SUPREME COURT OF NEW JERSEY
C-396 September Term 2022
087262

State of New Jersey,

Plaintiff-Respondent,

v.

Daniel J. Rios, a/k/a
Daniel Hernandez,
Daniell Hernandez,
Gabriel Ruiz, Daniel
H. Rios, Gabriel Rios,
Sean Davis, Gabriel
Ruis, and Daniel Jesus
Rios,

Defendant-Petitioner.

ORDER

A petition for certification of the judgment in A-003141-20 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 17th day of January, 2023.

Heather J. Baker

CLERK OF THE SUPREME COURT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3141-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANIEL J. RIOS, a/k/a DANIEL HERNANDEZ, DANIELL HERNANDEZ, GABRIEL RUIZ, DANIEL H. RIOS, GABRIEL RIOS, SEAN DAVIS, GABRIEL RUIS, and DANIEL JESUS RIOS,

Defendant-Appellant.

Submitted May 25, 2022 – Decided June 8, 2022

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 13-09-0804.

Daniel Rios, appellant pro se.

William A. Daniel, Union County Prosecutor, attorney for respondent (Meredith L. Balo, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Daniel J. Rios appeals from a June 2, 2021 order denying his motion for reconsideration of sentence under Rule 3:21-10(b), and a February 3, 2021 order denying his motion for reconsideration of that decision. We affirm.

We recounted the underlying facts and procedural history in our prior opinion affirming the denial of his petition for post-conviction relief (PCR). State v. Rios, No. A-5218-16 (App. Div. Sept. 18, 2018).

> Defendant was indicted on charges of first-degree murder, N.J.S.A. 2C:11-3(a)(1), (2); second-degree robbery, N.J.S.A. 2C:15-1; second-degree burglary, N.J.S.A. 2C:18-2; and first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) arising out of his asphyxiation of a ninety-two-year-old woman in the course of robbing her home. Defendant's fingerprints were found in the victim's kitchen and he confessed to the crime. He was not yet forty years old and had nine prior indictable convictions.
>
> . . . .
>
> In exchange for a plea to felony murder, the State offered defendant a sentence of thirty-five years with an eighty-five percent period of parole ineligibility. Defendant ultimately executed a supplemental plea form for a non-negotiated plea based on the judge's

> representation that he would sentence defendant to a thirty-year prison term with thirty years of parole ineligibility.
>
> [Ibid. (slip op. at 1-2).]

The court accepted defendant's plea to felony murder. On August 1, 2014, defendant was sentenced in accordance with the non-negotiated plea to a thirty-year NERA term, to run concurrently to the sentences imposed on two other indictments. The remaining counts were dismissed. Defendant did not file a direct appeal.

Thereafter, defendant filed a timely PCR petition, claiming trial counsel failed to explain he would be subject to five years of parole supervision after his release from prison under the No Early Release Act (NERA) N.J.S.A. 2C:43-7.2. The PCR court found that defendant failed to establish a prima facie case for PCR and denied the petition without an evidentiary hearing. Rios, slip op. at 4. We affirmed substantially for the reasons set forth in the PCR court's written opinion. Id. at 5.

On January 5, 2021, defendant filed a motion for reconsideration of sentence under Rule 3:21-10(b), claiming that the trial court should consider his post-conviction rehabilitation efforts, including completion of the Focus on the Victim, Cage Your Rage for Men, and Thinking For a Change programs.

Defendant relied upon Pepper v. United States, 562 U.S. 476 (2011); State v. Randolph, 210 N.J. 330 (2012); and State v. Towey, 244 N.J. Super. 582 (App. Div. 1990).

On February 3, 2021, the court issued an order and letter opinion denying the motion. The court found defendant "failed to assert any cognizable grounds for relief under [Rule] 3:21-10(b)." The court found the cases cited by defendant were inapplicable because defendant was not granted resentencing and his sentence "has not been set aside." The court noted that defendant had not indicated he wished to enter a substance abuse treatment program pursuant to Rule 3:21-10(b)(1) or that he suffered from an illness or infirmity pursuant to Rule 3:21-10(b)(2). Nor had he filed a joint application with the prosecutor's office pursuant to Rule 3:21-10(b)(3). In addition, defendant's sentence "is not one authorized to be changed under the Code of Criminal Justice" pursuant to Rule 3:21-10(b)(4), "nor is it an illegal sentence for purposes of proceeding under [Rule] 3:21-10(b)(5)."

On February 16, 2021, defendant submitted an informal letter request for the court to reconsider its denial of his motion for reconsideration of sentence. Defendant claimed that Rule 3:21-10 is unconstitutional because it prevents defendants from seeking a just sentence. Defendant further claimed that Rule

3:21-10 des not specify whether a defendant can seek the reconsideration of sentence based on post-sentencing rehabilitation.

The court issued a June 2, 2021 order and letter opinion denying the application without prejudice. The court noted that the rule sets forth "all of the potential bases that the [c]ourt can consider when amending or reducing a sentence." As to post-sentencing rehabilitation, the court noted that Rule 3:21-10 clearly requires a motion for reconsideration of sentence to be filed within sixty days of the entry of the judgment of conviction. The rule also sets forth the exceptions to that time limit. The court found that defendant's motion was filed more that six years after the sixty-day period expired and reiterated that defendant did not argue that he met any of the exceptions to the time bar.

The court rejected defendant's reliance on Graham v. Florida, 560 U.S. 48 (2010) and Miller v. Alabama, 567 U.S. 460 (2012), noting those cases involved "juvenile offenders facing life-without-parole sentences, which is not the case here."

This appeal followed. Defendant argues:

> THE LOWER COURT ERRED IN DENYING APPELLANT'S MOTION FOR RECONSIDERATION OF SENTENCE STATING THAT "POST-CONVICTION REHABITATIVE PROGRESS IS NOT A VALID BASIS FOR RELIEF" THEREFORE, THIS CASE MUST BE REMANDED

FOR A PROPER DETERMINATION OF THE ISSUES RAISED.

We affirm substantially for the reason expressed by Judge Regina Caulfield in her letter opinions. Defendant's arguments lack sufficient merit to warrant much further discussion in a written opinion. R. 2:11-3(e)(2).

A motion for reconsideration of sentence under Rule 3:21-10 is committed to the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. State v. Tumminello, 70 N.J. 187, 193 (1976). We discern no such abuse of discretion.

Judge Caulfield's findings are amply supported by the record and her conclusions of law are consonant with applicable legal principles. Defendant's motion for reconsideration of sentence, which was filed more than six years after the entry of the judgment of conviction, was clearly time-barred. Defendant did not establish a basis for to proceed under any of the exceptions enumerated in Rule 3:21-10(b).

Defendant was not sentenced for crimes committed as a juvenile and he was not sentenced to life-without-parole. His sentence is not unconstitutional or otherwise illegal, and it has not been set aside.

In addition, defendant is still serving a mandatory thirty-year parole disqualifier. He is not eligible for reconsideration of sentence while still serving

a term of parole ineligibility mandated by statute. State v. Brown, 384 N.J. Super. 191, 194 (App. Div. 2006); State v. Mendel, 212 N.J. Super. 110, 112-13 (App. Div. 1986). Until defendant completes his period of parole ineligibility "a court has no jurisdiction to consider a [Rule] 3:21-10(b) application." Brown, 384 N.J. Super. at 194.

Defendant has not been granted resentencing. His post-sentencing rehabilitation efforts can be brought forward and considered by the State Parole Board when he is eligible for parole.

Affirmed.

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
CRIMINAL

INDICTMENT NO.: 13-09-00804

STATE OF NEW JERSEY,

vs.

DANIEL J. RIOS,

Defendant.

ORDER

THIS MATTER having been opened to the Court by defendant, on a motion for reconsideration of sentence, and the Court having considered defendant's submission, and as defendant has failed to state an exception to the procedural bar under Rule 3:21-10(b), and for the reasons set forth in the Court's letter to defendant,

IT IS on this 2nd day of June, 2021,

ORDERED that defendant's motion for reconsideration of sentence is DENIED without prejudice.

REGINA CAULFIELD, P.J. Cr.

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
CRIMINAL

INDICTMENT NO.: 13-09-00804

STATE OF NEW JERSEY,

vs.

DANIEL J. RIOS,

Defendant.

ORDER

THIS MATTER having been opened to the Court by defendant, on a motion for reconsideration of sentence, and the Court having considered defendant's submission, and as defendant has failed to state an exception to the procedural bar under Rule 3:21-10(b), and for the reasons set forth in the Court's letter to defendant,

IT IS on this 3rd day of February, 2021,

ORDERED that defendant's motion for reconsideration of sentence is DENIED without prejudice.

REGINA CAULFIELD, P.J. Cr.

Additional material from this filing is available in the Clerk's Office.