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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-1637-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KRISTIN M. HANSEN,

Defendant-Appellant.

Submitted November 9, 2017 – Decided November 29, 2017

Before Judges Alvarez and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
14-01-0100.

Robin Kay Lord, attorney for appellant.

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Laura Sunyak,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Kristin Hansen appeals from the March 29, 2016
order confirming the prosecutor's denial of her application for
entry into the Pretrial Intervention Program (PTI). Because we

agree with the trial court that defendant has not established that the prosecutor's decision to deny PTI was a patent and gross abuse of his discretionary authority, we affirm.

A department store's loss prevention supervisor observed defendant pushing her child in a stroller. The security officer continued to watch as she shopped, placed numerous items into her stroller, went into a fitting room, and moved the merchandise into her handbag and diaper bag. Defendant then attempted to exit the store without paying for the merchandise. She was stopped by security and identified herself as a lieutenant at the Middlesex County Corrections Center. The merchandise removed from her stroller and purse was valued at over \$1600. Defendant was arrested after the police reviewed the store's surveillance system, which confirmed the security officer's account of events.

Defendant was charged in an indictment with third-degree shoplifting, in violation of N.J.S.A. 2C:20-11(b)(2). Her application for entry into PTI was approved by the Criminal Case manager. In her PTI interview, defendant stated she was shopping at the store when she was stopped by a store employee who mistreated her. She admitted that she told the security officer of her position at the corrections center. She said she went near the exit doors but denied leaving the store with any merchandise.

In his review of the PTI application, the prosecutor agreed to admit defendant into the program, conditioned on her resigning from her public employment. Noting that "PTI decisions are primarily individualistic in nature and . . . [he] must consider an individual defendant's features that bear on his or her amenability to rehabilitation," the prosecutor reviewed the application with defendant's employment as a "sworn law enforcement officer in mind."

The State found defendant was an appropriate candidate for PTI if she were an ordinary citizen, but not as a law enforcement officer. The prosecutor stated:

[t]he State believes, due to Defendant's employment, this crime can be viewed as a breach of the public trust. Law enforcement officials should be held to a higher standard, and it can be said they are always on duty and are expected to avoid breaking the law. Additionally, Defendant's consistent failure to fully accept responsibility for her actions and to mitigate her offense supports the State's contention that she would not be responsive to rehabilitation.

The State, therefore, conditioned defendant's entry into PTI upon the forfeiture of her job. Defendant appealed the decision to the trial court.

In a comprehensive written opinion, the trial judge considered the written submissions and oral argument of counsel. He found that the State's position was "carefully reasoned and

logical." As defendant was employed as a county corrections officer at the time of this offense, the judge noted that she was empowered under the applicable statute "to act as [an officer] for the detection, apprehension, arrest, and conviction of offenders against the law." N.J.S.A. 2A:154-3(a). In finding that it was not a patent and gross abuse of discretion for the State to hold defendant to a higher standard, the judge said that "[t]he State reasonably concluded that the defendant's conduct was so inconsistent with the inherent duties of a law enforcement officer that she could no longer be permitted to serve in that position."

The judge considered and rejected defendant's argument that under State v. DeMarco, 107 N.J. 562, 571 (1987), the prosecutor could not impose such a condition. Although finding DeMarco factually different from the circumstances here, the judge noted that the Supreme Court sanctioned the imposed condition, that the defendant resign from his public employment. Defendant's appeal was denied.

In this appeal, defendant argues that the trial court erred in finding the State's denial of her application for PTI was not a patent and gross abuse of discretion. We disagree and affirm.

Our scope of review of a prosecutor's decision to deny admission to PTI is "severely limited." State v. Neqran, 178 N.J. 73, 82 (2003). We afford the prosecutor's decision great

deference. State v. Wallace, 146 N.J. 576, 582, 589 (1996). A trial judge can only overturn a prosecutor's decision to deny PTI upon finding a "patent and gross" abuse of discretion. State v. Kraft, 265 N.J. Super. 106, 112-13 (App. Div. 1993).

Our review of a PTI application exists "to check only the most egregious examples of injustice and unfairness." State v. Nwobu, 139 N.J. 236, 246 (1995) (quoting Kraft, supra, 265 N.J. at 111). In short, it is expected that a prosecutor's decision to reject a PTI applicant "will rarely be overturned." Wallace, supra, 146 N.J. at 585 (quoting State v. Leonardis, 73 N.J. 360, 380 n.10 (1977)). Absent evidence to the contrary, a reviewing court must assume that "the prosecutor's office has considered all relevant factors in reaching the PTI decision." Nwobu, supra, 139 N.J. at 249 (citing State v. Dalqlish, 86 N.J. 503, 509 (1981)).

Defendant argues on appeal, as she did to the trial judge, that it was a patent and gross abuse of discretion for the State to condition her admission into PTI on the forfeiture of her employment because "there is no correlation between the forfeiture of employment condition and the seriousness of the shoplifting offense." Therefore, she contends that the forfeiture condition does not further the rehabilitative goals of PTI.

It is undisputed that the prosecutor considered all of the criteria enumerated in N.J.S.A. 2C:43-12(e). In fact, the State

agreed that if defendant were to be considered as an ordinary citizen, she would be eligible for admission into the program. However, Guideline 3 promulgated under Rule 3:28, also lists a number of factors for a prosecutor's consideration. Section (i) requires an assessment of the nature of the offense. "If the crime was . . . a breach of the public trust where admission to a PTI program would deprecate the seriousness of defendant's crime, the defendant's application should generally be rejected." R. 3:28. After its consideration of this guideline, the State concluded: "Defendant's employment, the circumstances of the offense, and Defendant's statements in support of her application," require her admission into PTI be conditioned on her "forfeiture of public employment."

In DeMarco, supra, 107 N.J. at 565, the defendant police officer was indicted for aggravated assault after he struck another man with his nightstick. The prosecutor agreed to DeMarco's entry into PTI, conditioned on his resignation of his position. Id. at 566. The prosecutor relied on the violent nature of the offense, DeMarco's continued attempt to justify the assault as an act of self-defense, and that the offense constituted a breach of the public trust reposed in the defendant as a police officer. Id. at 565-66. The Court stated:

we glean the principle that defendant's employment as a police officer does not necessarily preclude his admission into PTI, but that it is one factor to be considered in judging him as a whole person The prosecutor's reliance on defendant's employment as a police officer does not subvert the goals underlying PTI and does not constitute a "patent and gross" abuse of discretion. Likewise, the prosecutor is justified in viewing defendant's conduct as a breach of the public trust. A police officer is under a duty to uphold the law and maintain public safety [T]he prosecutor was not compelled to deny defendant admission into PTI.

[Id. at 569.]

Like in DeMarco, defendant did not accept responsibility for her actions. She also invoked her position as a high-ranking officer in the Middlesex County Sheriff's Department when stopped by the security officer in the store. It was within the bounds of the prosecutor's discretion to find defendant's actions to be a breach of the public trust and that she was not amenable to rehabilitation. Defendant was a law enforcement officer, a position in which she is held to a higher standard. As an officer, she was expected to enforce the law as to others and bound to uphold the law as to herself.

Here, the prosecutorial decision has not "gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention." Wallace, supra, 146

N.J. at 583 (quoting State v. Ridgway, 208 N.J. Super. 118, 130 (Law Div. 1985)). Rather, the trial judge applied the appropriate deferential standard of review to reach a sound decision. Defendant has not met her burden of proving the prosecutor's decision was a gross and patent abuse of discretion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION