SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3141-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DARRELL K. RAINEY,

Defendant-Appellant.

Submitted October 10, 2017 – Decided October 26, 2017

Before Judges Sabatino and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment Nos. 14-02-0402 and 14-02-0403.

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

Robert D. Laurino, Acting Essex County Prosecutor, attorney for respondent (Frank J. Ducoat, Special Deputy Attorney General/ Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

In a bifurcated trial, defendant was convicted of second-degree unlawful possession of a handgun, N.J.S.A. 2C:30-5(b);

third-degree possession of a controlled dangerous substance (heroin), N.J.S.A. 2C:35-10(a); fourth-degree possession of a defaced firearm, N.J.S.A. 2C:39-3(d) and obstruction of the administration of law, N.J.S.A. 2C:29-1; and then he was convicted of second-degree certain person not to possess a firearm, N.J.S.A. 2C:39-7(b). The court sentenced defendant to an aggregate term of ten years, with a five-year period of parole ineligibility.

Defendant presents the following points on appeal:

POINT I

> BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DRUGS AND WEAPON FOUND IN TWO ADJACENT BACK YARDS HAD BEEN POSSESSED BY RAINEY, THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE AND MUST BE REVERSED. (Not Raised Below)

POINT II

> THE FAULTY STATEMENT OF REASONS GIVEN FOR THE CONTROLLING SENTENCE REQUIRES A REMAND FOR RESENTENCING.

Unpersuaded by these arguments, we affirm.

The facts of the case are uncomplicated. Two police officers testified that during a field inquiry, defendant refused to permit one of them to pat him down, after the officer spotted a bulge in his hoodie. Defendant ran and the officers gave chase. One officer testified that he observed defendant toss a gun and a drugstore bag while he fled. The officer retrieved the gun and

the bag, which contained heroin along with dental products. Defendant admitted he fled from the officer, but denied he possessed a gun or drugs. He said the bulge in the pocket was a cell phone, which he simply lost during the chase, and the drugstore bag he dropped contained no heroin. The jury evidently believed the officers, and not defendant.

As defendant did not move for a new trial, his argument that the conviction was against the weight of the evidence is procedurally barred. See R. 2:10-1 (stating "the issue of whether a jury verdict was against the weight of the evidence shall not be cognizable on appeal unless a motion for a new trial on that ground was made in the trial court."). The procedural requirement is no mere technicality, as we are obliged to defer to a trial court's ruling, which is based on its feel of the case, and opportunity to assess witnesses' credibility. State v. Carter, 91 N.J. 86, 96 (1982). Although the Rule may be relaxed in the interests of justice, to prevent a miscarriage of justice under the law, State v. Smith, 262 N.J. Super. 487, 512 (App. Div.), certif. denied, 134 N.J. 476 (1993), there is no compelling reason to do so here.

In any event, defendant's argument of insufficient proof lacks substantive merit. On a motion for a new trial, "[t]he evidence should be sifted to determine whether any trier of fact

could rationally have found beyond a reasonable doubt that the essential elements of the crime were present." Carter, supra, 91 N.J. at 96. Little sifting is needed here to conclude the jury's verdict was rationally based on the testimony of two officers. Despite defense efforts to undermine their credibility, the jury obviously found the officers' version of events substantially more plausible than defendant's. We discern no failure of the jury's function to warrant our intervention. See Smith, supra, 262 N.J. Super. at 512.

We also reject defendant's challenge to his sentence. Defendant was eligible for an extended term. However, the State declined to seek one, and recommended the ten-over-five aggregate sentence. Defense counsel concurred. She presented no mitigating facts, aside from noting that defendant did not commit a crime of violence, nor did he actually sell or distribute drugs.

The court accepted counsels' joint sentencing recommendation. The court reviewed defendant's record, noting he was twenty-nine years old; he had thirteen prior arrests, and three prior indictable convictions including two CDS-related convictions; and he was unemployed and lacked a high school diploma. The court found aggravating factors three, risk of reoffending; six, prior criminal record; and nine, the need to deter defendant and others. See N.J.S.A. 2C:44-1(a)(3), (6), (9). The court found no

mitigating factors. See N.J.S.A. 2C:44-1(b). Thus, the aggravating factors preponderated.

In particular, the court imposed sentences of: five years flat on the drug count; eighteen months flat on the obstruction count; eighteen months, with an eighteen-month parole ineligibility term, on the possession of a defaced weapon count; ten years, with a five-year parole ineligibility term, on the handgun possession count; and five years, with a five-year parole ineligibility term, on the certain persons count — all to run concurrently.

We apply a deferential standard of review to the trial court's sentencing determination. State v. Grate, 220 N.J. 317, 337 (2015). No doubt, the court's statement of reasons could have been more explanatory. See State v. Fuentes, 217 N.J. 57, 74 (2014) (stating that trial courts must provide a "clear and detailed statement of reasons" for a sentence). Nonetheless, we are satisfied that the court's finding of aggravating factors and lack of mitigating factors was "based upon competent and credible evidence in the record." Fuentes, supra, 217 N.J. at 70 (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)). Although the trial court noted defendant's multiple arrests, the court did not

identify them, let alone presume defendant's guilt.[1] In any event, the balance of defendant's record supported the court's findings. The sentence does not shock our judicial conscience. See State v. Case, 220 N.J. 49, 65 (2014). Therefore, we will not disturb it.

However, as the State concedes, defendant's judgment of conviction erroneously refers to N.J.S.A. 2C:43-7(c), which pertains to an extended term, although the court did not impose one. See State v. Pohlabel, 40 N.J. Super. 416, 423 (App. Div. 1956) (stating that a clearly stated oral sentence will control where it conflicts with the written judgment). Furthermore, the separate judgment of conviction for the certain persons offense does not state that the sentence would run concurrent to the other sentences. We remand for prompt correction of the judgments.

Affirmed. Remanded solely for correction of the judgments of conviction. We do not retain jurisdiction.

[1] The Court in State v. K.S., 220 N.J. 190, 199 (2015), reviewing the denial of a pretrial intervention application, disapproved of the statement in State v. Green, 62 N.J. 547, 571 (1973) that a "sentencing judge might find it significant that a defendant who experienced an unwarranted arrest was not deterred by that fact from committing a crime thereafter." The K.S. Court concluded that "deterrence is directed at persons who have committed wrongful acts" not those simply charged. 220 N.J. at 199. However, even if K.S. is extended to sentencing, as opposed to PTI admission, it was decided after the sentencing in this case.