

1. Recent cases: Decision on defense attorney informing criminals of deportation not retroactive State v Brewster 429 NJ Super. 387 (App. Div. 2013)

This PCR appeal addressed *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010); *State v. Nunez-Valdez*, 200 N.J. 129, 138 (2009); and Rule 3:22-12, the limitations period for filing a PCR petition as amended in 2010. The court hold that defendant did not establish factually a prima facie case of ineffective assistance of counsel by alleging that his attorney at the time he pleaded guilty in 1998 to marijuana charges failed to predict correctly that a federal deportation complaint would be filed against him in 2010. The warning contained in Question 17 of the plea form that defendant "may" be deported was correct and sufficient advice. Also, the PCR was untimely filed under R. 3:22-12, in particular, because an attorney told defendant no later than in 2007 that his conviction would cause immigration problems.

2. Two Felony convictions can only be expunged if contemporaneous In Re Expungement of R.Z. 429 NJ Super. 295 (App. Div. 2013)

The court reversed and remanded an order expunging an adult conviction for two second-degree crimes - theft by deception and financial facilitation of criminal activity - because petitioner failed to prove the crimes were contemporaneous. N.J.S.A. 2C:52-2(a) precludes expungement if a petitioner has been "convicted of any prior or subsequent crime." Crimes are prior or subsequent if committed on "separate occasions." *In re Ross*, 400 N.J. Super. 117, 122 (App. Div. 2008). The court held the petitioner bears the burden to show one crime was not prior or subsequent to the other. Also, the court hold a crime involving a course of conduct is deemed to occur, for expungement purposes, when the course of conduct begins as well as when it ends, and the court reject the suggestion that the date of commission is determined solely by N.J.S.A. 2C:1-6c, which states, for statute of limitations purposes, a crime involving a course of conduct is committed when the conduct terminates. The court remand to allow petitioner to submit proofs

that his two crimes were in fact contemporaneous.

Editorial assistance provided by Rocco Seminerio. Mr. Seminerio will be entering his third year at Seton Hall University School of Law and is currently participating in Kenneth Vercammen's Spring Internship Program.