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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3446-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MACGOOHAN ROMELUS,  
a/k/a MAGUAN ROMERUS,  
MAGUAN ROMELUS,  
MAGOOHAM ROMELYUS,  
and BROCCOLI NOSE,

Defendant-Appellant.

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Argued May 10, 2023 – Decided June 21, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law  
Division, Union County, Indictment No. 94-07-0789.

Stephen W. Kirsch argued the cause for appellant  
(Joseph E. Krakora, Public Defender, attorney; Stephen  
W. Kirsch, Designated Counsel, on the brief).

Meredith L. Balo argued the cause for respondent  
(William C. Daniel, Union County Prosecutor,

attorney; Meredith L. Balo, Assistant Prosecutor, of counsel and on the brief).

## PER CURIAM

Defendant Macgoohan Romelus a/k/a Maguan Romerus appeals from a June 28, 2021 order denying his motion for reconsideration. Defendant moved for reconsideration following the denial of his second petition for post-conviction relief (PCR). We affirm.

We incorporate the facts leading to defendant's 1994 conviction from our decisions on defendant's direct appeal and defendant's first PCR petition. On direct appeal, we affirmed defendant's conviction and sentence. State v. Romelus, No. A-2717-95 (App. Div. Aug. 19, 1999) (Romelus I). The New Jersey Supreme Court denied defendant's petition for certification. State v. Romelus, 163 N.J. 11 (2000).

On November 15, 2001, defendant filed his first PCR petition, which the judge denied. Defendant appealed and we affirmed. State v. Romelus, No. A-3003-01 (App. Div. June 24, 2003) (Romelus II). The Court denied defendant's petition for certification. State v. Romelus, 178 N.J. 31 (2003).

Nearly eighteen years later, defendant filed a second PCR petition. The judge denied defendant's second PCR petition on May 17, 2021 as untimely under Rule 3:22-4(b)(1) because "it was not filed within the one-year window

mandated by [Rule] 3:22-12(a)(2)." The judge also found "the present petition fail[ed] to allege on its face either a new rule of constitutional law made retroactive to defendant's petition, a factual predicate for relief that could not have been discovered earlier, or a prima facie case of ineffective assistance of counsel on defendant's first petition for PCR."

Defendant filed a motion for reconsideration, which the judge denied.

On appeal, defendant argues:

THE ORDER DISMISSING DEFENDANT'S SECOND PCR PETITION SHOULD BE REVERSED. TRIAL DEFENSE COUNSEL'S NEAR-COMPLETE ABANDONMENT OF HIS CLIENT, RESULTING IN THAT CLIENT'S 1994 CONVICTION OF MURDER AND RELATED OFFENSES, WITH A 70-YEAR PRISON SENTENCE, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL SO EXTREME THAT IT MEETS THE LIMITED FUNDAMENTAL-FAIRNESS/MANIFEST-INJUSTICE EXCEPTION ESTABLISHED BY THE NEW JERSEY SUPREME COURT TO OVERCOME THE PROCEDURAL BARS OF THE COURT RULES GOVERNING SECOND PCR PETITIONS.

Defendant seeks a remand to the trial court for an evidentiary hearing because his trial counsel's ineffectiveness was "so severe that it presented at least a prima facie showing of a manifest and fundamental injustice serious enough to warrant hearing the matter on its merits." Defendant asserts "there are constitutional exceptions above and beyond the language of the PCR rules

that should apply . . . based upon notions of fundamental fairness and correction of manifest injustice." Defendant argues the New Jersey Supreme Court "established a constitutional exception to PCR rules—based on fundamental fairness and the need to correct a severe and manifest injustice—even when none of the exceptions that are set forth within the body of those rules apply."

On appeal from the denial of his second PCR petition, defendant contends his trial counsel was ineffective because counsel:

(1) unilaterally abandoned [his] alibi defense—that was the very defense that counsel had opened with to the jury and supported with three witnesses, including defendant—and instead told the jury in summation, contrary to his own client's testimony, that the client was present at the scene and guilty of some of the charged crimes; (2) failed to investigate and call witnesses to support the alibi of co-defendants Dorval and Pierre, which would have destroyed the central premise of the State's case; (3) and failed to cross-examine the State's witnesses on prior inconsistent statements and inconsistent identifications of the perpetrators as well as on shoddy police techniques in administering the photo identifications—all in a case where the State's overall theory of guilt has been proven to be manifestly untrue and where the three co-defendants have been released and exonerated after their own PCRs were successful.

The rules governing PCR petitions are set forth in Rule 3:22. Second or subsequent PCR petitions must comply with the requirements of Rule 3:22-4(b) and Rule 3:22-12(a)(2). To avoid dismissal of a second PCR petition, a

defendant must present evidence to satisfy one of three enumerated exceptions: a new rule of 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 prescribes the time limitations for post-conviction relief. As applicable in this case, 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. Defendant's second PCR petition was filed eighteen years after the denial of his first PCR application.

Unlike Rule 3:22-4(a), Rule 3:22-4(b) contains no "fundamental injustice" exception for second or subsequent PCR petitions. Similarly, there is no fundamental or manifest injustice exception under Rule 3:22-5, providing that prior rulings on appeal are conclusive and preclude reassertion of litigated issues in a PCR petition.

Defendant concedes his second PCR petition did not fall within the exceptions under Rule 3:22-4(b). Rather, he argues the PCR rules "must bend to accommodate violations of those rules in the rare case where fundamental

fairness demands it to correct a serious and manifest injustice." In support of his contention, defendant relies on State v. Hannah, 248 N.J. 148, 178-79 (2021), and State v. Nash, 212 N.J. 518, 546 (2013). In the context of PCR rules that lack an express exception for remedying a fundamental injustice, defendant asserts the Court "appl[ies] the constitutional doctrine of fundamental fairness to address those claims despite the procedural bars in the rules."

We reject defendant's argument because we are satisfied defendant has not presented that rare case requiring relief from the procedural limitations imposed on second or subsequent PCR petitions. Further, the facts in this matter are distinguishable from the facts before the Court in Hannah and Nash.

In Hannah, the defendant, who was a known drug dealer, was convicted of the felony murder of two other drug dealers. Hannah, 248 N.J. at 155. At trial, the defendant sought to introduce evidence in support of a third-party-guilt defense that the murders were committed by another drug dealer, Maurice Thomas. Ibid. Based on rulings by the trial judge, the defendant argued in his subsequent PCR petition that the jury "did not hear the full story" in support of his defense, depriving him of the opportunity to present a complete defense. Ibid.

The defendant's PCR issues in his subsequent petition were presented to the Court twenty-seven years after his conviction. Id. at 175. Despite the lengthy delay, the Court reviewed the defendant's arguments on the merits, noting "[t]he tortuous post-conviction procedural path of th[e] case . . . included a series of hearings conducted by multiple judges, a raft of appeals, and a number of missteps and errors—all combin[ing] to delay a final adjudication of the issues within a reasonable timeframe." Ibid.

According to the defendant in Hannah, there were two pieces of evidence in the possession of his defense counsel that the jury did not hear which would have altered the outcome of the trial. Ibid. The evidence not heard by the jury included a written investigative report, stating "investigators found in the pocket of one of the victims a bloody piece of paper bearing a pager number and that when investigators called that number, Thomas responded." Ibid. Additionally, the jury did not hear testimony from Thomas's mother "that her son made various statements inferentially implicating himself in the murders, that he plotted to frame Hannah, that he split drug money with [Hannah's co-defendant], and that he apparently came into possession of the heroin taken from the dead drug dealers." Ibid. The defendant argued the failure to present this evidence

constituted a manifest injustice, deprived him the right to present a complete defense before the jury, and resulted in the denial of a fundamentally fair trial.

The Court concluded the failures by the defendant's counsel to use information in their possession supporting a third-party-guilt defense constituted ineffective assistance of counsel and the issue "ha[d] not received meaningful review at the PCR trial or appellate level." Id. at 177. The Court held the PCR rules barring "review of a prior claim litigated on the merits 'is not an inflexible command' and must yield to a fundamental injustice." Id. at 178 (quoting Nash, 212 N.J. at 547).

The Hannah Court concluded Hannah's trial, appellate, and PCR counsel failed to use the investigative report to establish that Thomas committed the murders. If counsel had used the report, the Court found the document, coupled with the defendant's testimony that Thomas was the murderer, would have provided "the pathway toward the admission of Thomas's mother's testimony implicating her son." Id. at 182. The Court concluded counsel "was constitutionally deficient in failing to introduce evidence to support [the defendant's] third-party-guilt strategy." Ibid. The Court further determined the failure to use the report to support the admissibility of testimony from Thomas's



mother was "magnified and multiplied by errors made by the trial court, the PCR courts, and the Appellate Division." Id. at 183.

Because the prosecutor had the report and was aware of testimony from Thomas's mother regarding her son's role in the murders, the Court found the prosecutor's statement during summation "that there was not 'a scintilla' or 'piece of evidence' linking Thomas to the murder[s]" was "misleading." Id. at 187. The Court concluded "[t]he prosecutor unfairly exploited the derelictions of defense counsel, which, along with the erroneous evidentiary ruling of the trial court, compounded the prejudice to Hannah." Id. at 188.

The Court also found the State's evidence against Hannah was weak. Id. at 188-89. The Court noted "a conviction is more readily attributable to deficiencies in defense counsel's performance when the State has a relatively weak case than when the State has presented overwhelming evidence of guilt." Ibid. (quoting State v. Gideon, 244 N.J. 530, 557 (2021)).

Based upon these errors and missteps, the Court held the defendant satisfied both prongs of the Strickland/Fritz<sup>1</sup> analysis, entitling him to PCR

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<sup>1</sup> Strickland v. Washington, 466 U.S. 668 (1984); State v. Fritz, 105 N.J. 42 (1987).

relief. Ibid. Rather than remand for yet another evidentiary hearing, the Court vacated Hannah's conviction and remanded for a new trial. Id. at 190.

Unlike the defendant in Hannah, defendant here had meaningful review of the issues raised in his second PCR petition. On direct appeal, defendant claimed his alibi defense was improperly limited by the trial court. We disagreed because there was evidence in the record from defendant and two corroborating witnesses that defendant could not have committed the murder as he was at a bar at the time. Romelus I, slip op. at 12. Although defendant's trial counsel did not argue the alibi defense during summation, the jury heard testimony regarding defendant's alibi and nevertheless returned a guilty verdict.

Additionally, in Romelus I, we determined the identification of defendant by various eyewitnesses was properly admitted. Id., slip op. at 13-14. In upholding the identification testimony, we wrote "[t]here was no evidence to support a finding that the identification was unduly suggestive and the mere passage of time [did] not violate Simmons."<sup>2</sup> Id., slip op. at 14.

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<sup>2</sup> Simmons v. United States, 390 U.S. 377, 384 (1968) (holding "convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.").

We also rejected defendant's argument that his three separate statements to the police, admitting his presence at the crime scene, should have been suppressed. Id., slip op. at 14-19. In Romelus I, we were satisfied that defendant freely, voluntarily, and knowingly waived his Miranda<sup>3</sup> rights before speaking to the police. Id., slip op. at 15. We also agreed with the trial judge that because defendant initiated conversations with the police, suppression of his statements was not warranted. Id., slip op. at 18.

In Romelus II, we reviewed the denial of defendant's first PCR petition. In that appeal, defendant asserted his trial counsel "should have pressed the point of an alibi, namely, that the defendant was at the Zanzibar Tavern in Newark at the time of the offense." Romelus II, slip op. at 4. In affirming the denial of defendant's first PCR petition, we explained:

defendant gave a statement to the police in which he admitted his presence at the scene, and he was positively identified by others as having participated in the crime. At trial, the defense presented that while defendant was present, he did not share with the other defendants the intent or purpose to commit a murder, and, therefore, he was not responsible as a principal or an accomplice to that crime. While the defense was unsuccessful, we agree with [the PCR judge] that there was an insufficient basis for a finding that defendant received ineffective assistance. Furthermore, in light of the factual background, there is no basis for a finding

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<sup>3</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

that the result would have been different even if the alibi defense had been proved.

[Ibid.]

In this appeal, defendant recites a lengthy list of evidence the jury did not hear, arguing such evidence was likely to change the outcome of the trial. According to defendant, the evidence not heard by the jury included the following: the co-defendants were not in New Jersey at the time of the murder based on a speeding ticket issued in South Carolina just hours before the shooting; contradictory testimony by detectives concerning the photo array procedure that differed from the detectives' testimony during an evidentiary hearing; "shoddy police techniques" in the presentation of the photo arrays; and inconsistencies in the eyewitnesses' statements to the police and their trial testimony.

We note the evidence defendant asserted would have changed the outcome of the trial consisted largely of cross-examining purported inconsistencies in the testimony of the State's witnesses. With the benefit of hindsight, defendant now argues his defense counsel should have asked additional questions during cross-examination. We decline to review PCR claims under the "distorting lens of hindsight." Nash, 212 N.J. at 543.

Moreover, on direct appeal, we affirmed the admissibility of defendant's statements to the police placing him at the murder scene, the identification testimony from several eyewitnesses who saw defendant participate in the crime, and the alibi defense testimony placing defendant at a bar at the time of the murder. Given our disposition of these issues on direct appeal in Romelus I, the evidence defendant argued the jury did not hear was unlikely to alter the outcome of the case based on the evidence properly presented to the jury.

Additionally, even if defense counsel had cross-examined the State's witnesses on purported inconsistencies in their testimony and potential procedural missteps in the photo array, the State presented other evidence supporting defendant's guilt. Unlike the weak evidence against the defendant in Hannah, here the State had ample evidence of defendant's involvement in the crime. Not only did defendant admit to the police that he was at the scene, but there was testimony from several eyewitnesses placing defendant at the scene. Additionally, the eyewitnesses positively identified defendant as the shooter based on defendant's distinctive nose. Under the circumstances, it was doubtful that a more vigorous cross-examination of the State's witnesses would have altered the outcome of the trial given the other evidence supporting defendant's guilt.

With the benefit of hindsight nearly twenty-seven years after defendant's conviction, the fact that defendant's current counsel may have cross-examined the State's witnesses differently failed to present a significant constitutional exception to the limitations under the Rules governing review of PCR petitions. We discern no fundamental unfairness or severe manifest injustice warranting a remand for an evidentiary hearing based on the evidence presented at trial and our review of that evidence in Romelus I and Romelus II.

We also reject defendant's reliance on Nash, as supporting his manifest injustice and fundamental fairness argument to overcome the strict procedural time bar regarding a second PCR petition. In Nash, the Court found the defendant was "entitled to a new trial because exculpatory evidence—unknown to both the prosecutor and defense attorney—was not disclosed to the jury." 212 N.J. at 526. In that case, the defendant's entitlement to a new trial based on newly discovered evidence was never determined by any appellate court on direct appeal or PCR appeal. Id. at 527.

The Court's decision in Nash focused on the defendant's newly discovered evidence claim and the failure of the Appellate Division to address that argument. Id. at 545. Because no court had meaningfully considered the defendant's newly discovered evidence argument, the Court remanded for an

evidentiary hearing, declining to "yield to an injustice merely because no court ha[d] yet to address in any meaningful way the issue of newly discovered evidence." Id. at 547.

Here, defendant claimed his trial attorney failed to render effective assistance of counsel, resulting in an abdication of his right to a fundamentally fair trial and a severe manifest injustice. However, the jury heard alibi testimony from defendant and two corroborating witnesses, weighed that evidence against the other evidence presented by the State, and found defendant guilty of felony murder. Additionally, the judge instructed the jury that statements made during defense counsel's closing arguments were not evidence. The jury is presumed to have followed the judge's instructions in rendering a guilty verdict. See State v. Burns, 192 N.J. 312, 335 (2007). Unlike the defendants in Hannah and Nash, we discern no manifest miscarriage of justice or fundamental unfairness warranting a remand for an evidentiary hearing on defendant's second PCR petition.

Nor are we persuaded that the exoneration and release of the co-defendants supported defendant's fundamental fairness and manifest injustice arguments. Defendant was tried separately from his three co-defendants. The State's evidence against the co-defendants differed from the evidence against

defendant—namely, defendant's statements to the police, admitting he was present at the murder scene, and the testimony of eyewitnesses who positively identified defendant regarding his involvement in the crime.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION