SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3598-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASOOL McCRIMMON, a/k/a
RASOOL W. McCRIMMON,
DAHEEM McWRITTE,
DAHEEM McWRITE,
ANTHONY M. WOODS, and
OOKIE,

Defendant-Appellant.

Submitted October 26, 2022 – Decided November 15, 2022

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 05-01-0054.

Rasool McCrimmon, appellant pro se.

Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney for respondent (Lucille M. Rosano, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Following his conviction for murder and weapons offenses, on August 13, 2007, the trial court sentenced defendant Rasool McCrimmon to a fifty-year term of imprisonment with a thirty-year period of parole ineligibility. Eight days later, after the State informed the court that it failed to impose the mandatory period of parole ineligibility under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, the court resentenced defendant to a fifty-year term of imprisonment subject to NERA's eighty-five percent parole disqualifier. Now, defendant, who is self-represented, appeals from a July 7, 2021 order denying his motion to correct what he contends is an illegal sentence. We disagree and affirm.

I.

The procedural history and facts of this case are set forth in our prior opinion, State v. McCrimmon, No. A-0477-07 (App. Div. Aug. 18, 2011). A jury found defendant guilty of first-degree purposeful or knowing murder of Darius Davis, in violation of N.J.S.A. 2C:11-3(a)(1) or (2) (count one); third-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b) (count two); and second-degree possession of a handgun for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(a) (count three). We affirmed

defendant's conviction and corrected sentence. The Supreme Court denied certification. State v. McCrimmon, 209 N.J. 232 (2012).

On June 14, 2021, defendant filed a pro se motion to correct an illegal sentence under Rule 3:21-10(b)(5). Defendant contended his resentencing, which resulted in an increase in his parole ineligibility period, was illegal because it violated his double jeopardy rights.

On July 7, 2021, the motion court issued a written opinion letter and order denying defendant's motion. The motion court highlighted the resentencing court's observation that defendant has "[thirteen] petitions as a juvenile" and "[ten] arrests as an adult." In its decision, the motion court referenced the resentencing court's decision:

> So in order to bring the sentence into compliance with [NERA], the sentence as reflected in the [j]udgment of [c]onviction for [c]ount [o]ne of this indictment, at least as to the custodial aspect of it, is modified to reflect that of the [fifty]-year sentence he will be required to do [eighty-five] percent of it before he's eligible for parole. . . .

The motion court noted a sentence can be changed by way of notice of motion or on a court's own initiative within seventy-five days from the judgment of conviction pursuant to Rule 3:21-10(a). Because the original sentence did not include the mandatory minimum period of parole ineligibility required under

NERA, the resentencing court timely modified and corrected the sentence.[1] Consequently, defendant's motion to correct an illegal sentence was denied, and a memorializing order was entered.

On appeal, defendant presents the following points for our consideration:

> POINT I
>
> THE SENTENCING COURT ILLEGALLY ENHANCED DEFENDANT'S SENTENCE[,] SUBJECTING HIM TO DOUBLE JEOPARDY AND VIOLATI[NG] . . . HIS RIGHTS UNDER THE UNITED STATES AS WELL [AS] THE NEW JERSEY CONSTITUTION[S].
>
> POINT II
>
> THE TRIAL COURT ERRED BY SENTENCING [DEFENDANT] SUA SPONTE[] TO A GREATER TERM, THEREFORE VIOLATING [N.J.S.A. 2C:44-1(f)(2)]. (NOT RAISED BELOW).
>
> POINT III
>
> THE DISCREPANCY BETWEEN THE JUDGMENT OF CONVICTION AND THE SENTENCING TRANSCRIPT MUST BE CORRECTED AND THE MATTER SHOULD BE SCHEDULED FOR RESENTENCING.
>
> POINT IV
>
> DEFENDANT RESERVES THE RIGHT TO PRESENT NEW MITIGATING FACTORS AT

[1] N.J.S.A. 2C:43-7.2(d)(1)(amended 2001).

SENTENCING IN ACCORDANCE WITH STATE V. [RANDOLPH, 210 N.J. 330 (2012)].

II.

Whether a sentence is illegal is an issue of law that we review de novo. State v. Drake, 444 N.J. Super. 265, 271 (App. Div. 2016). "An illegal sentence that has not been completely served may be corrected at any time without impinging upon double[]jeopardy principles." State v. Austin, 335 N.J. Super. 486, 494 (App. Div. 2000). Our Supreme Court has reiterated "[t]here are two categories of illegal sentences: those that exceed the penalties authorized for a particular offense, and those that are not authorized by law." State v. Hyland, 238 N.J. 135, 145 (2019) (citing State v. Schubert, 212 N.J. 295, 308 (2012)).

These categories "have been 'defined narrowly.'" Ibid. (quoting State v. Murray, 162 N.J. 240, 246 (2000)). "[E]ven sentences that disregard controlling case law or rest on an abuse of discretion by the sentencing court are legal so long as they impose penalties authorized by statute for a particular offense and include a disposition that is authorized by law." Id. at 146. Under Rule 3:21-10(b)(5), "an order may be entered at any time . . . correcting a sentence not authorized by law including the Code of Criminal Justice."

Here, the sentence originally imposed was illegal because it was not authorized by law; it did not include NERA's mandatory period of parole

ineligibility for a murder conviction. See N.J.S.A. 2C:43-7.2(d)(1) (providing in part that a court "shall" impose the mandatory period of parole ineligibility required under N.J.S.A. 2C:43-7.2(a) on a conviction for "murder"); see also Schubert, 212 N.J. at 308-09 (finding the defendant's original sentence illegal as "not authorized by our criminal code" because it did not include service of the mandatory special sentence of community supervision for life). It is uncontroverted the sentencing court recognized the error and corrected defendant's sentence eight days after the original illegal sentence was imposed. Clearly, the sentence was modified well within the seventy-five-day time period required under Rule 3:21-10(a).

The double jeopardy clauses of the Federal and New Jersey Constitutions provide that no person shall be tried twice for the same criminal offense. U.S. Const. amend. V; N.J. Const. art. I, ¶ 11. Our Supreme Court "has consistently interpreted the State Constitution's double[]jeopardy protection as coextensive with the guarantee of the Federal Constitution." State v. Miles, 229 N.J. 83, 92 (2017) (citing Schubert, 212 N.J. at 304).

"The Double Jeopardy Clause contains three protections for defendant. It protects against (1) 'a second prosecution for the same offense after acquittal,' (2) 'a second prosecution for the same offense after conviction,' and (3) 'multiple

punishments for the same offense.'" Ibid. (quoting North Carolina v. Pearce, 395 U.S. 711, 717 (1969)). In examining the first two protections, the focus is on "whether the second prosecution is for the same offense involved in the first." Id. at 93 (quoting State v. Yoskowitz, 116 N.J. 679, 689 (1989)). The third protection applies only to the imposition of multiple criminal punishments for the same offense. Hudson v. United States, 522 U.S. 93, 99 (1997); State v. Eisenman, 153 N.J. 462, 468 (1998).

There are no double jeopardy issues implicated when a court timely corrects a sentence that was illegal when it was imposed, as in the matter under review. As noted, "[a]n illegal sentence that has not been completely served may be corrected at any time without impinging upon double[]jeopardy principles." See Austin, 335 N.J. Super. at 494. The sentencing court issued the amended judgment of conviction to correct defendant's illegal sentence prior to the completion of his custodial sentence. See Schubert, 212 N.J. at 309 (quoting Murray, 162 N.J. at 247) ("[A]n illegal sentence 'may be corrected at any time before it is completed.'"). Accordingly, we conclude defendant's double jeopardy protections afforded under the Federal and State constitutions were not violated, and we discern no error.

III.

In his final point, defendant seeks to "reserve" the right to present new mitigating factors at resentencing in accordance with our Supreme Court's holding in Randolph. Defendant also seeks to be resentenced under N.J.S.A. 2C:44-1(b)(14), which provides that a sentencing judge "may properly consider . . . [t]he defendant was under [twenty-six] years of age at the time of the commission of the offense." We generally do not consider claims, such as these, that are raised for the first time on appeal and do not "go to the jurisdiction of the trial court or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). In any event, we reject defendant's claim that we should in some manner consider mitigating factor fourteen's application to his sentence because he was resentenced long before the statute adding the factor was enacted.

Our Supreme Court in State v. Lane held "[t]he [amended] statute is devoid of the slightest hint that the Legislature intended mitigating factor fourteen to apply retroactively." 251 N.J. 84, 96 (2022) (citing L. 2020, c. 110.) The Court concluded the "Legislature's use of the language 'take effect immediately' when it adopted N.J.S.A. 2C:44-1(b)(14)" and found "no suggestion in N.J.S.A. 2C:44-1(b)(14)—let alone the clear, strong and

imperative declaration that our law demands for the presumption of prospective effect to be overcome—that the Legislature intended otherwise." Ibid.

Given the Court's clear pronouncement on the legislative intent to give prospective application to the statute and because defendant is not entitled to a resentencing, we decline to address defendant's argument that he should be entitled to reserve application of N.J.S.A. 2C:44-1(b)(14) at another sentencing hearing.

The remaining arguments advanced by defendant—including his assertion the resentencing court erred by sentencing him to a greater term in violation of N.J.S.A. 2C:44-1(f)(2)—are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.