SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3014-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TORIN RUFFIN, a/k/a
TALIB PRICE,

Defendant-Appellant.

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Argued March 28, 2022 – Decided April 25, 2022

Before Judges Mayer and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 19-12-3337.

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

Matthew E. Hanley, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Theodore N. Stephens II, Acting Essex County Prosecutor, attorney; Hannah Faye Kurt,

Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant was charged in a multi-count indictment with offenses related to the possession and distribution of a controlled dangerous substance and ultimately pled guilty to a single charge of third-degree possession of cocaine, contrary to N.J.S.A. 2C:35-10(a)(1). Between the time of his plea and sentence, he was arrested three times for additional possessory offenses and failed to appear at scheduled sentencing proceedings. After a bench warrant was issued because of those non-appearances, the court sentenced defendant to a four-year custodial term.

Before us, defendant contends that the court's sentence was contrary to the express terms of the parties' written plea agreement in which defendant agreed to plead guilty to a third-degree offense in exchange for dismissal of the remaining charges, a 364-day recommended sentence as a condition of probation, a period of post-conviction monitoring, and an agreement that he would testify against his codefendant at any trial, if necessary.

Defendant requests that we vacate his sentence and remand the matter for the court to enforce the original plea agreement. Alternatively, he seeks a

remand to provide him with the opportunity to withdraw his plea, as he contends it was not entered on an informed and voluntary basis.

Defendant also challenges his sentence arguing that the court improperly relied on arrests that did not result in convictions. He maintains further that the court incorrectly applied aggravating factor six, and failed to provide a sufficient explanation supporting its determination that a four-year term was necessary for deterrence purposes.

The State disagrees. It argues the written plea agreement did not accurately reflect the parties' entire agreement, as evidenced by defendant's express recognition at the sentencing proceeding that the plea was further conditioned on defendant's appearance at sentencing and not engaging in additional criminal conduct. Any failure to abide by those conditions permitted the State to seek a five-year custodial term, representing defendant's ordinary term exposure for a third-degree offense, under State v. Subin, 222 N.J. Super. 227 (App. Div. 1988).[1] The State also maintains the court's findings with regard

[1] In Subin, 222 N.J. Super. at 238-39, we held that "a component of a plea agreement that provides for an increased sentence when a defendant fails to appear that is voluntarily and knowingly entered into between a defendant and the State does not offend public policy."

to defendant's sentence were fully supported by the record and in accordance with the Code of Criminal Justice.

We affirm in part and remand in part. We disagree with defendant's arguments pertaining to his plea agreement. As reflected by his statements at the plea hearing, defendant expressly acknowledged the terms of his plea agreement, which included the possibility that he would be exposed to an enhanced custodial term if he engaged in criminal conduct or failed to appear at sentencing. That condition was also memorialized in a document prepared by the prosecutor and received by defendant's counsel prior to the sentencing proceeding.

We agree with defendant, however, that the court erred in imposing his sentence. Specifically, we conclude the court committed error when it failed to explain adequately the bases for its application and rejection of the sentencing factors, and when it referenced defendant's prior arrests not resulting in convictions without explaining how those arrests factored into the court's sentencing calculus. As such, we vacate defendant's sentence and remand for further proceedings.

I.

As noted, defendant agreed to plead guilty to third-degree possession of cocaine. The written plea form he executed on April 8, 2020 acknowledged that despite facing a "total exposure" of five years, the State would agree to recommend to the sentencing court a 364-day-time-served probationary sentence. Defendant also agreed to participate in Level 1 monitoring, and promised to testify against his co-defendant.

Later that day, the prosecutor sent defense counsel an internal memorandum that contained the following provision:

> This plea is conditioned upon defendant's appearance at time of sentencing and defendant remaining arrest free. If defendant violates these terms, the State will recommend custodial sentence of: 5 years NJSP.

At defendant's plea hearing, the State detailed the plea offer as follows:

> Your Honor, at this time it's the State's understanding that the defendant agrees to retract his plea of not guilty and plead to . . . third-degree possession of [cocaine], in violation of 2C:35-10(a) . . . . At the time of sentencing, the State agrees to recommend a custodial sentence of 364 days in the Essex County Jail as a condition of probation. The plea is conditioned upon the defendant's appearance at the time of sentencing and the defendant remaining arrest-free. If the defendant violates those terms, the State will recommend a custodial sentence of five years New Jersey State Prison.

> Additionally, the defendant agrees to provide a truthful factual basis as to the events that occurred on September 29[,] 2019, including whom he was working with. At this time, I believe that the co-defendant is going to plead guilty today, so the State may not request any type of testimony in regard to the trial.
>
> [Emphasis supplied.]

The court then questioned defendant and his counsel as follows regarding their understanding of the plea agreement:

> Court: Okay. Counsel, is that your understanding as well?
>
> Defense counsel: Yes, it is, Judge.
>
> . . . .
>
> Court: [Defendant], were you able to hear everything that . . . the prosecutor said?
>
> Defendant: Yes, Your Honor.
>
> Court: Okay. And you heard your attorney say that that's his understanding of the plea deal. Is that your understanding of it, as well?
>
> Defendant: Yes, Your Honor.

Defendant thereafter provided a sufficient factual basis for his guilty plea, and confirmed he was pleading guilty because he was, in fact, guilty of possessing cocaine, and that he was entering his plea voluntarily, knowingly, and with a complete understanding of his rights. Defendant also confirmed he

had sufficient time to consult with counsel, an opportunity to review discovery, was satisfied with his counsel's services, and had no questions for counsel or the court.

Further, prior to the conclusion of the plea hearing, the court emphasized one of the conditions of his plea, i.e., that he needed to appear at sentencing, and informed him of the consequences in the event he failed to do so:

> Court: Now, your sentencing date, sir, is going to be May 29th. As it stands right now, we're not sure what the world will look like May 29th. We're just [going] to do sentencings the way we're doing it right now, some type of virtual way. You need to be available on May 29th to do that. Do you understand, sir?
>
> Defendant: Yes, Your Honor.
>
> Court: [Because], again, the offer to you is a 364. But I believe it's a five flat, [prosecutor], if he failed to appear?
>
> State: That is correct, Your Honor.
>
> Court: Alright. So, sir, you have to make sure you stay in constant contact with your attorney because in the event we change the way we do it, he'd be able to let you know.
>
> [Emphasis supplied.]

After his plea, defendant was arrested three times for additional drug-related offenses. He also failed to appear at three scheduled sentencing hearings.

As a result, the court filed an application requesting that the court sentence defendant to the five-year term ordinary for a third-degree offense. See N.J.S.A. 2C:43-6(a)(3).

Defendant's counsel opposed the application and argued that defendant's plea forms failed to include any mention of an alternative sentence. He further contended he did not receive the April 8, 2020 internal memorandum from the prosecutor reserving the State's right to request an alternative, increased sentence until after all parties had already executed the plea forms. Thus, defendant argued that under applicable contract law principles, the State was barred from seeking an enhanced sentence based on a condition that was not part of the parties' written plea agreement.

The sentencing judge, who also presided over defendant's plea, considered the parties written submissions and oral arguments. He reminded defendant's counsel that the State explicitly placed the terms of the plea on the record, that neither he nor defendant disputed its terms and, in fact, acknowledged them. Defendant's counsel nevertheless maintained that despite his and defendant's acknowledgment of the terms of the plea, a "discrepancy existed between the plea paperwork and the internal prosecutor's document." He further explained

that he "totally missed" the State's proffer at the plea hearing, stating that he "wasn't listening that carefully."

Defendant's counsel also acknowledged that he "evidently" failed to object to the court's explicit statement to defendant at the plea hearing that he was obligated "to appear on the sentencing date because the offer was a 364, but it's a five flat if he fails to appear." Defense counsel stated despite the colloquy, defendant should not be sentenced to a custodial term because he "told [defendant], in accordance with the plea papers, that the whole agreement was what was contained in the plea papers."

In response, the State relied upon the April 8, 2020 internal memorandum containing the additional conditions received by defendant nearly two weeks before the plea hearing. As explained by the prosecutor, the parties' email exchange and memorandum confirmed a "modified plea offer that was provided well before [the plea hearing] that included the five years New Jersey State Prison Subin offer." Defense counsel conceded that he received the memorandum "but didn't look at it, because we already had an agreement."

The court granted the State's application concluding that it was clear from the record that defendant's counsel received the State's memorandum the same day he signed the plea agreement and nearly two weeks prior to the plea hearing.

In addition, the court noted that the State placed the terms of the agreement on the record and defendant and his counsel confirmed their understanding and agreement of the additional terms exposing defendant to an enhanced sentence.

At sentencing, the court applied aggravating factors three, N.J.S.A. 2C:44-1(a)(3) (the risk defendant would commit another offense); six, N.J.S.A. 2C:44-1(a)(6) (the extent of the defendant's criminal history); and nine, N.J.S.A. 2C:44-1(a)(9) (the need to deter defendant and others from violating the law), and found no applicable mitigating factors. The court sentenced defendant to a four-year custodial term, one year less than the State's recommendation, and assessed applicable fines and penalties.

In reaching its decision, the court first reviewed defendant's criminal history. It explained that "[a]s an adult [defendant] [had] [seventeen] known arrests, including the present offense" and that "[t]he present offense represent[ed] only [defendant's] second indictable conviction." The court also explained that defendant had previously been on, and violated, probation.

Turning to the individual sentencing factors, the court stated:

> Three, the risk you'll commit another offense. As I said, sir, you have been arrested [seventeen] times and now convicted two times as an adult. You have been arrested three times since you entered your guilty plea a little over a year ago. No evidence existed to

(indiscernible) reasonable likelihood you will offend again.

Six. [Extent] of your prior criminal record and the seriousness of the convicted offenses and nine, the need to deter you and others from violating the law.

[Emphasis supplied.]

This appeal followed, in which defendant raises the following points:

POINT I

GIVEN THE DISCREPANCY BETWEEN THE SIGNED PLEA FORM AND THE PLEA COLLOQUY, THE PLEA FORM GOVERNS. THE COURT'S FINDING OTHERWISE WAS FUNDAMENTALLY ERRONEOUS AND REQUIRES A REMAND FOR THE IMPOSITION OF A TIME-SERVED SENTENCE.

A. Principles of Contract Law Govern Plea Bargains

B. The Parol Evidence Rule Bars Admission of Extrinsic Evidence Outside the Four Corners of the Plea Form

POINT II

ALTERNATIVELY, THE MATTER MUST BE REMANDED TO PROVIDE MR. RUFFIN WITH THE OPPORTUNITY TO DECIDE WHETHER HE WISHES TO WITHDRAW HIS GUILTY PLEA, BECAUSE IT WAS NOT KNOWINGLY AND VOLUNTARILY ENTERED.

POINT III

EVEN IF THE NO SHOW/NO RECOMENDATION PROVISION HAD BEEN ENFORCEABLE, THE MATTER MUST BE REMANDED FOR RESENTENCING BECAUSE THE SENTENCING COURT RELIED ON ARRESTS THAT DID NOT RESULT IN CONVICTIONS, FOUND AGGRAVATING FACTOR SIX DESPITE ONLY ONE PRIOR INDICTABLE CONVICTION, AND FAILED TO ARTICULATE ANY BASIS FOR A NEED TO DETER.

II.

We initially address defendant's first two points that the court committed error when it sentenced defendant to a term of imprisonment contrary to the terms of the April 8, 2020 written plea agreement, or that the matter should be remanded, pursuant to State v. Kovack, 91 N.J. 476 (1982), to provide defendant with the opportunity to withdraw his guilty plea. We reject both arguments.[2]

First, as he did before the court, defendant argues the plea agreement was complete when the parties signed the plea form, and the parol evidence rule bars extrinsic evidence outside the four corners of the plea forms — including the prosecutor's oral recitation of the plea agreement on the record and the

[2] We note that defendant also reserves his right to assert a claim for post-conviction relief pursuant to Strickland v. Washington, 466 U.S. 668, 687 (1984). Nothing in our opinion shall be interpreted as an expression of our view of the merits of any such claim.

prosecutor's internal document indicating the plea agreement contained additional conditions. He further relies on State v. Conway for the proposition that a defendant is entitled to enforce a plea agreement "according to its terms without implying unstated terms favorable to the State and unfavorable to the defendant." 416 N.J. Super. 406, 411 (App. Div. 2010).

Plea bargaining is "firmly institutionalized in this State as a legitimate, respectable and pragmatic tool in the efficient and fair administration of justice." State v. Means, 191 N.J. 610, 618 (2007). "The cornerstone of the plea bargain system is the 'mutuality of advantage' it affords to both defendant and the State." State v. Taylor, 80 N.J. 353, 361 (1979) (citations omitted). A plea agreement "enables a defendant to reduce his penal exposure and avoid the stress of trial while assuring the State that the wrongdoer will be punished[,] and that scarce and vital judicial and prosecutorial resources will be conserved." Ibid.

The interpretation of a plea agreement is informed by basic principles of contract law. Means, 191 N.J. at 622. As the Court observed in Means:

> When two parties reach a meeting of the minds and consideration is present, the agreement should be enforced. The essence of a plea agreement is that the parties agree that defendant will plead guilty to certain offenses in exchange for the prosecutor's recommendation to dismiss other charges and suggest a certain sentence, all subject to the right of the court to accept or reject the agreement in the interests of justice.

[Ibid.]

In general, plea agreements are to be treated like contracts between the prosecutor and defendant. See Ibid.; Conway, 416 N.J. Super. at 410-12. "The analogy to contract law is, however, in certain circumstances imperfect, and [courts] do not always follow it." United States v. Transfiguracion, 442 F.3d 1222, 1228 (9th Cir. 2006); see e.g., United States v. Garcia, 956 F.2d 41, 44 (4th Cir. 1992) (declining to apply the parol evidence rule in the context of a plea agreement). This is because "[a] plea bargain is not a commercial exchange" but rather "an instrument for the enforcement of the criminal law." United States v. Barron, 172 F.3d 1153, 1158 (9th Cir. 1999). "The interests at stake and the judicial context in which they are weighed require that something more than contract law be applied." Ibid.

At bottom, the "validity of a plea agreement is guided by considerations of fundamental fairness and public policy." Subin, 222 N.J. Super. at 237. "It is axiomatic in plea bargaining that all material terms and relevant consequences be clearly disclosed, fully understood, and knowingly and voluntarily accepted by the defendant." State v. Warren, 115 N.J. 433, 444 (1989). As such, when evaluating a defendant's understanding of a plea agreement "we generally limit our review to the terms of the written plea agreement and the statements made

under oath during the plea colloquy." United States v. Jackson, 21 F.4th 1205, 1213 (9th Cir. 2022); see Conway, 416 N.J. Super. at 412 (stating that the conditions of a plea agreement "should [be] explicitly stated . . . in the written plea agreement or in the prosecutor's confirmation of the agreement on the record").

"Because the sworn statements during the plea colloquy 'speak[] in terms of what the parties in fact agree to,' United States v. Benchimol, 471 U.S. 453, 455 (1985), they 'carry a strong presumption of truth,' Muth v. Fondren, 676 F.3d 815, 821 (9th Cir. 2012)." Jackson, 21 F.4th at 1213 (alteration in original); see Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("[T]he representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings."). Accordingly, our Rules mandate that the terms of a plea agreement be expressly stated on the record. R. 3:9-3(b) (providing that plea agreements "shall be placed on the record in open court at the time the plea is entered").

The court, however, is not bound by the plea agreement. State v. Bieniek, 200 N.J. 601, 607 (2010). Nevertheless, if a judge is going to impose a different sentence than the one recommended in the plea agreement, the defendant should

usually be given an opportunity to withdraw his guilty plea. State v. McNeal, 237 N.J. 494, 499 (2019). Further, it is acceptable to have a provision in a plea agreement allowing a judge to impose a longer sentence if the defendant fails to appear for sentencing. Subin, 222 N.J. Super. at 238-39. A judge, however, cannot impose a longer sentence merely because the defendant failed to appear. State v. Wilson, 206 N.J. Super. 182, 184 (App. Div. 1985). Instead, the judge must hold a hearing, consider defendant's reason for not appearing, and determine whether under the totality of the circumstances an enhanced sentence is justified. State v. Shaw, 131 N.J. 1, 16-17 (1993).

Despite the importation of contract law principles, a plea agreement is not like a private contract that comes to a reviewing court's attention only after a dispute arises, at which point the court is called upon for the first time to divine the intention of the parties. In the plea-bargaining setting, the parties propose a negotiated resolution of charges, but it is the court, ultimately, that accepts or rejects a plea agreement. As such, it is incumbent on the parties to fully apprise the court of the terms and conditions of the agreement so that it can properly exercise its discretion in deciding whether the interests of justice will be served by effectuating the agreement. See R. 3:9-2 (reposing with the trial court the

discretion to accept a plea of guilty after questioning the defendant and obtaining "an understanding of the nature of the charge and the consequences of the plea").

Applying these general principles to the circumstances presented in this case, we are satisfied the court properly concluded that defendant's plea agreement was conditioned on his appearance at sentencing and remaining arrest free because the record clearly establishes defendant understood that condition at the time of his plea. Indeed, it is undisputed that the State notified defendant of the condition in writing the same day the plea forms were signed, and described the same on the record at defendant's plea hearing.

Further, at the hearing, defendant and his counsel both confirmed that the State's recitation of the terms of the agreement was correct. In sum, because the record of defendant's plea hearing establishes that "all material terms and relevant consequences [were] clearly disclosed, fully understood, and knowingly and voluntarily accepted by the defendant," Warren, 115 N.J. at 444, we conclude that enforcing the terms of the plea agreement as stated on the record was proper and in accordance with notions of "fundamental fairness and public policy." Subin, 222 N.J. Super. at 237.

Defendant's reliance on Conway is unpersuasive. First, in that case, the State moved to vacate the defendant's plea based on a condition not included in

the written plea agreement or stated on the record, whereas here, the State notified defendant of the condition before and during his plea hearing. 416 N.J. Super. at 408-09. Second, there, we concluded that "if the State wanted to [impose a] condition [on the] plea agreement . . . [it] should have explicitly stated that condition in the written plea agreement or in the prosecutor's confirmation of the agreement on the record." Id. at 412 (emphasis supplied). Here, the State complied with Conway by stating the condition on the record at defendant's plea hearing.

Defendant's argument, in essence, requests that we ignore his and his counsel's statements at the plea hearing. We decline to do so, as such an approach would undermine the plea hearing process required by our Rules and which serves as a necessary safeguard of the significant interests at stake in plea bargaining. It would also require us to ignore defendant's own statements at the plea hearing.

We also reject for similar reasons defendant's request for a remand to enable him to withdraw his guilty plea. Our Rules "permit a court to vacate a guilty plea after sentencing only if withdrawal of the plea is necessary to correct a 'manifest injustice.'" State v. Johnson, 182 N.J. 232, 237 (2005) (quoting R. 3:21-1). As we have explained, the record of defendant's plea hearing makes

clear that defendant understood the terms of his plea agreement and accepted it voluntarily after having been apprised of the conditions in question. Further, while defense counsel stated at sentencing that he "totally missed" the State's proffer at the plea hearing, defendant made no such claim. As such, we are satisfied on the current record that the court's adherence to those conditions did not result in a "manifest injustice," and defendant is not entitled to withdraw his guilty plea on that basis. R. 3:21-1.

Defendant's reliance on Kovack is misplaced as that case is clearly distinguishable. There, during the defendant's plea hearing the prosecutor confirmed that the plea agreement did not include a period of parole ineligibility. Kovack, 91 N.J. at 480. After the trial court imposed a sentence including a period of parole ineligibility, we vacated the sentence and our Supreme Court affirmed, finding that "defendant did not contemplate a period of parole ineligibility." Id. at 481. Here, as noted, the State clearly indicated on the record that defendant's plea agreement was conditioned on his appearance at sentencing and remaining arrest free, after which defendant voluntarily entered his guilty plea.

III.

In his final point, defendant contends the court committed "three critical" and related errors when it sentenced defendant. First, defendant maintains, by relying upon State v. K.S., 220 N.J. 190, 199 (2015) and State v. Farrell, 61 N.J. 99, 107 (1972), that the court improperly based its application of aggravating factors three, six, and nine on his prior arrests that did not result in convictions. Second, he contends the court improperly found aggravating factor six applicable notwithstanding defendant having only one prior indictable conviction. Third, defendant argues that the court failed to make factual findings supporting its conclusion that there existed a need to deter defendant. We conclude the court failed to adequately explain its sentencing decision, including how defendant's prior arrests influenced its decision. As such, we vacate defendant's sentence and remand for resentencing.

We employ a deferential standard when reviewing a trial court's sentencing decision. State v. Grate, 220 N.J. 317, 337 (2015); State v. Fuentes, 217 N.J. 57, 70 (2014). We must affirm a sentence unless: 1) the trial court failed to follow the sentencing guidelines; 2) the court's findings of aggravating and mitigating factors were not based on competent and credible evidence in the record; or 3) "the [court's] application of the guidelines to the facts of [the] case

makes the sentence clearly unreasonable so as to shock the judicial conscience." Fuentes, 217 N.J. at 70 (second alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)). Further, a "sentence imposed pursuant to a plea agreement is presumed to be reasonable because a defendant voluntarily '[waived] . . . his rights to a trial in return for the reduction or dismissal of certain charges, recommendations as to sentence and the like.'" Id. at 70-71 (alterations in original) (quoting State v. Davis, 175 N.J. Super. 130, 140 (App. Div. 1980)).

"Although '[a]ppellate review of sentencing is deferential,' that deference presupposes and depends upon the proper application of sentencing considerations." State v. Melvin, 248 N.J. 321, 341 (2021) (alteration in original) (quoting State v. Case, 220 N.J. 49, 65 (2014)). "To facilitate meaningful appellate review, trial judges must explain how they arrived at a particular sentence." Case, 220 N.J. at 64. In imposing a sentence, the court must make an individualized assessment of the defendant based on the facts of the case and the aggravating and mitigating sentencing factors. State v. Jaffe, 220 N.J. 114, 121-22 (2014).

"[T]he judge shall state reasons for imposing [the] sentence including . . . the factual basis supporting a finding of particular aggravating or mitigating factors affecting [the] sentence." State v. A.T.C., 454 N.J. Super. 235, 255 (App.

Div. 2018) (third alteration in original) (quoting R. 3:21-4(g)). The deferential standard is inapplicable when a sentencing court "merely enumerates [sentencing factors], . . . foregoes a qualitative analysis, or provides 'little insight into the sentencing decision.'" Case, 220 N.J. at 65 (quoting State v. Kruse, 105 N.J. 354, 363 (1987)).

New Jersey case law has limited the ability of sentencing courts to consider a defendant's prior arrests not resulting in convictions. In State v. Green, our Supreme court stated that "many factors, including an arrest record, contribute toward the composite picture of the 'whole man' that the trial court should necessarily have to rationally sentence a defendant." 62 N.J. 547, 566 (1973). It explained "an arrest could be relevant for several reasons" including that a "sentencing judge might find it significant that a defendant who experienced an unwarranted arrest was not deterred by that fact from committing a crime thereafter." Id. at 571. The Court cautioned, however, that "[t]he important limitation of course is that the sentencing judge shall not infer guilt as to any underlying charge with respect to which the defendant does not admit his guilt." Ibid.

In K.S., the Court further constrained courts' reliance on arrests and dismissed charges by "disaprov[ing] of" Green insofar as it allowed courts to

consider those facts as they relate to deterrence. See K.S., 220 N.J. at 199. It reasoned "deterrence is directed at persons who have committed wrongful acts." Ibid.

Here, the court did not make sufficient findings concerning its evaluation and application of sentencing factors. Indeed, in applying aggravating factors six and nine, the court failed to provide a "qualitative analysis" and, instead, "merely enumerate[ed]" the sentencing factors. Case, 220 N.J. at 65.

The court also made multiple references to defendant's prior arrests not resulting in convictions without explaining how the arrests factored into its sentencing decision. As such, we cannot determine whether the court improperly inferred defendant's guilt as to those arrests, see Green, 62 N.J. at 571, nor to which sentencing factors the court found the arrests relevant, see A.T.C., 454 N.J. Super. at 255. In essence, the court's findings precluded any "meaningful appellate review" and, as such, we are constrained to remand for resentencing. Case, 220 N.J. at 64. Further, to the extent we can discern the court's reasoning, it appears to have improperly considered defendant's arrests not resulting in convictions as proof of the need to deter defendant from violating the law, contrary to K.S. 220 N.J. at 199.

Defendant's remaining arguments, to the extent we have not addressed them, lack merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed in part, remanded in part. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION