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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2408-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DESMOND D. GRIER,

Defendant-Appellant.

Submitted February 13, 2018 – Decided March 6, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Salem County, Indictment No.
15-10-0493.

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

John T. Lenahan, Salem County Prosecutor,
attorney for respondent (David M. Galemba,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Desmond D. Grier appeals from his conviction for
third-degree possession of a controlled dangerous substance (CDS),

N.J.S.A. 2C:35-10(a)(1), and resulting sentence to an extended-term of eight years in prison. We affirm.

The issue before this court on defendant's appeal is twofold. First, whether defendant's Sixth Amendment right to self-representation was violated, warranting reversal of his conviction and remanding the matter for a new trial. Second, whether the trial judge engaged in impermissible judicial fact-finding by imposing an extended-term sentence.

Defendant's behavior throughout his prior trial and the trial in this case was inordinately disruptive. The transcripts of the court proceedings are replete with defendant's baseless statements and accusations challenging the court's lack of authority to proceed with his case. Defendant spoke over the judge on numerous occasions and repeatedly interrupted the judge during the court proceedings. The trial judge noted defendant was "an obstructionist and . . . continued to obstruct these proceedings." The judge exercised tremendous patience and showed the utmost courtesy toward defendant despite defendant's barrage of unruly and unintelligible objections and comments. The judge gave defendant every opportunity to comport his behavior with proper courtroom decorum in order to represent himself at trial, and expressly warned defendant that his continued obstreperous behavior would result in his removal from the courtroom.

Defendant steadfastly refused to follow the judge's instructions, talked over the judge, declined to answer the judge's questions regarding jury selection and trial preparation, and objected without reason or basis. The judge determined that these repeated behaviors demonstrated defendant's clear intent to undermine the trial. The judge ultimately found defendant was going to "continue his vexatious behavior" and "abuse the dignity of [the] courtroom and . . . the process." As a result of defendant's conduct during his court appearances, the judge found defendant was abusing his right to represent himself by interfering with the orderly proceedings of the trial.

Based on defendant's actions, the judge ordered him removed from the courtroom. The judge arranged for defendant to view the trial and listen to the sidebar discussions by video feed.

The trial proceeded with defendant absent from the courtroom. Defendant's counsel, assigned by the Office of the Public Defender, represented defendant's interests throughout the trial. The jury found defendant guilty of possession of CDS.

Prior to sentencing, the State moved to impose an extended-term of imprisonment. After reviewing the motion papers and hearing the arguments of counsel, the judge granted the State's motion for an extended-term, and sentenced defendant to an eight-year term of imprisonment.

On appeal, defendant argues:

POINT I

THE TRIAL COURT VIOLATED GRIER'S SIXTH AMENDMENT RIGHT TO COUNSEL BY FAILING TO HOLD A HEARING ON WHETHER GRIER WAS COMPET[E]NT TO SERVE AS HIS OWN ATTORNEY. ACCORDINGLY, GRIER'S CONVICTION MUST BE REVERSED AND THE MATTER REMANDED FOR A NEW TRIAL. U.S. CONST., AMENDS. VI AND [XIV]; [N.J.] CONST., ART. 1, ¶10. (NOT RAISED BELOW)

POINT II

GRIER'S SENTENCE MUST BE VACATED AND THE CASE REMANDED FOR RESENTENCING BECAUSE THE TRIAL COURT ENGAGED IN IMPERMISSIBLE JUDICIAL FACT-FINDING WHEN IT IMPOSED AN EXTENDED TERM SENTENCE ON GRIER'S CONVICTION FOR POSSESSION OF COCAINE IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONST[ITUTION]. (NOT RAISED BELOW)

I.

We review a trial judge's decision regarding a defendant's ability to represent himself during a criminal trial for abuse of discretion. State v. Buhl, 269 N.J. Super. 344, 364 (App. Div. 1994); see also State v. DuBois, 189 N.J. 454, 462-63 (2007). The Sixth Amendment grants a defendant the right to self-representation in a criminal proceeding. State v. Gallagher, 274 N.J. Super. 285, 294-95 (App. Div. 1994). However, the right of self-representation does not provide "a license to abuse the dignity of the courtroom" or the right to refuse "to comply with

relevant rules of procedural and substantive law." Faretta v. California, 422 U.S. 806, 834 n.46 (1975).

Here, defendant refused to answer the judge's questions on relevant topics, interrupted and spoke over the judge, and expressed a lack of understanding as to legal proceedings and the nature of the charges against him. Based on the judge's observations of defendant's disruptive behavior during each court proceeding, the judge found that defendant was incapable of representing himself.

In reviewing the record, we find the judge correctly "terminate[d] self-representation by a defendant who deliberately engage[d] in serious and obstructionist [behavior]." State v. Drew, 383 N.J. Super. 185, 200 (App. Div. 2006) (third alteration in original) (quoting Faretta, 422 U.S. at 834 n.46) (holding termination of defendant's self-representation was proper where defendant continually misbehaved, made faces, was loud, and argued with the judge).

II.

We review a judge's sentencing decision for abuse of discretion. State v. Bolvito, 217 N.J. 221, 228 (2014). Defendant argues that the judge failed to engage in the analysis prescribed in State v. Pierce, 188 N.J. 155, 168 (2006), and State v. Dunbar, 108 N.J. 80, 89-91 (1987), for imposing an extended-term.

We reject these arguments and affirm defendant's sentence. The judge provided ample reasons for the imposition of an extended-term sentence. The judge also performed the required analysis in imposing the extended-term sentence. The judge properly considered defendant's disruptive courtroom behaviors and belief that the law does not apply to him in connection with aggravating factor three, the likelihood that defendant would reoffend. The record further supports the judge's consideration of defendant's prior record, consistent with his being a persistent offender, in imposing an extended-term sentence. Thus, we find no abuse of discretion or impermissible fact-finding in support of an extended-term.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION