

STATE OF NEW JERSEY
V
CYNTHIA RIVERA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO: A-004825-18
BEFORE: PART H
JUDGES: FUENTES
ENRIGHT

ORAL ARGUMENT DATE: APRIL 01, 2020

DECIDED DATE: APRIL 01, 2020

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:

Having considered the record and argument of counsel, and it appearing that the issues on appeal relate solely to the sentence imposed, we are satisfied that the sentence is not manifestly excessive or unduly punitive and does not constitute an abuse of discretion. State v. Cassady, 198 N.J. 165 (2009); State v. Roth, 95 N.J. 334 (1984).

The judgment of the trial court is affirmed.

FOR THE COURT:



JOSE L. FUENTES, P.J.A.D.

MIDDLESEX
18-05-00681-I

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A.D. #A-004825-19-T05

STATE OF NEW JERSEY)	
)	TRANSCRIPT
v.)	
)	OF
CYNTHIA RIVERA,)	
)	SOA
Defendant.)	

Place: Hughes Justice Complex
8th Floor, North Wing
Trenton, New Jersey

Date: April 1, 2020

B E F O R E:

THE HON. JOSE L. FUENTES, J.A.D.
THE HON. CATHERINE I. ENRIGHT, J.A.D.

A P P E A R A N C E S:

For the State:

KEITH L. ABRAMS, Middlesex County Assistant Prosecutor

For the Appellant:

MORGAN BIRCK, Assistant Deputy Public Defender

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1 JUDGE FUENTES: The next matter is State
2 versus Cynthia Rivera.

3 MS. BIRCK: Morgan Birck, Assistant Deputy
4 Public Defender, on behalf of Ms. Rivera.

5 MR. ABRAMS: Assistant Prosecutor Keith
6 Abrams for the State from the Middlesex County
7 Prosecutor's Office. Good morning.

8 JUDGE FUENTES: Good morning. Counsel?

9 MS. BIRCK: Ms. Rivera was convicted of first
10 degree aggravated manslaughter, aggravated assault, and
11 conspiracy to commit robbery. The aggregate sentence
12 was a 15-year sentence subject to NERA, and when the
13 judge, the sentencing judge was imposing sentence, he
14 applied aggravating factors 3 and 9 and found
15 mitigating factors 7 and 12.

16 What's important here is that the judge
17 imposed both aggravating factor 3 and mitigating factor
18 7, even though these factors stand in counterpoise,
19 without an adequate reasoned explanation for applying
20 both of those factors at the same time. And for that
21 reason -- the judge should have given more weight to
22 mitigating factor 7 and less weight to aggravating
23 factor 3 on this record, and the mitigating factors
24 should have substantially outweighed the aggravating
25 factors, which would allow for the judge to downgrade,

1 or at least lessen Ms. Rivera's sentence in this case.

2 State v. Case talks about how these two
3 factors can be found together, but really emphasizes
4 that there needs to be a reasoned explanation,
5 especially when there's no criminal history on -- or
6 little criminal history on the defendant's -- in the
7 defendant's past.

8 And in this case Ms. Rivera had absolutely no
9 criminal history. There was no juvenile history.
10 There was no adult history, and she -- there wasn't
11 even an arrest on her record. She had absolutely
12 nothing for the judge to say that mitigating factor 7
13 was afforded so little weight, while aggravating factor
14 3 was afforded great weight in this case.

15 And, in fact, the judge seemed to indicate
16 that the reason that he was giving great weight to
17 aggravating factor 3 was because she hadn't had time
18 yet to commit another crime. And so it seems like he
19 was giving such great weight to aggravating factor 3 on
20 the basis that he believed in the future she would
21 commit a crime simply because she was young at the age
22 that she committed this offense, which was 18 years
23 old. However, it's --

24 JUDGE FUENTES: What about --

25 MS. BIRCK: I'm sorry?

1 JUDGE FUENTES: -- (indiscernible) of the
2 crime itself? I mean there's two -- one man was killed
3 and another man was seriously injured. This -- she and
4 another woman lured these two men to a motel room for
5 the purpose of robbing them, and one of them was
6 killed, and the other one was seriously injured. What
7 about the shock aspect of this horrific crime? Isn't
8 that a basis for aggravating factor 3?

9 MS. BIRCK: Yes, Your Honor, but aggravating
10 factor 3 also does talk about the risk of reoffense,
11 and there was really no explanation for why this --
12 like this -- what happened in this crime itself would
13 be a reason why she would commit another offense here.
14 It was just the fact that she did commit this offense
15 would give a risk of reoffense in the future, even
16 though she didn't have any history in the past.

17 There's really no indication that just
18 because this offense happened that a -- that she was
19 going to commit another offense when her entire history
20 had been clear at that point.

21 And briefly, just talking about her age at
22 the time, she was 18. She was right on the cusp of the
23 cutoff for the Miller, (indiscernible), Zuber line of
24 cases, which talk about a juvenile's developing brain,
25 and those cases really talk about how as somebody gets

1 older they're less likely to commit crimes, and that
2 young people tend to be more -- they tend to take
3 bigger risks and do things that are reckless.

4 So, there's really no basis in the science
5 either that the judge thinks that, if she were let out,
6 that she would continue to commit crimes as she got
7 older. There's -- the science indicates that she would
8 actually be less likely to commit future offenses,
9 especially since she had no prior record.

10 So, for those reasons we ask that this case
11 be remanded for a resentencing, so to give proper
12 weight to the aggravating and mitigating factors.

13 JUDGE FUENTES: Okay. Thank you.

14 JUDGE ENRIGHT: I have a question for
15 counsel, please. It's Judge Enright. On Page 10 of
16 the sentencing transcript, the judge references that
17 the PSI was read, that he read the PSI, meaning the
18 presentence interview, and in the presentence interview
19 there's a significant substance abuse history listed.

20 MS. BIRCK: Yes.

21 JUDGE ENRIGHT: So you're still maintaining
22 that there's -- that the risk factor should not have
23 been found?

24 MS. BIRCK: Yes, and, in fact, I don't think
25 that a substance abuse issue would be a reason to apply

1 factors -- aggravating factor 3 as an aggravating
2 factor here.

3 JUDGE ENRIGHT: Do you think it impacts the
4 mitigating factor 7 with respect to the defendant
5 leading a law-abiding life when there's such a
6 significant substance abuse history listed?

7 MS. BIRCK: Since she has not been arrested
8 or convicted of any crimes with those, I don't think
9 that those would apply for the mitigating factor 7
10 either simply because her -- the actual criminal
11 history in terms of being arrested or convicted of
12 anything is absent of any arrest or conviction.

13 JUDGE FUENTES: Well, in State v. Bieniek,
14 200 N.J. 601, the Supreme Court says that substance
15 abuse history can be a basis for aggravating factor 3.

16 MS. BIRCK: Yes, Your Honor. However, in
17 this case just because there is no -- I mean there's no
18 -- nothing on the record that really shows -- and this
19 is her own telling the Court that she has engaged in
20 this behavior before, but her actual engagement with
21 the law up to this point had not been great at all and
22 -- or really existed at all.

23 And the Court still has to give a reasoned
24 explanation for the reason that they're applying both
25 of these factors, and those -- the separate

1 explanations that he gave or the sentencing court gave
2 just were inadequate in this case.

3 JUDGE ENRIGHT: Thank you.

4 JUDGE FUENTES: Thank you. Counsel for the
5 State.

6 MR. ABRAMS: I'll be brief, judges. And,
7 respectfully, I don't understand what else defense
8 counsel wanted from Judge Jimenez here. I was the
9 trial prosecutor on this case, and Judge -- I remember
10 this argument, Judge Jimenez very clearly laid out the
11 mitigating factors and aggravating factors addressed by
12 the Court.

13 My reading of the sentencing transcript, I
14 think defense counsel may have it switched around. The
15 judge very clearly explains why he's finding
16 aggravating factor 3. In fact, all of Page 11 covers
17 it, and it's exactly as Your Honors both point out. We
18 have the extensive drug history that was continued all
19 the way up to the instant offense, as well as the
20 heinous nature of the offense, the thorough planning
21 that this defendant put into this scheme, which when
22 you read the facts, it essentially is a felony murder
23 crossing state lines, which she was one of the
24 masterminds behind.

25 And what the judge does say regarding the --

1 her being young and not -- that goes towards mitigating
2 factor 7 and why he finds it, but doesn't give it great
3 weight because she's only 18 and she's already
4 committed an aggravated manslaughter. I'm sorry.
5 She's 19 now at the time of the sentencing, and so she
6 hasn't had enough -- in the judge's position hasn't had
7 enough time to go forth and really see how her life is
8 going to play out.

9 He acknowledges that she has no prior
10 juvenile history, but he explained -- the judge
11 explains very clearly why he -- essentially the judge
12 explains for each factor that he finds why he finds it,
13 and whether or not he gives it certain -- you know,
14 great or little weight or moderate weight, and that is
15 all that's required of the Court here.

16 And I submit that the Court did everything
17 that it was required to do in this case in coming to
18 the sentence that was imposed. So, unless the Court
19 has any further questions, I'll submit on that in the
20 record.

21 JUDGE FUENTES: Okay. Thank you.

22 MR. ABRAMS: Thank you.

23 JUDGE ENRIGHT: Thank you.

24 * * * * *

25

C E R T I F I C A T I O N

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