SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3857-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT J. HULME, a/k/a
JIM HULME,

Defendant-Appellant.

Submitted February 14, 2018 – Decided May 25, 2018

Before Judges Alvarez and Currier.

On appeal from Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 16-02-0192.

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

Jeffrey H. Sutherland, Cape May County Prosecutor, attorney for respondent (Julie H. Mazur, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Robert J. Hulme appeals the May 18, 2017 Law Division order denying him admission into the pretrial

intervention (PTI) program. N.J.S.A. 2C:43-12 to -22. We affirm for the reasons stated by Judge John C. Porto. We add the following brief comments.

An officer stopped defendant when, during a random registration check, he discovered defendant's license was suspended for driving while intoxicated (DWI). N.J.S.A. 39:4-50. That 2008 conviction had resulted in a ten-year license suspension. N.J.S.A. 39:3-40. His prior DWI convictions occurred in 1999 and 2002. Defendant was therefore charged with fourth-degree operating a motor vehicle during a period of license suspension, N.J.S.A. 2C:40-26(b). Defendant's passenger was also a suspended driver.

Defendant initially entered a guilty plea to the indictment in exchange for the State's sentence recommendation of the statutory minimum of 180 days county jail. After publication of State v. Rizzitello, 447 N.J. Super. 301 (App. Div. 2016), however, he applied for PTI. Rizzitello holds that an N.J.S.A. 2C:40-26(b) charge is not a per se bar to admission into PTI. Id. at 312.

At the time of his PTI application, defendant was fifty-four years old and in a long-term relationship with a person who obtained a domestic violence final restraining order against him in 1999. See N.J.S.A. 2C:25-29. Defendant was convicted of contempt of an earlier domestic violence restraining order and,

in 1994, placed on a one-year term of probation. He also had an active "failure to pay" municipal bench warrant for a 2008 ordinance violation arrest.

The Criminal Division staff recommended defendant's admission into the PTI program, noting that he explained his act of driving, which he acknowledged was wrong, because "he was faced with an unexpected transportation problem immediately prior to attending a necessary medical appointment with his cancer specialist." The Criminal Division staff report also repeated defendant's claim that ordinarily his paramour would drive him to medical appointments, but she was ill that day. The report added that defendant's significant multiple health problems would "be burdensome to correctional authorities should [defendant] be required to serve a term of incarceration."

The prosecutor rejected defendant's application, relying upon the public policy behind the adoption of N.J.S.A. 2C:40-26(b), as well as defendant's "blatant disregard for the law." Despite being encouraged to do so, defendant never documented the alleged appointment. Nor was he able to explain the presence of another suspended driver in his vehicle. Additionally, the prosecutor reviewed the statutory factors he considered applicable: N.J.S.A. 2C:32-12(e)(4)-(7), (11), (14), and (17). To summarize, the State took the position that defendant's prior contacts with the system

mandated his rejection from PTI because he seemed to disregard societal norms and could not comply with the law.

In his decision, Judge Porto also touched upon defendant's failure to provide any proof of a medical appointment. The omission brought into question the "genuineness of that particular statement." He observed that the presence of the passenger in defendant's vehicle "militates against the theory that he was faced with an unexpected transportation problem immediately prior to attending a necessary medical appointment with a specialist." Defendant "was a 54-year-old man with three prior DWIs, [and] an active warrant out of . . . the Lower Township Municipal Court at the time of the PTI application." Thus, defendant had not clearly and convincingly established that rejection from PTI was a patent and gross abuse of discretion. Rather, "the State ha[d] appropriately considered all th[e] individualistic criteria for [defendant]."

On appeal, defendant asserts only:

> THE PROSECUTOR'S REJECTION OF MR. HULME'S APPLICATION TO BE ADMITTED INTO PTI CONSTITUTED A PATENT AND GROSS ABUSE OF DISCRETION.

It is black-letter law that a defendant's admission into PTI is usually contingent upon both the Criminal Division's favorable recommendation and the prosecutor's consent. State v. Nwobu, 139

N.J. 236, 246 (1995) (citing R. 3:28(b)). A prosecutor is required to give individualized consideration to an applicant's "amenability to correction" and potential "responsiveness to rehabilitation." N.J.S.A. 2C:43-12(b); Nwobu, 139 N.J. at 247-48; State v. Sutton, 80 N.J. 110, 119 (1979).

In this case, the prosecutor considered the non-exhaustive statutory list of factors and only then reached his decision. See State v. Watkins, 193 N.J. 507, 518-19 (2008). A clear statement of reasons was provided. See N.J.S.A. 2C:43-12(c).

The prosecutor's discussion of the public policy behind the panoply of drunken driving laws did not make his analysis improper. Rizzitello permits those legislative priorities to be taken into consideration in the PTI decision. Rizzitello, 447 N.J. at 316.

Therefore, the prosecutor's rejection in this case was not a patent and gross abuse of discretion. See Watkins, 193 N.J. at 520. The prosecutor considered all relevant factors, did not consider irrelevant or inappropriate factors, and did not make a clear error of judgment in the rejection. See State v. Roseman, 221 N.J. 611, 625 (2015) (citing State v. Bender, 80 N.J. 84 (1979)).

Affirmed.