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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2347-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ANTHONY ROBINSON,

Defendant-Respondent.

Submitted September 12, 2023 – Decided October 10, 2023

Before Judges Sumners and Smith.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Indictment Nos. 18-10-0910 and 19-02-0154.

Esther Suarez, Hudson County Prosecutor, attorney for appellant (Kevin Robert Sipe, Assistant Prosecutor, of counsel and on the brief).

Joseph E. Krakora, Public Defender, attorney for respondent (Zachary G. Markarian, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant pled guilty to weapons possession and contempt charges. He was sentenced to a five-year sentence with a forty-two-month parole disqualifier on the weapons conviction and a concurrent eighteen-month sentence on the contempt charge. Shortly thereafter, defendant filed a motion to withdraw his plea. The trial court granted the motion, finding, among other things, that defendant had made a colorable claim of innocence. The State appealed the order. We reverse and remand for the reasons that follow.

Defendant was charged twenty-one times with a series of crimes between 2017 and 2021. The following are the crimes charged that are relevant to this appeal. On October 2, 2018, a grand jury charged defendant with first-degree robbery, N.J.S.A. 2C:15-1(a); second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-5(b); and second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b). On January 30, 2019, another grand jury charged defendant with third-degree terroristic threats, N.J.S.A. 2C:12-3(a), and fourth-degree contempt of court, N.J.S.A. 2C:29-9(b). After failing to appear multiple times on the various charges, defendant was charged once again by a grand jury with six counts of contempt of court, N.J.S.A. 2C:20-2(a).

In June of 2019, defendant failed to appear for a scheduled court date on one of his matters. He remained at large on bench warrant status for nearly two years, next appearing before a court in February 2021 after being arrested and charged with five counts of drug and weapons offenses. On September 27, 2021, prior to a scheduled trial, defendant pled guilty to third-degree unlawful possession of a handgun, N.J.S.A. 39-5(b)(1), and fourth-degree contempt of court, N.J.S.A. 2C:29-9. The remaining charges, which had accumulated over the years, were dismissed.

On November 8, 2021, defendant filed a motion to withdraw his guilty plea. Nearly a year later, defendant submitted an investigation report by defense investigator Christopher Mooney, dated November 2, 2022. Following an evidentiary hearing, the trial court granted defendant's motion, and granted the State's application for a stay pending appeal.

We briefly recount the facts pertinent to the motion to withdraw. Defendant was implicated in a June 22, 2018 robbery, and pled guilty to a related weapons charge. Mooney's investigation report detailed an interview with Quadir Critten, an inmate at South Woods State Prison. The interview was conducted by video conference, but no recording was made. Mooney's report states in pertinent part:

Quadir Critten stated that he had been shown the surveillance video from Uncle U Dollar Store and told Anthony Robinson that he could see what was going on in the video but did not know the man seen wearing a hat in the video. Mr. Critten stated that he and Mr. Robinson then made an arrangement wherein Mr. Critten would write an affidavit confirming that the individual in the video was not Mr. Robinson, in exchange for \$2500. Mr. Critten explained that he had told Mr. Robinson "[i]f I'm gonna do something for you, you have to do something for me." Mr. Critten stated that he prepared the affidavit, but Mr. Robinson never provided the money, so Mr. Critten never gave the affidavit to his attorney.

The trial court considered the factors set forth in State v. Slater, 198 N.J. 145, 966 (2009) and found the report represented a colorable claim of innocence, which could "potentially exculpate the defendant. . . ." The court found "there may be credibility issues with respect to [Critten]." However, it concluded that "defendant's assertion is not one of blanket innocence, [but] one that actually rests on particular and plausible facts. . . ." The court further found the State was not prejudiced, noting it "found nothing out of the ordinary in terms of trial [preparation] for the State."

On appeal, the State argues that the trial court abused its discretion by finding the unsigned, unsworn investigation report was sufficient to permit withdrawal of a guilty plea. We review the trial court's findings using an abuse of discretion standard. State v. Tate, 220 N.J. 393, 404 (2015).

[T]he trial court's decision is judged by the four-prong test set forth in Slater . . . : "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal [will] result in unfair prejudice to the State or unfair advantage to the accused."

[Ibid.]

We consider the trial court's "qualitative assessments" about defendant's basis for his withdrawal motion, "the strength of his case," and the credibility findings the court made concerning defendant's proffered witnesses. Ibid.

The State argues that the trial court erred in finding defendant made a colorable claim of innocence. We agree.

"A colorable claim of innocence is one that rests on 'particular, plausible facts' that, if proven in court, would lead a reasonable factfinder to determine the claim is meritorious." State v. Munroe, 210 N.J. 429, 442 (2012) (quoting Slater, 198 N.J. at 158-9). "It is more than '[a] bare assertion of innocence,' but the motion judge need not be convinced that it is a winning argument" Ibid. (alteration in original) (citation omitted).

We consider what "particular, plausible" facts were at the trial court's disposal to support its findings. Defendant produced the investigative report

approximately twelve months after his filed his motion to withdraw. The report was an unsigned and unsworn narrative in which Mooney states that he did not interview Critten in person, but rather via video conference. The report describes what Critten told Mooney. Mooney did not obtain a sworn certification or a signature from Critten.

The report stated that Critten allegedly offered to write an exculpatory statement claiming defendant was not present at the robbery, if defendant paid him \$2,500. According to the report, Critten informed Mooney that he didn't produce the exculpatory statement because defendant didn't pay him the money. The trial court found Critten's alleged statement contained within the unsigned, unsworn report amounted to a colorable claim of innocence.

A bare assertion of innocence is insufficient to justify withdrawal of a plea. Defendant must present specific, credible facts, and where possible, point to facts in the record that buttress their claim. Slater, 198 N.J. at 158. (citations omitted). We first note that defendant asserts his innocence based on a third-party's alleged statements, not his own. Critten's unsworn claims embedded within Mooney's unsworn report raise concerns regarding the report's authenticity as well as the veracity of its contents.

Assuming, arguendo, that Critten's statement is authentic, its contents suggest that he solicited a cash payment in return for testimony that defendant wasn't at the scene of the alleged robbery. While the trial court framed Critten's cash-for-testimony solicitation as a witness credibility question at trial, we conclude that his conduct raises plausibility questions instead to the motion to withdraw defendant's guilty plea. Critten's tainted claims go to defendant's presence at the robbery. However, defendant pled guilty to a weapons possession charge, not robbery. His testimony during allocution confirmed his presence in the jurisdiction where the crime occurred.

COUNSEL: And then on June 22, 2018, were you in Jersey City on that day as well?

DEFENDANT: Yes.

COUNSEL: And on that date did you have in your possession a handgun?

DEFENDANT: Yes.

COUNSEL: And you knew that the object you possessed was, in fact, a handgun?¹

DEFENDANT: Yes.

COUNSEL: And it is true that you did not, in fact, have a permit to legally possess that handgun?

¹ The parties stipulated that during the plea hearing that the weapon defendant possessed was operable.

DEFENDANT: Yes.

At defendant's guilty plea on the weapons charge, there was no testimony required concerning his presence at the dollar store. It wasn't an element of the crime he pled guilty to; hence, the nature of defendant's alibi claim is not strong. The trial court's finding that defendant had shown a colorable claim of innocence on the weapons charge was unsupported by any credible and plausible facts in the record, and its order represents a mistaken exercise of discretion. Finding no colorable claim of innocence, we need not address the remaining Slater factors.

Reversed and remanded for sentencing consistent with the plea agreement entered into by defendant on September 27, 2021. 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