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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-2412-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VINCENT BRYANT,

Defendant-Appellant.

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Submitted March 20, 2018 – Decided April 17, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Indictment Nos.  
14-03-0358 and 14-10-1577.

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

Esther Suarez, Hudson County Prosecutor,  
attorney for respondent (Erin M. Campbell,  
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Vincent Bryant appeals from an October 21, 2016 judgment of conviction sentencing him to seven years in prison. Defendant claims he did not receive the recommended sentence of

drug court probation under the plea agreement, resulting in a violation of his right to due process. We disagree and affirm.

Defendant was charged with several drug-related offenses and weapons charges under two separate indictments. Defendant's counsel negotiated a plea for both indictments. Defendant would plead guilty to possession of controlled dangerous substances with intent to distribute in a school zone, N.J.S.A. 2C:35-7, and all other charges would be dismissed. In accordance with the plea agreement, the State would recommend a sentence of seven years in prison with forty-two months of parole ineligibility or drug court.

In anticipation of the plea hearing, defendant completed the plea forms. The forms included a handwritten notation reflecting the assistant prosecutor's recommended sentence of "7 w/ 42 months parole ineligibility or D/C (drug court)." Defendant signed and initialed the plea forms.

At the plea hearing, the assistant prosecutor stated his understanding of the plea agreement: defendant would plead guilty to distributing drugs in a school zone, and the State would recommend seven years in prison with forty-two months of parole ineligibility or "in the alternative drug court." The plea hearing judge confirmed the terms of the plea agreement with counsel and defendant. The judge then questioned defendant on his understanding of the plea forms. Defendant acknowledged he

reviewed the plea forms, signed them, and understood the signed plea agreement. While the plea hearing judge mentioned drug court and defendant's sentence to drug court probation, the judge never ruled out the potential for imprisonment.

After entering his plea, defendant applied for entry into the drug court program. The prosecutor's office rejected defendant's admission to drug court, and defendant appealed that rejection. On February 26, 2016, a different judge held a hearing and denied defendant's admission to drug court. The judge found

[he was] not bound by the four corners of the specific pleas in this situation. This is a sentencing and the [c]ourt can consider the facts and circumstances surrounding these crimes . . . .

[I]f this was a situation where we were confronted with only the incident of June 24th of 2014 and based on the fact that [defendant] is clinically eligible, perhaps he would have been admitted to drug court probation but as I've stated, as far as the incident of December 4, 2013, considering all the facts and circumstances surrounding that incident, I cannot make a finding that [defendant] is not a danger to the community.

Defendant filed a motion to withdraw his plea after he was denied admission to drug court.<sup>1</sup> On October 14, 2016, a third

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<sup>1</sup> We were not provided with a copy of the motion to withdraw the guilty plea. Therefore, we are unable to determine the arguments advanced by defendant in support of his motion.

judge heard argument on defendant's request to retract his plea. In a written decision dated October 21, 2016, the judge denied defendant's motion, finding defendant failed to meet the Slater<sup>2</sup> factors. The judge sentenced defendant, in accordance with the plea agreement, to two concurrent extended terms of seven years in prison with forty-two months of parole ineligibility.

On appeal,<sup>3</sup> defendant argues he is entitled to specific performance of the plea agreement since he did not receive the promised sentence under the agreement. Defendant contends he should be resentenced to drug court or, in the alternative, the matter should be remanded for the opportunity to renegotiate or withdraw the plea.

Defendant argues the following:

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<sup>2</sup> State v. Slater, 198 N.J. 145 (2009).

<sup>3</sup> Defendant's notice of appeal and case information statement do not track the grounds for appeal argued in his brief. Notwithstanding the inconsistency between the issues identified in defendant's notice of appeal, case information statement, and brief, we address only the issues raised in defendant's merits brief.

POINT ONE

IN VIOLATION OF HIS RIGHT TO DUE PROCESS, DEFENDANT DID NOT RECEIVE THE SENTENCE PROMISED UNDER THE PLEA AGREEMENT (Partly Raised Below).

A. The Defendant Must Enter a Guilty Plea with an Understanding of Its Consequences.

B. The Plea Court Told Defendant that His Admission to Drug Court Was a Consequence of the Plea.

C. Defendant is Entitled to Specific Performance of the Terms of the Plea.

D. If the Court Declines to Order Specific Performance, It Must Order a Remand in Accordance with State v. Kovack.<sup>4</sup>

Defendant's appeal seeks to enforce the plea agreement by compelling his admission into the drug court program. However, the parties to a plea agreement cannot bind the sentencing court by seeking specific performance. Kovack, 91 N.J. at 484. Where a sentence violates a plea agreement, the defendant may seek to withdraw or vacate the plea. Id. at 485.

The appellate standard for reviewing judicial acceptance or rejection of a plea agreement is abuse of discretion. See State v. Madan, 366 N.J. Super. 98, 109 (App. Div. 2004). Prior to a court's acceptance of a defendant's guilty plea, the plea judge must confirm that the plea is made (1) voluntarily and without any

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<sup>4</sup> 91 N.J. 476 (1982).

threats, inducements or promises not on the record, and (2) with understanding of the charges and the consequences of the plea. R. 3:9-2. "The essence of a negotiated plea is defendant's voluntary and informed waiver of his right to a trial in return for the reduction or dismissal of certain charges, recommendations as to sentence and the like." State v. Davis, 175 N.J. Super. 130, 140 (App. Div. 1980). Sentences are also reviewed under abuse of discretion. Ibid.

The plea agreement in this matter was patently clear. Pursuant to the plea forms and the assistant prosecutor's statement of the plea agreement during the plea colloquy, defendant was to be sentenced either to seven years in prison with forty-two months of parole ineligibility or drug court. If defendant had gone to trial and was convicted of all charges, including the gun charges, he faced a potential thirty-year term of imprisonment, with no parole eligibility for ten years. Defendant does not challenge that the negotiated plea resulted in a significantly reduced prison exposure. Nor does defendant argue he failed to understand the nature of the charges.

A review of the plea hearing transcript confirms the plea judge never promised or guaranteed that defendant would be sentenced to drug court. The record expressly demonstrates defendant agreed to a sentence of seven years in prison, with a

potential "alternative" of drug court. The judge who rejected defendant's admission to drug court placed the reasons for his decision on the record.

Based on the record, we find the judge did not abuse his discretion by accepting the plea agreement; nor by sentencing defendant in accordance with the agreement. Defendant was sentenced to a term of imprisonment consistent with defendant's knowing, voluntary, and intelligent acceptance of the plea.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION