

**NOT FOR PUBLICATION WITHOUT THE
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-2592-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ORIENTAL J. HAMLET, a/k/a
ORIENTAL J. HAMLET, II,
and BABY J ORIENTAL JUAN
HAMLET,

Defendant-Appellant.

Submitted May 19, 2022 – Decided June 2, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment Nos. 18-04-0258 and 18-12-1098.

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

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Steven Cuttonaro, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

After defendant pled guilty to two counts of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), the trial judge sentenced him to concurrent fifteen-year terms in prison, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and five years of parole supervision upon release. On appeal, defendant challenges his sentence and raises the following contentions:

POINT I

THIS COURT SHOULD REMAND FOR RESENTENCING FOR THE TRIAL COURT TO RECONSIDER DEFENDANT'S SENTENCE BASED ON THE NEW MITIGATING FACTOR, "THE DEFENDANT WAS UNDER [TWENTY-SIX] YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE," N.J.S.A. 2C:44-1(b)(14), AND BECAUSE THE TRIAL COURT ERRED IN ITS FINDING AND WEIGHING OF AGGRAVATING AND MITIGATING FACTORS.

A. The New Youth Mitigating Factor Law Should Be Given Retroactive Application.

B. Defendant's Sentence of [Fifteen] Years With [Twelve] Years And Eight Months Of Parole Ineligibility Is Excessive Because The Trial Court Erred In Its Finding And Weighing Of Aggravating And Mitigating Factors.

For the reasons that follow, we vacate defendant's sentence and remand for resentencing.

We employ a deferential standard when reviewing a trial court's sentencing decision. State v. Grate, 220 N.J. 317, 337 (2015); State v. Fuentes, 217 N.J. 57, 70 (2014). "[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). The court "must qualitatively assess" the factors it finds, and assign each "its appropriate weight." State v. Case, 220 N.J. 49, 65 (2014).

The court must "explain clearly why an aggravating or mitigating factor presented by the parties was found or rejected and how the factors were balanced to arrive at the sentence." Id. at 66. However, the court must also consider "mitigating factors that are suggested in the record[.]" State v. Blackmon, 202 N.J. 283, 297 (2010). Where mitigating factors "are amply based in the record . . . , they must be found." State v. Dalziel, 182 N.J. 494, 504 (2005). "In short, mitigating factors 'supported by credible evidence' are required to 'be part of the deliberative process.'" Case, 220 N.J. at 64 (quoting Dalziel, 182 N.J. at 505). "When the trial court fails to provide a qualitative analysis of the relevant

sentencing factors on the record, an appellate court may remand for resentencing." Fuentes, 217 N.J. at 70.

During his oral sentencing decision, the trial judge stated he considered and found mitigating factor seven, N.J.S.A. 2C:44-1(b)(7), "[t]he defendant has no history of prior delinquency or criminal activity[.]" even though defendant had a juvenile record. The judge stated, "I will consider that factor, but give it very slight weight given the seriousness of the juvenile offenses." Moments later, however, the judge summed up his findings on the aggravating and mitigating factors by stating, "In short, there are no mitigating factors." In the two judgments of conviction, the judge stated, "There being no mitigating factors, I find that the aggravating factors preponderate."¹

Because of these inconsistent statements, we cannot be sure whether the judge found and applied mitigating factor seven as he initially stated in his decision. "In the event of a discrepancy between the [trial] court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the sentencing transcript controls and a corrective judgment is to be

¹ The judge found aggravating factors three, N.J.S.A. 2C:44-1(a)(3), and nine, N.J.S.A. 2C:44-1(a)(9). The judge considered and rejected mitigating factors four, N.J.S.A. 2C:44-1(b)(4), eight, N.J.S.A. 2C:44-1(b)(8), and nine, N.J.S.A. 2C:44-1(b)(9).

entered." State v. Abril, 444 N.J. Super. 553, 564 (App. Div. 2016). Here, however, the sentencing transcript is far from clear as to the judge's intent. Under these circumstances, we must vacate defendant's sentence and remand for resentencing so that the trial court may reconsider the aggravating and mitigating factors and make detailed, consistent findings concerning each of them. We suggest no opinion as to the court's ultimate findings or resultant sentence.

In light of this determination, we need only briefly comment upon defendant's argument that N.J.S.A. 2C:44-1(b)(14) should be applied to his pending appeal. The trial judge sentenced defendant on October 25, 2019, and signed the judgments of conviction on November 7, 2019. Our Legislature later enacted N.J.S.A. 2C:44-1(b)(14) which, effective October 19, 2020, allows a sentencing judge to consider a defendant's youth as a statutory mitigating factor. Defendant argues that this statute should apply to him retroactively even though he was sentenced prior to its enactment. The State disagrees.

Because of the unique procedural posture of this case, we need not address this specific issue. We have vacated defendant's sentence and remanded for resentencing. As this court recently observed, "[w]hen an appellate court orders a resentencing, a defendant is ordinarily entitled to a full rehearing." State v.

Bellamy, 468 N.J. Super. 29, 39 (App. Div. 2021) (citing Case, 220 N.J. at 70). Thus, "[t]he resentencing judge must 'view [the] defendant as he stands before the court on that day unless the remand order specifies a different and more limited resentencing proceeding'" Id. at 39-40 (quoting State v. Randolph, 210 N.J. 330, 354 (2012)). Because the judge who will resentence defendant will view him "as he stands before the court on that day[.]" the judge may consider defendant's arguments concerning his age at the time he committed the offense involved in this case and apply the new mitigating factor set forth in N.J.S.A. 2C:44-1(b)(14). Id. at 44 (quoting Randolph, 210 N.J. at 354).

Vacated and remanded. 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