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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-1400-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LARRY JONES,

Defendant-Appellant.

Submitted September 13, 2023 – Decided September 21, 2023

Before Judges Currier and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Passaic County, Indictment No. 85-06-0624.

Larry Jones, appellant pro se.

Camelia M. Valdes, Passaic County Prosecutor,
attorney for respondent (Timothy P. Kerrigan, Senior
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from the October 27, 2021 order denying his motion to
change his sentence. We affirm.

In 1986, defendant was convicted of murder, felony murder, four counts of robbery, four counts of kidnapping, possession of a handgun for an unlawful purpose, and possession of a handgun without a permit. The court imposed an aggregate sentence of life with a forty-five-year period of parole ineligibility. We affirmed the convictions and sentence on direct appeal. State v. Jones, No. A-1776-86 (App. Div. May 19, 1989). Six subsequent petitions for post-conviction relief were denied.

In 2021, defendant moved to change his sentence under Rule 3:21-10(b)(4), asserting the trial court erred in failing to merge the convictions for robbery and kidnapping, the sentence was illegal, and the prosecutor and trial judge illegally changed the second-degree kidnapping conviction to a first-degree conviction after the verdict.

In a written opinion and accompanying order, the court denied the motion. In addressing defendant's assertions, the court found merger was not appropriate as the kidnapping and robbery charges were separate crimes and each had a separate purpose. The court further noted this court addressed defendant's contentions regarding his sentence on direct appeal and found the sentence was consistent with the guidelines established under State v. Yarbough, 100 N.J. 627, 643-44 (1985), and there was no abuse of discretion in the imposition of

sentence. The court also stated the argument regarding the modification of the kidnapping charge lacked merit. The court said: "At sentencing, the prosecutor stated to the [c]ourt that the pre-sentence report mistakenly referred to the kidnapping charge as a second[-]degree crime instead of a first[-]degree crime. Defendant was indicted for and found guilty of first[-]degree kidnapping charges."

In this appeal, defendant renews his arguments for our consideration:

POINT I

THE TRIAL COURT ERRED BY FAILING TO MERGE APPELLANT'S CONVICTIONS FOR KIDNAPPING AND ROBBERY INTO HIS MURDER CONVICTION[.]

POINT II

THERE ARE SENTENCING DISPARIT[IES] BETWEEN APPELLANT/LARRY JONES, STATE V. EDGAR TORRES, [246 N.J. 246 (2021)] AND STATE V. YARBOUGH, 100 N[.]J[.] 627 (1985) AND WHICH, DENIES APPELLANT'S DUE PROCESS, EQUAL PROTECTION RIGHTS, AND VIOLATES THE GOAL OF UNIFORMITY AND FUNDAMENTAL FAIRNESS.

POINT III

THE TRIAL COURT JUDGE AND PROSECUTOR ILLEGALLY CHANGED APPELLANT/LARRY JONES' SECOND-DEGREE CHARGE OF KIDNAPPING INTO A FIRST-DEGREE CHARGE OF KIDNAPPING AFTER THE JURY'S VERDICT[.]

We affirm for the reasons stated in the trial court's opinion, adding only the following comments. "[A]n illegal sentence is one that 'exceeds the maximum penalty provided in [the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 to 2C:104 -9] for a particular offense' or a sentence 'not imposed in accordance with law.'" State v. Acevedo, 205 N.J. 40, 45 (2011) (quoting State v. Murray, 162 N.J. 240, 247 (2000)).

Defendant was sentenced on the murder conviction to prison for life, with a mandatory parole ineligibility period of thirty years. Because this sentence was in the authorized range for the crime of which defendant was convicted, his sentence was not illegal.

Nor is there any merit to defendant's argument that his sentence was disparate to others. Defendant urges this court to overturn his sentence as the Supreme Court did in State v. Torres, 246 N.J. 246 (2021). However, the Court's decision in Torres, issued decades after defendant's convictions and sentence, bears no relationship to the sentence imposed on defendant. Torres was not a co-defendant, and he was convicted of different and less serious crimes.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION