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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4291-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GREGORY BYRD,

Defendant-Appellant.

Submitted February 7, 2017 – Decided May 8, 2017

Before Judges Espinosa and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
87-10-2132.

Gregory Byrd, appellant pro se.

Diane Ruberton, Acting Atlantic County
Prosecutor, attorney for respondent (Mario C.
Formica, Special Deputy Attorney General/
Acting Chief Assistant Prosecutor, of counsel
and on the brief).

PER CURIAM

Defendant appeals from the denial of his motion to correct
an illegal sentence pursuant to Rule 3:21-10(b)(5). We affirm.

A jury convicted defendant of first-degree murder, N.J.S.A.

2C:11-2(a)(2) (count one), attempted murder, N.J.S.A. 2C:11-3(a)(2) (count two), and other offenses arising from a robbery in which he shot two victims in the head.

In 1992, defendant was sentenced to life imprisonment with a thirty-year parole disqualifier on the murder charge. The sentence challenged in this appeal is the sentence imposed on the attempted murder charge. The State filed a motion to have defendant sentenced as a persistent offender pursuant to N.J.S.A. 2C:43-7(a) and N.J.S.A. 2C:44-3(a). The trial court granted the State's motion and sentenced defendant to an extended term of life imprisonment with a twenty-five year parole disqualifier, to run consecutive to the sentence imposed on the murder charge. The rest of the counts either merged or resulted in concurrent sentences.

We affirmed defendant's convictions and sentence on direct appeal, State v. Byrd, Docket No. A-2982-88 (App. Div. July 9), certif. denied, 122 N.J. 363 (1990). Thereafter, defendant filed two petitions for post-conviction relief, the denials of which were affirmed on appeal, State v. Byrd, Docket No. A-6002-91 (App. Div. Feb. 25), certif. denied, 137 N.J. 164 (1994); State v. Byrd, Docket No. A-0597-10 (App. Div. Mar. 13), certif. denied, 211 N.J. 608 (2012).

Defendant first challenged his sentence in his direct appeal,

arguing it was manifestly excessive. We noted the trial court's findings "were amply supported by the record [and] clearly justified and warranted the imposition of the parole ineligibility terms, the imposition of the extended term and the imposition of consecutive terms." State v. Byrd, supra, Docket No. A-2982-88, slip op. at 13.

In April 2015, defendant moved to have the extended term sentence imposed on his attempted murder conviction corrected as illegal. R. 3:21-10(b)(5). Noting we affirmed defendant's sentence in his direct appeal, the trial court denied the motion.

Defendant presents the following arguments:

POINT I

THIS COURT SHOULD REMAND THIS MATTER TO THE TRIAL COURT FOR PROPER SENTENCING SINCE APPELLANT WAS UNCONSTITUTIONALLY SENTENCED AS A "PERSISTENT OFFENDER" AND SINCE HE RECEIVED AN UNREASONABLE SENTENCE THAT WAS MANIFESTLY UNJUST.

POINT II

THE SENTENCING COURT ABUSED ITS DISCRETION IN IMPOSING A DISCRETIONARY EXTENDED TERM UPON APPELLANT AS A PER[]SISTENT OFFENDER.

Defendant argues the lower court erred in denying his motion to correct his sentence on the ground that it had already been addressed in our decision on his direct appeal because he did not

raise the issue of whether his treatment as a persistent offender at sentencing led to an illegal sentence. He also argues his sentence was illegal because the out-of-state convictions used by the State to prove he was a persistent offender under N.J.S.A. 2C:44-3(a) were insufficient. We disagree.

"[A]ppeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion." Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). Because defendant was properly sentenced as a persistent offender, we need not review the trial court's reasoning for concluding that sentence should not be vacated as illegal. Moreover, whether a sentence "violates sentencing guidelines and legislative policies . . . is a question of law which is reviewed de novo." State v. Robinson, 217 N.J. 594, 604 (2014).

N.J.S.A. 2C:44-3(a) permits a court to impose an extended term of imprisonment if a "defendant has been convicted of a crime of the first, second or third degree and is a persistent offender."

A persistent offender is defined as

a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant's last

release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced.

[Ibid.]

A prior conviction includes "[a] conviction in another jurisdiction . . . if a sentence of imprisonment in excess of 6 months was authorized under the law of the other jurisdiction."

N.J.S.A. 2C:44-4(c).

Defendant's convictions in Maryland resulted from crimes committed on March 1, 1983, May 2, 1986, and December 23, 1986 while defendant was twenty-one, twenty-four, and twenty-five years old, respectively. All three crimes were committed within ten years of January 8, 1987, the date of the attempted murder for which defendant was sentenced, and resulted in sentences greater than six months of imprisonment. Therefore, defendant's criminal record provided a proper basis for him to be a persistent offender. N.J.S.A. 2C:44-3(a). As a result, the trial judge had the authority, pursuant to N.J.S.A. 2C:43-7(a)(2), to sentence defendant to an extended term on his first-degree attempted murder conviction.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION