

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – ATLANTIC COUNTY  
(CRIMINAL PART)**

**Indictment Nos. 22-09-01413-I  
& 22-10-01440-I**

**STATE OF NEW JERSEY,**

**v.**

**DEVON TYLER BARBER, Defendant-Petitioner.**

**VERIFIED PETITION FOR  
POST-CONVICTION RELIEF  
(R. 3:22-1 et seq.)**

Devon Tyler Barber, appearing pro se, respectfully petitions this Court for post-conviction relief and alleges as follows:

- 1. Consolidated Plea and Convictions:** Petitioner was charged under two indictments ... (see Verified Petition ¶1).
- 2. Sentence:** On January 4, 2023, the Court sentenced Petitioner ... (see Verified Petition ¶2).
- 3. Underlying Facts:** The charges stem from a work-related dispute (employee/employer) ... (see Verified Petition ¶3).
- 4. No Prior PCR and Timeliness:** Petitioner has not filed any prior PCR petitions ... (see Verified Petition ¶4).

## **GROUND FOR RELIEF**

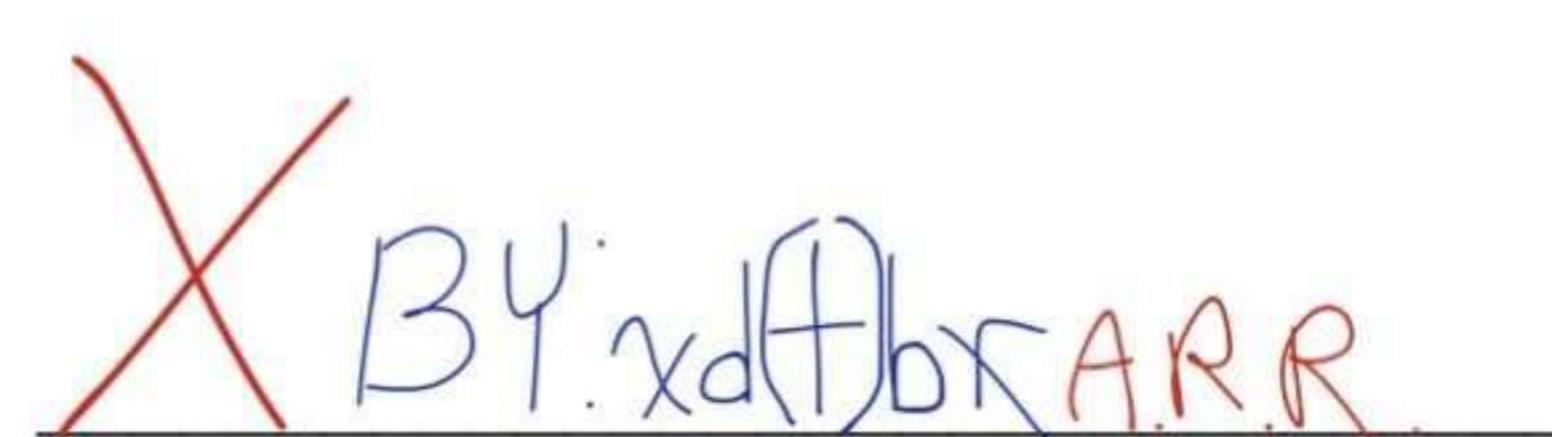
- Ineffective assistance of counsel in violation of the Sixth Amendment and NJ Const. art. I ¶10.
- Actual conflict of interest (Cuyler v. Sullivan).
- Manifest injustice / involuntary plea.
- Mischaracterization of a civil dispute as criminal.
- Prosecutorial misconduct – Brady/Giglio violations.
- Newly discovered evidence.
- Inhumane jail conditions amounting to coercion.

## **RELIEF REQUESTED**

- Vacate the guilty pleas and resulting judgments of conviction.
- Dismiss the indictments with prejudice OR restore to the trial calendar.
- Order an evidentiary hearing.
- Appoint PCR counsel if Petitioner is indigent.
- Stay any remaining probation during PCR.
- Order expungement if convictions are vacated.
- Grant any other just and equitable relief.

**Verification:** I, Devon Tyler Barber, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: Sunday, JULY 27,  
A.D. 2025

 A handwritten signature in blue ink, consisting of a large 'X' and the text 'BY: xdfbxARR'.

Devon Tyler Barber, Petitioner (pro se)

**To:** Honorable Judge of the Superior Court, Atlantic County (Criminal Part)

**From:** Devon Tyler Barber of the Paccillo Family, Petitioner (pro se)

Devon Tyler Barber, the above-named defendant, hereby petitions this Court for post-conviction relief (PCR) pursuant to *R. 3:22-1 et seq.*, and in support thereof states as follows:

## Procedural History

1. **Consolidated Plea and Convictions:** Petitioner was charged under two indictments arising from a single course of events. Under Indictment No. 22-09-01413-I, he was charged with third-degree aggravated assault and related weapons offenses (and two lesser disorderly persons offenses). Under Indictment No. 22-10-01440-I, he was charged with third-degree terroristic threats (threat to commit a crime of violence). On October 26, 2022, pursuant to a global plea agreement, Petitioner pleaded guilty to Count 1 of each Indictment (attempted aggravated assault and terroristic threats, both third-degree). All remaining counts and charges were dismissed as part of the plea bargain. The plea agreement included a **waiver of appeal** and a joint sentencing recommendation of non-custodial probation.
2. **Sentence:** On January 4, 2023, the Court sentenced Petitioner to **concurrent three-year terms of probation** on each indictment, with conditions including anger management counseling, substance abuse and mental health evaluation (TASC) with compliance, and no contact with the named victim. Petitioner has no prior indictable convictions; these matters represent his first and second indictable convictions. Petitioner has since completed the custodial component (time served) and is no longer a client of the probation department. No direct appeal was filed (appeal rights were waived per the plea agreement).

3. **Underlying Facts:** The charges stem from a **work-related dispute** in mid-2022 between Petitioner (a 24-year-old tradesman) and his former employer (the alleged victim). Petitioner had been working to rehabilitate a residential property for the victim and **believed he was owed unpaid wages**. In an attempt to secure payment, Petitioner, acting through his small business *Devons Home Improvement LLC*, sought to assert a **lien or ownership interest** in the property. Petitioner posted a sign or notice on the premises reflecting his claim, ‘No Trespass’. The State alleged that Petitioner’s actions escalated to unlawful conduct on July 11, 2022, when an altercation occurred at the property. According to police reports, officers responded to a disturbance that day and encountered Petitioner in the victim’s driveway holding a crowbar. Petitioner was accused of striking the victim (causing a minor injury) and of sending the victim **threatening communications** during the wage dispute. Petitioner asserts that his intent throughout was to retrieve lawfully earned compensation, not to commit any crime.

#### 4. **Electronic-Filing History, Lack of Merits Review & Timeliness**

(a) **JEDS submissions.** Since **4 May 2025** Petitioner has transmitted a series of filings through the Judiciary Electronic Filing and Delivery System (JEDS) under the two related Atlantic-County PCR dockets, **ATL-22-002313** (Indictment 22-09-01413-I) and **ATL-24-001934** (Indictment 22-10-01440-I), plus a single filing on **ATL-22-002292**. The clerk’s log reflects the following entries (all still marked “**Open**” and never scheduled for argument or decision):

<b>EF No.</b>	<b>Date (2025)</b>	<b>Docket</b>	<b>Filing Type</b>
3344015	05/04	ATL-24-001934	PCR petition
3344016	05/04	ATL-22-002313	PCR petition
3352125	05/07	ATL-22-002313	PCR petition
3370560	05/15	ATL-22-002313	Motion

EF No.	Date (2025)	Docket	Filing Type
3369597	05/15	ATL-22-002313	Motion
3370700	05/16	ATL-22-002313	PCR supplement
3373818	05/18	ATL-22-002313	PCR supplement
3373819	05/18	ATL-24-001934	PCR supplement
3381971	05/21	ATL-22-002313	PCR supplement
3382438	05/21	ATL-24-001934	PCR supplement
3384892	05/22	ATL-22-002313	PCR supplement
3385005	05/22	ATL-24-001934	PCR supplement
3386111	05/23	ATL-22-002313	PCR supplement
3386114	05/23	ATL-24-001934	PCR supplement
3436571	06/16	ATL-24-001934	PCR supplement
3438833	06/18	ATL-22-002292	PCR petition
3441478	06/18	ATL-22-002313	PCR supplement
3454163	06/24	ATL-24-001934	PCR supplement

**5. (b) No adjudication on the merits.** The docket shows **no order dismissing, denying, or granting any PCR claim**; no written opinion; and no hearing date. Thus, despite numerous uploads, **the Court has not yet reached the substance** of Petitioner's constitutional allegations.

**(c) "First perfected" petition.** Because earlier filings were procedurally incomplete and never acted upon, the present **Verified Petition is the first perfected PCR under R. 3:22-1.**

**(d) Timeliness.** Filed within **five (5) years of the 26 Oct 2022 Judgment of Conviction**, this petition is **presumptively timely** under **R. 3:22-12(a)(1)**.

**(e) Fundamental-justice exception.** Even if deemed "successive," **R. 3:22-4(b)(2)** requires the Court to relax any procedural bar where, as here, *fundamental justice* demands review of **serious constitutional violations**—ineffective counsel, Brady/Giglio nondisclosure, coerced plea, and inhumane jail conditions—that have never been examined.

## **Grounds for Relief (R. 3:22-2)**

Petitioner seeks relief under **R. 3:22-2 (a), (b), (c), and (d)**. The conviction and sentence are constitutionally infirm for the following, independent reasons:

1. **Ineffective Assistance of Counsel — Retained trial counsel John W. Tumelty, Esq.**  
failed to (i) investigate Petitioner's claim-of-right defense, (ii) obtain or subpoena basic documentary proof of the underlying work relationship— **e.g., the written work agreement, emails and invoices, Social-Security wage records, time-cards, tool-purchase receipts, and other corroborating business documents**— (iii) pursue exculpatory discovery, and (iv) protect Petitioner from coercive plea pressure, all in violation of the Sixth Amendment and *Strickland v. Washington*, 466 U.S. 668 (1984).  
**R. 3:22-2(a), (d).**
2. **Actual Conflict of Interest** — Counsel's divided loyalties (see Point II-A) tainted plea negotiations; under *Cuyler v. Sullivan*, 446 U.S. 335 (1980), prejudice is presumed.  
**R. 3:22-2(a), (d)**
3. **Failure to File—or Even Consult About—a Direct Appeal** — Immediately after sentencing, Petitioner told counsel he wished to appeal; counsel neither filed a notice nor discussed appellate options. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000) deems such inaction presumptively deficient and prejudicial. **R. 3:22-2(d)**
4. **Manifest Injustice / Involuntary Plea** — The plea was coerced by counsel's pressure and inhumane jail conditions; the record lacks a factual basis for intent elements. Withdrawal is required under **R. 3:21-1. R. 3:22-2(a)**

5. **Mischaracterization of a Civil Wage Dispute as Criminal Conduct** – Prosecuting a private contract matter as assault and terroristic threats exceeded proper jurisdiction and violated due process. **R. 3:22-2(b)**

6. **Prosecutorial misconduct — *Brady* / *Giglio* Violations** – The State suppressed critical impeachment and exculpatory evidence, including: **(a)** the complainant **Joseph Hardemon’s** prior conviction for *Aggravated Sexual Assault of a Child < 13*, **N.J.S.A. 2C:14-2a(1)** (true-billed 17 Dec 2003); **(b)** Hardemon’s third-degree *Theft-by-Deception* conviction, **N.J.S.A. 2C:20-4** (remanded 19 Oct 2021); and **(c)** contemporaneous electronic communications and on-scene statements showing that the **11 July 2022** incident arose from Petitioner’s effort to reclaim his own tools and materials — *not* any plan to threaten, extort, or injure.

By withholding this evidence, the prosecution breached its affirmative disclosure duty under ***Brady v. Maryland***, 373 U.S. 83 (1963), and ***Giglio v. United States***, 405 U.S. 150 (1972), as well as the parallel New Jersey authorities that require reversal whenever suppressed material could undermine confidence in the outcome:

- ***State v. Carter***, 91 N.J. 86 (1982) — new trial where withheld statements cast doubt on State witnesses.
- ***State v. Martini***, 187 N.J. 469 (2006) — death sentence vacated for late impeachment disclosure.
- ***State v. Nelson***, 155 N.J. 487 (1998) — suppressed police reports impeaching eyewitness required new trial.
- ***State v. Bell***, 217 N.J. 336 (2014) — plea vacated on PCR because nondisclosure rendered plea uninformed.
- ***State v. Brown***, 236 N.J. 497 (2019) — reaffirmed *Brady/Giglio* standard; nondisclosure eroding verdict confidence mandates new trial.

**Under R. 3:22-2(a), this suppression—standing alone and in concert with Petitioner’s other claims—requires vacatur of the plea and convictions.**

7. **Newly Discovered Evidence** – Post-plea documents corroborating wage claims and records of jail conditions meet the *State v. Carter*, 85 N.J. 300 (1981) test. **R. 3:22-2(a)**
8. **Eighth-Amendment Violations – Inhumane Jail Conditions** – Severe overcrowding and unsanitary conditions coerced the plea and offend fundamental fairness. **R. 3:22-2(a)**
9. **Sentence Not in Accordance with Law** – Any sentence resting on a constitutionally defective conviction is invalid. **R. 3:22-2(c)**

*Each ground, standing alone or in combination, warrants relief under the United States and New Jersey Constitutions and the cited subsections of R. 3:22-2.*

Each of the foregoing grounds—standing alone and, even more powerfully, in their cumulative effect—demonstrates (1) a violation of Petitioner’s rights under the United States and New Jersey Constitutions (**R. 3:22-2(a)**); (2) a fundamental defect that corrupted the entire proceeding (**R. 3:22-2(b)**); (3) a sentence that is unlawful because it rests on those defects (**R. 3:22-2(c)**); and (4) ineffective assistance of counsel that squarely fits the category identified in **R. 3:22-2(d)**. Petitioner incorporates by reference the facts set forth in his accompanying Certification, which supply the factual predicate for each claim.

### **Relief Requested**

**WHEREFORE**, Petitioner **Devon Tyler Barber** respectfully **prays** that this Court enter an Order granting the following relief:

- a. **Vacatur of Plea and Judgments.** Permit Petitioner to withdraw his guilty plea on both indictments and vacate the corresponding judgments of conviction because enforcement would constitute a manifest injustice. *R. 3:21-1; State v. Slater*, 198 N.J. 145 (2009).

**b. Dismissal or, in the Alternative, Trial.**

- (i) **Dismissal with prejudice** if the Court finds that constitutional error cannot be cured; **or**
- (ii) **Restoration to the trial calendar** for jury trial on all charges if not dismissed.

**c. Evidentiary Hearing.** Schedule a hearing pursuant to *State v. Preciose*, 129 N.J. 451 (1992) on contested factual issues—specifically counsel’s conflict and ineffectiveness, suppressed exculpatory evidence, and the coercive impact of jail conditions.

**d. Appointment of Counsel.** If Petitioner is indigent or the interests of justice so require, appoint qualified PCR counsel under **R. 3:22-6(b)**.

**e. Interim Stay of Sentence and Probation.** Issue any stay or modification necessary to prevent ongoing prejudice while this petition is pending, including suspension of remaining probation conditions or fee obligations.

**f. Conditional Expungement Relief.** Upon vacatur or dismissal, direct prompt expungement of all related records—or set an expedited expungement hearing—under **N.J.S.A. 2C:52-6**.

**g. Such Other and Further Relief** as the Court deems just and equitable, including correction of fines, penalties, and collateral consequences.

**h. Certified Transcripts at State Expense.** If not already on file, direct the State to provide certified copies of the plea, sentencing, and any pre-trial motion transcripts at its cost for use in any hearing ordered herein.

**i. Oral Argument.** Grant oral argument pursuant to **R. 3:22-10(b)**.

**j. Discovery & Brady/Giglio Production.** Order the State to disclose all discovery, Brady/Giglio material, and jail-condition records relevant to the issues raised in this petition.

Petitioner submits that these grounds present a **prima facie** basis for relief. No procedural bar under **R. 3:22-4 or R. 3:22-5** applies, as the issues have not been previously adjudicated and rely on facts outside the trial record and newly discovered evidence.

## **VERIFICATION**

**I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.**



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**Devon Tyler Barber (Pro Se)**

SBI # 542255G] 

c/o 325 E. Jimmie Leeds Rd., suite 7-333, Galloway, New Jersey.

Dated: Sunday, JULY 27,  
A.D. 2025

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