

**NOT FOR PUBLICATION WITHOUT THE  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-3416-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUSTIN HAZEL, a/k/a  
ANTHONY J. HAZEL,

Defendant-Appellant.

---

Submitted October 25, 2023 – Decided November 6, 2023

Before Judges Mayer and Paganelli.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Indictment No. 11-07-1306.

Justin Hazel, appellant pro se.

Theodore N. Stephens, II, Acting Essex County  
Prosecutor, attorney for respondent (Matthew E.  
Hanley, Special Deputy Attorney General/Acting  
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Justin Hazel appeals from a June 3, 2022 order denying his third petition for post-conviction relief (PCR), motion for new trial, and motion to compel discovery. We affirm.

We incorporate the facts from our affirmance of defendant's conviction for murder and weapons offenses in an unpublished decision on defendant's direct appeal, State v. Hazel, No. A-5404-12 (App. Div. Sept. 23, 2015), certif. denied, 224 N.J. 244 (2016), and the unpublished decision affirming denial of defendant's first PCR petition, State v. Hazel, No. A-3661-18 (App. Div. Nov. 4, 2020), certif. denied, 247 N.J. 140 (2021).

Defendant filed a second PCR petition while his appeal from the denial of his first PCR application was pending. Defendant's second PCR petition was denied by the PCR judge on August 24, 2020, because defendant failed to include a certification or affidavit in support of his petition. Defendant did not appeal the denial of his second PCR petition.

On January 18, 2022, defendant filed a third PCR petition. In the third petition, defendant included an affidavit from a private investigator licensed in Florida. Defendant claimed the investigator's affidavit contained newly discovered evidence warranting an evidentiary hearing. While defendant's third

PCR application was pending, he filed a motion for a new trial and a motion to compel discovery.

The PCR judge denied defendant's third PCR petition. She rejected the application as time-barred because defendant's third petition was filed more than one year after his previous petitions. Moreover, as the judge explained, the "issues were raised in [defendant's] first and second petitions, and they were addressed on appeal." Regarding the affidavit from the private investigator, the judge found "[a]ll of the information presented [in the affidavit] was obtained before 2018. Most of the conclusions were based on mere conjecture and were just assertions with no evidence provided to corroborate the claims."

The judge also denied defendant's motion for a new trial. The judge found the information in the private investigator's report was not "newly discovered evidence." To the contrary, the judge stated:

[A]ll evidence presented was obtained more than four years ago, even though the report is dated in 2021. . . . [N]one of the information in the report is "new" except for the investigator's development of autopsy photos and reconstruction of the evidence[, and the report] does not specify how this reconstruction differed from what was established at trial. . . . [T]his [c]ourt is not convinced that the outcome of the jury verdict would have changed, even with the reconstruction.

Defendant's motion to compel discovery was intertwined with his third PCR petition. Because the judge denied defendant's third PCR petition, she determined the issue was moot and it was "unnecessary to conduct a separate analysis."

On appeal, defendant raises the following argument:

THE LOWER COURT'S ORDER DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL, AND POST-CONVICTION RELIEF, WHICH WERE SUPPORTED BY CERTIFICATIONS WITHOUT THE BENEFIT OF AN EVIDENTIARY HEARING, OR ORAL ARGUMENT, SHOULD BE REVERSED AND REMANDED FOR AN EVIDENTIARY HEARING.

We apply a de novo standard of review when a PCR court does not conduct an evidentiary hearing. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016) (citing State v. Harris, 181 N.J. 391, 420-21 (2004)). When petitioning for PCR, a defendant must establish entitlement to "PCR by a preponderance of the evidence." State v. O'Donnell, 435 N.J. Super. 351, 370 (App. Div. 2014) (citing State v. Preciose, 129 N.J. 451, 459 (1992)).

The rules governing PCR petitions are set forth in Rule 3:22. Second or subsequent PCR petitions must comply with the requirements of Rules 3:22-4(b) and 3:22-12(a)(2). To avoid dismissal of a subsequent PCR petition, a defendant must present evidence to satisfy one of three enumerated exceptions: a new rule

of constitutional law; newly discovered evidence; or ineffective assistance of prior PCR counsel. R. 3:22-4(b)(2). Even when a defendant's PCR contentions fit within these exceptions, a second or subsequent PCR petition must be timely filed. R. 3:22-4(b)(1).

Rule 3:22-12(a)(2)(C) provides "no second or subsequent petition shall be filed more than one year after . . . the date of the denial of the first . . . application for post-conviction relief" based on ineffective assistance of counsel. The one-year time limitation for second or subsequent petitions is non-relaxable. R. 3:22-12(b); State v. Jackson, 454 N.J. Super. 284, 292 (App. Div. 2018). Rule 3:22-4(b)(1) requires dismissal of a second or subsequent petition if not timely under Rule 3:22-12(a)(2).

Guided by these rules, we are satisfied the PCR judge was required to dismiss defendant's third PCR petition as untimely. Defendant's third PCR petition had to be filed within one year of the denial of his second petition. Defendant's third PCR petition, submitted on January 18, 2022, was filed nearly two and a half years after the denial of his second PCR application. Thus, the PCR judge properly concluded defendant's third PCR petition was time barred.

Moreover, defendant's third PCR petition failed to satisfy any of the exceptions under Rule 3:22-4(b)(2). Defendant does not assert any newly

recognized constitutional right in his petition. Nor did defendant proffer any newly discovered evidence that could not have been discovered sooner.

While defendant submitted a 2021 affidavit from a private investigator in support of his third PCR petition, the information in that affidavit was available and known through the exercise of reasonable diligence. See R. 3:22-12(a)(2)(B). Further, the evidence proffered by the private investigator did not differ from the evidence presented at trial such that it would have changed the outcome of the case. Because we are satisfied the private investigator's affidavit failed to present newly discovered information or evidence, we need not address defendant's motion for a new trial based on that same affidavit.

Similarly, we affirm the PCR judge's denial of defendant's motion to compel discovery. That motion was premised upon granting the relief requested in defendant's third PCR petition. Because we affirm the denial of defendant's third PCR petition, we need not address the motion to compel discovery.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION