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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2984-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

J.M.,

Defendant-Respondent.

TANISHA LITTLE,

Appellant.

Submitted April 17, 2023 – Decided May 17, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Municipal Appeal No. 2022-05.

Arseneault & Fassett, LLC, attorneys for appellant (Jack Arseneault and Greg Jones, on the briefs).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent State of New Jersey

(Stephen A. Pogany, Special Deputy Attorney General/Acting Assistant Prosecutor, on the brief).

Fusco & Macaluso, PC, attorneys for respondent J.M. (Joely Reyes, on the brief).

PER CURIAM

Tanisha Little appeals from the April 18, 2022 Law Division order dismissing her municipal appeal filed under the Crime Victim's Bill of Rights (CVBR), N.J.S.A. 52:4B-34 to -38, and the Victims' Rights Amendment of the New Jersey Constitution (VRA), N.J. Const. art. I, ¶ 22, for lack of standing. Because we hold that Little has standing to enforce her right under the CVBR and VRA, we reverse and remand for a determination on the merits.

The municipal appeal arose from a dismissal order entered in the Belleville Municipal Court on the municipal prosecutor's motion. The order dismissed a complaint-summons charging defendant J.M. with simple assault of Little. Little and J.M. were both police officers employed by the Township of Irvington Department of Public Safety (IDPS). On March 4, 2021, J.M. allegedly assaulted Little "by striking her left arm with force and pushing her" as Little was leaving the IDPS communications center. Following the incident, Little was taken to a local urgent care center for medical treatment. The altercation was captured on IDPS surveillance cameras, and was further

documented by medical treatment records and an IDPS Internal Affairs report in which J.M. reportedly admitted striking Little.

On July 21, 2021, an Irvington Municipal Court Judicial Officer issued a complaint-summons against J.M. for simple assault, in violation of N.J.S.A. 2C:12-1(a)(1). The matter was ultimately transferred to the Belleville Municipal Court "due to conflicts of interest." A hearing on the complaint was conducted in Belleville Municipal Court on October 20, 2021. During the hearing, Little, who was then self-represented, participated in a Zoom "breakout room" with the municipal prosecutor assigned to the case, Krenar Camili. In a subsequent certification submitted in support of Little's motion to reinstate the complaint, Little detailed the ensuing discussions between herself and Camili.

Little averred that in the breakout room, Camili informed her that he had already spoken to J.M.'s attorney, who had provided him with the IDPS surveillance footage of the incident. According to Little, Camili "placed [her] on hold" while he reviewed the footage. Camili returned "approximately one minute" later and told her "he was dismissing the case." Camili described the video "as showing [Little] move from one side of the video frame to [J.M.'s] side, then 'somebody bump[ed] into somebody,' words [were] exchanged, and someone else step[ped] in between [them]."

When Little told Camili that J.M. "physically hit [Little] on [her] left arm," Camili "asked [Little] when." Despite Little's attempts to elaborate, Camili "interrupted [Little] and would not let [her] continue" to respond to the question. When Little informed Camili that she "had proof of medical treatment for the injury caused by [J.M.]," Camili "refused to look at [her] proofs and told [her] bluntly that [she] was not hit." Camili further declared that "his view of the video was that [Little] 'shoulder checked' [J.M.], [and] therefore, any injuries [Little] received were caused by [Little]." Camili concluded the meeting by telling Little that she "could tell the judge whatever [she] wanted later in open court."

According to Little, the municipal court judge allowed her to make a statement on the record, during which she asserted that she "could offer proofs of the assault, including: (1) [an] expert-enhanced video . . . , (2) [her] medical records from the day of the offense . . . , and (3) [J.M.'s] written admission in an Internal Affairs report that she struck [Little]." In her certification, Little explained that because the original surveillance footage was "dark and grainy, and . . . hard to see and interpret accurately[,] . . . at [her] own personal expense, [she had] retained a video expert to enhance, clarify, and slow down the video."

Little stated that the enhanced version "clearly show[ed] that [she] did not touch [J.M.] and certainly did not 'shoulder check' her."

After hearing her statement, the municipal court judge "asked . . . Camili if those proofs would alter his determination not to prosecute," to which Camili "adamantly stated that they would not, and . . . maintained his position that the matter should be dismissed." The judge accepted Camili's answer and dismissed the complaint forthwith.

Little's subsequent attempts to obtain relief from the dismissal resulted in a cacophony of errors, none of which were her doing. First, Little's timely request for a transcript of the October 20 proceedings ended unsuccessfully when the Belleville Municipal Court Administrator informed Little's newly-retained attorney that it "'d[id] not have any record on the requested case.'" Little's attempt to move for reconsideration fared no better.

On November 8, 2021, Little filed a timely motion for reconsideration in Belleville Municipal Court, alleging violations of her rights under the CVBR and the VRA based on Camili's refusal to consider the evidence she offered. In a supporting certification submitted by Little's attorney, counsel averred that in response to an inquiry regarding the status of the reconsideration motion, he was informed that the Belleville Municipal Court "had no record of the motion, that

[the motion] was not on the docket, and that the file had likely been transferred to Irvington Municipal Court." Upon contacting Irvington Municipal Court, Little's counsel was informed that Irvington Municipal Court "had no record of the matter in its system."

During the ensuing months, Little's counsel repeatedly contacted both courts regarding the status of the reconsideration motion. Finally, on March 4, 2022, one year after the alleged assault, Belleville Municipal Court issued a letter to counsel which contained no reference to the pending reconsideration motion. Instead, the letter addressed "the prospective filing of a new charge against J.M." In response to counsel's attempt to correct the court's misapprehension of the underlying issue, court staff explained to counsel that "the courts did not know how to handle the motion" because after the complaint had been dismissed, "J.M. had been granted an expungement." A subsequent letter from the court to Little's counsel dated March 7, 2022, did not reference an expungement but stated, "[a]s no complaint currently exists in this matter the [c]ourt does not have the ability [to] hear your motion to reconsider." (Third alteration in original).

Upon receipt of the letter, Little filed an appeal with the Law Division, reasoning that the March 7 letter "act[ed] as a final order of a court of limited

jurisdiction, denying as moot . . . Little's [m]otion for [r]econsideration." On April 18, 2022, the Law Division judge issued an order dismissing the appeal "with prejudice, pursuant to Rules 3:23-2 and 3:23-9, as [Little] ha[d] no standing to appeal and in any event is not entitled to the relief requested because [she] is not a prosecuting attorney." In an accompanying written opinion, the judge noted the "procedural morass" created in the municipal courts, but elected to deem the reconsideration motion denied in the interest of "judicial economy."

Turning to the issue of standing, the judge acknowledged the appeal's basis in the CVBR and VRA. However, relying on our opinions in State v. Bradley, 420 N.J. Super. 138 (App. Div. 2011), and State v. Vitiello, 377 N.J. Super. 452 (App. Div. 2005), the judge noted that a complainant lacked standing to appeal the order of the municipal court dismissing their complaint where neither the complainant nor the complainant's attorney was designated as a private prosecutor under Rule 3:23-9(d) or qualified for such a designation under Rule 7:8-7(b).

Under Rule 3:23-9(d),

[w]ith the assent of the prosecuting attorney and the consent of the court, the attorney for a complaining witness or other person interested in the prosecution may be permitted to act for the prosecuting attorney; provided, however, that the court has first reviewed the attorney certification submitted on a form prescribed by

the Administrative Director of the Courts, ruled on the contents of the certification, and granted the attorney's motion to act as private prosecutor for good cause shown.

Rule 7:8-7(b) allows the court to designate "an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints."

The judge observed:

[T]he municipal court never designated [Little] or her attorney as a "private prosecutor," nor was it requested. . . . [T]here were no cross-complaints, no assent of the municipal prosecutor, and there was no motion with the required supporting forms and certifications. Thus, under Bradley and Vitiello, [Little] does not have standing to appeal the dismissal of her complaint[] by the municipal prosecutor and municipal court.

The judge also determined that Little's CVBR and VRA rights "were properly vindicated . . . by her opportunity to address the municipal court directly to oppose the municipal prosecutor's discretionary decision to dismiss her complaint in open court." The judge observed that if the municipal judge had disagreed with the prosecutor's decision, "he could have directed that the matter be referred to the county prosecutor for review or [Little] could have

requested such a review directly from the county prosecutor." However, Little failed to pursue that course of action. This appeal followed.¹

Little argues the judge misapprehended the nature of her appeal and erred in dismissing her municipal appeal for lack of standing. Little asserts she did not seek "the mere survival of the underlying complaint," but rather a remedy for the purported "victim's rights violation committed by the State." (Emphasis omitted). According to Little, she had "standing to file a motion . . . to enforce any right conferred [by the CVBR or VRA], and to receive an adjudicative decision by the court on any such motion." (Alterations in original). Little's standing claim is predicated upon her assertion that both Camili and the municipal judge, "acting on behalf of the State and as part of the criminal justice system, failed to treat Little with the dignity, fairness, compassion, and respect

¹ On June 2, 2022, the same day that Little filed a notice of appeal from the April 18, 2022 order, on Little's motion, the Assignment Judge entered an order directing Belleville Municipal Court to reopen the October 20, 2021 hearing on Little's complaint so that the record could be reviewed in camera pursuant to N.J.S.A. 2C:52-19 to determine whether an appeal to the Law Division was appropriate. The Assignment Judge vacated her June 2 order the following day upon learning of the April 18 order and pending appeal.

owed [to] her under the CVBR and VRA." See N.J.S.A. 52:4B-36(a); N.J. Const. art. I, ¶ 22.²

"Standing is a threshold requirement for justiciability," Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 421 (1991), and "refers to the plaintiff's ability or entitlement to maintain an action before the court," In re Adoption of Baby T., 160 N.J. 332, 340 (1999) (quoting N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997)). Standing "neither depends on nor determines the merits of a plaintiff's claim," Watkins, 124 N.J. at 417, but the absence of standing "'precludes a court from entertaining any of the substantive issues presented for determination," Jen Elec., Inc. v. County of Essex, 197 N.J. 627, 645 (2009) (quoting Baby T., 160 N.J. at 340). "Whether a party has standing to pursue a claim is a question of law subject to de novo

² N.J.S.A. 52:4B-37 defines "victim" as "a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed . . . against that person." Disorderly persons offenses, such as the simple assault charge involved here, "are petty offenses and are not crimes within the meaning of the Constitution of this State." N.J.S.A. 2C:1-4(b)(1). Nonetheless, neither the State nor J.M. dispute that Little qualifies as a "victim" who is entitled to exercise the rights provided in the CVBR and VRA. Moreover, in Bradley, we tacitly acknowledged that the CVBR and VRA applied to the purported victim who unsuccessfully attempted to prosecute disorderly persons simple assault charges in municipal court. 420 N.J. Super. at 143.

review." Cherokee LCP Land, LLC v. City of Linden Planning Bd., 234 N.J. 403, 414 (2018).

Through the CVBR, the Legislature has "addressed the evolving rights of crime victims, including standing to assert certain rights." State v. Lavrik, 472 N.J. Super. 192, 206 (App. Div. 2022). In Lavrik, we recounted that history as follows:

Enacted in 1985, the Legislature codified "specific rights," affording "full recognition and protection" to crime victims and witnesses under the CVBR. N.J.S.A. 52:4B-35. The Legislature found "[t]hese rights are among the most fundamental and important in assuring public confidence in the criminal justice system." Ibid. Six years later, in 1991, New Jersey voters passed the VRA, which provides:

A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature.

Nearly a decade later, in 2012, the Legislature enacted "Alex DeCrocce's Law," L. 2012, c. 27, which amended and supplemented the rights of crime victims

and witnesses. Pertinent to this appeal, the Legislature added paragraph (r) to N.J.S.A. 52:4B-36, affording crime victims the right:

To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion or present argument on a motion filed to enforce any right conferred herein or by [the VRA], and to receive an adjudicative decision by the court on any such motion.

According to the Assembly Committee Statement, the 2012 "bill g[ave] victims standing to enforce the rights afforded by the '[CVBR].'" A. Appropriations Comm. Statement to A. 2380, at 2 (May 21, 2012); see also [State v. Tedesco, 214 N.J. 177, 184 (2013)] (recognizing the CVBR "grants victims standing to file a motion to enforce those rights"). In essence, N.J.S.A. 52:4B-36(r) confers standing to enforce the procedural rights granted under the VRA and the remaining seventeen paragraphs of N.J.S.A. 52:4B-36.

[Lavrik, 472 N.J. Super. at 206-07 (first, second, third, and fourth alterations in original) (emphasis omitted).]

See also State v. Blackmon, 202 N.J. 283, 298-99 (2010) (tracing the history of the CVBR and VRA); State v. Muhammad, 145 N.J. 23, 33-35 (1996) (discussing history of VRA).

Among the remaining seventeen paragraphs of N.J.S.A. 52:4B-36, other pertinent provisions afford crime victims and witnesses the following rights:

- (a) To be treated with dignity and compassion by the criminal justice system;
- (b) To be informed about the criminal justice process;
- (c) To be free from intimidation, harassment or abuse by any person . . . ;
- (d) To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible;
-
- (h) To be informed about available remedies, financial assistance and social services; [and]
-
- (k) To be advised of case progress and final disposition and to confer with the prosecutor's representative so that the victim may be kept adequately informed.

It is clear that N.J.S.A. 52:4B-36(r) expressly confers standing on victims to enforce the rights enumerated in the CVBR and VRA, including the right "[t]o be treated with dignity and compassion by the criminal justice system." N.J.S.A. 52:4B-36(a). However, our courts have also afforded standing to victims even when the right sought to be enforced was not expressly referenced in the CVBR or VRA. See Lavrik, 472 N.J. Super. at 198, 210 (holding that "a victim in a criminal matter has standing to appeal from a trial court order granting [the] defendant's motion for a civil reservation" because "[a]lthough

. . . civil reservations are not expressly referenced in the VRA or CVBR, the victim's standing in th[e] case finds support in the overarching principles embodied within both enactments – to ensure the criminal justice system treats crime victims fairly"); State v. Kane, 449 N.J. Super. 119, 134 n.6 (App. Div. 2017) (speculating that the victim would have standing to oppose the criminal defendant's motion seeking discovery of her medical records under N.J.S.A. 52:4B-36(r) because "[a]lthough the provision grants a victim standing to affirmatively seek enforcement of her victim rights, we do not read the standing grant so restrictively as to preclude standing to oppose efforts to undermine those rights").

Here, Little's standing claim is predicated upon her invocation of her right "[t]o be treated with dignity and compassion by the criminal justice system." N.J.S.A. 52:4B-36(a). She alleges Camili violated this right by "falsely blaming her for her own injuries and refus[ing] to consider her evidence." She asserts the judge "compounded that violation . . . by . . . failing to admonish [Camili] to review [her] evidence or remind him of Little's rights" and by "immediately granting Camili's motion . . . without affording [Little] any opportunity to retain counsel or . . . speak with the county prosecutor." Notably, neither the State nor J.M. has denied the prosecutor's or the judge's alleged malfeasance.

Based on our de novo review, we are satisfied that Little had standing to appeal the dismissal of the complaint to enforce her rights under the CVBR and VRA based on the prosecutor's alleged affirmative acts and the municipal court judge's alleged omissions. There can be no doubt that victims "are to be treated with fairness, compassion, respect, and dignity" by the criminal justice system. Tedesco, 214 N.J. at 196. If Little's allegations are true, that did not occur here. According to Little, the municipal prosecutor was dismissive of her claims, blamed her for provoking the alleged assault, and flatly refused to view the evidence she offered to prove her account. The municipal court judge compounded the error by failing to advise Little of her available remedies before dismissing the complaint on the prosecutor's motion.

If her allegations are accepted, Little has plausibly set forth a violation of her rights under N.J.S.A. 52:4B-36(a) and Article 1, Paragraph 22 of the State Constitution. In that regard, we disagree with the dicta in the judge's opinion that Little's rights "were properly vindicated" by the opportunity to oppose the prosecutor's decision in open court. The record suggests that the opportunity to be heard was "little more than a potentially cathartic but hollow exercise." State v. A.M., 252 N.J. 432, 453 (2023). The CVBR and VRA require more than a perfunctory observation of a victim's rights.

Little's appeal does not implicate the limitations on who may act as a prosecuting attorney in municipal court under the court rules as suggested by the State. In that regard, Rule 3:24(b) permits the prosecuting attorney to "appeal, as of right, a pre-trial or post-trial judgment dismissing a complaint." For purposes of appealing "a judgment of conviction" in municipal court, see R. 3:23-1, Rule 3:23-9 defines "prosecuting attorney" as "[t]he Attorney General," "county prosecutor," "municipal attorney," or private prosecutor under circumstances not applicable here. See R. 3:23-9(d).

It is undisputed that Little neither qualified as the prosecuting attorney under Rule 3:23-9(d) nor did she seek approval to act as such.³ She merely sought to have the municipal prosecutor assigned to her case treat her "with fairness, compassion, respect, and dignity." Tedesco, 214 N.J. at 196. For the same reasons, Vitiello and Bradley, upon which the Law Division judge relied in finding that Little had no standing, are distinguishable. In both Vitiello and Bradley, this court considered appeals raised by citizen-complainants seeking to challenge the dismissals of their respective complaints. Vitiello, 377 N.J. Super. at 454; Bradley, 420 N.J. Super. at 139-40.

³ Although Little's initial motion for reconsideration included a request for a private prosecutor, she has abandoned that request altogether.

In Vitiello, the complainant sought "to appeal from an order of the Assignment Judge of Morris County dismissing [his harassment] complaint as de minimis under N.J.S.A. 2C:2-11." Vitiello, 377 N.J. Super. at 454. In Bradley, the complainant challenged the municipal court administrator's finding that there was no probable cause to justify the issuance of a complaint for simple assault. Bradley, 420 N.J. Super. at 140. Neither complainant argued that the dismissals violated their CVBR or VRA rights; instead, both challenged the sufficiency of the factual and legal bases underpinning the respective dismissals. Vitiello, 377 N.J. Super. at 454; Bradley, 420 N.J. Super. at 140-41. In both cases, we determined the complainants lacked standing because neither qualified as the prosecuting attorney. Vitiello, 377 N.J. Super. at 455-56; Bradley, 420 N.J. Super. at 142. Significantly, neither case involved an allegation of a violation under the CVBR or VRA, and both cases predated the amendment of the CVBR explicitly conferring standing on victims to enforce their rights under the CVBR and VRA.

We acknowledge that courts should generally avoid "intrusion . . . into . . . the exercise of prosecutorial discretion in deciding not to pursue an investigation or press a charge." In re Grand Jury Appearance Request by Loigman, 183 N.J. 133, 146 (2005) (emphasis omitted). However,

prosecutorial discretion is not limitless. In choosing which cases to prosecute, a prosecutor must "examine the available evidence, the law and the facts, and the applicability of each to the other, and . . . intelligently weigh the chances of successful termination of the prosecution." State v. Ward, 303 N.J. Super. 47, 57 (App. Div. 1997). "If the prosecutor arbitrarily or corruptly fails or refuses to act, the courts must then intervene to correct the administrative abuse." Id. at 56-57; see also Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 3:25-1 (2023) ("The prosecutor's exercise of discretion in dismissing administratively is reviewable . . . under an abuse of discretion standard and extends to disorderly person's offenses.").

Here, Little accused the prosecutor of conduct that violated her right to be treated with dignity and compassion. Little acknowledges that "as a practical matter, [she] cannot receive the restorative dignity, fairness, compassion, and respect unless the [c]omplaint is first reinstated." Admittedly, a new complaint cannot be filed because the statute of limitations has expired. See N.J.S.A. 2C:1-6(b)(2) ("A prosecution for a disorderly persons offense . . . must be commenced within one year after it is committed."). The primary relief Little seeks to vindicate her right is to have a different prosecutor, in this case, the county prosecutor, "review [her] complaint and determine whether their intervention

was warranted." Bradley, 420 N.J. Super. at 140; see also Ward, 303 N.J. Super. at 54 ("[T]he county prosecutor . . . has general supervisory power over municipal prosecutors.").

Because we hold that under the circumstances, Little has standing to enforce her right under the CVBR and VRA, we reverse the judge's order dismissing her municipal appeal for lack of standing and remand for a determination on the merits in accordance with N.J.S.A. 52:4B-36(r).

Reversed and remanded for further proceedings consistent with this opinion. 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