

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-1380-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LOUIS WATLEY,

Defendant-Appellant.

Argued May 9, 2023 – Decided August 10, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Indictment No. 98-01-0099.

Louis Watley, appellant, argued the cause pro se.

Milton S. Leibowitz, Assistant Prosecutor, argued the
cause for respondent (William A. Daniel, Union County
Prosecutor, attorney; Milton S. Leibowitz, of counsel
and on the brief).

PER CURIAM

Defendant Louis Watley appeals from a December 15, 2021 Law Division order denying his third petition for post-conviction relief (PCR) without an evidentiary hearing. Judge Robert Kirsch issued a thorough and thoughtful written opinion ruling defendant's latest petition is procedurally barred by Rule 3:22-4(b) and Rule 3:22-5. After carefully reviewing the extensive record in light of the governing legal principles, we affirm.

I.

We recount the lengthy procedural history in detail to demonstrate defendant's contentions have been previously litigated in both direct and collateral appeals.

On October 6, 2000, a jury convicted defendant of fourth-degree criminal sexual contact, N.J.S.A. 2C: 14-3(b); second-degree kidnapping, N.J.S.A. 13-1(b); first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(3); and third-degree terroristic threats, N.J.S.A. 2C:12-3(b). The court sentenced defendant to an aggregate eighteen-year term of imprisonment.

Defendant filed a direct appeal, arguing the following:¹

POINT I NEW TRIAL IS IN ORDER BASED ON
SUPPRESSION OF EVIDENCE BY THE
STATE FAVORABLE TO DEFENDANT

¹ We reproduce defendant's appellate and collateral arguments as formatted in this court's prior opinions to avoid unnecessary alterations.

WHICH DENIED HIM A FAIR TRIAL
AND VIOLATES DUE PROCESS.

POINT II DOCTRINE OF FUNDAMENTAL
FAIRNESS CAME INTO PLAY WHEN
LAW ENFORCEMENT OFFICIAL
PERVERTED THE JUDICIAL PROCESS
AND TURNED IT INTO A
PROSECUTORIAL TOOL.

POINT III THE PROSECUTOR'S REFUSAL TO
MEET IT[S BURDEN OF
PRODUCTION, BEFORE, DURING
AND AFTER TRIAL, VIOLATED DUE
PROCESS AND DENIED THE
DEFENDANT A FAIR TRIAL.

POINT IV GRAND JURY INDICTMENT SHOULD
NOT STAND AS PROSECUTOR
WITHHELD EVIDENCE, SOLICITED
FALSE TESTIMONY AND TOLD HALF-
TRUTHS, THEREBY DETRACTING
FROM THE FAIRNESS OF THE
PROCEEDINGS.

POINT V THE PROSECUTOR'S CONDUCT
DURING SUMMATION AND TRIAL
WAS EGREGIOUS AND
CONSTITUTED PROSECUTORIAL
MISCONDUCT.

POINT VI VIOLATION OF EVIDENCE RULES
AND PROSECUTOR'S MISCONDUCT
WITH THE ADMISSION OF
PSYCHOLOGIST GENERIC
TESTIMONY DENIED DEFENDANT A
RIGHT TO A FAIR TRIAL.

POINT VII TRIAL COURT ERRED IN DENYING
DEFENDANT THE RIGHT TO SELF-

REPRESENTATION. THIS ACTION VIOLATED DEFENDANT'S SIXTH AMENDMENT RIGHT UNDER THE CONSTITUTION.

POINT VIII THE SENTENCE IMPOSED WAS MANIFESTLY EXCESSIVE.

POINT XI TRIAL COUNSEL'S FAILURE TO PROVIDE THE DEFENDANT WITH ACTUAL ASSISTANCE OF COUNSEL MEANT THAT HIS CONSTITUTIONAL GUARANTEE WAS VIOLATED.

- (A) TRIAL COUNSEL'S FAILURE TO FILE MOTION FOR JUDGMENT OF ACQUITTAL BASED UPON THE STATE'S PSYCHOLOGIST'S FACT TESTIMONY WHICH WAS NOT PRESENTED TO THE JURY VIOLATED DEFENDANT'S SIXTH AMENDMENT CONSTITUTIONAL RIGHT.
- (B) TRIAL COUNSEL FAILED TO REQUEST THE ADMISSION OF DR. BAKER'S TESTIMONY WHICH WAS NOT CONSIDERED BY THE JURY.
- (C) TRIAL COUNSEL FAILED TO OBJECT TO THE PROSECUTOR[']S IMPROPER SUGGESTION DURING SUMMATION THAT DEFENDANT WIPED AWAY FINGER PRINTS FROM THE VEHICLE.
- (D) TRIAL COUNSEL FAILED TO OBJECT AT SUMMATION TO THE MISSTATED FACTS WHICH THE PROSECUTOR ALLEGED THAT THE VICTIM WAS PENETRATED TWICE.

(E) TRIAL COUNSEL'S AND STATE'S
COLL[A]BORATION DURING TRIAL
CREATED A CONDITION WHICH
RESULTED IN CONFLICT OF
INTEREST THAT VIOLATED
DEFENDANT'S RIGHT TO TRIAL.

[State v. Watley (Watley I), No. A-4295-00 (App. Div.
Apr. 23, 2004) (slip op. at 3–4) (first alteration in
original).]

On direct appeal, we affirmed defendant's conviction and sentence.
Watley I, slip op. at 5, 12. The Supreme Court denied defendant's petition for
certification. State v. Watley, 180 N.J. 458 (2004).

In November 2004, defendant filed his first PCR petition, pro se. After a
hearing, in which defendant presented his arguments pro se, the trial judge
denied defendant's petition for PCR. Defendant appealed that decision, arguing:

POINT I.

PCR COURT ERRED IN DENYING DEFENDANT
RELIEF OR AT LEAST [A] HEARING WHERE IT
WAS CLEAR STATE OBSTRUCTED JUSTICE AND
DELIBERATELY MISREPRESENTED THE TRUTH
AT TRIAL CONCERNING BLOOD EVIDENCE AS
WELL AS INEFFECTIVE ASSISTANCE OF
COUNSEL CONNECTED WITH THE SAME.

A. PROSECUTORIAL MISCONDUCT
SURROUNDING BLOOD EVIDENCE.

B. INEFFECTIVE ASSISTANCE OF COUNSEL
SURROUNDING BLOOD EVIDENCE.

C. MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED SEROLOGIC EVIDENCE.

POINT II.

PCR COURT ERRED IN DENYING DEFENDANT RELIEF OR AT LEAST A HEARING WHERE IT WAS CLEAR STATE MADE IMPROPER COMMENTS AT TRIAL AND SUMMATION WHICH WERE DESIGNED TO DESTROY THE CREDIBILITY AND TESTIMONY OF DEFENSE EXPERT, DR. BODNER, AS WELL AS INEFFECTIVE ASSISTANCE OF COUNSEL IN CONNECTION WITH THE SAME.

A. COMMENT 1: CLAIM BASED ON PROSECUTORIAL COMMENT AT SUMMATION CONCERNING PAID EXPERT.

B. COMMENT 2: CLAIM OF PROSECUTORIAL ERROR AT TRIAL AND SUMMATION CONCERNING FABRICATED TESTIMONY.

C. COMMENT 3: CLAIM OF PROSECUTORIAL ERROR AT SUMMATION CONCERNING CONTRIVED EXPERT TESTIMONY.

D. INEFFECTIVE ASSISTANCE OF COUNSEL AND IMPROPER COMMENT.

POINT III.

THE PCR COURT ERRED IN FAILING TO GRANT DEFENDANT RELIEF OR AT MINIMUM A HEARING WHERE BRADY^[2] MATERIAL EVIDENCE PRESENTED TO COURT ESTABLISHED THAT DEFENDANT WAS

² Brady v. Maryland, 373 U.S. 83 (1963).

UNFAIRLY CONVICTED IN VIOLATION OF HIS FEDERAL AND STATE CONSTITUTION RIGHT TO DUE PROCESS AND FAIR TRIAL AS WELL AS INEFFECTIVE ASSISTANCE OF COUNSEL CONNECTED WITH THE SAME.

A. BRADY VIOLATION ONE – INCONSISTENT STATEMENT

B. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM CONNECTED WITH INCONSISTEN[T] STATEMENTS OF [THE VICTIM]

C. BRADY VIOLATION TWO – SELF INFLICTED INJURIES

D. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM CONNECTED WITH SELF-INFLICTED INJURIES OF [THE VICTIM]

POINT IV.

THE PCR COURT ERRED IN DENYING DEFENDANT POST-CONVICTION RELIEF OR AT MINIMUM A HEARING, WHERE AS HERE, DEFENDANT[‘S] TRIAL ATTORNEY FAILED TO INVESTIGATE OBVIOUS SIGNIFICANT AVE[NUES] OF DEFENSE, INCLUDING THE INTERVIEWING AND CALLING OF WITNESSES AND OTHERS WHO WOULD HAVE DIRECTLY EXCULPATED DEFENDANT, UTTERLY DEPRIVED DEFENDANT OF HIS FEDERAL AND STATE CONSTITUTIONAL RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, TO DUE PROCESS AND A FAIR TRIAL.

A. INEFFECTIVE ASSISTANCE OF COUNSEL WHERE FAILURE TO ADVOCATE RESULTED IN CONFLICT OF INTEREST.

B. INEFFECTIVE ASSISTANCE OF COUNSEL WITH THE FAILURE TO FILE A TIMELY NEW TRIAL MOTION.

C. INEFFECTIVE ASSISTANCE OF COUNSEL WITH THE FAILURE TO CONFRONT STATISTICAL EVIDENCE.

D. INEFFECTIVE ASSISTANCE OF COUNSEL WITH THE FAILURE TO REQUEST MENTAL HEALTH REPORTS.

E. COUNSEL RENDERED DEFICIENT PERFORMANCE WITH THE FAILURE TO MOVE FOR DISMISSAL OF THE INDICTMENT.

POINT V.

PCR COURT ERRED IN DENYING HEARING WHERE UNCERTIFIED TRANSCRIPT VOLUMES WHICH WERE DELIBERATELY ALTERED BY THE STATE WERE IN QUESTION.

[State v. Watley (Watley II), No. A-5970-04 (App. Div. Apr. 5, 2007) (slip op. at 7–10) (first, second, fourth and sixth alterations in original).]

Defendant also filed a reply brief, asserting the following:

POINT I.

PCR COURT INCORRECTLY DENIED DEFENDANT'S CLAIMS FOR RELIEF BASED UPON FALSE BLOOD EVIDENCE.

A. PROSECUTORIAL MISCONDUCT SURROUNDING BLOOD EVIDENCE.

B. INEFFECTIVE ASSISTANCE OF COUNSEL SURROUNDING BLOOD EVIDENCE.

C. MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED SEROLOGIC EVIDENCE.

POINT II.

PCR RELIEF WAS WARRANTED REGARDING THE PROSECUTOR'S COMMENTS AT TRIAL AND SUMMATION RELATING TO DR. BODNER'S TESTIMONY.

A. COMMENT I: CLAIM BASED ON PROSECUTORIAL COMMENT AT SUMMATION CONCERNING PAID EXPERT.

B. COMMENT II: CLAIM OF PROSECUTORIAL ERROR AT TRIAL AND SUMMATION CONCERNING FABRICATED TESTIMONY.

POINT III.

PCR COURT INCORRECTLY DENIED DEFENDANT'S CLAIMS FOR RELIEF BASED ON BRADY VIOLATIONS.

A. BRADY VIOLATION ONE – INCONSISTENT STATEMENT.

B. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM CONNECTED WITH INCONSISTEN[T] STATEMENTS OF [THE VICTIM].

C. BRADY VIOLATION TWO – SELF INFLICTED INJURIES.

D. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM CONNECTED WITH SELF-INFLICTED INJURIES OF [THE VICTIM].

POINT IV.

THE PCR COURT IMPROPERLY DENIED DEFENDANT AN EVIDENTIARY HEARING.

POINT V.

PCR COURT FAILED TO ADDRESS PETITIONER'S FOR TRIAL TRANSCRIPT VOLUME VERIFICATION AND CERTIFICATION.

[Id. at 10–11 (first alteration in original).]

We reversed in part for the limited purpose of conducting an evidentiary hearing on "defendant's claim of ineffectiveness with respect to his trial counsel's treatment of the blood evidence produced at trial including the stipulation . . . read to the jury." Id. at 18. We affirmed the trial court's denial of defendant's petition for PCR on all other issues. Ibid.

Following the evidentiary hearing, at which defendant testified, the trial judge again denied defendant's first PCR petition. Defendant again filed an appeal, arguing:

- I. PCR COURT ERRED IN DENYING DEFENDANT RELIEF ON INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WHERE IT WAS CLEAR COUNSEL KNOWING[LY] ALLOW[ED] PROSECUTOR TO PRESENT FALSE SEROLOGIC (ABO BLOOD TYPE) EVIDENCE TO THE JURY. THAT EVIDENCE WAS THE PRINCIPLE [SIC] PIECE OF FORENSIC EVIDENCE LINKING THE DEFENDANT TO THE CRIME.

- II. PCR COURT ERRED IN DENYING DEFENDANT RELIEF WHERE IT WAS CLEAR PROSECTOR PRESENTED FALSE SEROLOGIC (ABO BLOOD TYPE) EVIDENCE TO THE JURY. THAT EVIDENCE WAS THE PRINCIPLE [SIC] PIECE OF FORENSIC EVIDENCE LINKING THE DEFENDANT TO THE CRIME. BRADY EVIDENCE ALSO WITHHELD RELATED TO THE SAME.
- III. PCR COURT ERRED IN DENYING DEFENDANT RELIEF WHERE IT WAS CLEAR PROSECUTOR PRESENTED FALSE AND MISLEADING DNA BLOOD EVIDENCE. THE BLOOD EVIDENCE WAS THE PRINCIPLE [SIC] PIECE OF FORENSIC EVIDENCE LINKING THE DEFENDANT TO THE CRIME.
- IV. IMPROPER CONDUCT BY [THE] PCR JUDGE SUBSTANTIALLY PREJUDICE[D] THE DEFENDANT'S RIGHT TO A FAIR TRIAL AND IMPARTIAL HEARING.

[State v. Watley (Watley III), No. A-1132-07 (App. Div. Dec. 17, 2008) (slip op. at 10) (alterations in original).]

We affirmed that the PCR court's decision. Id. at 12. Defendant filed a petition for certification, which was denied by the Supreme Court. State v. Watley, 199 N.J. 514 (2009).

In August 2009, defendant filed a petition for writ of habeas corpus in federal court, which was denied in September 2010. Watley v. Mee, No. 09-

4358, 2010 U.S. Dist. LEXIS 101360, at *1 (D.N.J. Sept. 23, 2010), petition for writ of cert. denied, 565 U.S. 899 (2011).

In December 2013, defendant filed a second PCR petition, pro se, alleging ineffective assistance of appellate counsel, among other issues. Defendant was appointed an attorney from the Office of the Public Defender (OPD). Defendant was not satisfied with the brief filed by his OPD counsel and filed a motion to dismiss counsel and proceed pro se, alleging collusion between the State and OPD.

On January 30, 2015, the PCR court denied defendant's second PCR petition. State v. Watley (Watley IV), No. A-3220-14 (App. Div. July 26, 2017) (slip op. at 2). The court found that although appellate counsel was ineffective, defendant was not prejudiced by counsel's shortcomings. Ibid.

Defendant appealed the denial of this second PCR petition, claiming:

POINT I: PCR COURT ERRED IN DENYING DEFENDANT RELIEF WHERE IT WAS CLEAR PROSECUTOR PRESENTED FALSE SEROLOGIC (ABO BLOOD TYPE) EVIDENCE TO THE JURY. THAT EVIDENCE WAS THE PRINCIPLE [SIC] PIECE OF FORENSIC EVIDENCE LINKING THE DEFENDANT TO THE CRIME. IN ADDITION BRADY EVIDENCE ALSO WITHHELD RELATED TO THE SAME.

Laboratory Report Produced by Prosecutor Was Improper and Deceptive

1. Material Evidence Withheld
2. Evidence Altered and Withheld From Defense
3. Blood Type Data Missing From Evidence Report
4. Material Evidence Altered and Brady Evidence Withheld

POINT II: PCR COURT ERRED IN DENYING DEFENDANT RELIEF WHERE IT WAS CLEAR PROSECUTOR PRESENTED FALSE AND MISLEADING DNA BLOOD EVIDENCE. THE BLOOD EVIDENCE WAS THE PRINCIPLE [SIC] PIECE OF FORENSIC EVIDENCE LINKING THE DEFENDANT TO THE CRIME.

A. Applicable Law

B. Prosecutor misrepresented DNA Evidence Connected to non-sperm fraction of Specimen and failed to disclose lack of Genetic material finding in blood sample To the jury

C. Document Evidence establish prosecutor acted In bad faith by planning to use false DNA To corroborate the tainted serologic report

POINT III: PCR COURT ERRED IN DENYING DEFENDANT RELIEF ON INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WHERE IT WAS CLEAR COUNSEL KNOWING ALLOW PROSECUTOR TO PRESENT FALSE SEROLOGIC (ABO BLOOD TYPE) EVIDENCE TO THE JURY. THAT EVIDENCE WAS THE PRINCIPLE [SIC] PIECE OF FORENSIC EVIDENCE LINKING THE DEFENDANT TO THE CRIME.

STRICKLAND TEST 1: Deficient Performance

QUESTION 1: Opening Statement

QUESTION 2: Evans blood testimony

QUESTION 3: N.R. Blood Testimony

QUESTION 4: Prosecutor's Closing

STRICKLAND TEST 2: Prejudice to defendant

STIPULATED FACT

POINT IV: WITNESS DURING THE FIRST POST-CONVICTION EVIDENTIARY HEARING PROVIDED FALSE TESTIMONY WHICH WARRANTS NEW HEARING.

POINT V: ABUSE OF DISCRETION BY PCR COURT JUDGE SUBSTANTIALLY PREJUDICED THE DEFENDANT'S RIGHT TO A FAIR AND IMPARTIAL REMAND EVIDENTIARY HEARING THEREBY DENYING THE DEFENDANT THE CONSTITUTIONAL RIGHT TO DUE PROCESS.

A. CLAIM 1: PCR court made collateral review of Appellate Division order, altering it's contents to favor the State

B. CLAIM 2: PCR court vouched for the credibility of defense expert whose statements were false, inconsistent and perjurious[]

C. CLAIM 3: PCR court denied material evidence connected to tainted blood report to pro-se counsel on appeal

D. CLAIM 4: PCR court prohibited the testimony of the material witness Donna Hansen, chemist who manufacture[d] the tainted report used by the State at trial

POINT VI: ABUSE OF DISCRETION BY PCR COURT JUDGE AS ARTICULATED IN THE PCR

COURTS JANUARY 30, 2015 OPINION
SUBSTANTIALLY PREJUDICE THE
DEFENDANT'S RIGHT TO A FAIR AND PCR
PROCEEDING THEREBY DENYING THE
PETITIONER HIS CONSTITUTIONAL RIGHT TO
DUE PROCESS.

I. Whether Petitioner Is Entitled to an Evidentiary Hearing

II. Whether Petitioner's Appellate Counsel Provided Petitioner with Ineffective Representation and Prejudiced Defendant Thereby denying the defendant his constitutional right to due process

III. Whether Alteration of Appellate Documents by the Appellate Division Warrants a New Trial

IV. Whether Witness during the First Post-Conviction Relief Evidentiary Hearing Provided False Testimony, Requiring a New Hearing

V. Whether Petitioner is Entitled to New Counsel

[Id. at 3–5.]

We affirmed the denial of defendant's second PCR petition. Id. at 1. In doing so, we found defendant's contentions—both in his second PCR petition and the appeal from its denial—to be either without merit or procedurally barred. Id. at 6, 8, 10–11. Specifically, we determined that defendant's claims that "the prosecutor intentionally perpetrated a fraud on the trial court by presenting 'false and fabricated' DNA blood and serologic evidence and that his trial attorney was deficient for failing to challenge the prosecutor's actions" were identical to the

issues raised and rejected in defendant's first appeal of his first PCR petition—Watley II. Id. at 6. Our Supreme Court again denied defendant's petition for certification. State v. Watley, 232 N.J. 140 (2018).

Defendant filed a second habeas corpus petition without the required leave from the Court of Appeals, as required by 28 U.S.C. § 2244. Accordingly, his second habeas petition was dismissed for lack of jurisdiction. Watley v. Mee, No. 09-4358, 2014 U.S. Dist. LEXIS 58312 (D.N.J. Apr. 25, 2014).

On June 30, 2021, defendant filed his third PCR petition—the subject of the present appeal. Defendant's third petition alleged that as a result of Office of Attorney Ethics investigations, he obtained evidence of prosecutorial wrongdoing entitling him to PCR. Although defendant only raised three points in his memo, and only one of those points had a proper heading, the PCR court aptly identified four issues that were raised by defendant:

- (1) that the State committed prosecutorial misconduct by failing to reveal undisclosed impeachment evidence;
- (2) the State committed prosecutorial misconduct by "using massive amounts of false blood evidence;"
- (3) [defendant] received ineffective assistance of first and second PCR counsel; and
- (4) the prior PCR courts abused their discretion.

As we have already noted, on December 15, 2021, Judge Kirsch denied defendant's petition without an evidentiary hearing, ruling the petition was procedurally barred pursuant to Rule 3:22-4(b) and Rule 3:22-5.

Defendant raises the following contentions for our consideration in this latest appeal:

POINT I

LEGAL BASIS DOES NOT SUPPORT USING THE FIVE[-]YEAR BAR DETERMINATION OF THE LOWER COURT TO DENY DEFENDANT A POST[-CONVICTION RELIEF HEARING] WHERE AN OFFICE OF ATTORNEY ETHICS INVESTIGATION SECURED CONCLUSIVE EVIDENCE THAT TRIAL PROSECUTOR DARI[A] [SMITH ISENHOUR] AT TR[IA]L AND SARA LIEBMAN ON APPEAL USED THE POWER OF THEIR STATE POSITIONS TO FRAME AN INNOCENT AFRO AMERICAN OF RAPE.

POINT II

FACTUAL EVIDENCE DISREGARDED BY . . . THE LOWER COURT TO DENY DEFENDANT PCR WARR[A]NTS REVERSAL OF CONVICTION WHERE THAT EVIDENCE WHICH WAS SECURED FROM A[] HISTORIC OFFICE OF ATTORNEY ETHICS INVESTIGATION CONCLUSIVELY DEMONSTRATED THAT TRIAL PROSECUTOR DARI[A] [SMITH ISENHOUR] AND APPELLATE PROSECUTOR SARA LIEBMAN WERE THE PRINCIPAL NEMES[E]S RESPONSIBLE FOR THE TAINTED RAPE CONVICTION AND SUBSEQUENT COVER[-]UP.

POINT III

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO DECLARE A MISTRIAL OR TO INFORM THE JURY THAT THE STATE'S WITNESS DR. BAKER HAD DOCUMENTED STATEMENTS . . . FROM [THE VICTIM] THAT NO SEXUAL ASSAULT EVER TOOK PLACE. BEYOND THAT, [THE VICTIM'S] FACT STATEMENT CORROBORATED THE FACT INTERVIEW STATEMENT OF THE DEFENSE WITNESS DR. LATIMER.

POINT IV

[DEFENDANT]'S TRIAL AND APPELLATE COUNSEL'S PERFORMANCE WERE SO OBJECTIVELY UNREASONABLE AND PREJUDICIAL THAT [THEY] BY [THEMSELVES] WARRANT REVERSAL OF CONVICTION.

POINT V

THE PCR COURT'S DECISION TO PROTECT THE TWO ROGUE PROSECUTOR WHO KNOWINGLY SECURED AND FOSTERED A TAINTED CONVICTION WAS FRAUD. THE COURT'S CALLIGRAPHIC DISREGARD FOR THE PRINCIPLES UPON WHICH THE LEGAL SYSTEM IS BASED WITH NO REGARD FOR THIS COUNTRY OR ITS INSTITUTIONS IS DEPLORABLE.

II.

We affirm substantially for the reasons set forth in Judge Kirsch's written opinion. We add the following brief comments.

Appellate courts review the legal conclusions of a PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004). The de novo standard of review also applies to mixed questions of fact and law. Id. at 420. "Where, as here, the PCR court has not conducted an evidentiary hearing, we review its legal and factual determinations de novo." State v. Aburoumi, 464 N.J. Super. 326, 338–39 (2020) (citing State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018)).

A.

Rule 3:22-4(b) places strict limitations on second and subsequent petitions for PCR. It compels dismissal of a subsequent PCR petition unless the defendant's claim is: (1) brought within the applicable time period; and (2) falls within one of three grounds for relief. R. 3:22-4(b).

Rule 3:22-4(b)(1) requires second and subsequent PCR petitions to be timely filed under Rule 3:22-12(a)(2), which instructs that petitions cannot be filed beyond one year after the latest of:

(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey, if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or

(B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could

not have been discovered earlier through the exercise of reasonable diligence; or

(C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief is being alleged.

[R. 3:22-12(a)(2).]

A 2009 amendment to the rule makes clear beyond question that the one-year limitation for second or subsequent petitions cannot be relaxed. R. 3:22-12(b); Jackson, 454 N.J. Super. at 293; see also R. 1:3-4(c) (prohibiting the court and parties from enlarging the time to file a petition for PCR under Rule 3:22-12).

Regarding the allowable grounds for relief, Rule 3:22-4(b)(1) mandates that a second or subsequent petition for PCR allege on its face either:

(A) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or

(B) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable probability that the relief sought would be granted; or

(C) that the petition alleges a prima facie case of ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief.

[R. 3:22-4(b).]

Application of these rules makes plain defendant's third PCR petition is time-barred. Defendant fails to satisfy the first requirement of Rule 3:22-4(b)(1)—the time limitation set forth in Rule 3:22-12(a)(2). Defendant did not claim a new constitutional right, so his petition cannot be considered timely under Rule 3:22-12(a)(2)(A).

Further, defendant's petition is not timely under Rule 3:22-12(a)(2)(B) as he was aware of the factual predicate of his claims for more than a year before filing his petition. Each claim in defendant's third PCR is grounded in his direct appeal, first PCR, second PCR, or appeals thereof, all of which were completed over a year before the filing date.

Defendant's petition is also not timely under Rule 3:22-12(a)(2)(C) because, although defendant alleges ineffective assistance of counsel on his first and second petitions for post-conviction relief, his petition was beyond the one-year time requirement. As Judge Kirsch recognized, defendant's second petition for post-conviction relief was denied on January 30, 2015. Defendant filed his third petition on June 30, 2021. Therefore, Judge Kirsch correctly found that

defendant's petition—filed six-and-a-half-years after the denial of his second PCR petition—did not satisfy the one-year requirement of Rule 3:22-12(a)(2)(C).

B.

"[P]ost-conviction relief is not a substitute for direct appeal; nor is it an opportunity to relitigate a case on the merits." State v. Szemple, 247 N.J. 82, 97 (2021) (citing State v. Jones, 219 N.J. 298, 310 (2014)). Rule 3:22-5 provides: "[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding[,] . . . or in any appeal taken from such proceedings." Specifically, this procedural bar applies "if the issue raised is identical or substantially equivalent to that adjudicated previously on direct appeal." State v. Marshall, 173 N.J. 343, 351 (2002) (quoting State v. Marshall, 148 N.J. 89, 150 (1997)).


Considering the prior proceedings, many of which were themselves attempts to relitigate claims previously rejected, Judge Kirsch properly found that the issues raised in defendant's third petition for post-conviction relief were procedurally barred pursuant to Rule 3:22-5.

Defendant's first claim—that the State failed to reveal undisclosed impeachment evidence—was raised on direct appeal, in his first PCR petition, and in the two appeals related to his first PCR petition. Watley I, slip op. at 3; Watley II, slip op. at 7–8; Watley III, slip op. at 3, 10. It was rejected each time. Defendant's second claim—that the State committed prosecutorial misconduct by using false blood and serological evidence—has been raised in every prior appeal and rejected. Watley I, slip op. at 3; Watley II, slip op. at 7–8; Watley III, slip op. at 10; Watley IV, slip op. at 3–4. Defendant's third claim—ineffective assistance of his trial counsel and privately-retained appellate counsel—was raised in his second PCR petition, the denial of which was affirmed in Watley IV, slip op. at 4–5, 8–11. Lastly, defendant's claim that prior PCR courts abused their discretion was raised in Watley III, slip op. at 10, and Watley IV, slip op. at 4–5.

To the extent we have not addressed a particular argument defendant raises in this latest appeal, it is because that argument lacks 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