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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-2136-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JESUS A. ARAIZA-AVILA, a/k/a
JESUS A. ARAIZA-NAVA-AVILA,

Defendant-Appellant.

Submitted May 29, 2024 – Decided June 19, 2024

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law
Division, Burlington County, Indictment No. 07-11-
1631.

Jesus A. Araiza-Avila, appellant pro se.

LaChia L. Bradshaw, Burlington County Prosecutor,
attorney for respondent (Jennifer Bentzel Paszkiewicz,
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

A jury convicted defendant Jesus A. Araiza-Avila of murder and aggravated assault for the 2007 shooting death of the boyfriend of his child's mother and shooting the child's mother in the ankle. In 2009, defendant was sentenced to a thirty-year prison term with a thirty-year parole disqualifier on the murder conviction and a consecutive five-year prison term on the aggravated assault conviction, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. We affirmed defendant's convictions in an unpublished opinion, State v. Araiza-Nava-Avila, No. A-3621-09 (App. Div. Apr. 13, 2012). We also affirmed the court's denial of defendant's ensuing post-conviction relief (PCR) petition, State v. Araiza-Avila, No. A-3184-13 (App. Div. June 23, 2015), and a federal court denied his petition for a writ of habeas corpus, Araiza-Avila v. Warden of N.J. State Prison, No. 15-4003, 2019 U.S. Dist. LEXIS 48627 (D.N.J. Mar. 25, 2019). Defendant did not challenge his sentence on direct appeal or collateral attack.

Apparently, in September 2022, defendant filed a pro se motion styled as a motion to correct an illegal sentence.¹ We glean from the motion judge's written decision accompanying the October 26, 2022 order that defendant

¹ Defendant's moving papers are not included in the record provided on appeal. In its responding brief, without citation to the record, the State indicates the motion was filed on September 27, 2022.

challenged his sentence on various grounds. In essence, defendant claimed he was entitled to resentencing with the application of mitigating factor fourteen, N.J.S.A. 2C:44-1(b)(14), amended by the Legislature thirteen years after defendant committed the present offenses, and a litany of other mitigating factors, see N.J.S.A. 2C:44-1(b)(2) to (5), (8) to (9), (12). Defendant also argued the trial court inappropriately imposed consecutive sentences.

The motion judge found defendant's sentencing arguments, except his mitigating factor fourteen argument, could have been raised on direct appeal or PCR and, as such, did not give rise to an illegal sentencing argument. Compare Rule 3:22-4 (barring claims on PCR that could be raised on direct appeal) with Rule 3:21-10(b) (providing a court may correct an illegal sentence at any time before it is completed). Accordingly, the judge determined defendant's motion was untimely. The judge nonetheless thoroughly considered defendant's contentions on the merits, concluded they lacked merit, and denied relief without a hearing.

Self-represented on appeal, defendant abandons his mitigating factors argument, raising instead the following points for our consideration:

POINT I

THE LAW DIVISION ERRED IN CONCLUDING
THAT DEFENDANT'S MOTION TO CORRECT AN

ILLEGAL SENTENCE FILED THIRTEEN YEARS
AFTER HE WAS SENTENCED IS TIME BARRED.

POINT II

THE LAW DIVISION ERRED IN CONCLUDING THAT THE FIVE-YEAR CONSECUTIVE SENTENCE IS IN NO WAY ILLEGAL EVEN THOUGH IT DOES NOT COMPORT WITH STATE V. YARBOUGH, 100 N.J. 627 (1985) AND STATE V. TORRES, 246 N.J. 246 (2021).^[2]

Having considered defendant's contentions in view of the applicable law, we conclude they lack sufficient merit to warrant extended discussion in a written opinion, R. 2:11-3(e)(2). We add only the following brief remarks.

"[A]n illegal sentence is one that 'exceeds the maximum penalty . . . 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)). In the present matter, defendant's aggregate sentence does not exceed the maximum penalty and was imposed pursuant to the Criminal Code. Instead, defendant was sentenced to the lowest end of the permissible range for each conviction. See N.J.S.A. 2C:11-3(b)(1) (mandating a prison term "between [thirty] years and life imprisonment" with a mandatory parole ineligibility

² Unlike his first point, in his second point, defendant failed to cite "the place in the record where the opinion or ruling in question is located" or indicate "the issue was not raised below." See R. 2:6-2(a)(1).

period of thirty years); N.J.S.A. 2C:43-6(a)(2) (providing a term of imprisonment "between five years and [ten] years" for second-degree offenses).

Accordingly, as the motion judge correctly determined, because defendant did not raise a cognizable illegal sentencing argument, his contentions – raised for the first time thirteen years post-sentencing – were woefully out of time. Nonetheless, the judge found defendant's consecutive sentences were appropriately imposed. The judge elaborated: "There were two separate acts committed. First, [defendant] purposely shot [the boyfriend of his child's mother]. Next, he spoke to the mother of his child" and said "it was 'her turn.'" Defendant "then shot her" and "quickly departed without rendering any aid to either victim." See Yarbough, 100 N.J. at 644 (recognizing the court's discretion to impose consecutive sentences when the "crimes involved multiple victims"). We discern no error in the judge's analysis.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION