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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-1240-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAURA DIRIENZO,

Defendant-Appellant.

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Submitted March 8, 2022 – Decided April 28, 2022

Before Judges Fisher and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Municipal Appeal No. 6263.

Proetta, Oliver & Fay, and Jeff Thakker, attorneys for appellant (William A. Proetta, on the briefs).

William A. Daniel, Union County Prosecutor, attorney for respondent (Meredith L. Balo, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from the December 14, 2020 order denying her petition for post-conviction relief (PCR). Defendant moved for PCR after she was charged in 2019 with her third driving while intoxicated (DWI), N.J.S.A. 39:4-50(a) and refusal to submit to chemical breath testing, N.J.S.A. 39:4-50.2, offenses.<sup>1</sup> She sought to vacate her 2010 DWI and refusal convictions (second offenses),<sup>2</sup> contending she was not represented by counsel<sup>3</sup> and her guilty plea was not entered knowingly and voluntarily. She also asserted her guilty plea was not supported by a sufficient factual basis. The trial court denied the petition, concluding there was a sufficient factual basis for the DWI charge and defendant had not satisfied the Slater<sup>4</sup> factors to withdraw her plea.<sup>5</sup> We affirm.

Defendant raises the following issues for our consideration:

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<sup>1</sup> During oral argument before the trial court on the PCR petition, defense counsel advised the court that defendant had pleaded guilty to a third refusal offense and was sentenced to ten years' loss of her license.

<sup>2</sup> Defendant was first convicted of DWI in 2007.

<sup>3</sup> Defendant withdrew this ground for relief during oral argument before the trial court.

<sup>4</sup> State v. Slater, 198 N.J. 145, 157-58 (2009).

<sup>5</sup> The State conceded there was an insufficient factual basis for defendant's guilty plea to refusal and therefore, the judge remanded the refusal charge to the municipal court for further proceedings.

POINT I: THE APPELLATE DIVISION SHOULD REVIEW THE DENIAL OF MS. DIRIENZO'S MOTION FOR POST CONVICTION RELIEF UNDER A DE NOVO STANDARD OF REVIEW

POINT II: THE TRIAL COURT ERRED BY DENYING MS. DIRIENZO'S MUNICIPAL APPEAL BECAUSE AS A MATTER OF LAW HER DWI CHARGE MUST BE DISMISSED.

POINT III: THE TRIAL COURT ERRED BY DENYING MS. DIRIENZO'S MUNICIPAL APPEAL BECAUSE THE MUNICIPAL COURT DID NOT ESTABLISH A SUFFICIENT FACTUAL BASIS FOR HER GUILTY PLEA

A. The [t]rial [c]ourt erred by not properly considering the similarities between this case and State v. Vargas

POINT IV: THE TRIAL COURT ERRED BY FINDING THAT MS. DIRIENZO DID NOT MEET THE SLATER FACTORS

In considering defendant's convictions, our review is "limited to determining whether the Law Division's de novo findings 'could reasonably have been reached on sufficient credible evidence present in the record.'" State v. Palma, 426 N.J. Super. 510, 514 (App. Div. 2012) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). We do "not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious

and exceptional showing of error." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)).

In reviewing a trial judge's conclusions in a non-jury case, substantial deference is given to the trial court's findings of fact. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974)). These findings should only be disturbed when there is no doubt that they are inconsistent with the relevant, credible evidence presented below, such that a manifest denial of justice would result from their preservation. Id. at 412. However, this court owes no deference to the trial judge's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Defendant asserts the Law Division judge was required to dismiss her DWI conviction after finding there was an insufficient factual basis for her plea to the refusal charge. She relies on State v. Ashley, 443 N.J. Super. 10 (App. Div. 2015), in contending a court cannot "parcel out" portions of a guilty plea after other counts were later dismissed for lacking a sufficient factual basis. We find Ashley distinguishable from the circumstances present here.

In Ashley, the defendant pleaded guilty to attempted murder, conspiracy to commit murder, and aggravated assault. Id. at 13. Prior to sentencing, the

defendant moved to vacate his plea, asserting he had not provided an adequate factual basis for the attempted murder and conspiracy charges. Id. at 14. The judge agreed and granted the defendant's motion to vacate the plea regarding those two charges. However, because the court found the factual basis for the aggravated assault plea was sufficient, it did not vacate that portion of the plea.

On appeal, we reversed, stating the entire plea had to be vacated "if there is a material change to the reasons why [the defendant] pled in the first instance." Id. at 22. We reasoned that the plea had to be vacated in its entirety because the defendant's exposure to prison time changed when he pleaded guilty to only one charge. Id. at 23. Under those circumstances, the defendant was deprived of his "right to make a reasonably informed decision whether to accept [the] plea offer." Ibid. (quoting United States v. Day, 969 F.2d 39, 43 (3d Cir. 1992)).

Here, defendant seeks PCR and, therefore, she must show a substantial denial of her constitutional or legal rights. R. 3:22-2(a). She has not done so. First, defendant did not assert a claim of innocence either in 2010 or in this proceeding. To the contrary, she told the court, during her 2010 plea to DWI, that she had operated a motor vehicle while impaired by alcohol and "there [was] no doubt in [her] mind." Second, the Law Division reviewed the facts surrounding defendant's 2010 arrest and stated: "[T]he reality acknowledged by

all involved was that . . . [d]efendant was unquestionably guilty of operating her car while impaired by alcohol. This is confirmed by . . . [d]efendant's statement that there was 'no doubt in my mind' about her guilt."<sup>6</sup>

We are satisfied defendant provided a sufficient factual basis for the 2010 DWI plea. The judge first asked defendant questions about the DWI charge at which time she agreed there was "no doubt in her mind" she had operated her car while impaired by alcohol. She stated she was voluntarily pleading guilty to the charge. After the municipal court judge again advised defendant about the penalties accompanying a second offense, defendant reiterated her intent to plead guilty. After that allocution ended, the court addressed the refusal charge and plea. There was no intertwining of the pleas as defendant now asserts.

In addition, defendant has not demonstrated that vacating the refusal plea materially changed her plea to the DWI charge. She was not deprived of any constitutional right to warrant PCR relief.

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<sup>6</sup> A witness had observed defendant crossing over the yellow line, almost striking an oncoming vehicle. When defendant made a right turn, she struck a curb and although she had a flat tire, she continued driving. When she was stopped, the officer observed defendant slurring her speech and smelled alcohol on her breath. Defendant could not keep her balance and was swaying while performing field sobriety tests.

Because there was an adequate factual basis to support defendant's guilty plea to DWI in 2010, we need not address defendant's argument that the trial court erred in finding defendant did not meet the Slater requirements to withdraw her guilty plea. State v. Tate, 220 N.J. 393, 404 (2015) (stating that "when the issue is solely whether an adequate factual basis supports a guilty plea, a Slater analysis is unnecessary.")<sup>7</sup> Nevertheless, a review of the court's written opinion reflects a careful consideration of the factors and the reasons for concluding defendant cannot satisfy the Slater requirements. We see no abuse of discretion.

We affirm defendant's DWI conviction, vacate the refusal conviction, and remand to the municipal court for further proceedings. We do not retain jurisdiction.

Affirmed in part, vacated in part, and remanded.

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

  
CLERK OF THE APPELLATE DIVISION

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<sup>7</sup> Slater's four-prong test, however, must be used when an appellate court is reviewing a lower court's "denial of a motion to withdraw a guilty plea where the plea is supported by an adequate factual basis but the defendant later asserts his innocence." Tate, 220 N.J. at 404.