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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-3253-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRIAN D. SOOY, a/k/a BJ,

Defendant-Appellant.

Submitted June 21, 2017 – Decided August 14, 2017

Before Judges Fuentes and Koblitz.

On appeal from Superior Court of New Jersey,
Law Division, Salem County, Indictment No. 14-
12-0675.

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

John T. Lenahan, Salem County Prosecutor,
attorney for respondent (William G. Holmes,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Brian D. Sooy appeals from the December 23, 2015 denial of his application to the Pre-trial Intervention Program (PTI), Rule 3:28; N.J.S.A. 2C:43-12. A February 17, 2016 judgment of conviction resulted from his guilty plea to third-degree terroristic threats, N.J.S.A. 2C:12-3(a). Rule 3:28(g) allows the appeal of rejection from PTI even after a guilty plea. Defendant was sentenced to probation for four years. Because the record on appeal is insufficient for our review, we dismiss this appeal.

Defendant was indicted in three counts for various crimes in connection with comments he posted on his own and a police department Facebook accounts threatening violence towards the police and a municipal court judge. Although with the consent of both parties defendant was initially found incompetent to stand trial,¹ months later he was deemed competent by a different judge after another court-ordered evaluation.

On December 23, 2015, defense counsel put the following comments on the record regarding a potential plea agreement, which were agreed to by the State:

the State offered Mr. Sooy, if we were not to do any of the [m]otions, the offer was probation, where the defense could argue for one-year probation, the State could argue for up to five years probation. If the [m]otions

¹ We were not furnished with a transcript of this proceeding.

were filed and unsuccessful, the State was going to offer four years probation.²

Defendant nonetheless pursued an unsuccessful motion to dismiss the indictment. He also appealed the denial of his admission to PTI. Defense counsel stated at the beginning of the hearing that defendant was accepted by the PTI director. Later in the hearing, the prosecutor stated that the director rejected defendant's application. The court does not mention in its reasons the posture of the PTI director.

Defendant raises the following issue on appeal:

POINT I: THE TRIAL COURT ERRED IN FINDING THE STATE'S DENIAL OF DEFENDANT'S APPLICATION FOR PRE-TRIAL INTERVENTION WAS NOT A PATENT AND GROSS ABUSE OF DISCRETION.

In defendant's appellate procedural history, he indicates again that he was accepted by the PTI director. In its appellate brief, the State adopts the defense procedural history as written. We have not been provided with a copy of the PTI director's written

² We note that a plea agreement to a specific agreed-upon, non-mandatory sentence is not permitted. State v. Hess, 207 N.J. 123, 151 (2011). Defense counsel argued for one year of probation. The prosecutor stated that "this was a negotiated [p]lea [a]greement, in which both parties agreed to four years of probation. . . . This is the first time the State's been given any notice that the defendant is now requesting a lesser sentence. It's the State's position that the four years of probation was the negotiated [p]lea, and he should be sentenced to that today." Although the court did properly consider a lesser sentence before imposing four years of probation, we think it appropriate to point out the State's mistaken claim regarding "negotiated" sentences.

decision. See N.J.S.A. 2C:43-12(c) (requiring that all decisions by directors or prosecutors be written); see also State v. Nwobu, 139 N.J. 236, 246 (1995). The prosecutor states that he filed a written objection to defendant's admission to PTI by way of a "brief" dated January 21, 2015. We have not been provided with this document either. It is appellant's obligation to include these documents. See R. 2:6-1(a)(1)(I) (stating the appendix must contain "such other parts of the record, excluding the stenographic transcript, as are essential to the proper consideration of the issues").

Without the written decisions from the PTI director and prosecutor, we cannot properly evaluate the judge's decision that defendant's rejection from the PTI program was not an abuse of prosecutorial discretion. We therefore dismiss this appeal.

Dismissed.

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


CLERK OF THE APPELLATE DIVISION