filing was untimely due to "defendant's excusable neglect and there is a reasonable probability that if defendant's factual assertions were found to be true enforcement of the time bar would result in a fundamental injustice." R. 3:22-12(a)(1)(A).

Here, the JOC was entered on April 3, 2009, and defendant's first and only petition for PCR was filed on January 14, 2015, more than five years and nine months after his conviction.² Therefore, his petition is procedurally barred as untimely unless the delay was due to defendant's excusable neglect and there is a reasonable probability enforcement of the time-bar would result in a fundamental injustice. Ibid.

"The concept of excusable neglect encompasses more than simply providing a plausible explanation for a failure to file a

² The PCR was still untimely even using the court-stamped "received" date.

timely PCR petition." State v. Norman, 405 N.J. Super. 149, 159 (App. Div. 2009). If the petitioner fails to allege sufficient facts, this rule bars the claim. State v. Mitchell, 126 N.J. 565, 576 (1992). A defendant's lack of sophistication in the law does not relax the time-bar. State v. Murray, 162 N.J. 240, 246 (2000).

Defendant fails to provide any facts to show his failure to timely file his petition was due to excusable neglect. He argues only an ignorance of the law. That assertion alone is not a sufficient basis upon which to find excusable neglect and relax the timeframe under the rule.

Defendant argues that he would not have entered a guilty plea if he was informed by counsel that he would be subject to PSL. We are not persuaded by this argument. Defendant waived his Miranda rights and admitted to police that he had touched the child in an inappropriate manner. He faced a five-year prison term if he were convicted at a trial. Because of jail credits, defendant only served several weeks in jail prior to his release on probation.

As the trial judge stated, it was not credible that defendant was unaware of the terms of the sentence. Defendant was advised he was subject to Megan's Law at the time of the plea hearing. The judge read the requirements of Megan's Law at the sentencing. The JOC stated that defendant was subject to PSL, the following month he signed the PSL form, and he served two custodial terms


for violations of PSL. Even if defendant was not apprised of the PSL requirement by counsel prior to the plea hearing, the evidence presented at the PCR evidentiary hearing supports the PCR judge's finding that "defendant was aware of the PSL requirement" as of the date of his JOC.

Subsequent to the entry of the JOC, defendant signed a PSL form that delineated the specific conditions of the sentence. After he violated the terms of PSL on two occasions, he was returned to prison to serve custodial sentences. At no time during any of these proceedings did defendant question the PSL mandate. There is no credible evidence that defendant was unaware of the PSL component of his sentence or its consequences.

We are satisfied that the judge's finding that the defendant's PCR petition was untimely is supported by the credible evidence in the record.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION