

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-4884-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

M.F.,

Defendant-Appellant.

Submitted March 1, 2017 – Decided March 22, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New
Jersey, Law Division, Cape May County,
Indictment Nos. 10-07-0435 and 10-08-0551.

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

Christopher S. Porrino, Attorney General,
attorney for respondent (Emily R. Anderson,
Deputy Attorney General, of counsel and on the
brief).

PER CURIAM

On May 30, 2014, defendant M.F. was found not guilty by reason of insanity (NGRI) in accordance with N.J.S.A. 2C:4-1.¹ The trial court ordered that M.F. be periodically reviewed to determine if he required continued commitment or if he was eligible for release in accordance with the rules and procedures established in State v. Krol, 68 N.J. 236 (1975). See also R. 4:74-7. M.F. appeals from a June 2, 2015 order denying his motion to withdraw his NGRI plea. For the reasons that follow, we affirm.

The following facts and procedural history are relevant to our review. On July 13, 2010, a Cape May County Grand Jury returned Indictment No. 10-07-0435, charging M.F. with third-degree bail jumping, N.J.S.A. 2C:29-7 (Count One), and fourth-degree obstruction of justice, N.J.S.A. 2C:29-1 (Count Two). On August 10, 2010, a Cape May County Grand Jury returned Indictment No. 10-08-0551, charging M.F. with second-degree gang criminality, N.J.S.A. 2C:12-3 (Count One), and third-degree terroristic threats, N.J.S.A. 2C:12-3b (Count Two).

On December 10, 2010, the trial court ordered a mental health evaluation of M.F. to determine whether he was competent to stand trial under N.J.S.A. 2C:4-4. The evaluation was conducted at the Ann Klein Forensic Center (AKFC), where defendant was admitted on

¹ The judgments of acquittal memorializing the court's NGRI finding were entered on July 14, 2014.

July 12, 2011. The evaluators concluded that M.F. suffered from a psychotic disorder, not otherwise specified, and noted that he had "a well-documented history of paranoid ideation and bizarre behaviors." However, they further noted that M.F. "admits to feigning or malingering symptoms of mental illness in the past [...] . . . He has reported doing this in order to manipulate his housing environment or treatment while in jail or prison." In their September 2011 report, the evaluators opined that M.F. was competent to stand trial.

The defense retained an expert psychiatrist, Kenneth J. Weiss, M.D. Dr. Weiss examined M.F. in New Jersey State Prison (NJSP) on January 11, 2012, and reviewed the AKFC competency report and "over 1500 pages of [M.F.'s] prison records from 2005 through 2010." In his February 22, 2012 report, Dr. Weiss opined that M.F. likely met the criteria for insanity pursuant to N.J.S.A. 2C:4-1 at the time the subject offenses were committed. He concluded:

[M.F.] has a chronic, severe mental illness, most likely a form of [s]chizophrenia. The condition is completely disabling, except perhaps for some higher functioning when he is in a secure psychiatric hospital. Though I do not doubt that [M.F.] achieved temporary competency while at AKFC, he lacks the capacity now. I cannot speculate as to whether or when he will regain it, but I suspect he will not regain it while in NJSP. Meanwhile, it appears that there is a strong

causal link between his mental illness and the 2010 criminal charges. If it were legally practicable for [M.F.] to be found insane for the underlying charges despite his current condition, it may be a better outcome than to await competency restoration. It is reasonably clear that he wants to be in a hospital, implying that he would agree to use an insanity defense. Alternatively, if all parties agree that he has served sufficient time for the open charges, it would clear the way for a civil commitment hearing without placing him on Krol status.

The trial court conducted a competency hearing on May 3, 2012, at which Dr. Weiss testified substantially in accordance with his report. At the conclusion of the hearing on May 24, 2012, the court found that although M.F. had "achieved temporary competency" while at AKFC, he presently lacked the requisite fitness to proceed. However, the court declined to move M.F. to AKFC because he was then serving a custodial sentence on an unrelated charge.

M.F. was admitted to AKFC again on October 1, 2013, and underwent another competency evaluation. In his January 2, 2014 report, psychiatrist Dariusz Chacinski, M.D. diagnosed M.F. as suffering from a psychotic disorder, not otherwise specified, and a history of malingering. Nonetheless, Dr. Chacinski concluded that M.F. was competent to stand trial.

M.F. entered a NGRI plea with respect to Count One of Indictment No. 10-07-0435, third-degree bail jumping, and Count

Two of Indictment No. 10-08-0551, third-degree terroristic threats. At a May 30, 2014 hearing, the State agreed with Dr. Weiss's opinion that defendant was legally insane at the time he committed those offenses, and concurred in the NGRI disposition while simultaneously moving to dismiss the remaining counts. Before accepting the NGRI disposition, Judge Patricia M. Wild engaged M.F. in a lengthy and detailed colloquy. In response to the judge's questioning, M.F. stated he felt "fine" and acknowledged he was competent. M.F. further stated he understood what was occurring, and specifically that: the court was prepared to find him NGRI on the terroristic threats and bail jumping charges; he would be placed on Krol status and transferred to an appropriate treatment facility; generally every six months his Krol status would be reviewed; and he was satisfied with his attorney's advice. Judge Wild found that M.F. was competent and understood the proceedings. Accordingly, the judge entered a finding of NGRI and placed M.F. on Krol status subject to periodic review.

A Krol review took place on March 12, 2015, at which it was reported "that at [AKFC], [M.F.] has been engaging in activity that is requiring him to be taken to the emergency room on a number of occasions. He also is noncompliant with his medication." M.F.'s counsel also advised the court that M.F. "wishes to

withdraw from . . . his Krol arrangement," and indicated M.F.'s intention to file an application seeking such relief.

Judge Wild conducted a hearing on June 2, 2015, after M.F. apparently formally moved to withdraw his NGRI plea.² Counsel for M.F. argued that "he was not in his right mind and . . . was not competent" at the time of the NGRI adjudication and did not fully understand the ramifications of such an adjudication. Counsel further contended it was "clear from the jail records that [M.F.] was in a psychiatric meltdown at the time. They had him in the restraint chair for almost eight days."

Judge Wild denied M.F.'s application in a comprehensive oral opinion. The judge reiterated the lengthy colloquy she engaged in with M.F. at the NGRI hearing, and concluded:

This [c]ourt ensured that [M.F.] knew doctors had determined he was competent at that time and he felt competent on that day. [M.F.] indicated to the [c]ourt that he understood his charges, understood his plea, the plea that was going to be entered. He had enough time to talk to his attorney and he understood the details of the Krol status.

Judge Wild further reasoned:

[M.F.], in my recollection of this, was happy the day this was done. He was relieved

² The record on appeal does not include a copy of the motion or any supporting certifications that may have been submitted. See R. 2:6-1(a)(1)(I) (requiring appellant's appendix to contain "such other parts of the record . . . as are essential to the proper consideration of the issues[.]").

the day this was done. He knew exactly what was going on that day. He knew he was giving up his right to trial. Now, as to the claim that he was under duress because he was chained to a chair at the jail and was not given food or meds, the review of the jail records provided by [] [M.F.], in the view of this [c]ourt, reveals this not to be true.

. . . .

These records show [M.F.] was not under duress from improper treatment . . . contrary to his argument. He was being provided with adequate food and medication. Not only was he given food and meds, sometimes he did not even want it and he refused it. [M.F.] cannot pretend now that he wanted these things and attempt to have his NGRI plea overturned.

On appeal, M.F. argues that the court erroneously denied his motion to withdraw his NGRI plea. Specifically, M.F. contends: (1) he lacked the ability to knowingly, voluntarily, and intelligently decide whether to accept the NGRI disposition or instead proceed to trial, relying on both the merits defenses and the insanity defense; (2) he should have been provided the opportunity to present a defense on the merits while simultaneously being allowed to assert an insanity defense; and (3) the court should have considered the factors delineated in State v. Slater, 198 N.J. 145, 157-58 (2009), in determining whether the NGRI disposition should be vacated. Having reviewed the record and applicable legal standards, we find insufficient merit in these arguments to warrant extended discussion. R. 2:11-3(e)(2). We

affirm substantially for the reasons expressed in Judge Wild's cogent oral opinion. We add only the following comments.

To the extent M.F. argues, as he did before the trial court, that he was not competent at the time of the NGRI adjudication, we find such contention unavailing. Our review of a trial court's competency determination is "'typically, and properly, highly deferential.'" State v. M.J.K., 369 N.J. Super. 532, 548 (App. Div. 2004) (quoting State v. Moya, 329 N.J. Super. 499, 506 (App. Div.), certif. denied, 165 N.J. 529 (2000)), appeal dismissed, 187 N.J. 74 (2005). We do not review the factual record to determine how we would decide the matter if we were "the court of first instance." State v. Johnson, 42 N.J. 146, 161 (1964). Moreover, a trial court's determination on the subject of competency will be sustained if there is sufficient supporting evidence in the record. State v. Purnell, 394 N.J. Super. 28, 50 (App. Div. 2007).

Here, the most recent AKFC evaluation report dated January 2, 2014 found M.F. competent to stand trial. M.F. has produced no countervailing expert opinion that he was incompetent at the time of the NGRI hearing or did not understand the proceedings. In addition to Dr. Chacinski's report, Judge Wild engaged in a detailed colloquy with M.F. to ensure he understood the ramifications of his decision to proceed with an insanity defense.

The record fully supports the judge's finding that M.F. accepted the NGRI disposition knowingly, voluntarily, and intelligently.

M.F. relies on State v. Handy, 215 N.J. 334, 360 (2013), in support of his argument that he should have been provided the opportunity to challenge the State's proofs on the merits while simultaneously asserting his insanity defense in a unitary trial. We find such reliance misplaced. It is true that in Handy the Court held that when a competent defendant asserts a substantive defense and the insanity defense, both defenses should be determined in a unitary proceeding. Id. at 349. See also State v. Gorthy, 226 N.J. 516, 532 (2016) (holding that when a criminal defendant is found competent to stand trial, he or she has the autonomy to make strategic decisions, among which is the choice whether or not to assert the insanity defense). Here, however, unlike the defendants in Handy and Gorthy, M.F. did not then, nor does he now, proffer any substantive defenses to the charges.

We similarly find M.F.'s reliance on Slater misplaced. In Slater, the Court identified four factors that trial courts should consider in evaluating a defendant's motion to withdraw his or her guilty plea: "(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." Slater, supra, 198 N.J. at 157-58.


As noted, Slater was decided in the context of a motion to withdraw a guilty plea. Here, M.F. did not enter a guilty plea; consequently, the Slater factors are inapplicable. However, even should they apply, M.F. fails to satisfy them. Most notably, the first Slater factor focuses on whether the defendant has asserted a colorable claim of innocence. "A core concern underlying motions to withdraw guilty pleas is to correct the injustice of depriving innocent people of their liberty." Id. at 158. "A colorable claim of innocence is one that rests on 'particular, plausible facts' that, if proven in court, would lead a reasonable factfinder to determine the claim is meritorious." State v. Munroe, 210 N.J. 429, 442 (2012) (quoting Slater, supra, 198 N.J. at 158-59). In weighing such motions, trial courts must bear in mind that "[a] bare assertion of innocence is insufficient to justify withdrawal of a plea" and that defendant must present "specific, credible facts" in support of that claim. Slater, supra, 198 N.J. at 158.

Here, M.F. does not proclaim he was innocent of all the charges in the two indictments. Nor has he provided any "particular plausible facts" to support a colorable claim of innocence. Moreover, he concedes in his brief that he "was most likely insane at the time of his offenses." Accordingly, we

discern no basis to withdraw the NGRI plea or vacate the resulting
NGRI disposition.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION