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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0185-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MIGUEL DELGADOBENITEZ,
a/k/a MIGUEL DELGADO-
BENITEZ,

Defendant-Appellant.

Submitted October 24, 2022 – Decided November 29, 2022

Before Judges Whipple, Mawla and Smith.

On appeal from the Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
17-08-0878.

Joseph E. Krakora, Public Defender, attorney for
appellant (Ruth E. Hunter, Designated Counsel, on the
brief).

Yolanda Ciccone, Middlesex County Prosecutor,
attorney for respondent (Patrick F. Galdieri, II,
Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant appeals from a March 23, 2018 judgment of conviction after pleading guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1). We affirm.

Defendant raises the following arguments on appeal.

I. THIS COURT SHOULD REMAND FOR RESENTENCING BECAUSE THE TRIAL COURT: (1) FAILED TO CONSIDER DEFENDANT'S YOUTH; (2) IMPOSED AN EXCESSIVELY DISPARATE SENTENCE AS COMPARED TO THE OLDER CODEFENDANT; AND (3) ERRED IN NOT FINDING MITIGATING FACTOR [THIRTEEN]. THE RESENTENCING COURT SHOULD APPLY THE YOUTH 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).

A. A Remand For Resentencing is Necessary For the Trial Court To Consider Defendant's Youth.

B. Defendant Received an Excessively Disparate Sentence As Compared to His Older Co-defendant.

C. A Remand For Resentencing is Further Necessary Because the Trial Court Should Have Found Mitigating Factor [Thirteen].

D. At the Resentencing, The Trial Court Should Apply The Youth Mitigating Factor.

Defendant also submitted a pro se supplemental letter brief reiterating the above arguments regarding N.J.S.A. 2C:44-1(b)(14).

On December 6, 2016, defendant and his uncle, Juan Marrero-Cardona, executed a planned armed robbery of sixty-three-year-old Briccio Guevara. During the robbery, defendant shot the victim in the back, killing him.

Defendant was charged with first-degree murder, N.J.S.A. 2C:11-3(a)(1); first-degree felony murder, N.J.S.A. 2C:11-3(a); first-degree armed robbery, N.J.S.A. 2C:15-1(a)(1) and N.J.S.A. 2C:2-6; second-degree conspiracy to commit armed robbery, N.J.S.A. 2C:15-1(a)(1) and N.J.S.A. 2C:5-2; second-degree possession of a weapon for unlawful purpose, N.J.S.A. 2C:39-4(a)(1); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d); third-degree hindering, N.J.S.A. 2C:29-3(a), 2C:29-3(b) and 2C:29-3(b)(1); and fourth-degree false reports to law enforcement N.J.S.A. 2C:28-4(b)(1). Defendant's uncle, Juan Marrero-Cardona, was a co-defendant.

Defendant pled guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1) and third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d). In turn, the State recommended defendant be sentenced to a twenty-five-year term subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, for the manslaughter charge, and a concurrent

five-year term subject to two and a half years of parole ineligibility for the weapons offense, and dismissal of all other charges.

The trial judge imposed a sentence consistent with this agreement and dismissed all other charges. The judge found aggravating factors nine, the need to deter, and twelve, the offense was committed against a person defendant should have known was over sixty. N.J.S.A. 2C:44-1(a)(9), (12). The judge found no mitigating factors.¹ This appeal followed.

We review a sentencing court's imposition of a sentence under an abuse of discretion standard. State v. Torres, 246 N.J. 246, 272 (2021); State v. Jones, 232 N.J. 308, 318 (2018). We review a sentence "in accordance with a deferential standard." State v. Trinidad, 241 N.J. 425, 453 (2020) (citing State v. Fuentes, 217 N.J. 57, 70 (2014)).

Defendant argues he received an excessively disparate sentence when compared to co-defendant Marrero-Cardona. Marrero-Cardona was sentenced to ten years with NERA. Defendant argues that his sentence of twenty-five years was "unduly and excessively disparate" because he and Marrero-Cardona

¹ The judgment of conviction lists one mitigating factor. However, a review of the sentencing transcript reveals the judge found no mitigating factors. When there is a discrepancy between the transcript and the judgment of conviction, the transcript controls. State v. Abril, 444 N.J. Super. 553, 564 (App. Div. 2016).

were sufficiently similar, as required by State v. Roach, 146 N.J. 208, 233 (1996). Defendant argues that although he was the one who fired the gun, he believed the gun was fake. He also asserts Marrero-Cardona was the "impetus" for the crime.

New Jersey views uniformity as "a firm judicial commitment." Id. at 231. "Disparity may invalidate an otherwise sound and lawful sentence." Id. at 232. However, a sentence "is not erroneous merely because a co-defendant's sentence is lighter." Ibid. (quoting State v. Hicks, 54 N.J. 390, 391 (1969)). The central question in assessing disparity in sentences is "whether the disparity is justifiable or unjustifiable." Id. at 233. The court must determine "whether the co-defendant is identical or substantially similar to the defendant regarding all relevant sentencing criteria." Ibid.

We reject defendant's argument. There is substantial evidence in the record to support the disparity in sentencing between defendant and Marrero-Cardona. Defendant and Marrero-Cardona pled guilty to different crimes with significantly different sentencing guidelines. Defendant pulled the trigger and pled guilty to both aggravated manslaughter and a weapons charge. Marrero-Cardona pled guilty to conspiracy to commit armed robbery. Moreover, defendant had a previous conviction for assault, but Marrero-Cardona had no

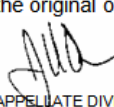
criminal history. Defendant and Marrero-Cardona were not "identical or substantially similar" in the actions they took during the crime, nor their criminal histories.

We also reject defendant's argument a remand is necessary for resentencing because the court erred in not applying mitigating factor thirteen. N.J.S.A. 2C:44-1(b)(13) requires the court to consider whether "[t]he conduct of a youthful defendant was substantially influenced by another person more mature than the defendant[.]" Although he was a co-defendant in the robbery, our review discloses insufficient evidence in the record tending to prove Marrero-Cardona substantially influenced defendant such that we would conclude the omission constituted a sentencing error.

Defendant argues he is eligible to be resentenced by applying the newly enacted youth mitigating factor retroactively. However, the Court in State v. Lane, 251 N.J. 84, 97 (2022), recently held that this amendment's language and legislative history indicates an intent to apply the statute prospectively rather than retroactively.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION