STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 15, 2024)

WILSON RODRIGUES	:	
	:	
V.	:	**C.A. No. PM-2023-03088**
	:	
STATE OF RHODE ISLAND	:	

DECISION

CRUISE, J. Before this Court is Petitioner Wilson Rodrigues' application for postconviction relief. *See* Application for Post-Conviction Relief, June 29, 2023 (2023 Application). Petitioner contends that his February 12, 1991 nolo contendere plea should be vacated because it did not comply with Rule 11 of the Superior Court Rules of Criminal Procedure. *See generally id.*; *see also* Super. R. Crim. P. 11. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-1.

I

Facts and Travel

On February 12, 1991, Petitioner, assisted by counsel, entered a plea of nolo contendere to one count of possession with intent to deliver a controlled substance. (2023 Application ¶ 1.) The trial justice sentenced Petitioner to the following: six years at the Adult Correctional Institutions; three months to serve retroactive to October 17, 1990; five years and nine months suspended; and five years and nine months' probation with three months credit for time served awaiting trial. (2023 Application ¶ 2; *see State of Rhode Island v. Rodrigues*, P2-1990-4284B.)

On September 9, 2022, Petitioner filed his first application for postconviction relief (the 2022 Application). *See* Docket PM-2022-05393. In the 2022 Application, Petitioner asserted that Spanish is his native language, and at the time of his arrest he "had nearly no knowledge or ability

to speak, read, or write in the English language." (2022 Application ¶ 7.) Petitioner stated that he was not provided *Miranda* warnings in Spanish, nor was he accompanied by a Spanish-speaking interpreter or counsel during his interrogation. *Id*. at ¶¶ 8-9. Petitioner further averred that he is not a United States citizen and he was not advised of his rights as an alien pursuant to G.L. 1956 § 12-12-22 before pleading nolo contendere. *Id*. at ¶ 11. Additionally, Petitioner claims he was not made aware of the requirements of Rule 11. *Id*. at ¶ 12. On February 27, 2023, Petitioner moved to withdraw his 2022 Application without prejudice. *See* Docket. The case was dismissed.

On June 29, 2023, Petitioner filed a second application for postconviction relief. *See generally* 2023 Application.[1] Petitioner claimed that the "entry of conviction and imposition of sentence" violate Rhode Island laws because "a record does not exist to confirm that the plea colloquy was in compliance with Rule 11[.]" *Id*. at ¶ 5. Petitioner requests that his plea be vacated. *Id*. at ¶ 7. In support of his Application, Petitioner attached a letter from the State of Rhode Island Superior Court indicating that the transcript for Petitioner's 1991 plea hearing is not available. (May 8, 2023 Transcript Request Letter.)

The State of Rhode Island (State) filed an Answer on July 31, 2023 asserting that this action is barred by the doctrine of laches and *res judicata*. *See* Docket. As of July 2024, no evidentiary hearing has been held. *See id*.

II

Standard of Review

Postconviction relief is a statutory remedy for

> "[a]ny person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

[1] Hereinafter, references to Petitioner's 2023 Application will be referred to as "the Application" unless otherwise stated.

> "(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;
>
> "(2) That the court was without jurisdiction to impose sentence;
>
> "(3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
>
> "(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> "(5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or
>
> "(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy[.]" Section 10-9.1-1(a).

In pursuing such claims, a petitioner "bears 'the burden of proving, by a preponderance of the evidence, that such relief is warranted' in his or her case." *Brown v. State*, 32 A.3d 901, 907 (R.I. 2011) (quoting *Mattatall v. State*, 947 A.2d 896, 901 n.7 (R.I. 2008)). The action is civil in nature and all civil rules and statutes apply. *See* § 10-9.1-7 ("All rules and statutes applicable in civil proceedings shall apply . . ."); *see also Ouimette v. Moran*, 541 A.2d 855, 856 (R.I. 1988) ("an application for postconviction relief is civil in nature"). In accordance with § 10-9.1-7, "[t]he court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." Section 10-9.1-7. "In reviewing a hearing justice's determination with respect to an application for postconviction relief, this Court will not disturb the findings of the hearing justice 'absent clear error or a showing that the hearing justice overlooked or misconceived material evidence.'" *Mattatall*, 947 A.2d at 901 (quoting *State v. Thomas*, 794 A.2d 990, 993 (R.I. 2002)).

III

Analysis

A

Threshold Issues

Before reviewing Petitioner's underlying substantive claim, the Court must address the threshold issues of whether Petitioner's claim is barred by the doctrine of laches or *res judicata* as asserted in the State's Answer. *See* Answer.

1

Defense of Laches

"'Laches is an equitable defense that precludes a lawsuit by a plaintiff who has negligently sat on his or her rights to the detriment of a defendant.'" *Desamours v. State*, 210 A.3d 1177, 1184 (R.I. 2019) (quoting *School Committee of City of Cranston v. Bergin-Andrews*, 984 A.2d 629, 644 (R.I. 2009)). The State must meet the two-part test to successfully invoke the doctrine of laches to bar a delayed postconviction relief application: "the state has the burden of proving by a preponderance of the evidence that [1] the applicant unreasonably delayed in seeking relief *and* [2] that the state is prejudiced by the delay." *Raso v. Wall*, 884 A.2d 391, 395 (R.I. 2005). Both prongs involve questions of fact, and the Court must make the determinations in light of the circumstances of the particular case. *See Lombardi v. Lombardi*, 90 R.I. 205, 209, 156 A.2d 911, 913 (1959) ("What constitutes laches is to be determined in the light of the circumstances of the particular case. . . . Ordinarily it is a question of fact and is addressed to the sound discretion of the chancellor."). This Court also notes that "the mere lapse of time does not constitute laches." *Hyszko v. Barbour*, 448 A.2d 723, 727 (R.I. 1982).

In *Desamours*, the applicant, a citizen of Haiti, plead nolo contendere to possession of

cocaine and he was sentenced to probation for two years. *Desamours*, 210 A.3d at 1180. Some twelve years later, he filed an application for postconviction relief claiming his plea was entered in violation of Rule 11. *Id.* The applicant asserted that he was not properly instructed as to the nature of his charge and consequences of his plea—mainly, he claimed that he "'was not advised by anyone' of the immigration consequences of his plea." *Id.* In its opposition, the State asserted the defense of laches and claimed that the application was not filed within a reasonable time after the plea. *Id*. at 1181-82.

The Superior Court denied the application, emphasizing that, even though the "plea colloquy [was] 'bare-boned,' . . . the court reasonably could have found that [the] applicant was aware of the nature of his plea and that [the] applicant fully understood his rights and knowingly relinquished those rights." *Id*. at 1182. On appeal, the Supreme Court affirmed and reasoned that the "applicant has not offered a credible explanation for the twelve-year delay" from entering the plea to filing the petition. *Id*. at 1184. Specifically, the Court explained that "[the applicant] knew from the moment that he signed the plea form that his plea could result in deportation consequences." *Id*.

Here, Petitioner filed his Application approximately thirty-three years after his plea. *See* Docket. He claimed that he "was not aware of the requirements of Rule 11 . . . until he conferred with the undersigned counsel." (Application ¶ 6.) "Upon becoming aware of these requirements, he filed the above-captioned [Application]." *Id.* However, the State did not provide any factual support for its assertions that the delay was unreasonable, nor did it explain how it is prejudiced by the delay; the State simply invoked the defenses. *See generally* Answer. Unlike *Desamours*, this Court lacks the benefit of a plea colloquy to determine what information Petitioner was told before entering his plea. Accordingly, without further support, the State has failed to meet its

burden that the defense of laches bars this matter.

2

Res Judicata

Section 10-9.1-8 codifies the doctrine of *res judicata* within the postconviction-relief context. This section provides in pertinent part:

> "All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief." Section 10-9.1-8.

This principle is intended to preclude the relitigation of substantially identical issues raised in prior postconviction-relief proceedings. *See Carillo v. Moran*, 463 A.2d 178, 182 (R.I. 1983); *see also Ramirez v. State*, 933 A.2d 1110, 1112 (R.I. 2007) (barring consideration of the petitioner's claims because he raised new claims—for the first time—in his third postconviction-relief application). A limited and narrow exception to this otherwise absolute bar exists which provides that issues which were "'finally adjudicated or not so raised' may nonetheless be the basis for a subsequent application for postconviction relief if the court finds it to be 'in the interest of justice.'" *Mattatall*, 947 A.2d at 905 (quoting § 10-9.1-8).

Here, Petitioner first averred that the plea colloquy did not comply with Rule 11 in his 2022 Application. (2022 Application ¶ 11.) Petitioner again raised the claim in his 2023 Application. *See* Application 2 ("the plea colloquy [did not comply] with Rule 11"). Because Petitioner raised

the issue of noncompliance with Rule 11 in his 2022 Application, he did not waive this issue.[2] Accordingly, this Court finds the *res judicata* doctrine inapplicable to preclude Petitioner's claims for relief.

B

Rule 11

Turning to the merits of Petitioner's Application, Petitioner asserted that his nolo contendere plea was not entered in compliance with Rule 11. *See* Application. Rule 11 provides that the Court "shall not accept . . . a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea." Super. R. Crim. P. 11; *see also Flint v. Sharkey*, 107 R.I. 530, 537, 268 A.2d 714, 719 (1970). In entering a plea of nolo contendere, "a defendant waives several federal constitutional rights and consents to the judgment of the court." *Johnson v. Mullen*, 120 R.I. 701, 706, 390 A.2d 909, 912 (1978).

Our Supreme Court recognizes that "[t]he decision to plead nolo contendere is not one to be taken lightly" and it "is treated as a guilty plea." *Cote v. State*, 994 A.2d 59, 63 (R.I. 2010). As such, our Supreme Court has expressed that

> "a hearing justice should engage in as extensive an interchange as necessary so that the record as a whole and the circumstances in their totality will disclose to a court reviewing a guilty or nolo plea that the defendant understand the nature of the charge and the consequences of the plea." *Njie v. State*, 156 A.3d 429, 434 (R.I. 2017) (internal quotations omitted).

The hearing transcript is a critical piece of a petitioner's application and the record before the

[2] This Court notes that had Petitioner raised the Rule 11 issue for the first time in his 2023 Application, the issue would be akin to that in *Ramirez v. State*, 933 A.2d 1110, 1112 (R.I. 2007) and the defense of *res judicata* could bar Petitioner's claim for relief.

Court. In reviewing the transcript, the Court is able to review the colloquy between the justice, petitioner, and counsel to determine whether the plea satisfied Rule 11. Without a transcript, the Court will be "unable to discern how the hearing justice could make factual findings about trial counsel's performance." *Tassone v. State*, 42 A.3d 1277, 1285–86 (R.I. 2012); *see State v. Vashey*, 912 A.2d 416, 419 (R.I. 2006) ("the lack of a fully developed record from a postconviction relief proceeding is fatal"); *see also 731 Airport Associates v. H & M Realty Associates, LLC ex rel. Leef*, 799 A.2d 279, 282 (R.I. 2002) ("The deliberate decision to prosecute an appeal without providing the Court with a transcript of the proceedings in the trial court is risky business.").

In *Reyes v. State*, 141 A.3d 644 (R.I. 2016), the defendant entered a nolo contendere plea and was charged with one count of narcotics nuisance. *Reyes*, 141 A.3d at 649. The Superior Court entered two pleas: one in English and one in Spanish; however, neither the defendant nor his counsel requested an interpreter at the hearing. *Id*. In his postconviction-relief application, the defendant asserted that the plea should be vacated because it "was not a knowing, intelligent, and voluntary plea" and failed to comply with Rule 11. *Id*. at 653. The Supreme Court affirmed the trial justice's determination that the plea complied with Rule 11. *Id*. at 654. The Court reviewed the hearing transcript to determine if the defendant's responses demonstrated he had a "basic, functional understanding of English" and concluded that "there is no indication that he was confused or had difficulty understanding the discourse at any point during the hearing." *Id*. at 653. For example, the defendant showed no hesitancy in providing his name and date of birth. *Id*. at 654. The defendant also confirmed with the hearing justice that he did not have questions about his rights or the consequences of his plea. *Id*.

The Supreme Court reviewed the record before it to determine whether the colloquy complied with Rule 11 and affirmed the trial court's denial of the defendant's application; review

of the hearing transcript was critical to its analysis. *Id*. Moreover, the Supreme Court reasoned, "[w]e glean nothing from the record to suggest that anything occurred at the hearing to put the trial justice on notice to inquire further into whether [the defendant] required an interpreter." *Id*.

In *Tassone*, the defendant was convicted of murder and sentenced to life imprisonment without the possibility of parole. *Tassone*, 42 A.3d at 1287. Years later, the defendant applied for postconviction relief and the hearing justice denied the application. *Id*. at 1282. At that hearing, "the trial transcripts were missing" and the "clerk's office was unable to track them down and locate them."[3] *Id*. at 1281. On appeal, our Supreme Court explained, "it is unclear to us how the hearing justice was able to independently determine that no genuine issues of material fact existed surrounding applicant's claims of ineffective assistance of counsel without having the benefit of a trial transcript or without conducting an evidentiary hearing." *Id*. at 1287. It was "perplexed by the fact that the trial transcript was unavailable and there is no good explanation about why it was missing." *Id*. at 1285. The Court held, "[i]n light of the severity of this sentence, . . . from this point forward, an evidentiary hearing is required in the first application for postconviction relief in all cases involving applicants sentenced to life without the possibility of parole." *Id*. at 1287.

Notably, in 2018, our Supreme Court declined to extend the holding from *Tassone* to a case where the defendant was not sentenced to life without possibility of parole. *See Ricci v. State*, 196 A.3d 292, 303 (R.I. 2018). In *Ricci*, the defendant was found guilty of burglary, robbery, and assault on a person over the age of sixty and sentenced to three concurrent sentences totaling approximately sixty years. *Id*. at 295. In his application for postconviction relief, the defendant asserted, among other things, "that he should have been given an evidentiary hearing . . . due to

[3] The hearing justice only had a one-page transcript from the pretrial motions. *Tassone v. State*, 42 A.3d 1277, 1285 n.9 (R.I. 2012).

the length of his sentence." *Id*. at 303. However, the Supreme Court reasoned that "[the defendant] has not been sentenced to life without the possibility of parole; and, therefore, *Tassone* is inapplicable." *Id*. The Supreme Court concluded: "we decline at this time to consider extending the holding in *Tassone*." *Id*.

Despite the instant matter's similarity to *Tassone* in that this Court lacks the benefit of a plea colloquy transcript, the Petitioner was not sentenced to life without the possibility of parole like the defendant was in *Tassone*.[4] *See Tassone,* 42 A.3d at 1287. This Court applies the rationale from *Ricci*. *See Ricci*, 196 A.3d at 303. Accordingly, this Court declines to mandate an evidentiary hearing. In light of the passage of time and lack of a record, this Court denies Petitioner's Application.

IV

Conclusion

In light of the foregoing, this Court concludes that Petitioner has not satisfied his burden of proving by a preponderance of the evidence that postconviction relief is warranted. Accordingly, Petitioner's Application for postconviction relief is denied and dismissed. Counsel shall submit an appropriate order for entry.

[4] The Court notes that Petitioner is not at fault for failing to provide the transcript. The Superior Court has confirmed that Petitioner attempted to access the 1991 transcript and that it is not available. *See* May 8, 2023 Transcript Request Letter.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Rodrigues v. State of Rhode Island**
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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 15, 2024**
JUSTICE/MAGISTRATE:	**Cruise, J.**
ATTORNEYS:	
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