SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1538-22

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Monmouth County.
AUSTIN MELI,	:	
		Indictment No. 21-05-00268-I
Defendant-Appellant.	:	
		Sat Below:
	:	Hon. Joseph W. Oxley, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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Dated: July 18, 2024

DEFENDANT IS CONFINED

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

Monmouth County Indictment No. 21-05-00268-I charged Mr. Austin Meli with first-degree murder under N.J.S.A. 2C:1.l-3a(l) and N.J.S.A. 2C:11-3a(2), with an aggravating factor under N.J.S.A. 2C:11-3b(4)(k), and second-degree endangering the welfare of a child under N.J.S.A. 2C:24-4a(2), for the death of his child.[2] (Da 18-20)

On February 10, 2022, Mr. Meli pleaded guilty to aggravated manslaughter before the Honorable Joseph W. Oxley, J.S.C. (1T) In exchange for the plea, the State agreed to dismiss the remaining charges and to recommend thirty years in prison, with an 85% period of parole ineligibility pursuant to the No Early Release Act ("NERA"), to run consecutive to a ten-year NERA sentence that had been imposed on a separate indictment.[3] (1T 9-20 to 10-6; Da 12-17)

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[1] For brevity, the procedural history and statement of facts are combined.

[2] Mr. Meli was twenty-two years old at the time of the offense. (PSR 1)

[3] That separate indictment charged Mr. Meli with one count of first-degree attempted murder under N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3, three counts of second-degree endangering under N.J.S.A. 2C:24-4A(2), two counts of second-degree aggravated assault under N.J.S.A. 2C:12-1B(1), one count of third-degree tampering with a witness under N.J.S.A. 2C:28-5A, and one count of fourth-degree tampering with physical evidence under N.J.S.A. 2C:28-6(1), for conduct related to his abuse of his older child, which was discovered pursuant to the investigation in this case. (PSR 6-7) On that indictment, Mr. Meli pleaded guilty to two counts of endangering, one count of aggravated assault, and one count of tampering on October 29, 2019. (PSR 6-7) He was sentenced on March 13, 2020. (PSR 6-7)

In giving the factual basis for the plea, Mr. Meli initially stated that on March 8 or March 9 of 2019, he laid on the couch with his infant child in a manner that "could be very dangerous to her," and admitted that he "knew that there was a risk . . . [of] rolling over on her and suffocating her by her being on the couch." (1T 12-21 to 13-6) He also agreed that he eventually "realized she was not okay and rather than render aid . . . put her in . . . the ExerSaucer." (1T 13-7 to 10) He acknowledged that "the manner in which [he] slept with her and recklessly causing her to suffocate . . . caused her death." (1T 13-14 to 18)

After the State observed that the factual basis was not sufficient, the parties took a break to confer amongst themselves. (1T 13-21 to 14-4) Thereafter, Mr. Meli provided a different factual basis.

He said he had previously put his "hand over [his] older child's mouth in an effort to get him to sleep" and that he had not died.[4] (1T 15-1 to 9) Mr. Meli then affirmed that on the day of the instant offense, "[he] used the same method to try and put [his] daughter to sleep." (1T 15-10 to 14) He agreed that "[he] did so because it had not hurt [his] son," and that he "did not intend on killing [his] daughter," even though "it was reckless that [he] put [his] hand over her nose and mouth in an effort to get her to sleep." (1T 15-15 to 19)

[4] His son was fifteen months old, while his daughter was six weeks old. (1T 16-19 to 24)

On December 16, 2022, Judge Oxley sentenced Mr. Meli in accordance with the State's recommendation to a thirty-year NERA term and five years of parole supervision, to run consecutive to the ten-year NERA term on the separate indictment. (2T 40-4 to 42-8)

Mr. Meli filed a timely Notice of Appeal. (Da 2-5) The appeal was initially placed on the Sentencing Oral Argument calendar and was argued on April 22, 2024, before the Honorable Maritza Berdote Byrne, J.A.D., and the Honorable Patrick Dealmeida, J.A.D. (3T) Thereafter, the panel transferred the appeal to the plenary calendar for briefing. (Da 1)

LEGAL ARGUMENT

POINT I

THE PLEA MUST BE VACATED BECAUSE THE FACTUAL BASIS IS INADEQUATE. (Not Raised Below)

The plea must be vacated because it lacked an adequate factual basis. U.S. Const. amends. V, VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10. A trial court may accept a guilty plea only after "elicit[ing] from the defendant a comprehensive factual basis, addressing each element of a given offense in substantial detail." State v. Campfield, 213 N.J. 218, 236 (2013). The "court is not permitted to presume facts required to establish the essential elements of the crime." State v. Gregory, 220 N.J. 413, 421 (2015) (internal citations omitted). Rather, the "court must be satisfied

from the lips of the defendant . . . that he committed every element of the crime charged." State v. Perez, 220 N.J. 423, 433 (2015) (internal citations omitted). This requirement "is designed to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." Id. (citing State v. Barboza, 115 N.J. 415, 421 (1989)). A "factual statement directly from a defendant ... reduces the possibility that a defendant will enter a guilty plea to an offense that he has not committed." Id. When an appellate court concludes on direct appeal that the plea lacked an adequate factual basis, "the analysis ends and the plea must be vacated." State v. Tate, 220 N.J. 393, 404 (2015).

An essential element, including a defendant's mental state, cannot be inferred from the defendant's actions. See State v. Gregory, 220 N.J. 413, 421–22 (2015) ("The State urges this Court to presume defendant's intent to distribute from the way the narcotics were packaged. However, a court is not permitted to presume facts required to establish 'the essential elements of a crime.'" (citations omitted)); State ex rel. T.M., 166 N.J. 319, 335 (2001) ("Nor does that decision suggest that a trial court may infer a defendant's purpose—degrading or humiliating the victim or sexually arousing or gratifying the victimizer—from the act of sexual contact with a victim. In fact, the opposite conclusion is distilled from Smullen, where the court's leading question concerning the purpose of the contact was a necessary

effort by a careful trial court to ensure that defendant establish a factual basis for each element of the offense." (citing State v. Smullen, 118 N.J. 408, 415 (1990)). Instead, a defendant must affirmatively admit to possessing the requisite mens rea for the offense. T.M., 166 N.J. at 335 ("Without such an affirmative statement by a defendant pleading guilty to sexual contact, there is no basis for the court necessarily to infer sexual purpose or motive.").

First-degree aggravated manslaughter requires that the actor "recklessly causes death under circumstances manifesting extreme indifference to human life." N.J.S.A. 2C:11-4(a)(1). In contrast, second-degree manslaughter requires that the actor recklessly cause the death of another. N.J.S.A. 2C:11–2(a); N.J.S.A. 2C:11–4(b)(1). Both offenses require recklessness, which the sentencing code defines:

> A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Campfield, 213 N.J. at 232 (quoting N.J.S.A. 2C:2–2(b)(3)).

The difference between the two crimes is the degree of recklessness and risk of death. See State v. Curtis, 195 N.J. Super. 354, 366–67 (App. Div. 1984)

(approving of an instruction because it "pointed out that the degree of recklessness in aggravated manslaughter was significantly greater than the degree of recklessness in reckless manslaughter"). Aggravated manslaughter, unlike reckless manslaughter, requires the State to "prove that 'the defendant was aware of and consciously disregarded a substantial risk of death, i.e., a probability that death would result, and that the defendant manifested extreme indifference to human life.'"[5] State v. Jenkins, 178 N.J. 347, 362 (2004) (citation omitted) (emphasis added); State v. Ruiz, 399 N.J. Super. 86, 97–98 (App. Div. 2008) (same). "If, instead, the defendant disregarded only a 'possibility' of death, the result is reckless manslaughter." See also Campfield, 213 N.J. at 233, 233 n.1 ("To convict a defendant of reckless manslaughter . . . , the State need not prove that the defendant perceived a risk that the victim would certainly or probably die as a result of the defendant's conduct; the defendant has the required state of mind if he disregarded only a possibility of death . . . . In contrast, a finding that a defendant caused death with an awareness and conscious disregard of the probability of death

[5] The State need not prove, however, that death is "practically certain" to follow, as it must for serious bodily injury murder. State v. Gaines, 377 N.J. Super. 612, 621 (App. Div. 2005) ("[T]he propriety of the judge's decision to submit the crime of aggravated manslaughter to the jury depends on whether the evidence clearly indicated a basis for finding that defendant fired the gunshot that killed [the victim] consciously disregarding a probability of causing the death of a person in the backyard but without an awareness that it was practically certain that someone would die as a result.").

supports a conviction for the offense of aggravated manslaughter, a first-degree crime." (internal citation marks omitted) (emphasis in original)); Jenkins, 178 N.J. at 362; N.J.S.A. 2C:11-4(b)(1) (same). In addition, aggravated manslaughter requires that the conduct evince "extreme indifference to human life," which our Courts have explained turn on the circumstances under which the defendant acted, rather than the defendant's state of mind. State v. Wilder, 193 N.J. 398, 409 (2008).

Two different potential theories of culpability for aggravated manslaughter were elicited during the plea hearing, but neither constituted aggravated manslaughter. First, Mr. Meli said the following:

> Q. And when you were on that couch in an effort to try and cajole her back to sleep, you laid with her in a – in a manner that you knew would cause – could be very dangerous to her. Is that correct?
>
> A. Yes.
>
> Q. And you knew that there was a risk to you rolling over on her or suffocating her by her being on the couch?
>
> A. Yes.
>
> Q. And laying with you. Is that right?
>
> A. Yes.
>
> Q. At some point you realized that she was not okay and rather than render aid, you put her in an in the ExerSaucer. Is that correct?
>
> A. Yes.
>
> Q. And that's where she was found later that that evening or morning?

> A. Yes.
>
> Q. And you agree that in the manner in which you slept with her and recklessly causing her to suffocate during the night that you caused her death. Was that correct?
>
> A. Yes.

(1T 12-21 to 13-18)

Even though Mr. Meli admitted that sleeping with his daughter on the couch was dangerous and posed a risk, he did not admit that he was aware of a substantial risk of death – i.e., the probability that she would die as a result. See Gregory, 220 N.J. at 421–22 (explaining that the trial court cannot infer essential elements, such as the requisite mens rea, from the facts); State ex rel. T.M., 166 N.J. at 335 (same). Nor does sleeping with a child on the couch in fact create a probability of death, as opposed to a possibility, or demonstrate extreme indifference to human life. See State v. Morrison, 233 A.3d 136, 141 (Md. 2020) (finding insufficient evidence of wanton and reckless disregard for human life necessary to prove gross negligence involuntary manslaughter where an infant died as a result of co-sleeping and explaining that co-sleeping was not "inherently dangerous," and that a reasonable person would not appreciate the risk of death)[6]; Curtis, 195 N.J. Super. at 366-67 (explaining that "[r]ecklessness which must be so extreme as to

[6] "[C]o-sleeping is a common practice." State v. Morrison, 233 A.3d 136, 154 (2020) (citing to a Center for Disease Control study that found that over sixty percent of respondents shared beds with their infants).

demonstrate an indifference to human life or is so indifferent to human life that the actor does not care whether the victim lives or dies is a degree of recklessness which is functionally equivalent to a high probability that the actor's conduct would cause [] death").

Realizing that these facts were inadequate to support an aggravated manslaughter plea, the State objected and a different factual basis was elicited – that Mr. Meli put his hand over his daughter's mouth to stop her from crying by making her fall asleep.

> Q. And there had been occasions in which you had put your older -- when your older child had woken up, you had put your hand over the older child's mouth in an effort to get him to sleep. Is that fair to say?
>
> A. Yes.
>
> Q. And the times that you did that with your son, your son did not die from that. Is that correct?
>
> A. That's correct.
>
> Q. So on -- on or about March 8th to March 9th of June, 2019 when you were with your infant daughter, you used that same method to try and put your daughter to sleep. Is that correct?
>
> A. Yes.
>
> Q. And you did so because it had not hurt your son, you did not intend on killing your daughter, but you agree that it was reckless that you would put your hand over her nose and mouth in an effort to get her to sleep.
>
> A. Yes.

> . . . .
>
> Q. You did -- you did review the discovery with your attorney, correct?
>
> A. Yes.
>
> Q. All right. And in that you know that there were recorded phone calls between you and your children's mother, A.B., correct?
>
> A. Yes.
>
> Q. And in those phone calls, you admitted to her that you had, in fact, put your hand over G.B. to prevent her from breathing in an effort to put her to sleep. Is that correct?
>
> A. Yes.
>
> Q. And just to be clear, G.B. at this time was approximately six weeks old, correct, when she died?
>
> A. Yes.
>
> Q. And your son, at that time, was approximately 15 months old. Is that correct?
>
> A. Yes.

(1T 15-1 to 16-24)

This factual basis was deficient for a number of reasons. Even though Mr. Meli agreed that covering his child's mouth was reckless, he did not admit to awareness of or consciously disregarding a risk of death, much less a probability that death would result. (1T 15-1 to 16-15) See State v. Ruiz, 399 N.J. Super. 86, 98 (App. Div. 2008) (explaining that "[a] jury could find that defendant struck [the child] with his elbow to quiet him down, but did so without any intention or awareness that his actions would probably cause the child's death" and thereby

infer "that although he struck [the child], he did so under circumstances indicative of a "mere possibility of [the child's] death"). Instead, Mr. Meli affirmatively denied an essential element of the offense – awareness of a substantial risk of death – by saying he only covered the child's mouth because he mistakenly believed that covering her mouth would not hurt her. See State v. Gorman, 454 N.J. Super. 343, 348–49 (App. Div. 2018) (finding the defendant did not establish a factual basis for theft by deception because "[c]ontrary to the State's argument that defendant 'purposely misled the victims to believe he had the Giants tickets,' defendant stated that he did not have the tickets when he took the victims' money and 'did not know [he] wasn't getting the tickets until [he] had taken all the money"); see also Urbina, 221 N.J. at 528–30 (explaining that where a defendant suggests he was acting in self-defense, the trial court is obliged to make further inquiry and determine whether the defendant would like to knowingly and voluntarily waive that defense, before accepting the guilty plea). In addition, because Mr. Meli said he only covered the child's mouth because he believed she would only fall asleep, the factual basis does not demonstrate that he was indifferent to the child's life or did not care whether she lived or died. Compare Curtis, 195 N.J. Super. at 366-67 ("Recklessness which must be so extreme as to demonstrate an indifference to human life or is so indifferent to human life that the actor does not care whether the victim lives or dies is a degree of recklessness which is functionally equivalent

to a high probability that the actor's conduct would cause the death of [the victim].”). Finally, Mr. Meli never even admitted that he caused G.B.’s death by covering her mouth – another missing critical element.

For all of these reasons, the factual basis was insufficient for aggravated manslaughter, and the plea must be vacated.

POINT II

A RESENTENCING IS REQUIRED BECAUSE THE SENTENCING COURT WAS REQUIRED TO ORDER A PSYCHOLOGICAL EVALUATION. (Not Raised Below)

The sentencing court was required to order a complete psychological evaluation of Mr. Meli, given the nature of the instant offense and his prior conviction for endangering. The psychological evaluation in this case was particularly important because Mr. Meli suffers from mental illness and childhood abuse and there is evidence that his mental condition and background contributed to this offense and affects his risk of recidivism. This case should be remanded to the trial court for a complete psychological evaluation and reconsideration of the mitigating and aggravating factors. U.S. Const. amends. V, VI, VIII, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10, 12.

The Court Rules provide that a defendant has the right to a presentence investigation that produces a report which “shall contain all presentence materials

having any bearing whatever on the sentence." R. 3:21-2(a). This requirement that the presentence report including all relevant information is "mandatory." State v. Mance, 300 N.J. Super. 37, 65-66 (App. Div. 1997). See also State v. Randolph, 210 N.J. 330, 343 (2012) ("[T]he trial court must consider all current information that is relevant to an appraisal of aggravating and mitigating factors"); State v. Jaffe, 220 N.J. 114, 121 (2014) ("[T]he Legislature requires the sentencing court to give 'due consideration to a presentence report, prepared after a defendant's conviction, which includes individualized information pertaining to a defendant's … psychiatric … history"). When the trial court "fail[s] to order a complete presentence report," and does not "acquire[] all the necessary information," "the sentences may not stand." Mance, 300 N.J. Super. at 65.

N.J.S.A. 2C:44-6b specifically provides that the presentence report "shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first- or second-degree crime involving violence and . . . . the defendant has a prior conviction for . . . endangering the welfare of a child which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:24-4 . . . or the defendant has a prior diagnosis of psychosis." While the statute says that a court "in its discretion and considering all the appropriate circumstances, may waive the medical history and psychological examination in any case in which a term of imprisonment," it

sets forth another requirement that "[i]n any case involving a conviction of N.J.S.A. 2C:24-4 . . . , the investigation shall include a report on the defendant's mental condition." N.J.S.A. 2C:44-6b (emphasis added).[7]

Even when N.J.S.A. 2C:44-6b does not apply, courts should order a psychological examination when there is evidence of significant mental illness that

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[7] For the ease of the reader, the pertinent portion of N.J.S.A. 2C:44-6b is reproduced below:

"The report shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first or second degree crime involving violence and:

(1) the defendant has a prior acquittal by reason of insanity pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to N.J.S.2C:4-6; or

(2) the defendant has a prior conviction for murder pursuant to N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1, endangering the welfare of a child which would constitute a crime of the second degree pursuant to N.J.S.2C:24-4, or stalking which would constitute a crime of the third degree pursuant to section 1 of P.L.1992, c. 209 (C.2C:12-10); or

(3) the defendant has a prior diagnosis of psychosis.

The court, in its discretion and considering all the appropriate circumstances, may waive the medical history and psychological examination in any case in which a term of imprisonment including a period of parole ineligibility is imposed. In any case involving a conviction of N.J.S.2C:24-4, endangering the welfare of a child; N.J.S.2C:18-3, criminal trespass, where the trespass was committed in a school building or on school property; section 1 of P.L.1993, c. 291 (C.2C:13-6), attempting to lure or entice a child with purpose to commit a criminal offense; section 1 of P.L.1992, c. 209 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the victim of the offense is a child under the age of 18, the investigation shall include a report on the defendant's mental condition."

could help explain the offense or the risk of recidivism, or otherwise be relevant to sentencing. As explained above, the law requires that presentence reports include all relevant information. See R. 3:21-2(a). To allow the courts to adhere to that requirement, the sentencing court has authority to order a psychological examination, even when not mandated under N.J.S.A. 2C:44-6b. See R. 3:21-2(b) ("After the presentence investigation and before imposing sentence, the court may order, pursuant to N.J.S.A. 2C:44-6c, a physical or mental examination of the defendant provided that the defendant may not be committed to an institution for the purpose of that examination."); N.J.S.A. 2C:44-6c ("If, after the presentence investigation, the court desires additional information concerning an offender convicted of an offense before imposing sentence, it may order any additional psychological or medical testing of the defendant."). Therefore, where there is reason to believe that a psychological evaluation would include information relevant to sentencing, the court should order one.

The sentencing court in this case was required to order a psychological evaluation for a number of reasons. As explained in Section A, a "complete psychological evaluation" was required under the first provision of N.J.S.A. 2C:44-6b because Mr. Meli was facing sentencing for a first- or second-degree crime of violence and has a prior endangering conviction. He was also entitled to an evaluation under the same provision because of the nature of the instant

conviction and the fact that he may have a prior diagnosis of psychosis. Although sentencing courts have some discretion to waive the evaluation after considering all the appropriate circumstances, the court did not do so here and could not have reasonably done so because the missing evaluation would have included information relevant to sentencing. In addition, or alternatively, as explained in Section B, a psychological report was required by the second provision of N.J.S.A. 2C:44-6b because the statute provides that the presentence investigation shall include "a report on the defendant's mental condition" in cases involving child endangering convictions and does not allow for that requirement to be waived. For both or either of these reasons, a remand is required.

A. A Psychological Evaluation Was Mandated Both Because of the Nature of the Present and Prior Convictions and Due to Mr. Meli's Mental Condition. The Court Did Not Waive and Could Not Have Waived the Evaluation Because It Would Have Included Information Relevant to Sentencing.

The sentencing court should have ordered a "complete psychological evaluation" due to the nature of the present and prior convictions and Mr. Meli's mental condition.

First, a "complete psychological evaluation was required" under N.J.S.A. 2C:44-6b because the present offense is a first-degree crime of violence and Mr. Meli has a prior endangering conviction under N.J.S.A. 2C:24-4. For this reason alone, a complete psychological evaluation was mandatory under this subsection.

Second, an evaluation was also necessary under N.J.S.A. 2C:44-6b because Mr. Meli suffered from a number of mental illnesses of which "psychosis" is a common symptom, including bipolar disorder. (PSR 10-12, 16) Rather than a diagnosis itself, psychosis is an amalgamation of symptoms resulting in dissociation from reality. Calabrese, J. & Al Khalili, Y., Psychosis, StatPearls Publishing (Jan. 2024). Although schizophrenia spectrum disorders are designated as "psychotic disorders" by the Diagnostic and Statistical Manual of Mental Disorders (the "DSM V"), the DSM V also recognizes that psychosis can result from other psychological disorders. See Diagnostic and Statistical Manual of Mental Disorders 103 (5th ed. 2022) ("DSM V") ("[T]he diagnosis of a schizophrenia spectrum disorder requires the exclusion of another condition that may give rise to psychosis."). Relevant here, psychosis is a common feature of bipolar disorder, and can also be a symptom of depression. DSM V at 139-143, 145, 151-52, 173, 184-85; Chakrabarti, S., & Singh, N., Psychotic Symptoms in Bipolar Disorder and Their Impact on the Illness: A Systematic Review, 12(9) World Journal of Psychiatry 1204–1232 (2022); Arciniegas, D. B., Psychosis, 21(3) Behavioral Neurology and Neuropsychiatry 715–736 (2015). For this reason, too, a complete psychiatric evaluation was necessary.

Because the court did not order the mandatory psychological evaluation or provide a statement of reasons as to why it was not ordering such an evaluation

after considering all the relevant circumstances, the sentence cannot stand. See Mance, 300 N.J. Super. at 65 ("[W]e are required to set the sentences aside and order the case remanded for re-sentencing based on a presentence report which fully accords with the dictates of R. 3:21–2 and N.J.S.A. 2C:44–6."); State v. Case, 220 N.J. 49, 65-66 (2014) (sentencing judges must provide "insight into the sentencing decision" and "explain clearly" their application of the Code for their decision to be afforded any deference); State v. Rivera, 249 N.J. 285, 298 (2021) (explaining that resentencing is required where a sentencing court fails to apply the Code or explain its sentencing decisions); R. 3:29 ("The court shall place on the record the reasons supporting its . . . disposition of a criminal matter."). The court did not give any indication that it had considered the statute or that it had decided to waive the requirement after considering the relevant circumstances. Without a statement of reasons, we cannot know whether the court considered the requirement, and this Court cannot review the failure to order such a psychological examination for an abuse of discretion. See State v. Blackmon, 202 N.J. 283, 307 (2010) ("To the extent that the choice about who may speak [at sentencing] is an exercise of discretion, it shares the same attributes of all discretionary determinations, namely, it must be accompanied by some expression of reasons sufficient to permit appellate review."); State v. Bolvito, 217 N.J. 221, 235 (2014)

(explaining that a statement of reasons is required for sentencing decisions in order to facilitate appellate review).

Had the court considered the relevant statutes governing whether a psychological examination was necessary, it would have ordered one. Indeed, such an evaluation is not just mandated under N.J.S.A. 2C:24-6b but also is a necessary exercise of the court's discretion under N.J.S.A. 2C:44-6c, due to the overwhelming evidence that Mr. Meli suffered from mental illnesses that may have contributed to the offense. The PSR indicates that Mr. Meli has post-traumatic stress disorder ("PTSD") from childhood trauma, manic bipolar disorder, depression and anxiety; received psychological treatment for three months from January to April of 2019; attempted to commit suicide twice, once by cutting himself and another time by jumping off a building; was discharged from the military due to his mental health issues; had previously been the subject of more than one mental health evaluation (none were produced for sentencing); previously took medication for his mental illnesses; and completed counseling while incarcerated to deal with his anger and mental illnesses. (PSR 10-12, 16-17) In addition, both Mr. Meli and defense counsel stated that Mr. Meli was struggling with serious mental health and anger issues at the time of the offense. (PSR 16-17; 2T 27-20 to 31-12, 32-12 to 25) The support letters state the same and suggest that his actions could be attributed to his PTSD and mental illnesses, which resulted

from childhood abuse. (Da 40-43) Yet, even in the face of all of this evidence, the sentencing court failed to order a psychological report.

If the court had the benefit of a psychological examination, it might have found that Mr. Meli's mental illness partially explained or contributed to the offense, that treatment would reduce his risk of recidivism and the need for deterrence, and that imprisonment would pose an excessive hardship.[8] For instance, one of the diagnostic criteria for PTSD is "marked alterations in arousal and reactivity," which can manifest as "irritable or angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression toward people or objects" and "reckless or self-destructive behavior that is dangerous, that shows a disregard for the physical safety of themselves or others, and that could directly result in serious physical harm or death." DSM V at 302, 307 (setting forth examples including "getting into fights," "drunk driving," "driving at dangerously high speeds"). An expert could have explained that Mr. Meli's PTSD likely caused his angry outburst, and that psychological treatment would reduce the risk of recidivism going forward. See Miles, S. et al., Changes in Anger and Aggression After Treatment for PTSD in Active Duty Military, 76(3) Journal of Clinical

[8] For further discussion of how mental illness relates to the aggravating and mitigating factors, see Point III.B.

Psychology 493-507 (2020) (explaining that anger and aggression are treatable symptoms).

For these reasons, not only was a psychological evaluation mandated under N.J.S.A. 2C:44-6b but also required under N.J.S.A. 2C:44-6c. As has been done in other cases, this Court should remand for a psychological examination and resentencing. (Da 44-45)

B. A Psychological Examination Was Also Required, and Could Not Be Waived, Because the Case Involves a Child Endangering Conviction.

While N.J.S.A. 2C:44-6b initially states that a sentencing court "may waive the medical history and psychological examination in any case in which a term of imprisonment including a period of parole ineligibility is imposed," after "considering all the appropriate circumstances,"[9] it thereafter makes clear that a court does not have discretion to waive the requirement that the presentence investigation include "a report on the defendant's mental condition" in cases "involving" certain convictions, including child endangering.[10] Thus, a remand for

[9] For the reasons explained in Section A, however, the sentencing court did not waive and could not have permissibly waived the evaluation in this case.

[10] The previous version of the statute required a report on mental health in cases involving certain convictions "unless the court direct[ed] otherwise." 1997 NJ Sess. Law Serv. Ch. 216 (ASSEMBLY 489 and 685). In 1997, the statute was amended to make the report mandatory under these circumstances.

a psychological examination or report is also required because the case "involves" a child endangering conviction and because the information included in the presentence report does not constitute "a report on the defendant's mental condition." See N.J.S.A. 2C:44-6b.

In interpreting a statute, "[t]he overriding goal . . . is to determine and give meaning to the Legislature's intent." State v. Carter, 247 N.J. 488, 513 (2021). "The plain language of a statute is the best indicator of the statute's meaning, and statutory words should be read as they are commonly used and ordinarily understood." State v. Scriven, 226 N.J. 20, 34 (2016). Courts should "read and construe words and phrases in their context," "consider[ing] the words of a statute in context with related provisions so as to give sense to the legislation as a whole." Carter, 247 N.J. at 513 (internal quotations omitted).

The word "involves" means "to have as a necessary feature or consequence," or "to relate or affect." See American Heritage Dictionary, "Involves," (ahdictionary.com). This Court should find that this case "involves" a child endangering conviction because Mr. Meli's preceding endangering conviction from the other indictment was related to the instant conviction,[11] and the

[11] As explained earlier, the earlier endangering conviction related to conduct committed against his older child that had been discovered pursuant to the homicide investigation in this case. Although Mr. Meli was charged in separate indictments, the nature of his conduct underlying both indictments was similar.

sentencing court in this case was tasked with considering the overall sentence for these related convictions as the instant plea agreement recommended a sentence to be served consecutively to the prison term imposed for the endangering conviction. See State v. Torres, 246 N.J. 246, 252 (2021) (holding that the sentencing court is tasked with considering and explaining the overall fairness of the aggregate sentence).

If the Legislature had wanted to use less broad language to limit the application of the psychological evaluation requirement, it would have done so. In the preceding provision, for instance, the Legislature stated that the presentence report "shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first or second degree crime involving violence and . . . . the defendant has a prior conviction for . . . endangering the welfare of a child which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:24-4 . . . or the defendant has a prior diagnosis of psychosis." N.J.S.A. 2C:44-6b (emphasis added). Thus, the Court can conclude that the Legislature purposely used broad language here to require a report on a defendant's mental condition in cases, like this one, involving or relating to an endangering conviction. At the very least, the statute requires a report on the defendant's mental condition where the sentencing

court is deciding the overall sentence for an endangering conviction and another offense.

While this later portion of the statute uses the language "report on the defendant's mental condition," rather than "complete psychological evaluation," Mr. Meli's self-reported mental health included in the presentence report is not sufficient to satisfy this requirement. As our courts have explained, "[t]he coupling of words denotes an intention that they shall be understood in the same general sense" and "[t]he natural, ordinary and general meaning of terms and expressions may be limited, qualified and specialized by those in immediate association." State v. Sisler, 177 N.J. 199, 206-207 (2003) (citation omitted). Thus, in construing "a report on the defendant's mental condition," this Court should consider the language in the preceding sentences of the same and preceding paragraph, mandating "complete psychological evaluations" and "psychological examination[s]," and find that the provision is also referring to an expert psychological evaluation or examination – or an expert report – not to a defendant's self-report on his mental status and history. See id. ("Reading the subsection's text as a whole, we conclude that the Legislature similarly intended the companion term "reproduce" to require more than the printing of a preexisting image for personal use."); see also American Heritage Dictionary, "Report," (ahdictionary.com) (defining "report" as "[a] formal account of the proceedings or

transactions of a group" and "[a] spoken or written account of an event usually presented in detail"). Immediately after stating that courts can waive the complete psychological evaluation under certain circumstances, the Legislature carved out an exception to this exception – that courts must make sure the presentence investigations include a report on the defendant's mental health condition in cases involving an endangering conviction. The Legislature was attempting to ensure that, at the very minimum, a psychological examination or report was included in cases like this one.

Because the Legislature's clear purpose in mandating psychological evaluations was to obtain accurate and complete information on the mental health of a defendant facing sentencing for certain offenses, more is required than a defendant's self-report on his mental health history and condition. The presentence report must include reliable information about the defendant's mental condition that is relevant to sentencing considerations, including whether the defendant's mental health condition related to the instant offense and the degree to which mental health treatment was possible. See also See R. 3:21-2(a) (requiring that presentence reports include all relevant information). Because an expert evaluation was required to provide this relevant and reliable information about Mr. Meli's mental health condition, and the presentence report was incomplete without it, a remand for a psychological evaluation is necessary.

POINT III

IN THE ALTERNATIVE, RESENTENCING IS REQUIRED BECAUSE THE COURT ERRED IN APPLYING THE MITIGATING AND AGGRAVATING FACTORS AND IN IMPOSING A SECOND MAXIMUM CONSECUTIVE SENTENCE. (2T 37-15 to 44-4)

Even if this Court decides that a remand for a psychological evaluation is not required, resentencing is still required because the court erred in applying the mitigating and aggravating factors and in imposing a maximum sentence to run consecutive to another maximum sentence, without adequately considering the fairness of the aggregate sentence. U.S. Const. amends. V, VI, VIII, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10, 12.

A. The Court Did Not Adequately Explain the Aggravating and Mitigating Factors.

Sentencing courts must consider mitigating factors where they are called to the court's attention or supported by credible evidence, find aggravating factors only where they are supported by competent and credible evidence, and qualitatively weigh those factors by assigning them specific weights. See State v. Case, 220 N.J. 49, 65-66, 68-69 (2014). Courts must also provide "insight into the sentencing decision" and "explain clearly" their application of the Code. Id.; see also State v. Rivera, 249 N.J. 285, 303 (2021) ("[T]he court failed to provide detail

about the weight assigned to each aggravating and mitigating factor and how those factors were balanced with regard to the defendant.").

The court did not assign weights to any of the factors, explain the bases for aggravating factors 3 and 9, or qualitatively weigh the factors. (2T 38-8 to 39-19) In particular, although the court acknowledged that the defense had elaborated on mitigating factor 14 and had asked the court to assign the factor great weight, the court did not explain the weight it was assigning to the factor and did not engage with defense counsel's arguments about why the factor should have been assigned significant weight in this case. (2T 39-16 to 40-3) Because the court failed to adequately explain the sentence, a remand for resentencing is required. See Case, 220 N.J. at 68-69.

B. The Court Failed to Properly Consider Mr. Meli's Mental Health and Trauma in Weighing the Mitigating and Aggravating Factors.

Next, the court should have considered Mr. Meli's mental health and the abuse he suffered in weighing the mitigating and aggravating factors. Mr. Meli's mental illness and trauma are specifically relevant to mitigating factors 4 and 11, and the fact that he went to psychological therapy for a long period of time after he was incarcerated undermines the application of aggravating factors 3 and 9. See N.J.S.A. 2C:44-1b(4) (substantial grounds tending to excuse the conduct); 2C:44-1b(11)(incarceration will cause excessive hardship); 2C:44-1a(3) (risk of recidivism); 2C:44-1a(9) (need for deterrence).

Where, as here, there is evidence that a defendant struggles with serious mental illness that contributed to the offense, that mental disability should be considered under mitigating factor 4 (substantial grounds tending to excuse the conduct). See State v. Nayee, 192 N.J. 475 (2007) (remanding for the trial court to consider the defendant's mental illness under mitigating factor 4); State v. Briggs, 349 N.J. Super. 496, 504 (App. Div. 2002) (finding that the trial court was required to consider the defendant's history of abuse and PTSD when considering mitigating factor 4); see also State v. Hess, 192 N.J. 123, 149 (2011) (finding that evidence of the defendant's Battered Women's Syndrome was relevant under factor 4). A diagnosis of mental illness need not rise to the level of a complete insanity defense to constitute a mitigating factor. See State v. Nataluk, 316 N.J. Super. 336 (App. Div. 1998) (finding that the defendant's mental condition, as testified to by an expert, could constitute a mitigating factor in sentencing even though an insanity defense was rejected). After all, mental illness can only serve as a mitigating factor when it does not constitute a complete defense.

As previously explained, Mr. Meli's mental health and history of abuse were discussed during sentencing by defense counsel as an explanation for his conduct and included in the presentence report and support letters. (2T 27-20 to 31-12, 32-12 to 25; PSR 16-17; Da 40-43) As explained in Point II, one of the criteria for a PTSD diagnosis is an inability to properly regulate emotional responses, which can

result in aggressive and reckless behavior, consistent with the conduct displayed in this case. The court should have considered and found mitigating factor 4 because Mr. Meli's childhood and mental health, like his youth, helped to explain and partially excuse his behavior. See Nayee, 192 N.J. at 145.

Relatedly, the court should have considered under mitigating factors 4 and 14 (youth) the fact that Mr. Meli's childhood abuse and mental illnesses would have resulted in developmental delays, further reducing his culpability and increasing his capacity for rehabilitation. See Center for Law, Brain & Behavior at Massachusetts General Hospital, White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers 17-18 (2022) (noting that the percentage of justice-involved youth that have experienced trauma and suffer from PTSD is far high than the prevalence in the general population and that "[t]hese experiences influence behavioral development and have consequences for brain development"). Defense counsel requested that the court consider Mr. Meli's trauma and mental illnesses under mitigating factor 14 for these very reasons. (2T 27-16 to 30-9) While the sentencing court found mitigating factor 14 based on Mr. Meli's age, and said that it had considered the defense's argument, as mentioned above, it did not explain the weight it assigned to the factor and never specifically addressed the defense's argument regarding Mr. Meli's trauma or mental health

status. (2T 39-16 to 40-1) Therefore, for these reasons, a remand is required for the court to consider Mr. Meli's abuse, age, and mental illnesses in mitigation.

Mr. Meli's mental health diagnoses and history of trauma stemming from his abuse are also relevant to mitigating factor 11 (substantial hardship posed on the defendant), as was also explained by defense counsel at sentencing. (1T 30-10 to 31-12) Severe mental illness can give rise to unusual suffering and excessive hardship in prison settings, and researchers urge judges to take into account this foreseeable harm during sentencing. Johnston, E. L., Vulnerability and Just Desert: A Theory of Sentencing and Mental Illness, 103 J. CRIM. L. & CRIMINOLOGY 147 (2013). People with serious mental illness, including PTSD and major depressive disorder, are at greater risk of physical victimization in prison, and are more likely to experience sexual assault, solitary confinement, and overall psychological deterioration. Id.; Blitz, C., Physical Victimization in Prison: The Role of Mental Illness, 31 INT'L J. L. & PSYCHIATRY 385 (2008). Studies have found that incarceration exacerbates the suffering and symptoms of severe mental illness. Haney, C., "Madness" and Penal Confinement: Some Observations on Mental Illness and Prison Pain, 19 PUNISHMENT & SOC'Y 310, 312, 321-23 (2017). In accordance with this research, Mr. Meli reported that prison is not beneficial for his mental health. (PSR 10) Because the court rejected the application of mitigating factor 11 without considering or addressing the defense's

argument that prison would pose an excessive hardship on Mr. Meli due to his mental illnesses and trauma (2T 39-9 to 15), this case should be remanded for resentencing for the court to consider the additional suffering that would be endured by Mr. Meli in prison as a result of his severe mental illness.

The court also failed to consider in mitigation the fact that Mr. Meli voluntarily engaged in group therapy and anger management on a weekly basis (and continued with anger management treatment even after he completed the eight-week course) and attended individual counseling for two years upon his arrest. (PSR 11, 16) New Jersey Supreme Court precedent establishes that the sentencing court was required to consider this conduct as a mitigating factor. See State v. Evers, 175 N.J. 355, 396-98 (2003) (holding that where defendant entered into long term psychological treatment after his arrest for distributing child pornography, that action "is to be commended and entitled to weight as a 'mitigating factor'").

Relatedly, because participation in psychological treatment helps minimize the likelihood of recidivism and need for deterrence, this conduct also undermined the application of aggravating factors 3 and 9. See Case, 220 N.J. at 68 (finding aggravating factor 9 was not entitled to particular emphasis where "[t]he undisputed medical testimony was that this first-time offender suffered from PTSD and depression, and in the four years between his arrest and trial, he underwent

psychological therapy."). The age-crime curve similarly demonstrates that Mr. Meli's likelihood of recidivism will be low by the time he is released from prison. See National Institute of Justice, From Youth Justice Involvement to Young Adult Offending (2014) (the age-crime curve demonstrates that the likelihood of recidivism drops dramatically as a defendant's age increases). Because the root causes of Mr. Meli's behavior can and, to some degree, have been addressed through appropriate treatment, the court should not have found or assigned much weight to aggravating factors 3 and 9.

For the above reasons, the court erred in applying and weighing the mitigating and aggravating factors and a resentencing is required.

C. The Court Erred in Double Counting the Prior Endangering Conviction in Applying the Aggravating Factors and Imposing a Consecutive Sentence.

Next, the court erred in double counting the existence of the endangering conviction in applying aggravating factors and in imposing a consecutive sentence. The Supreme Court has explained that courts should not rely on the same factors in imposing the maximum term, as in imposing consecutive sentences. See State v. Miller, 108 N.J. 112, 122 (1987) ("[F]actors relied on to sentence a defendant to the maximum term for each offense should not be used again to justify imposing those sentences consecutively."); State v. Carey, 168 N.J. 413, 422-423 (2001)

(citing Yarbough, 100 N.J. at 643-44) (explaining that courts should not double count aggravating factors in this way).

Here, the sentencing court considered the nature of the prior offense in weighing the aggravating and mitigating factors and imposing the maximum term, and in deciding to make the sentences consecutive. (2T 38-17 to 21, 41-24 to 42-5) For instance, in finding aggravating factor 6, the court stated, "Aggravating Factor Number 6, the extent of the -- the defendant's prior criminal record. Clearly, it's not extensive in terms of numbers, but it is in terms of the severity of the prior offense, so I do believe that that applies." (2T 38-17 to 21) And, of course, the crux of the court's Yarbough analysis was about the nature of and differences between this and the prior offense. (2T 41-24 to 42-5) It was improper for the court to impose a maximum sentence for the instant conviction based on the same prior offense it ran the instant conviction consecutive to. See State v. Streater, 233 N.J. Super. 537, 546 (1989) ("The only factor which could support imposition of a consecutive sentence under the criteria set forth in Yarbough is that there were multiple victims of defendant's fraudulent schemes. However, this circumstance was one of the primary factors which justified sentencing defendant to a maximum extended term for the conspiracy conviction."). Thus, resentencing without improper double counting is required.

D. The Court Failed to Explain the Overall Fairness of the Aggregate Sentence.

Next, although the sentencing court cited to Torres, it did not explain why the imposition of two maximum term consecutive sentences, amounting to an aggregate 40 years subject to NERA, was fair for this young defendant. See State v. Torres, 246 N.J. 246, 252 (2021) (requiring an explanation of the overall fairness of the sentence). Instead, the court only concluded that the imposition of consecutive sentences was warranted based on Yarbough. (2T 41-16 to 42-8). The court should have considered Mr. Meli's youth, mental health and childhood in fashioning the sentence and determining whether a 40-year aggregate term, which is effectively a life sentence, was fair for him. See Torres, 246 N.J. at 274 ("[A]ge is a fact that can and should be in the matrix of information assessed by a sentencing court, even in the deliberation over whether consecutive sentences are a fair and appropriate punishment – proportional for the individual being sentenced. . . This case highlights that the fairness assessment includes consideration of the person on whom the sentence is being imposed.").

In State v. Miller, 108 N.J. 112, 122 (1987), our Supreme Court held that "factors relied on to sentence a defendant to the maximum term . . . should not be used again to justify imposing those sentences consecutively. Where the offenses are closely related, it would ordinarily be inappropriate to sentence a defendant to [] maximum term[s] . . . and to [] require [the] sentences be served consecutively."

See also State v. Hooper, 459 N.J. Super. 157, 184–85 (App. Div. 2019) (remanding for resentencing because this Court believed the sentencing court relied on the same factors in imposing maximum terms, as it did in ordering that those terms run consecutive, and because the court failed to explain why the overall sentence was fair). Likewise, in State v. Pennington, 154 N.J. 344, 361-62 (1998), our Supreme Court remanded a case with directions that the trial court "explain why a shorter second term for the same offense is not warranted if consecutive terms are reimposed." In State v. Randolph, 210 N.J. 330, 354 (2012), the Court stated that it still "adhere[d] to the cautioning in Miller and Pennington against the imposition of multiple consecutive maximum sentences unless circumstances justifying such an extraordinary overall sentence are fully explicated on the record."

Because the court did not adequately justify the reasons for imposing a maximum term consecutive to another maximum term, or adequately consider Mr. Meli's youth, mental health and childhood and explain why an aggregate 40-year NERA sentence was fair for Mr. Meli, a remand for a full resentencing is required.

CONCLUSION

For the reasons set forth in Point I, the plea should be vacated. For the reasons explained in Points II and III, a remand for a psychological evaluation and resentencing is required.

Respectfully submitted,

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Date: July 18, 2024

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Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Post Office Box 006
Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Respondent)
v. Austin Meli (Defendant-Appellant)
Appellate Division Docket No. A- 1538-22T5
Indictment No. 21-05-0268I
Case No. 20000349
Criminal Action: On Appeal From a Final Judgment of Conviction in the Superior Court of New Jersey, Law Division (Criminal), Monmouth County

Sat Below: Joseph W. Oxley, J.S.C.

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of a more formal brief submitted on behalf of the State of New Jersey.

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COUNTERSTATEMENT OF PROCEDURAL HISTORY

A Monmouth County Grand Jury returned Indictment 21-05-0268I charging defendant, Austin Meli, with first-degree murder, N.J.S.A. 2C:11-3a(1) and (2) (Count 1), and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a(2) (Count 2). (Da18-19).[1] Pursuant to a negotiated agreement with the State, defendant pleaded guilty to Count 1 as amended to aggravated manslaughter, N.J.S.A. 2C:11-4a(1). In exchange, the State agreed to dismiss Count 2 and to recommend a sentence of 30 years in prison subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to be served consecutively to the 10-year NERA sentence defendant was already serving on another matter. (Da12-17; 1T5-13 to 6-6). The Honorable Joseph W. Oxley, J.S.C., imposed sentence in accordance with the plea agreement. (2T40-4 to 13).

Defendant appealed, and the matter was heard on the sentencing calendar before a panel of this Court, (3T), which transferred the case to the plenary calendar. (Da1).

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1 "Da" – defendant's appendix
"PSR" – presentence report, December 27, 2022
"1T" – plea hearing, February 10, 2022
"2T" – sentencing, December 16, 2022
"3T" – sentencing oral argument, April 22, 2024

COUNTERSTATEMENT OF FACTS

Providing a factual basis for his guilty plea, defendant testified that on March 9, 2019, he placed his hand over the nose and mouth of his six-week-old daughter, G.B., to prevent her from breathing when he attempted to put her to sleep, killing her as a result. Agreeing that his conduct was reckless, defendant further testified that on previous occasions he did the same thing to his 15-month-old son, who survived. (1T14-24 to 16-24).

The 10-year prison sentence that defendant was serving at the time of his sentencing in the instant matter was for his convictions in connection with his abuse of his 15-month-old son, A.Y.B. (2T14-6 to 8). In that case, defendant was captured on video striking the baby, picking him up by his neck, swinging him around, and attempting to smother A.Y.B. by placing his hands over the child's face, leaving the boy gasping for air while defendant blew smoke in the boy's face from a vape pen. On a separate occasion, defendant burned the child while giving him a bath and refrained from seeking medical attention for the boy, concealing the burns instead. (2T11-9 to 12-15). Defendant pleaded guilty to one count of second-degree aggravated assault, two counts of second-degree endangering the welfare of a child, and one count of fourth-degree tampering with physical evidence. He was sentenced to an aggregate term of imprisonment of 10 years subject to NERA. (Da25).

Requesting that defendant be sentenced in accordance with the plea agreement in the instant matter, the prosecutor argued for the application of aggravating factors 1 (nature and circumstances of the offense), 2 (harm to the victim), 3 (risk of another offense), 6 (prior record), and 9 (need for deterrence), N.J.S.A. 2C:44-1a(1),(2),(3),(6), and (9). (2T8-12 to 13). Defendant sought to have the 30-year sentence run concurrently with his other sentence, arguing for the application of mitigating factors 7 (lack of prior history), 11 (excessive hardship), and 14 (defendant under age 26), N.J.S.A. 2C:44-1b(7),(11), and (14). (2T28-19 to 32-2; 2T34-8 to 15).

Judge Oxley found aggravating factors 2, 3, 6, and 9, as well as mitigating factor 14. Balancing those factors, Judge Oxley concluded that the aggravating factors substantially outweighed the mitigating factor. (2T38-8 to 40-3). Determining whether to make the sentence consecutive to the sentence defendant was currently serving, and assessing the overall fairness of the sentence, Judge Oxley concluded that imposing a consecutive sentence was appropriate because the cases involved separate crimes committed against two victims who were especially vulnerable due to their young ages. (2T41-16 to 42-5).

LEGAL ARGUMENT

POINT I

DEFENDANT'S FACTUAL BASIS FOR HIS GUILTY PLEA ESTABLISHED ALL OF THE ELEMENTS OF AGGRAVATED MANSLAUGHTER

Contending that the factual basis for his guilty plea does not establish that his conduct was reckless or that it demonstrated an extreme indifference to human life, defendant argues that his guilty plea is invalid and must be vacated. Because the circumstances to which defendant testified establish that he recklessly caused the death of G.B. under circumstances manifesting an extreme indifference to G.B.'s life, defendant's factual basis supported all of the elements of aggravated manslaughter and establish his guilt beyond a reasonable doubt.

Appellate review of the adequacy of a factual basis for a guilty plea is de novo. State v. E.J.H., 466 N.J. Super. 32, 37 (App. Div. 2021). For a defendant's factual basis to adequately support his guilty plea, he must "provide a factual statement or acknowledge all of the facts that comprise the essential elements of the offense to which [he] pleads guilty." State v. Perez, 220 N.J. 423, 433-34 (2015). The defendant's admission or acknowledgment "should be examined in light of all surrounding circumstances and in the

context of an entire plea colloquy." State ex rel. T.M., 166 N.J. 319, 327 (2001). To ensure that "the defendant is in fact guilty of the crime for which he is being sentenced[,]" State v. Sainz, 107 N.J. 283, 292 (1987), "[t]he trial court's task is to ensure that the defendant has articulated a factual basis for each element of the offense to which he pleads guilty." State v. Campfield, 213 N.J. 218, 232 (2013); see also R. 3:9-2 (guilty plea must be supported by factual basis).

A person is guilty of aggravated manslaughter when he "recklessly causes death under circumstances manifesting extreme indifference to human life[.]" N.J.S.A. 2C:11-4a(1). Recklessly is defined in the Criminal Code:

> A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.
>
> [N.J.S.A. 2C:2-2b(3).]

Aggravated manslaughter is distinguished from reckless manslaughter based on "the difference in the degree of the risk that death will result from defendant's conduct." State v. Curtis, 195 N.J. Super. 354, 364 (App. Div. 1984). Whereas reckless manslaughter requires only the possibility of causing

death, aggravated manslaughter entails a probability that death will occur. State v. Bakka, 176 N.J. 533, 550 (2003). A defendant manifests extreme indifference to human life when his conduct demonstrates that he "does not care whether the victim lives or dies[.]" Curtis, 195 N.J. Super. At 367. Because the aggravated manslaughter statute provides that a defendant's extreme indifference derives from the circumstances under which he acts, "[t]he relevant circumstances are objective and do not depend on defendant's state of mind." State v. Sanchez, 224 N.J. Super. 231, 240 (App. Div. 1988).

With the assistance of his attorney, defendant provided a factual basis for his plea of guilty to committing aggravated manslaughter against his infant daughter G.B.:

> DEFENSE COUNSEL: Mr. Meli, [] you had [] at the time an older child as well. Is that right?
>
> DEFENDANT: Yes.
>
> DEFENSE COUNSEL: And there had been occasions in which you had put your older – when your older child had woken up, you had put your hand over the older child's mouth in an effort to get him to sleep. Is that fair to say?
>
> DEFENDANT: Yes.
>
> DEFENSE COUNSEL: And the times that you did that with your son, your son did not die from that. Is that correct?

DEFENDANT: That's correct.

DEFENSE COUNSEL: So on [] or about March 8th to March 9th of [] 2019 when you were with your infant daughter, you used that same method to try to put your daughter to sleep. Is that correct?

DEFENDANT: Yes.

DEFENSE COUNSEL: And you did so because it had not hurt your son, you did not intend on killing your daughter, but you agree that it was reckless that you would put your hand over her nose and mouth in an effort to get her to sleep.

DEFENDANT: Yes.

[(1T14-24 to 15-20).]

The prosecutor posed some additional questions to defendant:

PROSECUTOR: You did [] review the discovery with your attorney, correct?

DEFENDANT: Yes.

PROSECUTOR: All right. And in that you know that there were recorded phone calls between you and your children's mother, A.B., correct?

DEFENDANT: Yes.

PROSECUTOR: And in those phone calls, you admitted to her that you had, in fact, put your hand over G.B. to

prevent her from breathing in an effort to put her to sleep. Is that correct?

DEFENDANT: Yes.

...

PROSECUTOR: And just to be clear, G.B. at this time was approximately six weeks old, correct, when she died?

DEFENDANT: Yes.

PROSECUTOR: And your son, at that time, was approximately 15 months old. Is that correct?

DEFENDANT: Yes.

[(1T16-4 to 24).]

Defendant's conduct in suffocating a newborn baby clearly evinces that he "did not care whether she lived or died." Curtis, 195 N.J. Super. at 367. Defendant sought to stop G.B. from crying as quickly as possible by stopping her from breathing. Her survival was incidental to that objective, which was paramount to defendant as demonstrated by the fact that he likewise had suffocated his son when putting his son to sleep. Intentionally preventing a newborn baby from breathing created a "high probability that [defendant's] conduct would cause the death of" that baby. Ibid.

As the circumstances surrounding defendant's extreme recklessness in suffocating his infant daughter demonstrate his complete disregard for her life, which was contingent on his convenience, defendant's factual basis for his guilty plea established all of the elements of aggravated manslaughter beyond a reasonable doubt.

POINT II

A PSYCHOLOGICAL EVALUATION OF DEFENDANT WAS NOT REQUIRED BECAUSE DEFENDANT WAS SENTENCED TO A TERM OF IMPRISONMENT SUBJECT TO NERA

Defendant argues that because he was convicted of a first-degree crime, has a prior conviction for endangering the welfare of a child, and might have a prior diagnosis of psychosis, the trial court was required to order a psychological evaluation, the absence of which requires that defendant be resentenced. Try as he might, defendant cannot avoid the fact that a psychological evaluation is not required where a sentence of imprisonment that includes a period of parole ineligibility is imposed, as is the case here.

Presentence reports are governed by N.J.S.A. 2C:44-6, which provides that "[t]he court shall not impose sentence without first ordering a presentence investigation of the defendant and according due consideration to a written

report of such investigation when required by the Rules of Court." N.J.S.A. 2C:44-6a. Among other information, the presentence report

> shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first or second degree crime involving violence and:
>
> > (1) the defendant has a prior acquittal by reason of insanity pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to N.J.S.2C:4-6; or
> >
> > (2) the defendant has a prior conviction for murder pursuant to N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1, endangering the welfare of a child which would constitute a crime of the second degree pursuant to N.J.S.2C:24-4, or stalking which would constitute a crime of the third degree pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10); or
> >
> > (3) the defendant has a prior diagnosis of psychosis.
>
> The court, in its discretion and considering all the appropriate circumstances, *may waive the medical history and psychological examination in any case in which a term of imprisonment including a period of parole ineligibility is imposed.*
>
> [N.J.S.A. 2C:44-6b (emphasis added).]

Pursuant to defendant's guilty plea to aggravated manslaughter, and in accordance with the sentencing recommendation in the plea agreement, Judge Oxley sentenced defendant to a 30-year term of imprisonment subject to the

85-percent period of parole ineligibility under NERA. (Da6-8). Hence, a psychological evaluation was not required.

Recognizing this obstacle, defendant argues in the alternative that this case involves a conviction for endangering the welfare of a child due to his prior conviction for endangering in which he engaged in similar conduct against his son, and because the sentence for his endangering conviction implicates the sentence for this matter due to the consecutive nature of the sentences. In addition to the requirements set forth in the portion of N.J.S.A. 2C:44-6b quoted above, the statute provides that "[i]n any case involving a conviction of N.J.S.2C:24-4, endangering the welfare of a child...the [presentence] investigation shall include a report on the defendant's mental condition."

Beyond the fact that this provision requires only a "report on the defendant's mental condition" and not a psychological evaluation, this case does not involve a conviction for endangering the welfare of a child. Defendant was convicted of aggravated manslaughter. His prior conviction for endangering the welfare of a child was in a separate case, as defendant argued and emphasized at sentencing, where his attorney stated:

> There is one prior conviction. That is the conviction regarding his son. The State has gone at great length in their sentencing

> argument to bring up the facts of that case...but that case is not here for Your Honor's consideration in terms of sentencing.
>
> [(2T31-15 to 22).]

The State fully subscribes to the idea that the two cases are separate, which is precisely why consecutive sentences are appropriate. It is to defendant's sentencing contentions that the State now turns.

POINT III

THE TRIAL COURT'S FINDINGS OF AGGRAVATING AND MITIGATING FACTORS ARE SUPPORTED BY THE RECORD AND SUSTAIN THE SENTENCE, THE OVERALL FAIRNESS OF WHICH THE COURT EXPLAINED

In a multipart challenge to his sentence, defendant alleges that the trial court did not adequately explain its findings of aggravating and mitigating factors, failed to consider defendant's mental health issues, double counted his prior endangering conviction, and failed to explain the overall fairness of the sentence. Though inadequate by defendant's lights, Judge Oxley's sentencing findings are fully compliant with the law, accounted for defendant's mental health issues, and appropriately considered defendant's prior endangering conviction in fashioning a just sentence for defendant's crime.

Sentences are reviewed for abuse of discretion. State v. Jones, 232 N.J. 308, 318 (2018). Under that standard, the "appellate court must affirm the sentence unless (1) the sentencing guidelines were violated; (2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or (3) the application of the guidelines to the facts of the case makes the sentence clearly unreasonable so as to shock the judicial conscience." State v. Miller, 237 N.J. 15, 28 (2019) (citation and internal quotation marks and brackets omitted).

When sentencing a defendant to a term of imprisonment, the court's determination of the length of the sentence within the permissible range is guided by its findings of aggravating and mitigating factors, which must be supported by credible evidence in the record. State v. Tillery, 238 N.J. 293, 324 (2019). The sentencing court must articulate the reasons for its findings of aggravating and mitigating factors in order to facilitate appellate review. State v. Case, 220 N.J. 49, 65 (2014); see also R. 3:21-4(h).

The court must determine the weight of the factors it finds and assess the factors and their significance in relation to each other. State v. Kiriakakis, 235 N.J. 420, 442 (2018). "[A] sentencing judge must engage in both quantitative and qualitative assessments of the aggravating and mitigating factors, and only then impose a sentence consistent with the sentencing range outlined under our Code of

Criminal Justice." State v. McFarlane, 224 N.J. 458, 467 (2016). Where the aggravating factors outweigh the mitigating factors, the term of imprisonment will tend toward the upper end of the range. Kiriakakis, 235 N.J. at 442.

Defendant contends that Judge Oxley did not give reasons for finding aggravating factors 3 and 9. Noting that he was fully familiar with the facts and circumstances of the case and had thoroughly reviewed the presentence report, Judge Oxley stated:

> This case, really particularly troubling in light of the other matter for which this defendant was sentenced[.] Looking at the pre-sentence investigation and no involvement as a juvenile, one municipal court matter, this will be his second adult conviction.
>
> The State has urged a number of Aggravating Factors 1, 2, 3, 6 and 9. I do not find Aggravating Factor 1. I do find Aggravating Factor Number 2, specifically the extreme youth of the victim in this case and the gravity [] and seriousness of the harm that was inflicted to somebody who was vulnerable and incapable of defending [herself.]
>
> Aggravating Factor Number 3, the risk that Defendant will commit another offense, I do find.
>
> Aggravating Factor Number 6, the extent of the [] defendant's prior criminal record. Clearly, it's not extensive in terms of numbers, but it is in terms of the severity of the prior offense, so I do believe that that applies.
>
> And finally Aggravating Factor Number 9, the need to deter this defendant and others from violating the law, clearly, clearly, clearly in these facts and these circumstances, that aggravating factor applies.

[(2T38-2 to 39-1).]

Considered as a whole, Judge Oxley's findings support his application of aggravating factors 3 and 9. See State v. Miller, 205 N.J. 109, 129 (2011) ("[S]entences can be upheld where the sentencing transcript makes it possible to 'readily deduce' the judge's reasoning.") (quoting State v. Bieniek, 200 N.J. 601, 609 (2010)). The nature of defendant's crime and the nature of his prior conviction reveal that his conduct in this matter was not aberrational but part of a pattern of abuse of his children, which culminated in defendant killing his newborn daughter. See State v. Thomas, 188 N.J. 137, 154 (2006) ("[A]ggravating factors (3) and (9)...can be based on assessment of a defendant beyond the mere fact of a prior conviction, or even in the absence of a criminal conviction.).

Defendant contends that his mental health issues and his participation in group therapy and counseling while he was incarcerated pending the resolution of this matter supported the application of mitigating factor 4 (justification for offense) and 11 (imprisonment would entail excessive hardship). N.J.S.A. 2C:44-1b(4) and (11). As defendant did not seek the application of mitigating factor 4 at sentencing, he cannot seek its application on appeal. See Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012) ("appellate courts will

decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available"). Moreover, in all of the cases on which defendant relies, the defendants' mental health was directly implicated in their crimes, either because the defendant raised an insanity defense at trial (State v. Nayee, 192 N.J. 475 (2007), State v. Nataluk, 316 N.J. Super. 336 (App. Div. 1998)) or because the defendant had been abused by the victim (State v. Hess, 207 N.J. 123 (2011), State v. Briggs, 349 N.J. Super. 496 (App. Div. 2002)). Neither condition obtains in this matter.

To support a finding of mitigating factor 11, the defendant must establish that imprisonment "would entail excessive hardship to the defendant or the defendant's dependents[.]" N.J.S.A. 2C:44-1b(11). Defendant's reliance on his statement in the presentence report that "being incarcerated is not beneficial to his mental health" falls rather short of that standard. (PSR, p. 10); see State v. Dalziel, 182 N.J. 494, 505 (2005) (rejecting application of mitigating factor 11 because the defendant "offered no evidence to show that the length of his sentence would be an 'excessive hardship' on him.").

No more successful is defendant's argument that Judge Oxley erred by considering defendant's prior endangering conviction when imposing a maximum term of imprisonment in this matter and in having the sentence run consecutively to defendant's sentence for the endangering conviction.

Defendant's reliance on State v. Miller, 108 N.J. 112 (1987) is misplaced, for he omits the key details of that case that the defendant was sentenced for multiple crimes he committed against a single victim over a weekend. Id. at 114-15. "Where the offenses are closely related, it would ordinarily be inappropriate to sentence a defendant to the maximum term for each offense and also require that those sentences be served consecutively, especially where the second offense did not pose an additional risk to the victim." Id. at 122.

Similarly, the defendant in State v. Streater, 233 N.J. Super. 537 (1989) was convicted of multiple crimes stemming from a single episode. The court imposed a maximum sentence for the defendant's conspiracy conviction and a consecutive sentence for his theft-by-deception conviction. Id. at 544-45. Because the trial court relied on the fact of multiple victims to impose a maximum sentence for the conspiracy, the fact of multiple victims "should not have been relied upon as the basis for also imposing a consecutive sentence for a closely related offense." Id. at 546.

Defendant also cites State v. Carey, 168 N.J. 413 (2001), to no good effect since the defendant in that case was not sentenced to maximum terms. Miller is not implicated, nor is it cited for the proposition defendant advances.

As Judge Oxley explained, defendant's conviction in this matter and his prior endangering conviction involve "two separate victims, two separate

timeframes, and clearly, two separate factual circumstances." (2T41-6 to 8). The convictions are thus not closely related.

The record belies defendant's final claim, that Judge Oxley did not articulate the overall fairness of the aggregate sentence. In State v. Torres, 246 N.J. 246 (2021), the Supreme Court held that where a sentencing court imposes a consecutive sentence, "an explanation for the overall fairness of a sentence by the sentencing court is required...to foster consistency in sentencing in that arbitrary or irrational sentencing can be curtailed and, if necessary, corrected through appellate review." Id. at 272 (citation and internal quotation marks and text alterations omitted).

Citing Torres and State v. Yarbough, 100 N.J. 627 (1985), which sets forth the guidelines for imposing consecutive sentences, Judge Oxley stated:

> [A] court must place on the record its statement of reasons for the decision[] to impose consecutive sentence[s], which should focus on the fairness of the overall sentence[,] and the sentencing court should set forth in detail its reasons for concluding that a particular sentence is warranted, State v. Torres, 246 N.J. 246 on page 267 through 68.
>
> In this case, as the Court has stated, these were separate victims, two very, very vulnerable victims, certainly in terms of their ability to defend themselves. Two very, very separate and distinct crimes, but the one we're here for today is the infant daughter, very, very young when her life was tragically taken from her.

> So, I do find under these facts, these circumstances, using those guiding principles from Yarbough that a consecutive sentence is warranted.
>
> [(2T41-17 to 42-8).]

Judge Oxley's "careful evaluation of the specific case[,]" Torres, 246 N.J. at 269, demonstrated an appreciation for the vulnerability of the innocent infant whose life defendant took after he had abused his baby boy. "Crimes involving multiple deaths or victims who have sustained serious bodily injuries represent especially suitable circumstances for the imposition of consecutive sentences." Carey, 168 N.J. at 428. Because Judge Oxley found that the aggravating factors substantially outweighed the mitigating factor, he appropriately sentenced defendant to 30 years in prison for defendant's aggravated manslaughter of his infant daughter, Kiriakakis, 235 N.J. at 442, to be served consecutively to defendant's sentence for endangering the welfare of his baby son. A just sentence, it is also the one for which defendant bargained. (Da14); see State v. Fuentes, 217 N.J. 57, 70 (2014) ("A sentence imposed pursuant to a plea agreement is presumed to be reasonable[.]").

As Judge Oxley's sentencing findings are supported by the record, he articulated the reasons why the sentence is fair overall, and the sentence both as to the term of imprisonment and its consecutive nature represents the

sentence for which defendant negotiated, defendant's sentence is condign punishment for his aggravated manslaughter of baby G.B.

CONCLUSION

For the reasons expressed, the State respectfully urges the Court to affirm the judgment of the Law Division.

Respectfully submitted,

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REPLY LETTER BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1538-22
INDICTMENT NO. 21-05-00268-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior
v.	:	Court of New Jersey, Law Division, Monmouth County.
AUSTIN MELI,	:	
		Sat Below:
Defendant-Appellant.	:	Hon. Joseph W. Oxley, J.S.C.;
		DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

TABLE OF CONTENTS

CITATION KEY

"Sb" – State's brief

"Db" - Defendant's brief

STATEMENTS OF PROCEDURAL HISTORY AND FACTS

Mr. Austin Meli relies upon the Statement of Procedural History and Statement of Facts included his original brief.

LEGAL ARGUMENT

Meli relies upon the arguments made in his previously filed brief and only adds the following critical point.

In Arguing that the Court Waived the Statutory Requirement that the Presentence Investigation Include a Psychological Evaluation, the State Conveniently Ignores the Fact that the Court Did Not Acknowledge the Existence of the Requirement, Much Less Provide Reasons for the Purported Waiver. The Claim That the Court Waived the Requirement Is a Mere Fiction.

The State argues that the court was permitted to waive the complete psychological evaluation, and therefore that the lack of such a report poses no error. (Sb 10-11) But the fact that the requirement is waivable does not mean that it was waived. The State conveniently ignores the cases cited by Mr. Meli which establish that a court cannot make a discretionary sentencing decision without providing a statement of reasons, perhaps because, once acknowledged, there is no way to avoid the necessary conclusion. (Db 17-19) See State v. Bolvito, 217 N.J. 221, 235 (2014) (explaining that a statement of reasons is required for sentencing decisions in order to facilitate appellate review); State v. Blackmon, 202 N.J. 283, 307 (2010) ("To the extent that the choice about who may speak [at sentencing] is

an exercise of discretion, it shares the same attributes of all discretionary determinations, namely, it must be accompanied by some expression of reasons sufficient to permit appellate review."); R. 3:29 ("The court shall place on the record the reasons supporting its . . . disposition of a criminal matter."); see also State v. Rivera, 249 N.J. 285, 298 (2021) (explaining that resentencing is required where a sentencing court fails to apply the Code or explain its sentencing decisions); State v. Case, 220 N.J. 49, 65-66 (2014) (sentencing judges must provide "insight into the sentencing decision" and "explain clearly" their application of the Code); State v. Mance, 300 N.J. Super. 37, 65 (1997) ("[W]e are required to set the sentences aside and order the case remanded for re-sentencing based on a presentence report which fully accords with the dictates of R. 3:21–2 and N.J.S.A. 2C:44–6.").

Because the sentencing court did not acknowledge the existence of the statutory requirement, or make any findings as to why such a report was not necessary in this case, at the very minimum, a remand for consideration of the statutory requirement is required. See Blackmon, 202 N.J. at 307 (finding that a remand for a statement of reasons was required because the court failed to give reasons for denying a family member's request to be heard). However, this Court should remand for a complete psychological evaluation, rather than for additional findings, because not ordering an evaluation would be an abuse of discretion, given

the overwhelming evidence of serious mental illness and that an evaluation would include information relevant to sentencing. C.f. id. (noting that the error there was not necessarily the court's decision, which the court may have been able to justify, but its failure to provide a statement of reasons); see R. 3:21-2(a) (requiring that presentence reports include all relevant information).

CONCLUSION

For the reasons above and those included in Meli's opening brief, this Court should vacate the plea due to the deficient factual basis, or remand for a complete psychological evaluation and resentencing.

Respectfully submitted,

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Ashley Brooks, Esq.

Dated: August 12, 2024