SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3480-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMES M. DAVIS, a/k/a
MALCOLM DAVIS,

Defendant-Appellant.

Submitted September 19, 2023 – Decided October 2, 2023

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 19-01-0136 and 19-01-0137.

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

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Nancy A. Hulett, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant James M. Davis appeals from the Law Division orders which denied his motions for a Franks[1] hearing and to suppress, and from his sentencing following a guilty plea. Having considered the parties' arguments in light of the record and applicable legal standards, we affirm.

I.

On October 17, 2018, Woodbridge Police Department (WPD) Detectives Bryan Jaremczak and Jessica DeJesus presented a Superior Court judge with a jointly signed affidavit in support of search warrants requested. The warrants were for defendant's person; a residential apartment at Armstrong Lane, Perth Amboy; and a black four-door 2012 Honda Accord registered in New York.

The salient facts provided in the affidavit are as follows. Detective Jaremczak, the main affiant, attested to a narcotics investigation of defendant. Detective Jaremczak stated, based on his training, experience, and investigation observations, searches would likely yield "evidence regarding the possession and distribution of controlled dangerous substances."

[1] Franks v. Delaware, 438 U.S. 154 (1978).

Detective Jaremczak had been a Woodbridge police officer since May of 2006 and had worked in the narcotics bureau since 2010. He recited his narcotics experience and numerous training courses, including: undercover operations, drug interdiction, confidential informant management, surveillance techniques, narcotics organizations, and narcotics concealment. Detective Jaremczak also participated in a "multitude of drug investigations" and "many [drug] apprehensions."

The investigation commenced in August 2018 based on information Detective Jaremczak received from a confidential informant (CI). The CI provided that defendant was "distributing quantities of cocaine throughout the city of Perth Amboy . . . as well as surrounding towns." WPD detectives then surveilled defendant and the Armstrong Lane apartment. During the investigation, the CI, in Detective Jaremczak's presence, arranged via cell phone for three separate controlled purchases of cocaine from defendant. After a controlled purchase of cocaine, the CI positively identified defendant from a photograph as the individual "who sold him the [Controlled Dangerous Substance (CDS)]."

The three purchases occurred during the weeks of August 26, September 9, and October 7, 2018. During the first purchase, Detective DeJesus

observed defendant "exit [an apartment at] Armstrong Lane" and enter "a black Honda Accord [with a] NY registration . . . parked in the [designated] parking space." Detective Jaremczak then followed defendant as he drove from the apartment complex to the prearranged purchase location with the CI. After observing the controlled purchase, Detective Jaremczak observed defendant return to the parking spot and enter the Armstrong Lane apartment. Another detective maintained constant surveillance of the CI, during this and subsequent purchases, and the purchased substances each tested positive for cocaine.

At the second purchase, Detective DeJesus observed defendant sitting in the black Honda and then driving away from the location. Detective Jaremczak followed defendant to the CI meeting. Law enforcement observed the controlled purchase. Prior to the third purchase, Detective Harris observed defendant driving the black Honda on Armstrong Lane, but then lost visual contact. Detectives then observed defendant at the prearranged location making an exchange with the CI.

Detectives Jaremczak and DeJesus separately conducted additional surveillance of the Armstrong Lane apartment and witnessed defendant exiting the apartment and entering his parked black Honda. They discovered

that Defendant's driver's license listed a Westbury, New York address. Before applying for the search warrants, law enforcement determined defendant had been convicted of at least three indictable offenses: distribution of a CDS on or near school property, unlawful possession of a weapon, and possession of a weapon during a CDS offense.

Detective Jaremczak described the Armstrong Lane apartment as a "single unit apartment located within a multi-unit apartment building" that was "located above parking spaces . . . including [the] parking space" subject to the warrant. He described the exterior as having "half beige shingles on the top portion and brick on the lower portion" with a "brick colored door." Further, defendant's vehicle was a "black, four door, Honda Accord bearing New York registration" and was registered to defendant. Detective Jaremczak described defendant as a "light brown skin colored African American male, 5'08 in height, approximately 180 pounds, brown eyes, black hair, and a date of birth of [July 1980]." Detective Jaremczak presented the information to a Middlesex County assistant prosecutor who approved the application.

Detective Jaremczak stated that the "investigation, surveillance, and observations" provided evidence that defendant was residing at and dealing cocaine from the Armstrong Lane apartment and using his black Honda

Accord to facilitate distribution. On October 17, 2018, the judge signed the search warrants and on October 25, 2018, detectives executed the warrants. Police located defendant in Perth Amboy and found him in possession of CDS. Police also seized a nine-millimeter handgun located in a locked box, which also contained cocaine.

Defendant was charged with multiple offenses in two separate indictments and thereafter filed motions for: a Franks hearing; suppression of evidence seized from the search of the Armstrong Lane apartment and the vehicle; reconsideration of the denial of the Franks hearing; discovery; and dismissal of the indictments for the State's failure to disclose, as ordered, defendant's phone number called by the CI.[2] The judge denied the motions for a Franks hearing, suppression, and reconsideration. The judge granted in part defendant's motion for discovery, ordering disclosure of the phone number called to arrange the cocaine purchases. The State failed to provide discovery of the number and defendant moved to dismiss the indictments.

[2] We do not address defendant's various other motions filed which are not pertinent on appeal.

Defendant argued a Franks hearing was warranted because the affidavit was "false and misleading in part and in total."[3] In support of the motion, defendant submitted an affidavit that asserted the officers' affidavit included inaccuracies, including that during the weeks referenced, he did not "make a sale," and he only stayed at Armstrong Lane "from time to time but never continuously." Defendant argued the inaccuracies required an opportunity "to cross-examine the officer." Defendant did not precisely address any alleged false misrepresentation in the affidavit, nor did he specifically address the recited eyewitnesses' accounts of his actions. In opposition, the State argued the detectives "didn't make any knowing, intentional, recklessly false statement" or "any material omissions" that were critical to the judge's determination of probable cause. On April 18, 2019, the judge denied the motion, finding "defendant's assertion in his affidavit is merely a conclusory statement" and "to obtain a Franks hearing, it must be more than conclusory."

Defendant thereafter moved for reconsideration of the denial of the Franks hearing and to suppress the evidence seized during the search. On January 7, 2020, after hearing arguments, the judge denied both motions. The

[3] Based on our review of the documents referenced in the parties' submissions, we note that the judge's order on the motion for a Franks hearing was not submitted as part of the record for our consideration.

judge denied reconsideration finding unpersuasive defendant's arguments that: he did not reside at the apartment in accordance with his license and tax returns; no cocaine sales occurred in the apartment; and the unit could not be clearly seen from surveillance points. The judge again found defendant's affidavit to be conclusory and self-serving, and that the affiants had observed defendant on multiple occasions exiting the Armstrong Lane apartment, parking in the same designated spot, and travelling to make the controlled purchases.

The judge denied the suppression motion, finding defendant's arguments unpersuasive that: the search of the defendant's locked box where the handgun and CDS were found was unlawful, though the warrant permitted detectives to search locked containers; and the affidavit provided no facts linking the cocaine sales to the apartment. The judge held that while no cocaine transactions occurred at Armstrong Lane, the affiants' independent surveillance corroborated defendant exited and/or returned to the apartment after distributing cocaine, which sufficiently demonstrated probable cause. The judge found the search of the vehicle and apartment to be within the scope of the warrant, both places were sufficiently described, and the affiants'

observations, training, and experience provided probable cause to "connect the residence with [defendant's] drug activity."

Defendant's discovery motion sought surveillance information, cell phone communications, defendant's phone number, and other recordings not relevant on appeal. On July 7, 2020, the judge granted in part defendant's motion, and ordered the disclosure of the defendant's phone number that the CI called. The State failed to comply with the order. The State advised that the number was not retained in the file, and thereafter, the State expressed concerns over disclosure. At a collateral proceeding in this matter, the judge addressed the necessity of the State to locate the number.

On March 29, 2021, defendant filed an order to show cause to dismiss the indictment for the State's failure to produce his phone number. On March 30, 2021, the State filed a motion for reconsideration to preclude release, arguing disclosure could jeopardize the CI's identity. At a status conference, the judge requested further submissions on the issue, including a certification as to the alleged risk to the CI, and set a date for argument.

On April 14, 2021, before the judge decided the discovery applications, defendant pleaded guilty to: second-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(2) (count 2); second-

degree possession of a firearm while possessing CDS with intent to distribute, N.J.S.A. 2C:39-4.1 (count 4), both counts were under indictment 19-01-0136; and to second-degree certain person not to have weapons, N.J.S.A. 2C:39-7(b)(1) (count 1), under indictment 19-01-0137. Defendant preserved the right to appeal the orders which denied a Franks hearing and discovery.

At sentencing, the judge, after considering the submissions and arguments, found no mitigating factors, but found aggravating factors three (risk of reoffending), six (prior criminal record), and nine (need for deterrence) applied. N.J.S.A. 2C:44-1(a)(3); -1(a)(6); -1(a)(9). The judge found, as there were no mitigating factors, the aggravating factors substantially outweighed the mitigating factors.

The judge sentenced defendant to a nine-year term of incarceration with a fifty-four-month period of parole ineligibility on possession of CDS with intent to distribute; a five-year term of incarceration with a forty-two-month period of parole ineligibility on possession of a firearm while possessing CDS with intent to distribute; and a five-year term of incarceration with a five-year period of parole ineligibility on certain person not to have weapons. The judge ordered count two to run consecutively to count four, pursuant to N.J.S.A. 2C:39-4.1(d), and count one to run concurrently. Defendant was

sentenced to an aggregate term of fourteen years with an eight-year period of parole ineligibility, which was in accordance with the negotiated plea agreement. For count two, the judge found the period of parole ineligibility was discretionary because there was a dispute as to whether the State advised defendant of its intention to move for the mandatory period of parole ineligibility. All other counts were dismissed.

On appeal, defendant raises the following arguments for our consideration:

> I. THE WARRANT TO SEARCH ARMSTRONG [LANE] WAS INVALID BECAUSE POLICE FAILED TO ESTABLISH PROBABLE CAUSE THAT EVIDENCE OF DAVIS' ALLEGED DRUG SALES WOULD BE FOUND AT THAT ADDRESS.
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> II. DAVIS' AFFIDAVIT AND THE STATE'S NONCOMPLIANCE WITH THE COURT'S DISCOVERY ORDER TOGETHER CONSTITUTED A "SUBSTANTIAL PRELIMINARY SHOWING" THAT THE WARRANT AFFIDAVIT INCLUDED MATERIAL FALSE STATEMENTS. DAVIS WAS ENTITLED TO A FRANKS HEARING.
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> III. THE COURT ERRED IN FAILING TO CONSIDER THE HARDSHIP OF DAVIS' INCARCERATION ON HIS CHILDREN AND GRANDCHILD AND IN SETTING A DISCRETIONARY PERIOD OF PAROLE INELIGIBILITY WITHOUT SUFFICIENT EXPLANATION.

II.

The Fourth Amendment to the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution "protect individuals' rights 'to be secure in their persons, houses, papers, and effects' by requiring that search warrants be 'supported by oath or affirmation' and describe with particularity the places subject to search and people or things subject to seizure." State v. Andrews, 243 N.J. 447, 464 (2020). A search executed pursuant to a warrant enjoys the presumption of validity. State v. Bivins, 226 N.J. 1, 11 (2016); State v. Marshall, 199 N.J. 602, 612 (2009). "Before issuing a warrant, the judge must be satisfied that there is probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is at the place sought to be searched." State v. Sullivan, 169 N.J. 204, 210 (2001); see also State v. Boone, 232 N.J. 417, 426 (2017).

"Probable cause for the issuance of a search warrant requires 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993)). "'[T]he probable cause determination must be . . . based on the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony

before the issuing judge that is recorded contemporaneously.'" Marshall, 199 N.J. at 611 (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)).

"[S]ubstantial deference must be paid by a reviewing court to the determination of the judge who has made a finding of probable cause to issue a search warrant." State v. Evers, 175 N.J. 355, 381 (2003). Any "[d]oubt as to the validity of the warrant 'should ordinarily be resolved by sustaining the search.'" State v. Keyes, 184 N.J. 541, 554 (2005) (quoting State v. Jones, 179 N.J. 377, 389 (2004)). The same applies in situations where "the adequacy of the facts offered to show probable cause . . . appear[] to be marginal." State v. Kasabucki, 52 N.J. 110, 116 (1968) (citing United States v. Ventresca, 380 U.S. 102, 109 (1965)).

Our Court has "upheld the issuance of a search warrant for an apartment unit based only on an informant's description of that unit." Boone, 232 N.J. at 428. However, "[c]ourts [must] consider the 'totality of the circumstances' and should sustain the validity of a search only if the finding of probable cause relies on adequate facts." Id. at 427 (quoting Jones, 179 N.J. at 388-89).

A trial judge's factual findings on a motion to suppress will be upheld if they are "supported by sufficient credible evidence in the record." See State

v. Scriven, 226 N.J. 20, 40 (2016). The defendant bears the burden of challenging the search and must "prove 'that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" Jones, 179 N.J. at 388 (quoting State v. Valencia, 93 N.J. 126, 133 (1983)). The judge's findings should be overturned "only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). However, we owe no deference to the trial judge's conclusions of law. Instead, our review is de novo. State v. Watts, 223 N.J. 503, 516 (2015).

Defendant's assertion that the affidavit demonstrated no "fact-based nexus between the alleged criminal activity and the location of the proposed search" is unsupported. The twenty-five-page affidavit, signed by both Detectives Jaremczak and DeJesus, provides the nexus between defendant's distributions, the apartment at Armstrong Lane, and the Honda. Specifically, the affiants, in addition to the observed drug transactions, had surveilled defendant on an "almost daily basis," observed his vehicle "parked in the parking spot for [the] apartment," and witnessed him "walking from the area of the door to [the] Armstrong" Lane apartment.

The affiants, based on their training and experience, attested that narcotics dealers use "different addresses where they can store their money, narcotics and weapons" and "different locations to distribute their narcotics . . . . to make it harder for law enforcement to locate them." The judge provided detailed factual findings from the affidavit, and appropriately found sufficient connection between the observations of the defendant at each sale, and defendant's activities specifically at the Armstrong Lane apartment. We concur with the judge that the affidavit provided a fair probability that contraband or evidence would likely be discovered on defendant, in his vehicle, and at the apartment. The judge appropriately distinguished the facts here from State v. Boone, finding defendant's demonstrated occupation of the apartment was well supported, and that a strong contemporaneous nexus was shown to the cocaine sales. See Boone, 232 N.J. at 426. The judge's findings that the affidavit provided probable cause for the search warrants is supported by sufficient credible evidence.

III.

We review a trial court's decision denying a Franks hearing for an abuse of discretion. State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009). An abuse of discretion will be found where the "'decision [was] made

without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. ex rel. USDA v. Scurry, 193 N.J. 492, 504 (2008) (alteration in original) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

When a defendant challenges the veracity of a search warrant affidavit, a Franks hearing is required "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included . . . in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause." 438 U.S. at 155-56. The defendant "must allege 'deliberate falsehood or reckless disregard for the truth,' pointing out with specificity the portions of the warrant that are claimed to be untrue." State v. Howery, 80 N.J. 563, 567 (1979) (quoting Franks, 438 U.S. at 171). Only where a defendant also establishes "the allegedly false statement [was] necessary to the [issuing judge's] finding of probable cause, [does] the Fourth Amendment require[] that a hearing be held at the defendant's request." State v. Desir, 245 N.J. 179, 196 (2021) (quoting Franks, 438 U.S. at 156). "These allegations should be supported by an offer of proof including reliable statements by witnesses." Howery, 80 N.J. at 567. "[N]o hearing is required" where the defendant fails

to make this substantial preliminary showing. Franks, 438 U.S. at 172. "A Franks hearing is not directed at picking apart minor technical problems with a warrant application; it is aimed at warrants obtained through intentional wrongdoing by law enforcement agents." Broom-Smith, 406 N.J. Super. at 240.

A defendant may also challenge a warrant affidavit on grounds the affiant made a material omission in the application. State v. Marshall, 148 N.J. 89, 193 (1997) (stating "[m]aterial omissions in the affidavit may also invalidate the warrant"). The Franks standard "requirements apply where the allegations are that the affidavit, though facially accurate, omits material facts." State v. Stelzner, 257 N.J. Super. 219, 235 (App. Div. 1992).

Defendant's claim that remand is mandated for a Franks hearing is unsupported by a credible showing that the detectives made false misrepresentations or material omissions in their affidavit. Defendant attacks the affidavit as to the three witnessed cocaine sales with a self-serving affidavit that he did not "make a sale during that period." Defendant's statement is uncorroborated by any other evidence. As correctly found by the judge, defendant did not specifically address that officers observed him

exiting the Armstrong Lane apartment, utilizing its designated parking spot, travelling to make the prearranged controlled purchases, and selling cocaine.

Similarly, defendant also argued he only intermittently stayed at the Armstrong apartment. We agree with the judge's finding that defendant's claim was unavailing. Defendant's inhabiting multiple locations does not refute the detectives' observations of defendant at the apartment on the days of the sales and at other times. Defendant produced no evidence to substantiate affiants attested to facts with a reckless disregard for the truth. See Howery, 80 N.J. at 566.

We are also unpersuaded by defendant's argument that the judge should have "revisited its order denying [a Frank's] hearing [because] the State refused to produce the [defendant's phone] number." This argument belies the fact that defendant chose to enter a plea while his order to show cause to dismiss for failing to produce the phone number, and the State's motion for reconsideration, were pending. Additionally, defendant has failed to demonstrate how the phone number would demonstrate any falsity in the affidavit. As acknowledged by defense counsel at argument before the judge, the main purpose of the discovery of the phone number was for "the credibility of the State's witnesses' testimony at trial." The judge

appropriately found defendant failed to make a substantial preliminary showing of any false misrepresentations and did not abuse his discretion in denying a Franks hearing.

IV.

Finally, we address defendant's argument that his sentence should be vacated, and the matter remanded for resentencing. Applying an abuse of discretion standard, we maintain a limited scope of review when considering sentencing determinations on appeal. See State v. Torres, 246 N.J. 246, 272 (2021). We do "not second-guess the sentencing court" and defer to the sentencing court's factual findings. State v. Case, 220 N.J. 49, 65 (2014). A sentence, therefore, must be affirmed "unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364−65 (1984)). The test also applies to "sentences that result from guilty pleas, including those guilty pleas that are entered as part of a plea agreement." State v. Fuentes, 217 N.J. 57, 71 (2014) (quoting State v. Sainz, 107 N.J. 283, 292 (1987)).

In imposing a sentence, the court must make individualized assessments based on the facts of each case and the aggravating and mitigating sentencing factors. See State v. Jaffe, 220 N.J. 114, 121-22 (2014). The judge must "state reasons for imposing such sentence including . . . the factual basis supporting a finding of particular aggravating or mitigating factors affecting [the] sentence." R. 3:21-4(h); see also N.J.S.A. 2C:43-2(e) (requiring sentencing court to state on the record the reasons for imposing a sentence and the "factual basis supporting its findings of particular aggravating or mitigating factors affecting sentence"). Fifteen aggravating factors are set forth in N.J.S.A. 2C:44-1(a), and fourteen mitigating factors are set forth in N.J.S.A. 2C:44-1(b). "[A] trial court should identify the relevant aggravating and mitigating factors, determine which factors are supported by a preponderance of evidence, balance the relevant factors, and explain how it arrives at the appropriate sentence." State v. O'Donnell, 117 N.J. 210, 215 (1989).

A court "must qualitatively assess" the factors it finds and assign each an "appropriate weight." Case, 220 N.J. at 65. The sentencing judge must explain his or her findings about each factor presented by the parties and how the factors were balanced to arrive at the sentence. Ibid. Our case law does

"not require . . . that the trial court explicitly reject each and every mitigating factor argued by a defendant," particularly when "we can readily deduce from the sentencing transcript" its reasoning. State v. Bieniek, 200 N.J. 601, 609 (2010).

When sentencing a defendant for multiple offenses, "such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence." N.J.S.A. 2C:44-(5)(a). In State v. Yarbough, 100 N.J. 627, 642-44 (1985), our Court established criteria that a sentencing court must consider when deciding whether to impose consecutive sentences. "The Yarbough factors are qualitative, not quantitative; applying them involves more than merely counting the factors favoring each alternative outcome." State v. Cuff, 239 N.J. 321, 348 (2019). A judge's explanation of what was considered is "invaluable to support the choice to impose a consecutive sentence, which will often increase the real time a defendant spends in custody as much as a decision to impose a sentence at the top of the sentencing range for an individual offense among several being imposed." Torres, 246 N.J. at 271.

Defendant argues the judge erred in rejecting without consideration mitigating factor eleven, N.J.S.A. 2C:44-1(b)(11), that imprisonment would

cause serious hardship, because defendant presented evidence he was integrally involved in his family's lives and incarceration would cause a hardship. The record demonstrates the judge appropriately considered the "submitted character letters on behalf of" defendant, and specifically went off the record to review the letter submissions from defendant's family which were provided on the day of sentencing. The judge noted defendant's relationship with his children and grandchild, and that defendant was recently married, but found no excessive hardship was demonstrated for defendant or his dependents. The judge found no mitigating factors, but determined aggravating factors three, six, and nine applied. We find no abuse of discretion.[4]

Defendant next argues the judge erred in sentencing defendant on count two to "a discretionary 54-month period of parole ineligibility" on his conviction for possession with intent to distribute, and that a detailed explanation was required "because the court was already compelled to run Davis' possession with intent to distribute conviction consecutive to his gun possession conviction[,] pursuant to N.J.S.A. 2C:39-4.1(d)." As

[4] Even if the judge erred, remand is not required. Since the judge found three aggravating factors and no mitigating factors, a lesser sentence could not have been justified on this record. See State v. Natale, 184 N.J. 488 (2005).

acknowledged by defendant at sentencing, he was subject to a mandatory extended term of incarceration for his conviction of second-degree possession with intent to distribute, upon application by the prosecuting attorney pursuant to N.J.S.A. 2C:43-6(f), because he was previously convicted of a CDS distribution offense. A mandatory extended term, pursuant to N.J.S.A. 2C:43-7(a)(3) and (c), would have provided a term of incarceration between ten and twenty years, with a five-year period of parole ineligibility.

The judge found that while defendant acknowledged that he pleaded guilty to a negotiated plea, which called for a fifty-four-month period of parole ineligibility, the parole ineligibility was considered discretionary because he was not advised until sentencing that the State was moving for an extended term. The judge, at sentencing, acknowledged pursuant to N.J.S.A. 2C:35-12 and N.J.S.A. 2C:43-6(f), based on defendant's plea to second-degree possession of cocaine with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(2), that defendant was subject to a mandatory extended term based on his prior conviction.

We observe question seven in the plea forms that defendant signed specifically addressed whether the guilty plea "require[d] a mandatory period of parole ineligibility or a mandatory extended term," and was answered in

the affirmative. The form specified that "the minimum mandatory period of parole ineligibility [was eight] years." Additionally, question fourteen, part b, asked whether the prosecutor promised that he or she would not "[s]eek an extended term of confinement," and if yes, was the promise "part of a negotiated plea where the prosecutor represent[ed] you [were] otherwise eligible to receive a mandatory extended term for repeat drug offenders and . . . agreed to request a period of incarceration or parole ineligibility that is less than what would be required on the extended term?" Defendant also answered this question in the affirmative.

Lastly, defendant answered question one of the supplemental drug offense form, which asked if he "and the Prosecutor entered into any agreement . . . for a lesser sentence or period of parole than . . . required?" in the affirmative, and referenced question thirteen of the main plea form that provided the agreed upon fifty-four-month period of parole eligibility on the nine-year sentence for count two, and the exact overall sentence received. The judge correctly found defendant entered into a negotiated plea and was subject to an extended term, but the plea agreement provided for a lesser period of parole ineligibility.

Our Court in State v. Courtney, 243 N.J. 77 (2020) discussed the effect of a negotiated plea on a sentencing judge's discretion, and stated:

> The [Comprehensive Drug Reform Act of 1987] . . . provides an exception to the imposition of [mandatory] sentences in the context of a negotiated plea agreement, N.J.S.A. 2C:35-12 (Section 12). Significantly, Section 12 renders immutable the sentence recommended under such a negotiated plea agreement: it "requires the sentencing court to enforce all agreements reached by the prosecutor and a defendant under that section and prohibits the court from imposing a lesser term of imprisonment than that specified in the agreement."
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> [Id. at 80 (quoting State v. Brimage, 153 N.J. 1, 9 (1998)).]

Pursuant to N.J.S.A. 2C:35-12, when a negotiated plea is entered, "the court at sentencing shall not impose a lesser term of imprisonment, lesser period of parole ineligibility . . . than that expressly provided under the terms of the plea."

Pursuant to N.J.S.A. 2C:39-7(b)(1), certain persons not to have weapons, defendant was subject to serve a five-year minimum term of parole ineligibility. Upon conviction for possession of a weapon, pursuant to N.J.S.A. 2C:39-4.1(a), defendant was subject to a mandatory consecutive term of imprisonment and subjected to a mandatory period of parole ineligibility under N.J.S.A.2C:43-6(c). The judge correctly precluded the

State from seeking a mandatory extended term on the count for possession with intent to distribute, and mindful of N.J.S.A. 2C:35-12, imposed the negotiated period of parole to be served concurrent with the possession of a weapon offense and consecutive to the certain persons not to have a weapon offense.

We agree with the State's contention that because consecutive sentences are mandated, under N.J.S.A. 2C:39-4.1(d), remand is not required as there is no sentencing discretion warranting explanation. In Torres, our Court held that an explanation for the overall fairness is necessary "to 'foster[] consistency in . . . sentencing in that arbitrary or irrational sentencing can be curtailed and, if necessary, corrected through appellate review.'" 246 N.J. at 272 (alteration and omission in original) (quoting State v. Pierce, 188 N.J. 155, 166–67 (2006)). The factual background in Torres, however, did not involve the presumption of consecutive sentences that arises under N.J.S.A. 2C:39-4.1(d), which applies here. We do not construe the general rule in Torres, that sentencing courts must consider the overall fairness of consecutive sentences, as altering the application of required mandatory consecutive sentences. Thus, remand is not warranted as the judge made

sufficient findings as to the mandatory consecutive sentences and periods of parole ineligibility imposed.

Defendant's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirm.