

FILED

APR 04 2017

REGINA CAULFIELD, P.J.Cr.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
CRIMINAL

Ind. No. 00-12-01580

STATE OF NEW JERSEY,

vs.

RAHEEM WILCOX,

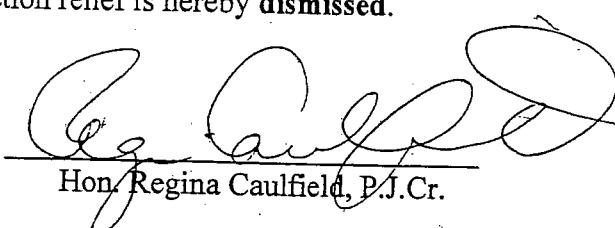
Defendant.

ORDER

THIS MATTER having been opened to the Court by petitioner, Raheem Wilcox, by the filing of a petition for post-conviction relief on March 22, 2017, and as this is petitioner's third petition for post-conviction relief, as his first petition was denied by the Hon. Stuart Peim, J.S.C., with said decision having been affirmed on appeal, State v. Raheem Wilcox, No. A-1188-10T4 (App. Div. July 20, 2012), with the Supreme Court denying certification, 213 N.J. 46 (2013), and as petitioner's second petition was denied by Judge Peim, with said decision having been affirmed on appeal, State v. Raheem Wilcox, No. A-2930-13T1 (App. Div. April 1, 2016), with the Supreme Court denying certification, 227 N.J. 255 (2016), and as this Court finds that the instant petition has failed to allege on its face a basis to preclude dismissal under R. 3:22-4(b),

IT IS on this 4th day of April, 2017:

ORDERED that the petition for post-conviction relief is hereby dismissed.


Hon. Regina Caulfield, P.J.Cr.

APPENDIX A

~~DA-26~~

SUA SPONTE ORDER

STATE OF NEW JERSEY
V.
RAHEEM WILCOX

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004328-16T1
BEFORE PART L
JUDGE(S): JOSEPH L. YANNOTTI
MICHAEL J. HAAS

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT ON ITS OWN MOTION PURSUANT TO R. 2:8-3(b) AND UPON CONSIDERATION OF THE RECORD AND THE ARGUMENTS PRESENTED IN THE BRIEFS, THE COURT BEING SATISFIED THAT THE ISSUES MAY BE SUMMARILY DECIDED;

IT IS ON THIS 29th DAY OF June, 2018, HEREBY ORDERED AS FOLLOWS:

Defendant Raheem Wilcox appeals from the April 4, 2017 Law Division order dismissing his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

This is defendant's third petition for PCR.¹ Rule 3:22-4(b)(2) provides in relevant part that a second or subsequent petition for PCR shall be dismissed unless the petition alleges that: (A) it relies on a "new rule of constitutional law, made retroactive to [the] defendant's petition by the . . . Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings;" (B) "the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence"; or (C) the defendant received ineffective assistance of counsel on his or her first or subsequent application for PCR.

In addition, Rule 3:22-4(b)(1) states that the petition must be dismissed if it is untimely under Rule 3:22-12(a)(2). Under that rule, a second or subsequent petition for PCR must be filed within one year after the latest of: (a) the date on

¹ The procedural history and facts underlying defendant's convictions and his two prior unsuccessful petitions for PCR are set forth in detail in our opinion in State v. Wilcox, No. A-2930-13 (App. Div. Apr. 1, 2016) (slip op. at 1-6), certif. denied, 227 N.J. 255 (2016) and, therefore, will not be repeated here.

which the constitutional right asserted was initially recognized by the Supreme Court; (b) the date on which the factual predicate for relief sought was discovered; or (c) the date of denial of the first or subsequent application for PCR where ineffective assistance of counsel is alleged.

In his third petition for PCR, defendant asserted that a police officer who interviewed him prior to his indictment and obtained an inculpatory statement, destroyed all his notes after preparing his final report. Defendant asserted that because the notes were destroyed, he was entitled to a new trial under the Supreme Court's decision in State v. W.B., 205 N.J. 588, 607-09 (2011), which he argued was a "new rule of constitutional law" under Rule 3:22-4(b)(2)(A). In the alternative, he alleged that the officer's action constituted a new factual predicate for relief under Rule 3:22-4(b)(2)(B).² The trial judge rejected these contentions and dismissed defendant's petition. This appeal followed.

On appeal, defendant presents the following contention:

THE ORDER DENYING THE THIRD APPLICATION FOR
[PCR] MUST BE REVERSED AND THE MATTER
REMANDED FOR AN EVIDENTIARY HEARING ON THE
BASIS OF A NEW FACTUAL PREDICATE PURSUANT TO
R. 3:22-4 AND OR IN LIGHT OF THE NEW JERSEY
SUPREME COURT'S HOLDING IN STATE V. W.B.
THAT CLARIFIED R. 3:13-3 THAT SHOULD BE
RETROACTIVELY APPLIED TO DEFENDANT'S CASE
REGARDING THE ISSUE INVOLVING THE STATE'S
DETECTIVE DESTROYING HIS PRE-INTERVIEW NOTES
OF DEFENDANT INCLUDING THE LACK OF
RECORDINGS THAT HIS TRIAL ATTORNEY RAISED
AND PRESERVED FOR REVIEW THAT WARRANT THE
REMEDY OF AN ADVERSE INSTRUCTION AND A NEW
TRIAL.

We have considered defendant's contention in light of the record and applicable legal principles and conclude that it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add the following brief comments.

² Defendant did not claim that his third petition alleged that his prior attorneys provided ineffective assistance in connection with his first two PCR petitions under Rule 3:22-4(b)(2)(C).

Contrary to defendant's contention, the Supreme Court's decision in W.B. did not constitute a "new rule of constitutional law" under Rule 3:22-22(b)(2)(A) that was "made retroactive to defendant's petition by the . . . Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings[.]" In W.B., the Court held that the pre-indictment destruction of police interview notes may entitle a defendant to an adverse inference charge. 205 N.J. at 608-09. However, the Court deferred application of this new rule, and ruled that it would only have prospective effect beginning thirty days from the Court's opinion. Ibid. Then, in State v. Dabas, 215 N.J. 114, 138 (2013), the Court reiterated that "the note-retention requirement would apply prospectively to pre-indictment cases beginning after the thirty-day grace period[,]" and did not retroactively apply to govern a preexisting case.

Here, defendant was convicted in July 2002, Wilcox, slip op. at 2, and, therefore, W.B., which was decided in August 2011, plainly does not apply to this case. Accordingly, defendant failed to meet the requirements of Rule 3:22-4(b)(2)(A).

The trial judge also properly concluded that defendant did not satisfy the requirements of Rule 3:22-4(b)(2)(B). Defendant concedes he was aware at the time of his 2002 conviction that the police officer had destroyed the interview notes. Thus, there was no new "factual predicate" supporting his third PCR petition, which he filed in March 2017.

For similar reasons, defendant's petition was also untimely under Rule 3:22-4(b)(1) and Rule 3:22-12(a)(2). His third petition was not filed until three years after the denial of his second PCR petition in January 2014, more than five years after the Supreme Court's August 2011 decision in W.B., and many years after he learned that the interview notes were destroyed. Thus, defendant failed to satisfy the one-year filing deadline established by these rules.

Finally, an evidentiary hearing was not required under the circumstances presented in this case. Such a hearing is only required "when there are disputed issues of material facts related to the defendant's entitlement to PCR, particularly when the dispute regards events and conversations that occur off the record or outside the presence of the judge." State v. Porter, 216 N.J. 343, 354 (2013). Here, there was no dispute as to any material fact relative to defendant's petition and, therefore, an evidentiary hearing was not required.

Affirmed.

FOR THE COURT:



MICHAEL J. HAAS, J.A.D.

(Electronically Submitted)

SUPREME COURT OF NEW JERSEY
C-248 September Term 2018
081589

State of New Jersey,

Plaintiff-Respondent,

v.

FILED ORDER

OCT 24 2018

Raheem Wilcox,

Mark Neary
CLERK

Defendant-Petitioner.

A petition for certification of the judgment in A-004328-16

having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 23rd day of October, 2018.

Mark Neary
CLERK OF THE SUPREME COURT

APPENDIX C