

STATE OF NEW JERSEY
V
RAHEE LANE

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO: A-000092-20
BEFORE: PART F
JUDGES: FISHER
GUMMER

ORAL ARGUMENT DATE: MARCH 23, 2021

DECIDED DATE: MARCH 23, 2021

O R D E R

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT ON A SENTENCING CALENDAR PURSUANT TO R. 2:9-11, IT IS HEREBY ORDERED AS FOLLOWS:

In 2017, defendant pleaded guilty to committing two counts of first-degree armed robbery, first-degree kidnapping, and second-degree unlawful possession of a weapon, arising out of events that occurred on March 18, 2015. Defendant was born on March 17, 1996, and, so, he was nineteen at the time of his criminal offenses. He was sentenced on December 14, 2017, pursuant to a negotiated plea agreement, to three fourteen-year prison terms in accordance with NERA – to run concurrently – on the two armed robbery counts and the one kidnapping count; a ten-year prison term, with five years of parole ineligibility – also ordered to run concurrently with the other prison terms – was imposed on the weapons conviction.

Defendant argues he should be resentenced to allow for the sentencing judge's application of a mitigating factor adopted and signed into law on October 19, 2020. See L. 2020, c. 110. This new mitigating factor allows a sentencing judge to consider that "[t]he defendant was under 26 years of age at the time of the commission of the offense." This new law stated that it "shall take effect immediately."

Defendant may have been under twenty-six years of age at the time he committed his crimes, but he is not entitled to the benefit of this new mitigating factor. The parties have referred us to an unpublished opinion – State v. Brown, No. A-0972-18 (App. Div. Jan. 14, 2021) – in which we determined that this new law was not to be given retroactive effect. We, of

course, cannot refer to this opinion, since it has no precedential value. See R. 1:36-3. But we agree with the State's position that this mitigating factor has no application when a defendant was already sentenced – and serving that sentence – at the time the new law was adopted. The Legislature clearly expressed its intent that the mitigating factor would be effective "immediately," which must be understood as meaning that sentencing judges were obligated – when factually applicable – to consider this mitigating factor in sentences imposed thereafter. It does not mean that the mitigating factor would require the alteration of sentences previously imposed, even if the sentence was being challenged on appeal at the time the new law was adopted.

We find no merit in any of defendant's other arguments. The judgment under review is affirmed.

FOR THE COURT:



CLARKSON S. FISHER JR., P.J.A.D.

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