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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-1528-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LATIA R. HARRIS,

Defendant-Appellant.

Submitted May 30, 2017 – Decided June 22, 2017

Before Judges Haas and Currier.

On appeal from the Superior Court of New
Jersey, Law Division, Salem County, Indictment
No. 14-11-0654.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alison Perrone, Designated
Counsel, on the brief).

John T. Lenahan, Salem County Prosecutor,
attorney for respondent (Thomas A. DeSimone,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Latia Harris appeals from an October 30, 2015 order
denying her motion to withdraw her plea. After reviewing the

record in light of her contentions and the applicable principles of law, we affirm.

Defendant was charged in an indictment with second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1), and two counts of terroristic threats, N.J.S.A. 2C:12-3, following an altercation memorialized in a video recording. The video showed defendant approaching the much smaller victim who was walking with her three-year-old son and pushing a stroller. Although the victim attempted to walk away, defendant knocked her to the ground and then kneeled on top of the victim, punching her in the head and face multiple times. Before she walked away, defendant kicked the victim who was still lying on the ground, bleeding profusely from her head and face. Defendant also threatened the victim and child. The victim was treated in the hospital and discharged with diagnoses of multiple nasal bone fractures, a nasal septal deviation and soft tissue swelling, and a head injury.

Defendant moved to dismiss the indictment. The State argued that the video evidence was sufficient to support an attempt to cause serious bodily injury and the second-degree charge of aggravated assault. In denying defendant's motion, the trial judge agreed that the "closed-head injury" and "multiple strikes by the defendant" were sufficient to establish there was attempt to cause injury.

On April 20, 2015, defendant pleaded guilty to second-degree aggravated assault, to be sentenced as a third-degree crime. The prosecutor agreed to recommend a three-year sentence subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and to dismiss the terroristic threat charges. Defense counsel questioned defendant to establish a factual basis for her plea:

Q Okay. So I'm going to take your attention to the date of June 24, 2014. Do you remember that date?

A Yes.

Q You were in the City of Salem, correct?

A Yes.

Q And at that time, you came in contact with [the victim] correct?

A Yes.

Q You knew [the victim] through working, correct?

A Yes.

Q And at that time, you had assaulted her causing serious bodily injury, correct?

A Yes.

Q And you have no reason to dispute that the injuries you caused were serious bodily injuries, is that correct?

A (Inaudible.)

Q You don't have any reason to dispute it, do you?

[Assistant Prosecutor]: You would agree that those were the injuries that she sustained that were tantamount to serious bodily injury?

Defendant: Yes

[By Defense Counsel]:

Q Okay. So how do you plead to committing a second-degree aggravated assault to be sentenced as a third on the date in question? Guilty or not guilty?

A Guilty.

Upon questioning by the court, defendant testified that she understood that she was giving up her right to a trial by jury and that she would be required to serve two years, six months and twenty days before she was eligible for parole. She also testified that she was satisfied with the services of defense counsel, that she was not forced or coerced to enter the plea, and that she was not under the influence of drugs or alcohol or anything that would affect her ability to understand the proceedings. The judge found that there was a sufficient factual basis for the plea and that "it was made freely, voluntarily, without coercion[,] with a full understanding of the ramifications, knowing waiver of trial, [and] adequate representation of counsel."

In August 2015, prior to sentencing, defendant filed a motion to modify her plea agreement¹ or, in the alternative, withdraw her plea.² She argued that she had established a basis for the motion under State v. Slater, 198 N.J. 145 (2009), in asserting a colorable claim of innocence because she never attempted or caused serious bodily injury to the victim.

On October 30, 2015, the court denied defendant's motions and sentenced her in accordance with the plea agreement. In reviewing the required factors under Slater, the judge noted that defendant had not asserted a colorable claim of innocence; she only argued "that she did not intend to cause serious bodily injury because she did not use a weapon." The judge further stated that:

The evidence supports the defendant struck the victim many times while in the presence of the victim's child, and then threatened the child as well.

The Court is aware also that the evidence showed [defendant] standing over . . . a helpless victim while on the ground and repeatedly striking her.

¹ Defendant sought to eliminate the NERA requirement and serve a three-year flat sentence. This issue has not been presented to us on appeal.

² These motions were heard and determined by a different judge than had considered the prior motions and conducted the plea hearing.

The judge concluded defendant's argument that she had no intent to cause or that "she could not have caused serious bodily injury, frankly, [was] meritless."

After analyzing the remaining Slater factors, the court found that defendant had failed to meet her burden of proof that the plea agreement should be set aside, and her motion was denied.

On appeal, defendant argues that the trial court erred in denying her motion to withdraw her guilty plea. She contends that she did not cause serious bodily injury to the victim and that there is no evidence that she attempted to do so since the altercation was brief and no weapons were used. Defendant concedes that she did not dispute at the plea hearing that she caused serious bodily injury to the victim. However, she contends that the Slater factors weigh in favor of granting her motion to withdraw her guilty plea.

A motion to withdraw a guilty plea is committed to the judge's sound discretion. Slater, supra, 198 N.J. at 156 (citations omitted); State v. Phillips, 133 N.J. Super. 515, 518 (App. Div. 1975). We will only overturn a judge's decision if there was an abuse of discretion causing the decision to be clearly erroneous. We are mindful that discretion should ordinarily be exercised liberally where the motion is made before sentencing. Slater, supra, 198 N.J. at 156 (citations omitted). "In a close case, the

'scales should usually tip in favor of defendant.'" Ibid. (quoting State v. Taylor, 80 N.J. 353, 365 (1979)).

A defendant bears the burden to demonstrate that fairness requires withdrawal of his plea, and he must make that showing upon a balance of competing factors. State v. Russo, 262 N.J. Super. 367, 373 (App. Div. 1993) (quoting State v. Huntley, 129 N.J. Super. 13, 17 (App. Div.), certif. denied, 66 N.J. 312, 331 (1974)). Although a motion to withdraw a plea after sentencing must be supported by "strong, compelling reasons," [] "a lesser showing is required for motions raised before sentencing." Slater, supra, 198 N.J. at 160.

The applicable factors are: "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused." Id. at 157-58 (citation omitted). While all factors must be considered and balanced, "[n]o factor is mandatory; if one is missing, that does not automatically disqualify or dictate relief." Id. at 162.

With respect to the first factor, "[a] bare assertion of innocence is insufficient to justify withdrawal of a plea." Id. at 158. Instead, a defendant must "present specific, credible

facts and, where possible, point to facts in the record that buttress [her] claim." Ibid. (citations omitted). There must be more than just a "change of heart" to warrant leave to withdraw a guilty plea once entered. Id. at 157.

According to Slater, the second factor, the nature and strength of defendant's reasons for withdrawal, "focuses on the basic fairness of enforcing a guilty plea by asking whether defendant has presented fair and just reasons for withdrawal, and whether those reasons have any force." Id. at 159. Although we are not to approach the reasons for withdrawal with "skepticism," we "must act with 'great care and realism' because defendants often have little to lose in challenging a guilty plea." Id. at 160 (citing Taylor, supra, 80 N.J. at 365).

With respect to the third Slater factor, whether the plea was entered as the result of a plea bargain, the Court noted that "defendants have a heavier burden in seeking to withdraw pleas entered as part of a plea bargain." Id. at 160 (citations omitted). However, the Court did "not suggest" that the third factor "be given great weight in the balancing process." Id. at 161.

As to the fourth factor, unfair prejudice to the State or unfair advantage to the accused, the Court stated that there was "no fixed formula to analyze the degree of unfair prejudice or

advantage that should override withdrawal of a plea" and that "courts must examine this factor by looking closely at the particulars of each case." Ibid. The "critical inquiry . . . is whether the passage of time has hampered the State's ability to present important evidence." Ibid. The State need not show prejudice "if a defendant fails to offer proof of other factors in support of the withdrawal of a plea." Id. at 162.

We consider these factors in light of defendant's arguments and the evidence in the record. "When evaluating a defendant's claim of innocence, courts . . . are not to conduct a mini-trial [but] should simply consider whether a defendant's assertion of innocence is more than a blanket, bald statement and rests instead on particular, plausible facts." Id. at 158-59. Defendant has not presented "specific, credible facts" to support any colorable claim of innocence. She asserts only that the altercation was brief and she used her hands, not a weapon. We agree with the trial judge that this argument is meritless. Defendant knelt over a helpless victim striking her multiple times. Her actions belie any statement that she did not intend to cause serious injury. This effort to withdraw her plea is essentially the type of "change of heart" that ordinarily warrants little weight in terms of the first Slater prong.

The second factor considers the nature and strength of defendant's reasons for withdrawing her plea. Defendant reiterates the same argument she makes in respect to the first factor; that she did not commit the crime to which she pled guilty. As discussed, this does not satisfy this factor.

Although the plea was the result of a plea offer, we do not accord that fact great weight in assessing the third and fourth factors because we discern no particular prejudice to the State if the plea were withdrawn.

Having balanced the Slater factors, we find no error in the judge's exercise of his "sound discretion" in denying the motion. We do not consider this the type of "close case" in which the balance should tip in favor of a defendant. Defendant made a counseled and knowing decision to plead guilty; her change of mind, absent viable support for her theoretically colorable claim of innocence, did not warrant leave to withdraw her plea.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION