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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5192-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FREDERICK VANGELDREN,

Defendant-Appellant.

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Submitted December 14, 2016 – Decided January 11, 2017

Before Judges Higbee and Manahan.<sup>1</sup>

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Indictment No.  
15-02-0061.

Joseph E. Krakora, Public Defender, attorney  
for appellant (John Douard, Assistant Deputy  
Public Defender, of counsel and on the brief).

Esther Suarez, Hudson County Prosecutor,  
attorney for respondent (Lillian Kayed,  
Assistant Prosecutor, on the brief).

PER CURIAM

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<sup>1</sup> Hon. Carol E. Higbee participated in the panel that decided this appeal. The opinion was approved for filing prior to Judge Higbee's death on January 3, 2017.

Defendant Frederick Vangeldren appeals the denial of his admission into the Pretrial Intervention Program (PTI). We affirm.

On October 3, 2014, defendant and two acquaintances damaged four trucks belonging to his former employer. Defendant specifically damaged the window of one of the trucks and spray-painted a swastika on it; he was aware his former employer is Jewish.

On February 9, 2015, defendant was charged with fourth-degree criminal mischief-property damage, N.J.S.A. 2C:17-3(a)(1); and fourth-degree bias intimidation, N.J.S.A. 2C:16-1(a)(2). That same day, defendant pled guilty to both charges. Pursuant to the agreement, the State recommended that defendant be sentenced to a one-year period of probation. At the conclusion of the plea hearing, defendant's counsel stated that defendant wanted to apply for admission to PTI. The assistant prosecutor did not object to the application. The court then entered an order permitting defendant to apply.

After defendant's application, the prosecutor objected to defendant's PTI admission by letter dated March 17, 2015.<sup>2</sup> Defendant's application was denied. Defendant appealed to the Law Division. A hearing was held on May 29, 2015. In a written

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<sup>2</sup> The record does not reflect the Criminal Division's determination regarding defendant's application.

opinion, the court determined that the State's objection to PTI admission was not arbitrary or capricious and denied defendant's appeal. The court then sentenced defendant to a one-year period of probation.

Judicial review of the State's decision for PTI is severely limited. State v. Nwobu, 139 N.J. 236, 246 (1995) (citing State v. Kraft, 265 N.J. Super. 106, 111 (App. Div. 1993)); State v. Hermann, 80 N.J. 122, 128 (1979). Prosecutors have wide latitude in deciding whom to divert into the PTI program and whom to prosecute. Nwobu, supra, 139 N.J. at 246 (citing Kraft, supra, 265 N.J. Super. at 111). Courts grant "enhanced" or "extra" deference to that decision. Nwobu, supra, 139 N.J. at 246 (citing Kraft, supra, 265 N.J. Super. at 111); accord State v. Baynes, 148 N.J. 434, 443-44 (1997). "Judicial review serves to check only the 'most egregious examples of injustice and unfairness.'" State v. Negran, 178 N.J. 73, 82 (2003) (quoting State v. Leonardis, 73 N.J. 360, 384 (1977)); accord Nwobu, supra, 139 N.J. at 246; State v. DeMarco, 107 N.J. 562, 566 (1987).

Consequently, a reviewing court may order a defendant into PTI over the prosecutor's objection only if the defendant can "clearly and convincingly establish that the prosecutor's refusal to sanction admission into the program was based on a patent and gross abuse of . . . discretion." State v. Wallace, 146 N.J. 576,

582 (1996) (quoting Leonardis, supra, 73 N.J. at 382) (alteration in original); accord Baynes, supra, 148 N.J. at 444.

In State v. Bender, 80 N.J. 84, 93 (1979), the Supreme Court explained in detail the definition of patent and gross abuse of discretion in the PTI context:

Ordinarily, an abuse of discretion will be manifest if defendant can show that a prosecutorial veto (a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in judgment. In order for such an abuse of discretion to rise to the level of "patent and gross," it must further be shown that the prosecutorial error complained of will clearly subvert the goals underlying Pretrial Intervention.

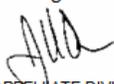
[(Citations omitted).]

In the letter objecting to defendant's PTI application, the prosecutor cited six of the seventeen PTI factors enumerated in N.J.S.A. 2C:43-12(e), specifically, factors (1), (2), (3), (7), (11), and (17). The State reasoned that bias crimes are "inappropriate for PTI diversion" and that defendant "displayed a venomous hatred of his Jewish ex-employer by invoking a heinous reference to the Nazi era." The State concluded that defendant's anti-Semitic act cannot be "rectified" with the diversion afforded by PTI and rejected defendant's admission.

Upon review of the record in light of our highly deferential standard of review, we conclude the prosecutor's determination to reject defendant's PTI application was premised upon relevant and appropriate factors. As such, the decision was not an "arbitrary, patent, and gross abuse of discretion."

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION