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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-1844-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DONALD A. ALLEN,

Defendant-Appellant.

Submitted April 29, 2024 – Decided June 11, 2024

Before Judges Gilson and Jacobs.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 03-08-0041.

Donald A. Allen, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondent (Boris Moczula, Deputy Attorney General,
of counsel and on the brief).

PER CURIAM

Defendant Donald Allen pled guilty to first-degree distribution of
marijuana, N.J.S.A. 2C:35-5(a)(1), N.J.S.A. 2C:35-5(b)(10)(a), N.J.S.A. 2C:35-

5(c), and N.J.S.A. 2C:2-6, and was sentenced to ten years in prison with thirty-six months of parole ineligibility. He appeals from a January 31, 2023 order denying his motion to vacate his conviction and dismiss the indictment. On appeal, defendant raises a series of arguments that are either procedurally barred because they were or could have been raised before, are time-barred, or lack merit. Accordingly, we affirm.

In 2003, defendant was indicted on several drug distribution charges. In May 2006, defendant pled guilty to first-degree distribution of marijuana. In the negotiated plea agreement, the State agreed to recommend a sentence of ten years in prison with thirty-six months of parole ineligibility.

In June 2006, defendant, who is not a United States citizen, was deported by federal authorities before he was sentenced. In 2009, defendant re-entered this country illegally. Eventually, he was arrested and convicted of other crimes in Arizona. In 2012, after serving his sentence in Arizona, defendant was extradited to New Jersey. That same year, defendant was sentenced for his 2006 conviction.

In December 2012, defendant, representing himself, filed a motion to withdraw his guilty plea. Shortly thereafter, defendant, again representing himself, filed a petition for post-conviction relief (PCR). In his PCR petition,

defendant alleged ineffective assistance of counsel for failing to advise him of the possibility of deportation, violations of due process for the delay in his sentencing, and related issues.

The trial court denied defendant's PCR petition in May 2014. On appeal, we affirmed, and the Supreme Court denied certification. State v. Allen, No. A-5472-13 (App. Div. Apr. 20, 2015), certif. denied, 223 N.J. 283 (2015).

In a separate order, the trial court denied defendant's motion to withdraw his guilty plea. On defendant's appeal from that order, we affirmed and rejected defendant's argument that his trial counsel had been ineffective in not assisting him in seeking to retract his plea and his argument that his due process rights under the Speedy Trial Act had been violated. State v. Allen, No. A-4957-15 (App. Div. Oct. 11, 2017).

In July 2022, more than eight years after the denial of his first PCR petition, defendant, again representing himself, filed a "notice of motion to vacate conviction and dismiss indictment with prejudice." On January 31, 2023, the trial court issued a written opinion and order denying defendant's motion.

Defendant now appeals from the January 31, 2023 order. He puts forward six arguments, contending that (1) his rights under the federal Bail Reform Act and Rule 3:26-1(a) were violated; (2) the indictment should be dismissed with

prejudice because of the violations of his rights under the federal Bail Reform Act and Rule 3:26-1(a); (3) the State "abandoned" the prosecution when it allowed the federal government to deport him; (4) his counsel was ineffective at the plea hearing and sentencing; (5) his due process rights and right to a speedy sentence were violated; and (6) the "rule of lenity" should be applied.

Most of defendant's arguments were or could have been presented in his first PCR petition and prior appeals; therefore, they are procedurally barred. See R. 3:22-4(b)(2). The remainder of defendant's arguments are time-barred. See R. 3:22-4(b)(1); R. 3:22-12(a)(2). Finally, we conclude that none of defendant's arguments have sufficient merit to warrant discussion in a written opinion. See 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