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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-0134-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAJUAN COPPER, a/k/a DAJUAN
COOPER,

Defendant-Appellant.

Argued November 15, 2017 – Decided December 18, 2017

Before Judges Fuentes, Koblitz and Manahan.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Indictment No. 14-12-0779.

Joshua D. Sanders, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Joshua D. Sanders, on the brief).

Perry Farhat, Assistant Prosecutor, argued the cause for respondent (Michael H. Robertson, Somerset County Prosecutor, attorney; Perry Farhat, on the brief).

PER CURIAM

Defendant DaJuan Copper appeals from his February 5, 2016 judgment of conviction after pleading guilty to third-degree

uttering a fraudulent instrument, N.J.S.A. 2C:21-1(a)(3), and fourth-degree attempted theft by deception, N.J.S.A. 2C:5-1 and 20-4. He was sentenced to probation for twelve months. He now argues that we should reverse the court's November 9, 2015 order affirming the denial of defendant's Pretrial Intervention (PTI) application by both the Program director and prosecutor. Defendant argues the court's reliance on the prosecutor's representation of defendant's juvenile record without substantiating documentation was reversible error. Defendant does not dispute the nature of his juvenile adjudications or that, if demonstrated, they were an appropriate reason to deny entrance into PTI. We affirm.

Defendant raises the following argument on appeal:

POINT I: BECAUSE THE TRIAL JUDGE'S RULING WAS BASED UPON THE STATE'S UNSUBSTANTIATED ALLEGATIONS INSTEAD OF SUFFICIENT CREDIBLE EVIDENCE IN THE RECORD, THIS MATTER MUST BE REMANDED TO THE TRIAL COURT FOR RECONSIDERATION OF THE PTI APPEAL ABSENT THESE UNSUPPORTED ALLEGATIONS. (RAISED BUT NOT RULED ON BELOW).

PTI is "a diversionary program through which certain offenders are able to avoid criminal prosecution by receiving early rehabilitative services expected to deter future criminal behavior." State v. Baynes, 148 N.J. 434, 441 (1997) (quoting State v. Nwobu, 139 N.J. 236, 240 (1995)). Admission into PTI is "based on a recommendation by the criminal division manager, as Director of the PTI Program, with the consent of the prosecutor."

Ibid. (citing R. 3:28(c)(1)). The New Jersey Supreme Court "has provided criteria for making PTI decisions in its Guidelines for Operation of Pretrial Intervention." Ibid.

The Rules of Evidence are relaxed for a hearing on admissibility into the PTI Program. N.J.R.E. 101(a)(2)(C). PTI hearings "need not follow all of the formalities of a criminal trial nor be limited by the strict rules of evidence." State v. Devatt, 173 N.J. Super. 188, 194 (App. Div. 1980).

"A prosecutor's decision is to be afforded great deference. In fact, the level of deference which is required is so high that it has been categorized as 'enhanced deference' or 'extra deference.'" Baynes, 148 N.J. at 443 (quoting State v. Kraft, 264 N.J. Super. 106, 111 (App. Div. 1993)). "[A] prosecutor's decision to reject a PTI applicant 'will rarely be overturned.'" Ibid. (quoting State v. Wallace, 146 N.J. 576, 585 (1996)). The scope of judicial review is severely limited and exists "to check only the most egregious examples of injustice and unfairness." Kraft, 264 N.J. at 111 (quoting State v. Demarco, 107 N.J. 562, 566 (1987)).

"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.'" Baynes, 148 N.J. at 444 (quoting Wallace, 146 N.J. at 582) (amended in original). 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.

[Ibid. (quoting State v. Bender, 80 N.J. 84, 93 (1979).]

Defendant argues that the trial court erred in affirming the State's decision to deny defendant's PTI application because the trial court relied on the State's unsubstantiated allegations in its brief regarding defendant's prior juvenile adjudications and alleged gang affiliation. Defendant states that "[n]o evidence was offered into the record to establish any of these allegations by any quantum or quality of proof."

The State notes that it provided defendant with discovery, including his juvenile record, prior to the PTI appeal hearing. Although defendant raised the issue that the prosecutor did not provide the court with a copy of the juvenile record, he never challenged the accuracy of the State's representations. The specific information regarding defendant's juvenile record, which

we do not detail here based on its confidentiality, N.J.S.A. 2A:4A-60; R. 1:38-3, was known by both parties. The court had access to that information through court records. N.J.R.E. 201(b).

Our Supreme Court has held that "[t]here is no question that '[t]he extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior' is relevant to a prosecutor's consideration of a [PTI] application." State v. K.S., 220 N.J. 190, 201 (2015) (quoting N.J.S.A. 2C:43-12(e)(8)). "Anti-social behavior includes 'not only serious criminal acts, but less serious conduct.'" Ibid. (quoting State v. Brooks, 175 N.J. 215, 227 (2002)).

In K.S. the Court reversed the denial of defendant's admission into PTI because the defendant's prior juvenile and adult arrests resulted in dismissals and the behavior was not otherwise substantiated. Id. at 202. We see no benefit here to remanding the matter for the court to review defendant's juvenile court record reflecting adjudications and admissions as to gang affiliation, which defendant does not deny are accurately described in the prosecutor's brief.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION