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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-3016-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PAUL BEZAK,

Defendant-Appellant.

Submitted May 16, 2023 – Decided July 3, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Municipal Appeal No. 22-04.

Kevin T. Conway, attorney for appellant.

Mark Musella, Bergen County Prosecutor, attorney for
respondent (K. Charles Deutsch, Assistant Prosecutor,
of counsel and on the brief).

PER CURIAM

This is an appeal from the denial of post-conviction relief (PCR) without
an evidentiary hearing. Defendant, Paul Bezak, filed a PCR petition in

municipal court in December 2021, seeking to vacate his plea to driving while intoxicated (DWI) N.J.S.A. 39:4-50, which was entered April 2002. The municipal court denied PCR, and the Law Division, reviewing de novo, affirmed. We find no reason to disturb the trial court's findings and affirm for the reasons expressed by Judge Carol Novey Catuogno in her cogent and well-reasoned oral opinion, adding the following brief comments.

Although defendant argued his counsel was ineffective in failing to file a suppression motion, such a motion would not have been successful. Defendant claims defense counsel advised him he could not challenge the stop, probable cause, arrest, and search and his municipal public defender did not file a suppression motion. PCR counsel argued an evidentiary hearing was needed because matters outside the record had to be considered to determine if his guilty plea to the DWI was made knowingly and voluntarily.

The trial court described the police reports, noting the police did not perform a vehicle stop and did not observe defendant driving. They instead responded to a two-car accident. The vehicle was already stopped as a result of the accident and defendant was outside his car. The officer detected an odor of alcohol, slurred speech, droopy eyes, slowed movements, fumbling with papers, stumbling, and an inability to perform simple field sobriety tests. The police

officer's observations were sufficient to establish probable cause. Moreover, during the accident investigation, defendant ran from the scene. Police found him asleep forty-five minutes later in his home where he had urinated in his pants. As to the warrantless search of his residence, defendant's wife led police to their residence and allowed them into their home by consent. It is well settled an ineffective assistance of counsel claim cannot be based upon counsel's failure to file a meritless suppression motion. "The failure to raise unsuccessful legal arguments does not constitute ineffective assistance of counsel." State v. Worlock, 117 N.J. 596, 625 (1990).

A defendant may seek to show an evidentiary hearing is warranted to develop the factual record in connection with an ineffective assistance claim. State v. Preciose, 129 N.J. 451, 462 (1992). "Although Rule 3:22-1 does not require evidentiary hearings to be held on [PCR] petitions, Rule 3:22-10 recognizes judicial discretion to conduct such hearings." Ibid. The PCR court should grant an evidentiary hearing only if: (1) a defendant is able to prove a prima facie case of ineffective assistance of counsel; (2) there are material issues of disputed fact that must be resolved with evidence outside of the record; and (3) the hearing is necessary to resolve the claims for relief. Ibid.; R. 3:22-10(b).

To establish a prima facie case of ineffective assistance of counsel, a defendant "must do more than make bald assertions that" his counsel's performance was substandard. State v. Porter, 216 N.J. 343, 355 (2013) (quoting State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)). "Rather, [a] defendant must allege specific facts and evidence supporting his allegations." Ibid. Moreover, "a defendant is not entitled to an evidentiary hearing if the 'allegations are too vague, conclusory, or speculative.'" Ibid. (quoting State v. Marshall, 148 N.J. 89, 158 (1997)). Defendant's factual claims are belied by the record. Defendant did not present a prima facie case and an evidentiary hearing was not required.

Additionally, the trial court found defendant did not establish excusable neglect for the delay in filing his petition. We concur. The petition is time-barred, defendant did not establish excusable neglect and denial of the petition would not result in an injustice as defendant has not demonstrated trial counsel was ineffective. See R. 3:22-12(a). The petition was filed long after the five-year time limit expired.

To the extent we have not addressed them here, the rest of defendant's arguments are without sufficient merit to warrant written discussion. 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.



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