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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-4927-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHANNON P. GREGORY,

Defendant-Appellant.

Submitted December 11, 2017 – Decided December 27, 2017

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
15-04-0643.

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

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Mary R.
Juliano, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Shannon P. Gregory appeals the trial court's denial
of her post-plea motion to be admitted into the Pretrial

Intervention ("PTI") program over the prosecutor's objection. We affirm.

The facts revealed in the State's investigation showed that defendant was part of an arrangement with other individuals to carry out an act of revenge against the victim. The victim was tricked into getting into a car driven by one of the other defendants. She then was accosted through a surprise attack by a co-defendant in the car's rear seat. Defendant and another co-defendant were in another car following the lead vehicle. When the first vehicle stopped, defendant allegedly participated in a melee in which the victim was assaulted, reportedly kicking the victim and throwing her cell phone into the woods. Defendant then drove one of the co-defendants away from the scene to avoid being caught by the police.

The grand jury charged defendant with first-degree kidnapping, second-degree conspiracy to commit kidnapping, second-degree aggravated assault, second-degree conspiracy to commit assault, and other offenses. She applied for admission into PTI, which was initially denied because of the statutory presumption against PTI enrollment for persons charged with first-degree and second-degree offenses.

After plea negotiations ensued, defendant pled guilty to a downgraded charge of third-degree hindering apprehension, N.J.S.A.

2C:29-3(a), with the State recommending a non-custodial period of probation. The other charges were dismissed.

Following her guilty plea, defendant reapplied for PTI. The PTI Director this time recommended her admission. However, the prosecutor rejected defendant's application, citing three reasons. First, the prosecutor focused upon the facts of the case, noting that defendant had played a "role in a violent assault which resulted in injury," and "created a risk of greater injury even than what was inflicted." Second, the prosecutor relied on the needs and interests of the victim and society. The prosecutor reasoned that, although the victim had failed to respond to the PTI investigator's attempts to contact her, "[i]t is not in the interest of society to allow diversion for individuals who concocted a scheme to commit this form of pre-meditated violent crime," nor those who helped the conspirators to mislead police and avoid punishment. Lastly, the prosecutor underscored that the crime encompassed a violent or assaultive nature, because it "involv[ed] the ambush and attack of a young woman[.]"

Defendant sought review of the post-plea PTI denial in the Law Division. She filed a certification from the victim, who stated she did "not want [defendant] to come away from this with a criminal conviction." At oral argument, the prosecutor represented that his office had indeed considered the victim's

position, but nevertheless his office still opposed defendant's admission into PTI. In addition, the prosecutor informed the court of a new and unrelated drug charge pending against defendant.

The trial court upheld the prosecutor's decision to reject defendant's PTI application. In issuing its oral ruling, the court recognized its very limited scope of review of a prosecutor's discretionary decision respecting PTI admissions. Correctly citing the legal standards, the court noted that it lacked the authority in PTI matters to substitute its own discretion for that of the prosecutor, even if it disagreed with the prosecutor's decision. The court recognized that it could only reverse a prosecutor's PTI denial only if a defendant clearly and convincingly proves that the denial represents "a patent and gross abuse of discretion." State v. Wallace, 146 N.J. 576, 582 (1996) (citations omitted).

Applying these well-established standards, the trial court concluded that, despite the victim's recently-expressed desire that defendant not be prosecuted, the prosecutor had reasonably found "the balance of factors" weighed against her admission into PTI. The court recognized that defendant might not have taken part in the physical aspect of the violence against the victim, but nevertheless found her role in covering up the offense and hindering law enforcement was appropriately cited by the

prosecutor in the PTI rejection. The court also expressed concern that defendant had new charges pending against her.

Having been sentenced by the trial court to two years of probation consistent with her plea agreement, defendant now solely appeals the PTI ruling. She raises the following point in her brief:

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.

We have duly considered defendant's arguments and affirm the trial court's decision. We add only a few comments.

The prosecutor was free to consider the severity of the first-degree and second-degree crimes that had been charged against defendant by the grand jury, notwithstanding defendant's eventual plea to a lesser offense. The nature of charged offenses, even if they are denied by a defendant, may be considered by prosecutors in assessing PTI eligibility. See State v. Nwobo, 139 N.J. 236, 254-56 (1995); Pressler & Verniero, Current N.J. Court Rules, Guideline 3 on R. 3:28 (2018). The happenstance that defendant reapplied for PTI after entering a guilty plea to lesser charges does not eliminate the relevance of the overall indictment's severity. Had the plea been withdrawn for some reason before sentencing, those first-degree and second-degree charges would

have been back in play. A plea agreement cannot be used to bootstrap defendant's previous unsuccessful efforts to gain admission into PTI, especially without the prosecutor's acquiescence.


We also are satisfied that the prosecutor and the trial court gave adequate consideration to the victim's wishes. Likewise, there was sufficient recognition of defendant's youth, her lack of a prior criminal record, her positive work history, and her educational goals. On balance, the prosecutor rationally concluded in his discretion these points in defendant's favor were outweighed by negative considerations.

Lastly, we reject defendant's claim the prosecutor violated State v. K.S., 220 N.J. 190 (2015), by taking into account defendant's recent criminal charges. The Supreme Court's rationale for putting dismissed charges off-limits was that "deterrence is directed at persons who have committed wrongful acts[,]" and dismissed charges alone are not proof that a defendant did anything wrong. Id. at 199. For the same reason that K.S. limits a prosecutor in a PTI review from considering "the sole fact that a defendant was charged, where the charges were dismissed[,]" a prosecutor should not be able to consider pending new, but unproved charges, absent "undisputed facts of record or facts found at a hearing." Ibid. However, the prosecutor's

memorandum to the court explaining its decision to deny PTI only incidentally mentions defendant's recent arrest and was not one of the three reasons listed for rejection. Therefore, consideration of the new charges, without more, was harmless.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION