

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
APP. DOCKET NO. A-000916-24-T2

ACCUSATION NO. 24-04-00437

STATE OF NEW JERSEY :

Plaintiff-Respondent, :

v. :

B [REDACTED] C. L [REDACTED] :

Defendant-Appellant. :

CRIMINAL ACTION

ON APPEAL FROM A FINAL  
JUDGMENT IN THE SUPERIOR  
COURT OF NEW JERSEY,  
LAW DIVISION (CRIMINAL PART)  
MIDDLESEX COUNTY

SAT BELOW: Honorable Thomas B. Abode, J.S.C.  
Honorable Deborah J. Venezia, P.J. F.P.

---

REDACTED

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT B [REDACTED] C. L [REDACTED]

DEFENDANT IS CONFINED

---

HELMER, CONLEY & KASSELMAN, P.A.  
92 West Main Street  
Freehold, NJ 07728

Patricia B. Quelch  
Attorney ID No. 027111985  
Counsel and  
On the Brief  
Phone (848) 207-3500  
e-mail: PatriciaQuelch@HelmerLegal.com

Date Submitted: May 21, 2025

TABLE OF CONTENTS

	<u>Page</u>
<u>TABLE OF JUDGMENTS, ORDERS AND RULINGS</u> .....	ii
<u>TABLE OF APPENDIX</u> .....	ii
<u>TABLE OF AUTHORITIES</u> .....	iii
<u>TABLE OF TRANSCRIPTS</u> .....	ix
<u>PRELIMINARY STATEMENT</u> .....	1
<u>STATEMENT OF PROCEDURAL HISTORY</u> .....	2
<u>STATEMENT OF FACTS</u> .....	3
<u>WAIVER HEARING</u> .....	3
<u>PLEA</u> .....	5
<u>SENTENCING</u> .....	6
<u>LEGAL ARGUMENT</u> .....	9
<u>POINT I</u> THE DEFENDANT WAS DENIED DUE PROCESS IN THE JUVENILE WAIVER HEARING (3T).....	9
<u>POINT II</u> THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE WAIVER HEARING (3T).....	19
A. THE ATTORNEY’S PERFORMANCE WAS DEFICIENT.....	21
B. BUT FOR COUNSEL’S MISINFORMATION, DEFENDANT WOULD NOT HAVE PLED GUILTY.....	22

<u>POINT III</u>	THE COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER MITIGATING FACTORS BASED UPON THE FACTS AND IMPROPERLY WEIGHING THE AGGRAVATING AND MITIGATING FACTORS FOUND BY THE COURT, REQUIRING REMAND FOR RESENTENCING (5T; Da33).....	22
------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

<u>CONCLUSION</u> .....	32
-------------------------	----

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Order Granting Waiver, filed April 22, 2024.....	Da33
Judgment of Conviction.....	Da7

TABLE OF APPENDIX

Certification of Bryce Lomas.....	Da1
Waiver of Indictment.....	Da5
Accusation.....	Da6
Judgment of Conviction.....	Da7
Order granting first extension, filed February 27, 2025.....	Da11
Order granting second extension, filed March 20, 2025.....	Da12
Order granting third extension, filed April 24, 2025.....	Da13
Complaint, 1209 W 000171.....	Da14
Preliminary Law Enforcement Incident Report (PLEIR).....	Da23

Notice of Appeal, filed December 1, 2024.....	Da24
Amended Notice of Appeal, filed December 2, 2024.....	Da27
Certification of Transcript Completion and Delivery.....	Da31
Presentence Report (PSR)*	
Juvenile Disposition.....	Da32**
Order Granting Waiver, filed April 22, 2024.....	Da33
Complaint – Juvenile Delinquency.....	Da34
Preliminary Law Enforcement Incident Report (PLEIR) for Juvenile Complaint.....	Da37

---

\* The Presentence Report (PSR) has been uploaded to the Appellate Division via the E-Courts Portal as a confidential exhibit.

\*\*Da32-Da37 are included in a separate Confidential appendix.

## TABLE OF AUTHORITIES

### **Cases**

<u>Aron v. Rialto Realty Co.,</u> 100 N.J. Eq. 513, affirmed 102 N.J. Eq. 331 (E. & A. 1928).....	10
<u>Hill v. Lockhart,</u> 474 U.S. 52, 106 S.Ct. 366 (1985).....	21, 22
<u>Kent v. United States,</u> 383 U.S. 541, 86 S.Ct. 1045 (1966).....	14, 15
<u>McCue v. Silcox,</u> 122 N.J.L. 12 (1939).....	10

<u>Miller v. Alabama,</u> 567 U.S. 460, 132 S.Ct. 2455 (2012).....	27
<u>Padilla v. Kentucky,</u> 599 U.S. 356, 130 S.Ct. 1473 (2010).....	18, 20, 21
<u>Roper v. Simmons,</u> 543 U.S. 551, 125 S.Ct. 1183 (2005).....	28
<u>Smith v. National Commercial Title &amp; Mtg. Guaranty Co.,</u> 120 N.J.L. 75 (1938).....	10
<u>State in the Interest of E.S.,</u> 252 N.J. 331 (2022).....	10, 13, 14
<u>State in the Interest of N.H.,</u> 226 N.J. 242 (2016).....	13, 14
<u>State in the Interest of Z.S.,</u> 464 N.J. Super. 507 (App. Div. 2020).....	10, 13, 15
<u>State v. A.T.C.,</u> 454 N.J. Super. 235 (App. Div. 2018).....	24
<u>State v. L.V.,</u> 410 N.J. Super. 60 (App. Div. 2009).....	31
<u>State v. Allegro,</u> 193 N.J. 352 (2008).....	20
<u>State v. Bellamy,</u> 178 N.J. 127 (2003).....	18
<u>State v. Bienick,</u> 200 N.J. 601 (2010).....	24
<u>State v. Birkenmeier,</u> 185 N.J. 552 (2006).....	11

<u>State v. Blackmon,</u> 202 N.J. 283 (2010).....	23, 24
<u>State v. Buonadonna,</u> 122 N.J. 22 (1991).....	21
<u>State v. Carey,</u> 168 N.J. 413 (2001).....	25
<u>State v. Case,</u> 220 N.J. 49 (2014).....	25, 26
<u>State v. Chew,</u> 179 N.J. 186 (2004).....	21
<u>State v. Dalziel,</u> 182 N.J. 494 (2005).....	24, 25
<u>State v. Davis,</u> 116 N.J. 341 (1989).....	20
<u>State v. Des Morets,</u> 92 N.J. 62 (1983).....	23
<u>State v. Dunbar,</u> 108 N.J. 80 (1987).....	27
<u>State v. Echols,</u> 199 N.J. 344 (2009).....	20
<u>State v. Fritz,</u> 105 N.J. 42 (1987).....	20, 21
<u>State v. Fuentes,</u> 217 N.J. 57 (2014).....	passim
<u>State v. Gaitan,</u> 209 N.J. 339 (2012).....	19

<u>State v. Gorthy,</u> 437 N.J. Super. 339 (App. Div. 2014).....	11
<u>State v. Grate,</u> 220 N.J. 317 (2015).....	24
<u>State v. Hagans,</u> 233 N.J. 30 (2018).....	11
<u>State v. Handy,</u> 215 N.J. 334 (2013).....	12
<u>State v. Handy,</u> 226 N.J. 516 (2016).....	12
<u>State v. Heitzman,</u> 209 N.J. Super. 617 (App. Div.1986), aff'd o.b., 107 N.J. 603 (1987).....	17
<u>State v. Ikerd,</u> 369 N.J. Super. 610 (App. Div. 2004).....	23
<u>State v. Johnson,</u> 68 N.J. 349 (1975).....	11
<u>State v. Kromphold,</u> 162 N.J. 345 (2000).....	24
<u>State v. Lake,</u> 408 N.J. Super. 313 (App. Div. 2009).....	31
<u>State v. Lane,</u> 251 N.J. 84 (2022), as revised (June 21, 2022).....	28
<u>State v. Lawless,</u> 214 N.J. 594 (2013).....	24, 25
<u>State v. Megargel,</u> 143 N.J. 484 (1996).....	31

<u>State v. Morton,</u> 155 N.J. 383 (1998).....	11, 12
<u>State v. Natale,</u> 184 N.J. 458 (2005).....	23, 24
<u>State v. Nunez-Valdez,</u> 200 N.J. 129 (2009).....	18, 22
<u>State v. O’Neal,</u> 190 N.J. 601 (2007).....	20
<u>State v. Palma,</u> 219 N.J. 584 (2014).....	23
<u>State v. Pineda,</u> 227 N.J. Super. 245, (App. Div. 1998), affirmed on this issue, 119 N.J. 621 (1990).....	25
<u>State v. Preciose,</u> 129 N.J. 451 (1992).....	20
<u>State v. R.G.D.,</u> 108 N.J. 1 (1987).....	13
<u>State v. Radziwil,</u> 235 N.J. Super. 557 (App. Div. 1989), aff’d o.b., 121 N.J. 527 (1990).....	25
<u>State v. Rivera,</u> 249 N.J. 285 (2021).....	28
<u>State v. Ross,</u> 335 N.J. Super. 536 (App. Div.), certif. denied, 167 N.J. 637 (2001).....	24
<u>State v. Santana,</u> 215 N.J. Super. 63 (App. Div. 1987).....	11
<u>State v. Shaw,</u> 237 N.J. 588 (2019).....	11

<u>State v. Trinidad,</u> 241 N.J. 425 (2020).....	23
<u>State v. Williams,</u> 461 N.J. Super. 80 (App. Div. 2019).....	11
<u>State v. Zuber,</u> 227 N.J. 422 (2017).....	26, 27
<u>Strickland v. Washington,</u> 466 U.S. 668, 104 S.Ct. 2052 (1984).....	19, 20, 21
<u>Sullivan v. James Leo Co.,</u> 124 N.J. Eq. 317 (1938).....	10
<u>United States v. C.R.,</u> 792 F. Supp. 2d 343 (E.D.N.Y. 2011).....	28
<u>United States v. Reingold,</u> 731 F.3d 204 (2d Cir. 2013).....	28
<b>Statutes</b>	
N.J.S.A. 2A:4A-26.1.....	12, 13
N.J.S.A. 2A:4A:26.1c(2).....	12, 17
N.J.S.A. 2A:4A:26.1c(3).....	13
N.J.S.A. 2A:4A-26.1f(2).....	16
N.J.S.A. 2A:4A-27.....	12
N.J.S.A. 2A:4A-40.....	9
N.J.S.A. 2C:1-2b(4).....	23
N.J.S.A. 2C:1-2b(6).....	24
N.J.S.A. 2C:44-1(a).....	24

N.J.S.A. 2C:44-1(b).....	24
N.J.S.A. 2C:44-1(b) (14).....	27
N.J.S.A. 2C:44-1(f)(2).....	30

## **Rules**

Rule 3:9-2.....	12, 18
-----------------	--------

## **Acts**

No Early Release Act NERA (NERA).....	passim
Sexual Violent Predator’s Act.....	18

## **Other**

<u>A Social Neuroscience Perspective on Adolescent Risk-Taking,</u> 28 <u>Dev. Rev.</u> 78 (2008).....	28
Administrative Directive # 1-1998 (Jan. 15, 1988).....	19
<u>S. Judiciary Comm. Statement to A. 4373 1 (L. 2020, c. 110).....</u>	28

## TABLE OF TRANSCRIPTS

- 1T refers to the transcript dated February 6, 2024.
- 2T refers to the transcript dated March 19, 2024.
- 3T refers to the transcript dated April 22, 2024 – Voluntary Waiver Hearing.
- 4T refers to the transcript dated April 22, 2024 – Guilty Plea
- 5T refers to the transcript dated October 17, 2024.

### PRELIMINARY STATEMENT

Waiver of a juvenile to be tried as an adult has been characterized by our Court as one of the most important decisions a Family Court can make. Waiver can be either voluntary or involuntary. Despite the overwhelming importance of this decision, there are no procedural safeguards in place to ensure the juvenile's understanding of the rights he is waiving, should the juvenile elect voluntary waiver. Unlike in adult court where the Court's recognition of issues which effect the decision to waive indictment by a grand jury or to enter a plea of guilty, the Juvenile Justice System has developed no mechanism detailing the rights being waived, such as a plea form or waiver of indictment form, to ensure that a juvenile is informed of his rights and the consequences of his decision.

In this case, the failure to inform the juvenile of the consequences of his voluntary waiver rather than requiring the State to conduct an involuntary waiver hearing resulted in a lengthy prison sentence. Juveniles must receive the same procedural safeguards when they are waiving important rights which are afforded to adult criminal defendants. Therefore, it is crucial to develop a voluntary waiver form and a formal process informing of the rights being waived as well as the collateral consequences of such a waiver.

### STATEMENT OF PROCEDURAL HISTORY

On December 4, 2023, the defendant, B [REDACTED] C. L [REDACTED], was driving his truck on in Old Bridge Township when he stopped at a WaWa on his way to school. A.P. was an employee of the WaWa. A.P. believed the defendant had failed to pay for gas. Outside the store, A.P. confronted him about an earlier incident. As the defendant attempted to drive away, A.P. stood in front of the defendant's truck. The defendant struck A.P. and drove to school. A.P. was taken to the hospital where he eventually died. See Certification of B [REDACTED] L [REDACTED], dated April 24, 2025. Da1-4. The defendant was seventeen years old at this time.

The defendant was originally charged as a juvenile in Docket No. FJ-[REDACTED] [REDACTED] as follows: attempted murder; aggravated assault; leaving the scene of an accident; hindering; tampering, and obstruction. After A.P. died, the defendant was charged as a juvenile in Docket No. FJ-[REDACTED] as follows: murder, leaving the scene of an accident; hindering; tampering, and obstruction. Da32.

On February 6, 2024, the defendant appeared with counsel before the Honorable Deborah J. Venezia, P.J.F.P., for a case management conference, in which counsel informed the court the charges had been upgraded due to A.P.'s death. (1T:4-21 to 4-24). The issue of waiver to adult court was discussed. See (1T:5-1 to 5-2; 6-5 to 6-13). The defendant and counsel again appeared before Judge Venezia on March 19, 2024, where the State informed the court of its amended plea offer

conditioned upon voluntary waiver to adult court, with a waiver hearing date of April 15, 2024, if a plea agreement could not be reached. Counsel confirmed the plea offer and added that if the State had to conduct a waiver hearing, then the plea would be withdrawn. (2T:4-1 to 5-23). At the conclusion of this conference, negotiations were on-going. (2T:11-4 to 11-6).

On April 22, 2024, defendant appeared with counsel before Judge Venezia and voluntarily waived jurisdiction to the adult court. (3T);Da5; Da33. Also on April 22, 2024, the defendant appeared before the Honorable Thomas P. Abode, J.S.C., and entered a plea of guilty to an accusation charging death by auto and leaving the scene of an accident resulting in death. (4T); Da5-6.

On October 17, 2024, Judge Abode sentenced the defendant to an aggregate sentence of ten years with five years subject to NERA. (5T); Da7-10. The defendant filed his Notice of Appeal on December 1, 2024, and an Amended Notice of Appeal on December 2, 2024. Da24-30. The defendant has obtained three extensions and his brief is now due May 21, 2025. Da11-13. The defendant offers the following in support of his appeal.

### STATEMENT OF FACTS

#### Waiver Hearing:

On April 22, 2024, the defendant appeared before Judge Venezia and voluntarily waived jurisdiction over his case to the adult courts. Voluntary waiver

was a condition of the plea agreement with the State: in exchange for the recommendation of five years subject to NERA for death by auto and a five-year sentence for leaving the scene of an accident, to be served consecutively to the NERA sentence, the defendant agreed to plead guilty, reserving his right to argue for a lesser sentence of three years on each crime at sentencing. The State also agreed to a delayed sentencing date to allow the defendant to undergo necessary medical treatments prior to his incarceration. (3T:3-20 to 4-20). The court asked counsel to elicit a factual basis from the defendant.

Counsel first ascertained the defendant was a juvenile on December 4, 2023. Counsel next addressed involuntary waiver and the State's burden of proof, its ability to call witnesses subject to cross-examination. However, counsel noted that if the defendant chose an involuntary waiver hearing, then the State's plea offer would be withdrawn. The defendant agreed that he had spoken at length with counsel concerning the plea agreement. The factual basis ended with the defendant agreeing to voluntary waiver to the adult court for disposition. (3T:5-16 to 7-23). Counsel also added that the defendant understood that once waived to adult court, he could not return to juvenile court. (3T:10-1 to 10-8).

The court then addressed the defendant, asking if the terms and conditions of the waiver application were accurate. The court inquired if the defendant had any questions for his attorney or the court and the defendant replied no. When asked if

he had adequate time to consult with his attorney, the defendant replied yes. The defendant indicated his satisfaction with his attorney. (3T:8-19 to 9-19; 10-10 to 10-19).

Plea:

On April 22, 2024, the defendant appeared before Judge Abode and entered a guilty plea to an accusation charging death by auto and leaving the scene of an accident resulting in death. (4T): Da6. After reviewing the plea agreement with both attorneys, the court inquired as to the defendant's medical procedures that necessitated the delayed sentencing. Counsel explained that the defendant was recovering from chemotherapy due to leukemia and he had to obtain certain immunizations before he could be safely incarcerated. (4T:4-8 to 8-25).

The court then addressed the defendant and asked the foundational questions required for waiver of indictment by a grand jury. (4T:9-7 to 13-24). The court found that the defendant knowingly and voluntarily waived his right to have the case presented to a grand jury. (4T:13-25 to 14-6). The next reviewed the plea forms with the defendant as well as his waiver of his right to trial. (4T:14-7 to 25-21). Afterward, counsel elicited a factual basis: On December 4, 2023, the defendant operated a Ford F-150 pick-up truck in the Township of Old Bridge at a WaWa on Route 34. An employee of the store, A.P., stood in front of the defendant's truck in the parking lot of the store. The defendant drove toward A.P. knowing he was standing in front

of the truck and ran him over. At that point in time, the defendant operated his vehicle in a reckless manner. After hitting A.P., the defendant did not stop but left the scene of the collision. A.P. died of his injuries six weeks later. (4T:26-3 to 31-2).

The court found the factual basis adequate and that the defendant understood the nature and consequences of the crimes. The court also found the plea was knowingly, voluntarily and intelligently entered with the assistance of competent counsel. (4T:31-10 to 31-18). The court explained the conditions of the defendant's continued release pending sentencing, scheduled for September 5, 2024. (4T:31-19 to 33-14).

Sentencing:

Judge Abode sentenced the defendant on October 17, 2024. (5T); Da7-10. Adopting the State's facts,<sup>1</sup> the court set forth a detailed rendition of the facts before identifying and then balancing the aggravating and mitigating factors. The court summarized the contents of the letters submitted in support of the defendant, recognized the impact of the defendant's medical history, and acknowledged the defendant's actions were reckless, not deliberate. The court believed the defendant

---

<sup>1</sup> It must be noted that A.P. was recovering from the injuries sustained from being struck by a pick-up truck. Unfortunately, he developed a blood infection which ultimately resulted in his death. Much of his suffering can be attributed to the blood infection.

was remorseful. (5T:62-2 to 67-24).

The court first addressed the mitigating factors for both the death by auto and leaving the scene of an accident resulting in death. The court found Factor 7, “the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense,” due to the defendant’s age at the time of the offense. The court also found he had no prior criminal history. The court noted that the defendant voluntarily waived to the adult court. The court applied “appropriate weight” to Factor 7. The court applied Factor 9, “the character and attitude of the defendant indicates that the defendant is unlikely to commit another offense.” The court remarked that the defendant did not show remorse on the day of the offense when he left the scene of the accident, but since that time, the defendant has reflected on what happened and demonstrated sincere remorse. The court first gave “sleight weight” and then “moderate weight” to Factor 9. The court held Factor 14, “the defendant was under 26 years of age at the time of the commission of the offense,” applied because the defendant was 17 years old at the time of the offense. The court indicated its intention to give this factor “appropriate weight.” The court determined the defendant’s youth contributed to the offense but it does not alleviate responsibility: the defendant had a duty to stop after striking A.P. with his truck. (5T:67-25 to 69-13).

The court then addressed the aggravating factors for both the death by auto and leaving the scene of an accident resulting in death. The court found Factor 2, “the gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance,” applicable and gave it “heightened weight.” The court recounted in extreme detail the victim’s injuries and suffering before he died as well as the impact upon the victim’s family. The court also found Factor 9, “the need for deterring the defendant and others from violating the law.” The court determined the need was both specific to this defendant and general to others. The court noted that accidents occur but if a person causes an injury, there is a responsibility to remain and act. The court afforded Factor 9 “heightened weight.” (5T:69-13 to 72-17).

The court rejected defense counsel’s request for the defendant to be sentenced one-degree lower, in the third-degree range. Instead, the court found the aggravating factors outweighed the mitigating factors. The court emphasized that the defendant pled guilty and allocated to a second-degree crime and there is a presumption of incarceration that attaches as well as a mandatory NERA provision to Count 1, death by auto. Count 2, leaving the scene of an accident resulting in death, mandated a

consecutive sentence. Citing the interest of justice, the court agreed to impose the recommended sentence. (5T:72-18 to 73-19).

On Count 1 of Accusation 2404-437, charging death by auto, the defendant was sentenced to five years subject to NERA, to be served at a juvenile facility until he reached the age of 21. Upon his release from custody, the defendant must submit to three years' parole supervision. On Count 2 of the accusation, charging leaving the scene of a crime, the defendant was sentenced to five years to be served in a juvenile detention facility until the age of 21; this sentence is to be served consecutively to that imposed on Count 1. The defendant was also ordered to pay restitution, fines and fees, and to provide a DNA sample. The motor vehicle summonses were dismissed. The defendant was advised of his appeal rights. (5T:73-20 to 76-5).

## LEGAL ARGUMENT

### POINT I

THE DEFENDANT WAS DENIED DUE PROCESS IN THE JUVENILE WAIVER HEARING (3T).

"All rights guaranteed to criminal defendant's by the Constitution of the United States and the Constitution of this State, except the right of indictment, the right to trial by jury and the right to bail, shall be applicable to cases arising under this act." N.J.S.A. 2A:4A-40. New Jersey's Juvenile Code seeks to 'provide balanced attention to the protection of the community, the imposition of

accountability for offenses committed and fostering interaction and dialogue between the offender, victim, and community, and the development of competencies to enable children to become responsible and productive members of the community.” State in the Interest of E.S., 252 N.J. 331, 344 (2022) (quoting N.J.S.A. 2A:4A-21f). “There are fundamental distinctions between juvenile court and criminal court.”

“[A] juvenile waiver entails the transfer of jurisdiction from the Family Part to the Criminal Part, where the juvenile will be tried as an adult and face adult criminal punishment if found guilty of the charged offenses.” State in the Interest of Z.S., 464 N.J. Super. 507, 512-13 (App. Div. 2020).

‘Waiver’ has been defined as a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim, or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it. Thus, a ‘waiver’ occurs where one in possession of any right, whether conferred by law or by contract, will full knowledge of the material facts, does or forbears to do something, the doing of which or the failure or forbearance to do which is inconsistent with the right or his intention to rely upon it; a ‘waiver’ takes place where one dispenses with the performance of something which he has a right to exact.’ 67 Corpus Juris, 289. See, also, Aron v. Rialto Realty Co., 100 N.J. Eq. 513, affirmed 102 N.J. Eq. 331; Smith v. National Commercial Title & Mtg. Guaranty Co., 120 N.J.L. 75; Sullivan v. James Leo Co., 124 N.J. Eq. 317.

McCue v. Silcox, 122 N.J.L. 12, 13–14 (1939). New Jersey courts require that the

person waiving the right must be advised or aware of the right and the waiver of the right must be given knowingly, voluntarily and intelligently. See State v. Morton, 155 N.J. 383, 440–41 (1998) (“To be sufficient, the waiver of a fundamental constitutional right must be given intelligently and voluntarily.” (citations omitted)).

When the issue of waiver of an important right occurs in a criminal or quasi-criminal setting as well as within a juvenile delinquency proceeding, courts are tasked with the responsibility of ensuring that the waiver was knowingly, voluntarily and intelligently made. Advisement of the rights to be waived is an essential element of this determination. For a valid consent to search, the State bears the burden of proving “that the individual giving consent knew that he or she ‘had a choice in the matter[,]’ ” State v. Hagans, 233 N.J. 30, 39 (2018) (citation omitted), and “the scope of a consent search is limited by the terms of its authorization.” State v. Santana, 215 N.J. Super. 63, 72 (App. Div. 1987). See State v. Shaw, 237 N.J. 588, 618–19 (2019); State v. Williams, 461 N.J. Super. 80, 103 (App. Div. 2019). Notably, “one required element of proof is that the consenting party must know that he [or she] has the right to decline consent.” State v. Birkenmeier, 185 N.J. 552, 563-64 (2006) (citing State v. Johnson, 68 N.J. 349, 3553-54 (1975)).

Waiver of the right to counsel during a criminal proceeding requires the trial court to “apply a procedure akin to that which [courts] utilize in evaluating a competent defendant’s effort to waive other significant rights.” State v. Gorthy, 437

N.J. Super. 339, 346-47 (App. Div. 2014) (quoting State v. Handy, 215 N.J. 334, 362 (2013)), affirmed in part, reversed in part, 226 N.J. 516 (2016). Waiver of the right to indictment by a grand jury requires an in-depth inquiry by a court. See, e.g., (4T:10-10 to 13-20). The waiver of a defendant's right to be present in court during proceedings must be addressed by the court to ascertain that the defendant understands the nature and consequences of his absence from trial. Morton, 155 N.J. at 441. A guilty plea is the waiver of the right to trial by jury and its concomitant rights. These rights are memorialized in a form created and promulgated by the Administrative Office of the Courts. When taking a plea, the court must be satisfied that the defendant has knowingly, voluntarily and intelligently waived his right to trial and provided an adequate factual basis establishing the elements of the crime. Rule 3:9-2. See, e.g., (4T:21-14 to 31-18). There is also a process for waiver of a juvenile from Family Court to adult court.

Our Legislature has enacted two statutes, which govern juvenile waiver. N.J.S.A. 2A:4A-27 authorizes a juvenile aged fourteen or older, charged with murder, to voluntarily transfer his case to adult court. This statute stands in contrast with N.J.S.A. 2A:4A-26.1, which sets forth the process for the State to involuntarily waive a juvenile to adult court for certain serious crimes, such as criminal homicide, first-degree robbery, carjacking, sexual assault, kidnapping, aggravated arson, and certain firearms violations. N.J.S.A. 2A:4A:26.1c(2). Neither vehicular homicide

nor leaving the scene of an accident resulting in death is subject to involuntary waiver. The involuntary waiver statute requires that the juvenile be at least fifteen years old and that “there is probable cause to believe the juvenile committed a delinquent act which if committed by an adult would constitute” one if the enumerated crimes. E.S., 252 N.J. at 342. N.J.S.A. 2A:4A-26.1 sets forth eleven factors for prosecutors and courts to consider when seeking waiver. N.J.S.A. 2A:4A-26.1c(3).

At an involuntary waiver hearing, the court reviews the evidence submitted by the State and juvenile and if the State has made the prerequisite showing, waiver is generally granted. E.S., 252 N.J. at 343. Accord State in the Interest of N.H., 226 N.J. 242, 251 (2016). The court, however, may deny waiver upon a finding of prosecutorial abuse of discretion. Ibid. Accord Z.S., 464 N.J. Super. at 519. Review of a waiver proceeding is conducted under the deferential abuse standard. E.S., 252 N.J. at 343; N.H., 226 N.J. at 249-51.

Our Supreme Court observed decades ago that “the waiver of a juvenile to adult court ‘is the single most serious act that the juvenile court can perform.’” N.H., 226 N.J. at 252 (quoting State v. R.G.D., 108 N.J. 1, 4-5 (1987)). “The Court explained that, once waiver occurs, the child loses the protections and opportunities for rehabilitation which the Family Part affords. The child also faces the real possibility of a stiffer adult sentence.” Ibid. (quoting R.G.D., 108 N.J. at 4-5, 11-12).

Indeed, it is a “‘critically important action’ that determines ‘vitally important statutory rights of the juvenile.’” *Id.* at 253 (quoting Kent v. United States, 383 U.S. 541, 557, 86 S.Ct. 1045, 1055 (1966)). “In recognition of the significance of a waiver determination, [our Supreme Court has] considered a juvenile’s rights in the context of waiver proceedings and found that ‘due process requires that juveniles receive a hearing, effective assistance of counsel who have access to relevant information, and a statement of reasons for the court’s decision.’” *E.S.*, 252 N.J. at 344 (quoting *N.H.*, 226 N.J. at 253. “And because the probable cause portion of the waiver hearing is such a meaningful and critical stage of the proceedings, [the Court] required that juveniles be allowed to present evidence and testify at waiver hearings.” *Ibid.* (internal punctuation and citations omitted). A juvenile is also entitled to full discovery prior to a waiver hearing. “Full discovery facilitates the court’s review of all the issues to be addressed at the hearing. Full discovery also enables the juvenile and counsel to prepare for all facets of the hearing and decide how best to cross0examine the State’s witnesses, whether the juvenile or others should testify, and how to assess and challenge the prosecutor’s exercise of discretion.” *N.H.*, 226 N.J. at 256.

The requirements of due process in an involuntary waiver are defined by statute and by the courts. However, no such protections are afforded to a juvenile’s decision to voluntarily waive jurisdiction to the Criminal Part, despite recognition

that “[t]he transfer of jurisdiction over a minor to adult court is so momentous that it has constitutional dimensions.” Z.S., 464 N.J. Super. at 513. “[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.” Z.S., 464 N.J. Super. at 513 (quoting Kent, 383 U.S. at 554, 86 S.Ct. 1045 (internal punctuation omitted)).

The waiver hearing in this case highlights the lack of meaningful protections for this juvenile but also to all juveniles choosing voluntary waiver. After putting the plea agreement, which contained the condition of voluntary waiver to adult court based upon the murder charge, reached by the State and counsel on the record, the court asked counsel to elicit a factual basis from the defendant. (3T:3-20 to 4-20). Counsel ascertained the defendant was a juvenile on December 4, 2023, before addressing involuntary waiver and the State’s burden of proof at such a hearing and its ability to call witnesses who would be subjected to cross-examination. Counsel cautioned, however, if the defendant chose to request an involuntary waiver hearing, then the State’s plea offer would be withdrawn. The defendant agreed that he had spoken at length with counsel concerning the plea agreement. The factual basis ended with the defendant agreeing to voluntary waiver to the adult court for disposition. (3T:5-16 to 7-23). Counsel also added that the defendant understood that once waived to adult court, he could not return to juvenile court. (3T:10-1 to 10-8).

The court then addressed the defendant, asking if the terms and conditions of the waiver application were accurate. The court inquired if the defendant had any questions for his attorney or the court and the defendant replied no. When asked if he had adequate time to consult with his attorney, the defendant replied yes. The defendant indicated his satisfaction with his attorney. (3T:8-19 to 9-19; 10-10 to 10-19). Waiver was then granted. Da33.

The waiver hearing failed to address one very important provision, and seemingly overlooked provision, of the involuntary waiver statute, N.J.S.A. 2A:4A-26.1f(2), which provides as follows:

If a juvenile is not convicted of an offense set forth in paragraph (2) of subsection c. of this section, a conviction for any other offense shall be deemed a juvenile adjudication and be remanded to the Superior Court, Chancery Division, Family Part for disposition in accordance with the dispositional options available to that court and all records related to the act of delinquency shall be subject to the provisions of section 1 of P.L. 1982, c. 79 (C.2A:4A-60).

Had counsel or the court been required to advise the defendant of this pivotal provision in the statute, the defendant's decision to voluntarily waive to the adult court would have been different. See Certification of B [REDACTED] L [REDACTED] at ¶ 13.Da1-4.

Although the State had charged the defendant with murder, the facts of the case do not support that the defendant acted knowingly or purposely to cause the death of A.P. or even to severely injure him resulting in his death. The lack of proof as to knowingly or purposely committed actions is buttressed by the plea offer which

the defendant accepted. At sentencing, the State argued that the defendant acted recklessly. At an involuntary waiver hearing, the State would have been required to prove that probable cause existed to support the charge of murder, which requires purposeful conduct. The defendant pled guilty to death by auto, a charge which does not support involuntary waiver. See N.J.S.A. 2A:4A-26.1c(2). The plea agreement tendered by the State was contingent on voluntary waiver as the means to avoid the probable cause requirement because it did not have sufficient proofs as to murder.

Over the years similar situations have arisen and the courts have responded to prevent injustice. Here are only a few examples reflected in changes and/or additions to the plea form authorized by the Administrative Office of the Courts. In his dissenting opinion in State v. Heitzman, Chief Justice Wilentz recognized the importance of advising a criminal defendant of certain consequences of a guilty plea, such as permanent forfeiture of public employment, even though determined to be collateral. He remarked that notification should “not depend on ill-defined and irrelevant characterizations of those consequences.” 209 N.J. Super. 617 (App. Div.1986), *aff’d o.b.*, 107 N.J. 603, 606 (1987). Our Court ensured that notice of that possible consequence was provided to a criminal defendant through the inclusion of this question: “Do you understand that if you are a public office holder or employee, you can be required to forfeit your office or job by virtue of your plea of guilty?” and requires “yes,” “no,” or “N/A” as a response.

In State v. Bellamy, the Court ruled “that civil commitment under the [Sexual Violent Predator’s] Act is a collateral consequence of defendant’s plea.” 178 N.J. 127, 138 (2003). However, the Court “conclude[d] that fundamental fairness requires that the trial court inform a defendant of the possible consequences under the Act. A defendant who has committed a predicate offense may be faced with commitment under the Act for a period in excess of his or her sentence. Rule 3:9–2 requires the court to determine whether a defendant clearly understands ‘the nature of the charge and the consequences of the plea.’ R. 3:9–2.” Ibid. Accordingly, the plea forms used in adult court were promulgated to address this issue.

In Padilla v. Kentucky, the United States Supreme Court announced that constitutionally effective assistance of counsel required a criminal defense attorney to advise a client of the potential immigration consequences of a guilty plea. 599 U.S. 356, 369-71, 130 S.Ct. 1473, 1484 (2010). See also State v. Nunez-Valdez, 200 N.J. 129 (2009) (holding defendant received ineffective assistance of counsel when initial counsel provided false advice assuring no deportation pursuant to a guilty plea and this misinformation was reinforced by substitute counsel as to this material matter). Notification of possible immigration consequences of a plea had been mandated in New Jersey since 1988, when “our Court ensured that notice of that possible consequence was provided to a criminal defendant through the inclusion of a question addressing the subject in [the] required plea form. In 1988, what is today

known as Question 17, and was then labeled Question 16, was incorporated into the plea form.” State v. Gaitan, 209 N.J. 339, 362 (2012). See Administrative Directive # 1-1998 (Jan. 15, 1988). This question has remained in some form on the plea form since that time through the changes in the law and enforcement of immigration rules and regulations. Id. at 362-63.

Juveniles deserve such procedural protection of their rights both constitutionally and under principles of fundamental fairness. The juvenile should have been specifically informed at the time of his decision to accept the State’s plea offer, requiring voluntary waiver to adult court that any conviction for a non-waivable offense would have resulted in the remand to Family Court for a juvenile disposition. The record is barren of any such warning or admonition. Thus, in this case the defendant was deprived of due process and made the decision to voluntarily waive to the adult court without full knowledge of all relevant and material information. This court must act to prevent such a travesty of justice in this case and in the future.

## POINT II

### THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE WAIVER HEARING (3T).

“To establish a prima facie claim of ineffective assistance of counsel, a defendant must demonstrate the reasonable likelihood of succeeding under the test set forth in Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068

(1984),” which New Jersey courts “adopted in State v. Fritz, 105 N.J. 42, 58 (1987).” Preciose, 129 N.J. at 462. To obtain relief, defendant must show counsel's performance “fell below an objective standard of reasonableness,” and a “reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different.” State v. Allegro, 193 N.J. 352, 365-66 (2008)(citations omitted). Effective assistance of counsel is measured by a standard of “reasonable competence.” Fritz, 105 N.J. at 60-61. The reasonableness of counsel's representation “is necessarily linked to the practice and expectations of the legal community: ‘The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Padilla, 559 U.S. at 366, 130 S.Ct. at 1482 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2052). Reasonable competence requires that defendant's attorney be “not so ineffective as to make the idea of a fair trial meaningless.” State v. Davis, 116 N.J. 341, 351 (1989). “No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” State v. Echols, 199 N.J. 344, 358 (2009) (citation omitted). Therefore, defendant must demonstrate to the court that his attorney's performance was deficient, falling below the prevailing norms. See State v. O'Neal, 190 N.J. 601, 618-19 (2007).

Defendant must also demonstrate that the attorney's deficient performance

prejudicially affected the plea process. “[T]he defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985). See State v. Chew, 179 N.J. 186, 204 (2004) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” State v. Buonadonna, 122 N.J. 22, 41 (1991) (quoting Fritz, 105 N.J. at 52).

In this matter, defendant has met both prongs to establish the ineffective assistance of counsel.

A. The attorney’s performance was deficient:

When determining whether counsel was deficient, the Court instructed courts that the reasonableness of counsel’s representation “is necessarily linked to the practice and expectations of the legal community: ‘The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Padilla, 559 U.S. at 367, 466 S.Ct. at 1482 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2052). Here, the failure to fully explain the waiver processes, both voluntary and involuntary as well as the provision for remand to juvenile court for sentencing if the defendant were found guilty of a lesser crime constituted deficient performance, not rising to the level of professionalism expected from an attorney representing a juvenile in Family Court. See Point I, supra.

B. But for counsel's misinformation, defendant would not have pled guilty:

To establish prejudice flowing from erroneous advice, a defendant need merely demonstrate that, but for such erroneous advice, there exists a probability that defendant would not have entered a plea of guilty. Nunez-Valdez, 200 N.J. at 139. See also, generally, Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). Defendant submits that because his waiver decision was made without full knowledge of all relevant and material information, his subsequent guilty plea is invalidated. See Certification of B [REDACTED] L [REDACTED]. Da1-4.

The failure to inform the defendant of a material element of the consequences of his voluntary waiver constitutes ineffective assistance of counsel and the defendant is entitled to relief from this court. Specifically, the defendant's attorney failed to advise him of the "safety valve" the Legislature provided into the involuntary waiver statute which would result in a juvenile disposition should an involuntarily waived juvenile ultimately be convicted of a non-waivable offense.

### POINT III

THE COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER MITIGATING FACTORS BASED UPON THE FACTS AND IMPROPERLY WEIGHING THE AGGRAVATING AND MITIGATING FACTORS FOUND BY THE COURT, REQUIRING REMAND FOR RESENTENCING (5T; Da33).

In this case the trial court abused its discretion when sentencing the defendant.

The trial court failed to find applicable mitigating factors as well as failing to afford those mitigating factors the appropriate weight, skewing the balancing process. The defendant should have been sentenced one-degree lower in the third-degree range. This court must review the defendant's sentence under an abuse of discretion standard. State v. Trinidad, 241 N.J. 425, 453 (2020). If the aggravating or mitigating factors were not based upon competent or credible evidence in the record or if the sentence is so unreasonable it shocks the judicial conscience, appellate courts must intervene. State v. Fuentes, 217 N.J. 57, 70 (2014);

The “dominant, if not paramount, goal of the Code is uniformity in sentencing,” State v. Blackmon, 202 N.J. 283, 296 (2010), because “there can be no justice without a predictable degree of uniformity in sentencing.” State v. Natale, 184 N.J. 458, 485 (2005) (citations and internal punctuation omitted). “The objective is to treat all offenders in similar situations in the same manner. Random and unpredictable sentencing is anathema to notions of due process.” State v. Palma, 219 N.J. 584, 592-93 (2014) (internal punctuation and citation omitted). See N.J.S.A. 2C:1-2b(4). A court's attempt to cure social ills cannot be a factor in determining punishment. State v. Ikerd, 369 N.J. Super. 610, 621 (App. Div. 2004). “Judges have no business imposing their views of ‘enlightened’ sentencing on society.” Ibid. (quoting State v. Des Morets, 92 N.J. 62, 66 (1983)).

Aggravating and mitigating factors are the mechanism through which the

sentencing guidelines ensure that sentencing is individualized but not arbitrary. State v. Bieniek, 200 N.J. 601, 608 (2010). See N.J.S.A. 2C:1-2b(6). The sentencing court must consider the applicability of the aggravating and mitigating factors found in N.J.S.A. 2C:44-1(a) and (b) and then conduct a qualitative balancing to determine the sentence within the statutory range. Fuentes, 217 N.J. at 72-3; Natale, 184 N.J. at 483-84. All aggravating factors and mitigating factors must be based upon “competent credible evidence in the record.” State v. A.T.C., 454 N.J. Super. 235, 254 (App. Div. 2018) (citing State v. Grate, 220 N.J. 317, 337 (2015); State v. Lawless, 214 N.J. 594, 606 (2013)). The weight attributed to each aggravating and mitigating factor lies within the sentencing court’s discretion. State v. Dalziel, 182 N.J. 494, 504-05 (2005). “Elements of a crime, not including those that establish its grade, may not be used as aggravating factors for sentencing of that particular crime.” Lawless, 214 N.J. at 608. “To do so would result in impermissible double-counting.” A.T.C., 454 N.J. Super. at 254 (citing Kromphold, 162 N.J. at 353. See Fuentes, 217 N.J. at 74-75 (2014).

While a court is limited to those aggravating factors found in N.J.S.A. 2C:44-1a, a court is not similarly limited to those mitigating factors listed. See State v. Ross, 335 N.J. Super. 536, 545 (App. Div.), certif. denied, 167 N.J. 637 (2001).

Mitigating factors that “are called to the court's attention” should not be ignored, State v. Blackmon, 202 N.J. 283, 297, 997 A.2d 194 (2010), and when “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.” Dalziel, 182 N.J. at 505.

State v. Case, 220 N.J. 49, 64 (2014).

Here, the court found Aggravating Factors 2 and 9. Aggravating Factor 2 considers the gravity and seriousness of the harm inflicted on the victim. The harm inflicted on the victim is an element of both death by auto and leaving the scene of an accident resulting in death. See State v. Carey, 168 N.J. 413, 425 (2001) (holding that deaths underlying conviction for death by auto may not be used as an aggravating factor); State v. Pineda, 227 N.J. Super. 245, 247-48 (App. Div. 1998), affirmed on this issue, 119 N.J. 621 (1990) (same). Further, a court may not consider the impact or harm on people other than the actual victim of the crime charged. Lawless, 214 N.J. at 614; State v. Radziwil, 235 N.J. Super. 557, 575 (App. Div. 1989), aff’d o.b., 121 N.J. 527 (1990). The sentencing court remarked and relied upon the anguish suffered by the family members of the victim in addition to the harm he suffered before dying from a blood infection contracted during his hospitalization.

The court found Aggravating Factor (9), “[t]he need for deterring the defendant and others from violating the law,” applied as it does to most, if not all, defendants. “[D]eterrence incorporates two interrelated but distinguishable concepts, the sentence’s general deterrent effect on the public and its personal deterrent effect on the defendant.” Fuentes, 217 N.J. at 79 (internal punctuation and

citation omitted). The sentencing court placed “heightened weight” upon this factor, finding the need for specific and general deterrence. The court emphasized the legal requirement that all drivers must remain on scene after an accident and youth does not excuse failure to do so. The court’s position ignores the accepted social science regarding how a youth’s brain has not developed at age 17 and the lack of understanding of the repercussions of reckless actions. As our Supreme Court has noted, deterrence fails “[b]ecause juveniles are less responsible and more prone to impetuous and ill-considered actions and decisions[;] they are less likely to take a possible punishment into consideration when making decisions.” Ibid. (citations and internal punctuation omitted). State v. Zuber, 227 N.J. 422, 442 (2017). See infra.

The sentencing court found Mitigating Factors 7, 9 and 14. The court informed the defendant that it only found Mitigating Factor 7, the defendant has not prior criminal or juvenile history or has led a law-abiding life for a substantial time prior to the offense, due to his age at the time of the crime. The implication being that had the defendant been older, he probably would have had some criminal history. Supporting this conclusion, the court only assigned “appropriate weight” to Factor 7. Such reasoning is based upon an impermissible presumption because a defendant cannot be sentence “based on speculation and suspicion.” State v. Rivera, 249 N.J. 285, 302 (2021) (quoting Case, 220 N.J. at 64 (internal punctuation omitted)).

The court found Mitigating Factor 9, the character and attitude of the

defendant indicate he is unlikely to commit another offense. The court afforded this factor both “slight” and “moderate weight,” noting the defendant’s action did not demonstrate remorse on the date of the offense, but the defendant did exhibit sincere remorse afterward. The court also found Mitigating Factor 14, the defendant was under the age of 26 at the time of the offense, based upon his age. The court gave this factor “slight weight.” In doing so, the court exhibited its failure to consider the Legislature’s basis for the addition of this mitigating factor.

Our Supreme Court has noted the importance of considering youth in making sentencing decisions.

In State v. Dunbar, 108 N.J. 80, 95 (1987), we recognized that a “defendant's relative youth ordinarily would inure to his benefit” in a determination of whether to apply an extended sentence. More recently, we extended application of the factors prescribed by the United States Supreme Court in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012), to situations where a juvenile is facing a term of imprisonment that is the practical equivalent to life without parole. State v. Zuber, 227 N.J. 422, 429-30 (2017). In doing so, we built upon the U.S. Supreme Court's “clear message” that “ ‘children are different’ when it comes to sentencing, and ‘youth and its attendant characteristics’ must be considered at the time a juvenile is sentenced to life imprisonment without the possibility of parole.” Id. at 429 (quoting Miller, 567 U.S. at 465, 480, 132 S.Ct. 2455). We further urged the Legislature to “consider enacting a statute that would provide for later review of juvenile sentences that have lengthy periods of parole ineligibility.” Id. at 430.

In response to those court decisions, the Legislature added youth as a statutory mitigating factor. See N.J.S.A. 2C:44-1(b)(14) (effective October 19, 2020) (“The defendant was under 26 years of age at the time of the commission of the offense.”). Recommended by “the first annual report of the New Jersey Criminal Sentencing and Disposition

Commission,” the change is meant to “broaden the court's consideration of age as a mitigating factor for determining sentences.” S. Judiciary Comm. Statement to A. 4373 1 (L. 2020, c. 110).

Rivera, 249 N.J. at 301-02.

Social science studies have long recognized that persons under the age of twenty-six may not have reached a full level of mental and emotional maturity -- thus **making them more susceptible to act impulsively, rashly, and without consideration of long-term consequences.** See Laurence Steinberg, A Social Neuroscience Perspective on Adolescent Risk-Taking, 28 Dev. Rev. 78 (2008); see also Roper v. Simmons, 543 U.S. 551, 574, 125 S.Ct. 1183 (2005) (“The qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”); United States v. C.R., 792 F. Supp. 2d 343, 498-506 (E.D.N.Y. 2011) (explaining that social and psychological science support the conclusion that the immature behaviors associated with youth “continue to apply to individuals into their twenties, even mid-twenties or beyond” (quotation omitted)), rev'd on other grounds, United States v. Reingold, 731 F.3d 204 (2d Cir. 2013).

State v. Lane, 251 N.J. 84, 98 (2022), as revised (June 21, 2022) (emphasis added).

In light of this information, the court abused its discretion by not affording Mitigating Factor 14 more weight.

The court rejected application of Mitigating Factor 8, “[t]he defendant’s conduct was the result of circumstances unlikely to recur.” This factor may be found despite the court’s application of Aggravating Factor 9. Fuentes, 217 N.J. at 80 (“we decline to hold that aggravating factor nine and mitigating factor eight can never apply in the same sentencing”). Given the fact that the defendant had no prior criminal history, had exhibited sincere remorse, had exhibited personal traits of caring and willingness to help others, and had no violations while released on

PreTrial Release, there is factual support for finding this mitigating factor and the court's failure to do so constitutes an abuse of discretion.

The court also rejected Mitigating Factor 11, "the imprisonment of the defendant would entail excessive hardship to the defendant." As set forth below, the defendant is now in remission from cancer, but his immunity is compromised. The court was well aware of his condition as it was the basis for the unusual request to delay sentencing for a substantial period of time to receive necessary vaccinations prior to his incarceration. The court rejected this factor by noting that the defendant was attending school. There is much difference between attending school for a limited time where the defendant has access to the expert care should, he have need, and being incarcerated with numerous other individuals all day long with access only to the general care available in the prison. Going to prison has much more serious repercussions for this defendant due to his cancer than those faced by the average convicted person. The court abused its discretion in failing to apply this mitigating factor.

The court may also consider non-statutory mitigating factors. The court mentioned that the defendant the defendant's medical history. (5T:61-16 to 61-18). The court again referred to the defendant's medical problems: "You have—I appreciate you- your history, you medical history and the endurances that you've overcome. But your actions were reckless." (5T:67-13 to 61-15). The court,

however, did not specifically state that it was finding this history as a mitigating factor or the weight assigned to this factor. By just paying lip service to the defendant's background, the court failed to recognize the issues created by the defendant's illness. He was diagnosed with cancer at age 14 and spent over a year in the hospital. He had to undergo a bone marrow transplant with the resulting immunity issues. He had to do this during the height of the Covid epidemic and almost died from the Covid vaccine. Both Covid and his cancer interfered with his education and socialization. As a result, the defendant was extremely emotionally challenged, functioning well below his chronological age. The court's failure to recognize the mitigating factor constitutes an abuse of discretion.

For these reasons alone, the sentence should be vacated and the case remanded for resentencing. Had the court correctly identified the aggravating and mitigating factors and properly weighed them, the court would have been clearly convinced that the mitigating factors substantially outweighed the mitigating factors and the interest of justice demanded a sentence within the third-degree range. The court's decision not to sentence the defendant in the third-degree range only exacerbated the abused discretion.

N.J.S.A. 2C:44-1(f)(2) provides that a defendant convicted of a first- or second-degree crime may be sentenced one degree lower "where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors

and where the interest of justice [so] demands.” The statute thus contemplates a two-step test be employed by sentencing courts. First, the court must be clearly convinced the mitigating factors substantially outweigh the aggravating and second, the court must find the interest of justice demands a downgrade. State v. Megargel, 143 N.J. 484, 495-96 (1996). Courts may also consider facts personal to the defendant. Megargel, 143 N.J. at 501. However, “[c]haracteristics or behavior of the offender are applicable only as they relate to the offense itself and give fuller context to the offense circumstances.” State v. Lake, 408 N.J. Super. 313, 328 (App. Div. 2009).

The defendant in this case has made the necessary showing to overcome this hurdle. The should then have considered the interest of justice. “A decision to downgrade should be limited to those circumstances in which defendant can provide compelling reasons for the downgrade.” L.V., 410 N.J. Super. at 110 (citations and internal punctuation omitted). The “reasons must be in addition to, and separate from, the mitigating factors which substantially outweigh the aggravating factors. Megargel, 143 N.J. at 502. The additional non-statutory mitigating factors cited above and not found by the court substantiate a finding that the interest of justice would be best served by sentencing this defendant to a three-year sentence subject to NERA and a consecutive three-year sentence. The court abused its discretion in failing to do so.

CONCLUSION

For the above mentioned reasons and authorities cited in support thereof, the defendant respectfully submits defendant's conviction and sentence should be reversed. In the alternative, the defendant submits his sentence should be vacated and remanded for resentencing.

Respectfully submitted,



HELMER, CONLEY & KASSELMAN, P.A.

By: Patricia B. Quelch  
Attorney ID Number 027111985  
Of Counsel and  
On the Brief

PBQ/  
May 21, 2024

c Middlesex County Prosecutor's Office

REDACTED

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-000916-24T2

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
	:	
Plaintiff-Respondent,	:	On Appeal from a Final Judgment of
	:	Conviction of the Superior Court of
v.	:	New Jersey, Middlesex County, Following
	:	Voluntary Waiver from Family Court.
	:	
B [REDACTED] C. L. [REDACTED],	:	
	:	Sat Below: The Hon. Deborah J. Venezia,
	:	J.S.C., and the Hon. Thomas P.
Defendant-Appellant.	:	Abode, J.S.C.

---

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

---

YOLANDA CICCONE  
MIDDLESEX COUNTY PROSECUTOR  
COUNTY OF MIDDLESEX  
25 KIRKPATRICK STREET, 3<sup>RD</sup> FLOOR  
NEW BRUNSWICK, NEW JERSEY 08901  
(732) 745-3300

NANCY A. HULETT  
ASSISTANT PROSECUTOR  
MIDDLESEX COUNTY PROSECUTOR'S OFFICE  
[nancy.hulett@co.middlesex.nj.us](mailto:nancy.hulett@co.middlesex.nj.us)  
ATTORNEY ID NUMBER 015511985

OF COUNSEL AND ON THE BRIEF

AUGUST 11, 2025

TABLE OF CONTENTS

	<u>PAGE</u>
<u>COUNTER-STATEMENT OF PROCEDURAL HISTORY</u> . . . . .	1
<u>COUNTER-STATEMENT OF FACTS</u> . . . . .	5
<u>LEGAL ARGUMENT</u>	
<u>POINT I</u>	
DEFENDANT’S VOLUNTARY WAIVER TO ADULT COURT WAS PROPERLY TAKEN AND HIS UNCONDITIONAL GUILTY PLEA IN ADULT COURT WAIVES CONSTITUTIONAL CLAIMS BEFORE THE GUILTY PLEA. (Da32-33; 3T10- 10 to 15) . . . . .	11
<u>POINT II</u>	
DEFENDANT’S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IS IMPROPERLY RAISED ON DIRECT APPEAL . . . . .	27
<u>POINT III</u>	
DEFENDANT’S SENTENCE IS MANIFESTLY PROPER (5T60-3 to 5T76-12) . . . . .	29
<u>CONCLUSION</u> . . . . .	37

TABLE OF JUDGMENTS

Trial Court Order waiving case from Family Court to adult court . . . . .	Da32-33
---------------------------------------------------------------------------	---------

	<u>PAGE</u>
Trial court decision granting voluntary waiver to adult court . . . . .	3T10- 10 to 15
Trial court's sentencing decision on the record . . . . .	5T60- 3 to 5T 76-12

TABLE OF APPENDIX  
(SEPARATE COVER)

Waiver of Indictment by Grand Jury . . . . .	Sa1 <sup>1</sup>
Accusation Number 24-04-437 . . . . .	Sa2 <sup>2</sup>
Plea form signed by defendant on April 22, 2024 . . . . .	Sa3
Appellate Division Order granting defendant's motion to expand the appellate record, dated June 10, 2025 . . . . .	Sa10

TABLE OF CONFIDENTIAL APPENDIX  
(SEPARATE COVER)

Juvenile Delinquency Complaint 1209-2023-000029 . . . . .	Sca1
Juvenile Delinquency Complaint 1209-2024-000003 . . . . .	Sca7

---

<sup>1</sup> The copy of this document in defendant's appendix at page 5 is not signed by counsel or defendant.

<sup>2</sup> The copy of this document in defendant's appendix at page 6 is not signed by the prosecuting attorney.

PAGE

TABLE OF AUTHORITIES

CASES CITED

<u>State v. Allah</u> , 170 N.J. 269 (2002) . . . . .	27, 28
<u>State v. Case</u> , 220 N.J. 49 (2014) . . . . .	30
<u>State v. Castagna</u> , 187 N.J. 293 (2006) . . . . .	27
<u>State v. Crawley</u> , 149 N.J. 310 (1997) . . . . .	26
<u>State v. Dalziel</u> , 182 N.J. 494 (2005) . . . . .	33
<u>State v. Denmon</u> , 347 N.J. Super. 457 (App. Div.), certif. denied, 174 N.J. 41 (2002) . . . . .	34
<u>State v. Devlin</u> , 234 N.J. Super. 545 (App. Div.), certif. denied, 117 N.J. 653 (1989) . . . . .	34
<u>State v. Ferguson</u> , 255 N.J. Super. 530 (App. Div. 1992), certif. denied, 138 N.J. 265 (1994) . . . . .	13
<u>State v. Fritz</u> , 105 N.J. 42 (1987) . . . . .	29
<u>State v. Fuentes</u> , 217 N.J. 57 (2014) . . . . .	30
<u>State v. Hess</u> , 207 N.J. 123 (2011) . . . . .	34
<u>State v. Hodge</u> , 95 N.J. 369 (1984) . . . . .	33
<u>State v. Jack</u> , 144 N.J. 240 (1996) . . . . .	13, 26
<u>State v. Knight</u> , 183 N.J. 449 (2005) . . . . .	25, 26
<u>State v. Krumphold</u> , 162 N.J. 345 (2000) . . . . .	34

	<u>PAGE</u>
<u>State v. Laganella</u> , 144 N.J. Super. 268 (App. Div. 1976) . . . . .	25
<u>State v. Lake</u> , 408 N.J. Super. 313 (App. Div. 2009) . . . . .	31
<u>State v. Locane</u> , 454 N.J. Super. 98 (App. Div.), <u>certif. denied</u> , 235 N.J. 457 (2018) . . . . .	30, 31
<u>State v. Marolda</u> , 394 N.J. Super. 430 (App. Div.), <u>certif. denied</u> , 192 N.J. 482 (2007) . . . . .	26
<u>State v. Megargel</u> , 143 N.J. 484 (1996) . . . . .	30, 31
<u>State v. N.H.</u> , 226 N.J. 242 (2016) . . . . .	13
<u>State v. J.M.</u> , 182 N.J. 402 (2005) . . . . .	12, 26
<u>State v. Means</u> , 191 N.J. 610 (2007) . . . . .	24
<u>State v. Radziwill</u> , 235 N.J. Super. 557 (App. Div. 1989), <u>aff'd o.b.</u> , 121 N.J. 527 (1990) . . . . .	34
<u>State v. Robinson</u> , 224 N.J. Super. 495 (App. Div. 1988) . . . . .	25
<u>State v. Roth</u> , 95 N.J. 334 (1984) . . . . .	33
<u>State v. Taylor</u> , 80 N.J. 353 (1979) . . . . .	15
<u>State v. L.V.</u> , 410 N.J. Super. 90 (App. Div. 2009), <u>certif. denied</u> , 201 N.J. 156 (2010) . . . . .	35
<u>State in the Interest of Z.S.</u> , 464 N.J. Super. 507 (App. Div. 2020) . . .	12, 14
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984) . . . . .	29
<u>Tollett v. Henderson</u> , 411 U.S. 258 (1973) . . . . .	26

PAGE

<u>United States v. Russell</u> , 411 U.S. 423 (1973) . . . . .	25
-----------------------------------------------------------------	----

STATUTES CITED

N.J.S.A. 2A:4A-26.1(a) . . . . .	12
N.J.S.A. 2A:4A-26.1(c)(1) . . . . .	12
N.J.S.A. 2A:4A-26.1(c)(2) . . . . .	12
N.J.S.A. 2A:4A-26.1(c)(3) . . . . .	12
N.J.S.A. 2A:4A-26.1(e) . . . . .	12
N.J.S.A. 2A:4A-26.1(f)(1) . . . . .	13, 17
N.J.S.A. 2A:4A-26.1(f)(1)((a) . . . . .	13
N.J.S.A. 2A:4A-26.1(f)(1)(b) . . . . .	13
N.J.S.A. 2A:4A-26.1(f)(2) . . . . .	11
N.J.S.A. 2A:4A-27 . . . . .	14
N.J.S.A. 2A:4A-29 . . . . .	14
N.J.S.A. 2C:2-2(b)(1) . . . . .	22
N.J.S.A. 2C:11-2(b)(2) . . . . .	22
N.J.S.A. 2C:5(a)(1) . . . . .	1
N.J.S.A. 2C:11-1(b) . . . . .	22
N.J.S.A. 2C:11-3(a)(1) . . . . .	1, 2, 3, 21

	<u>PAGE</u>
N.J.S.A. 2C:11-3(a)(2) . . . . .	2, 3, 21
N.J.S.A. 11-3(b)(1) . . . . .	24
N.J.S.A. 2C:11-4(a)(1)(c) . . . . .	24
N.J.S.A. 2C:11-5a . . . . .	3
N.J.S.A. 2C:11-5.1 . . . . .	2, 3, 16
N.J.S.A. 2C:12-1b(1) . . . . .	1
N.J.S.A. 2C:12-1.1 . . . . .	1, 2
N.J.S.A. 2C:28-6(1) . . . . .	2, 3
N.J.S.A. 2C:29-1(a) . . . . .	2, 3
N.J.S.A. 2C:29-3b(1) . . . . .	2, 3
N.J.S.A. 2C:43-6a(2) . . . . .	33
N.J.S.A. 2C:44-1a . . . . .	31
N.J.S.A. 2C:44-1a(2) . . . . .	31, 34
N.J.S.A. 2C:44-1a(9) . . . . .	32, 35
N.J.S.A. 2C:44-1b(7) . . . . .	32
N.J.S.A. 2C:44-1b(9) . . . . .	32
N.J.S.A. 2C:44-1b(14) . . . . .	32
N.J.S.A. 2C:44-1b . . . . .	31

	PAGE
N.J.S.A. 2C:44-1(f)(2) . . . . .	30

RULES CITED

<u>Rule</u> 3:5-7(d) . . . . .	26
<u>Rule</u> 3:9-3(f) . . . . .	26
<u>Rule</u> 3:28-6(d) . . . . .	26

COUNTER-STATEMENT OF PROCEDURAL HISTORY

On December 4, 2023, Juvenile Delinquency Complaint Number 1209-2023-00027 was filed by the Old Bridge Police Department, charging defendant B■■■■ C. L■■■■ with an act of delinquency which, if committed by an adult, would constitute the third-degree crime of knowingly leaving the scene of a motor vehicle accident that caused serious bodily injury to another person, contrary to N.J.S.A. 2C:12-1.1. (Da34-37).<sup>1</sup>

On December 13, 2023, Juvenile Delinquency Complaint Number 1209-2023-00029 was filed by the Old Bridge Police Department against defendant charging him with acts of delinquency which, if committed by an adult, would constitute the first-degree crime of attempted murder, contrary to N.J.S.A. 2C:11-5 and 2C:11-3a(1), the second-degree crime of aggravated assault, contrary to N.J.S.A. 2C:12-1b(1), the original charge of third-degree leaving

---

<sup>1</sup> Citations to the record are as follows:

- “Da” defendant’s appendix;
- “Db” defendant’s brief;
- “PSR” defendant’s pre-sentence report (separately uploaded to the docket);
- “Sa” State’s appendix;
- “Sca” State’s confidential appendix;
- “1T” Transcript dated February 6, 2024;
- “2T” Transcript dated March 19, 2024;
- “3T” Transcript dated April 22, 2024 (juvenile waiver hearing);
- “4T” Transcript dated April 22, 2024 (guilty plea in adult court);
- “5T” Transcript dated October 17, 2024.

the scene of a motor vehicle accident resulting in serious bodily injury to another person under N.J.S.A. 2C:12-1.1, third-degree hindering apprehension, contrary to N.J.S.A. 2C:29-3b(1), fourth-degree tampering with physical evidence, contrary to N.J.S.A. 2C:28-6(1), and fourth-degree obstruction of the administration of law, contrary to N.J.S.A. 2C:29-1(a). (Sca1-6).

On January 26, 2024, Juvenile Delinquency Complaint Number 1209-2024-000003 was filed by the Old Bridge Police Department charging defendant with acts of delinquency which, if committed by an adult, would constitute the crimes of purposeful or knowing murder, contrary to N.J.S.A. 2C:11-3a(1), (2), second-degree knowingly leaving the scene of an accident that resulted in the death of another person, contrary to N.J.S.A. 2C:11-5.1, third-degree hindering apprehension, contrary to N.J.S.A. 2C:29-3b(1), fourth-degree tampering with evidence, contrary to N.J.S.A. 2C:28-6(1), and fourth-degree obstruction of the administration of law, contrary to N.J.S.A. 2C:29-1(a). (Sca7-12).

The Honorable Deborah J. Venezia, J.S.C., presided over defendant's case in Family Court. (1T-3T). On April 22, 2024, Judge Venezia presided over the juvenile court hearing whereby defendant agreed to voluntarily waive his case to adult court pursuant to a "global plea resolution." (3T3-20 to 24).

On this same date, Judge Venezia accepted defendant's voluntary waiver to adult court and signed an Order to this effect. (Da32-33; 3T10-10 to 15).

On the same day defendant's case was transferred to adult court, Complaint Warrant 1209-2024-000171 was issued charging defendant as an adult with purposeful or knowing murder under N.J.S.A. 2C:11-3a(1), (2), second-degree leaving the scene of a motor vehicle accident that resulted in death under N.J.S.A. 2C:11-5.1, second-degree vehicular homicide under N.J.S.A. 2C:11-5a, third-degree hindering apprehension under N.J.S.A. 2C:29-3b(1), fourth-degree tampering with physical evidence under N.J.S.A. 2C:28-6(1), and fourth-degree obstruction of the administration of law under N.J.S.A. 2C:29-1(a). (Da14-23).

Also on April 22 in adult court, defendant waived his right to indictment by grand jury after which Accusation Number 24-04-437 was entered charging him with second-degree vehicular homicide under N.J.S.A. 2C:11-5a (count one) and with second-degree knowingly leaving the scene of an accident of a motor vehicle accident that resulted in death under N.J.S.A. 2C:11-5.1 (count two). (Sa1-2). The parties entered into a plea agreement, which defendant went over with counsel and signed on April 22. (Sa3-9). Defendant then appeared that same day before the Honorable Thomas P. Abode, J.S.C., and

pleaded guilty to both counts in the Accusation. (4T). Judge Abode accepted defendant's guilty plea. (4T31-10 to 18).

Judge Abode sentenced defendant on October 17, 2024, in conformance with the plea agreement. (5T). On count one, defendant was committed to the custody of the Juvenile Justice Commission (JJC) for a term of five years, of which 85% had to be served without parole under the No Early Release Act (NERA). (Da7; 5T73-21 to 5T74-5).<sup>2</sup> On count two, defendant was committed to the custody of the JCC for a term of five years, which was to run consecutively to count one. (Da7; 5T74-9 to 18). The judge also imposed restitution in the amount of \$7500. (5T74-24 to 5T75-2). The judge assessed a LEOTEF penalty of \$30, a total SNSF assessment of \$150 and a total VCCO assessment of \$100. (Da8; 5T75-2 to 8).

Defendant filed a Notice of Appeal on December 1, 2004. (Da24-31). Defendant filed a motion to expand the appellate record with his certification in his appendix, (Da1-4), and the Appellate Division granted the motion on June 10, 2025. (Sa10).

---

<sup>2</sup> On March 17, 2025, the Legislature passed bill S2423, which renamed the JJC to the Youth Justice Commission (YJC). See <https://www.njleg.state.us/bill-search/2024/S2423>.

### COUNTER-STATEMENT OF FACTS

The facts of defendant's crimes are taken from the factual basis given by defendant at his plea hearing, as well as information contained in the charging documents, the transcripts and the pre-sentence report.

At about 7:41 a.m. on December 4, 2023, police responded to a Wawa store on Route 34 in Old Bridge Township after receiving a dispatch of a pedestrian strike. (PSR, page 3; 5T62-2 to 4). First Aid responders were already on the scene attending to the victim, A.P., who was lying on the ground against the curb in the northeast corner of the Wawa parking lot. (5T62-5 to 8). A.P. was wearing a black-colored Wawa jacket that had reflective stripes on it. (PSR, page 3; 5T62-8 to 9). There were tire track impressions on the jacket. (PSR, page 3; 5T62-12). A.P. was moaning in pain, swinging, and showing signs of being in shock. (PSR, page 3; 5T62-9 to 10). A.P. could not answer direct questions. (PSR, page 3; 5T62-10 to 11). He was transported to a hospital in Old Bridge. (PSR, page 3; 5T62-13 to 15).

Police spoke to a witness, M.B., who told them that he had seen a white teenaged male with dirty blonde hair and wearing a dark and light-colored purple sweatshirt with gray sweatpants enter the Wawa parking lot driving a two-tone silver colored Ford F-150 pick-up truck with a Harley Davidson symbol on it. (PSR, pages 3-4; 5T62-16 to 20). He told police the truck was

speeding and skidding. (PSR, page 4; 5T62-20 to 21). The driver of the truck parked it in a marked space in the northeast corner of the parking lot. (PSR, page 4; 5T62-21 to 23). The teenaged male then entered the Wawa store. (PSR, page 4; 5T62-23 to 24). When he came out of the store, he was accompanied by another teenager who was Caucasian and who had dark hair and a “mushroom style” haircut. (PSR, page 4; 5T62-24 to 5T63-1). A.P. approached the teenager with the dirty blonde hair in the parking lot, who responded by shoving A.P. (PSR, page 4; 5T63-2 to 3). A.P. followed the teenager to the Ford truck as he was “stiff armed” by the teenager. (PSR page 4, 5T63-3 to 5). A.P. yelled for help to stop the teenager from leaving the parking lot. (PSR page 4; 5T63-6). Police were told that both teenagers got into the Ford pick-up truck. (PSR, page 4; 5T63-7).

The driver of the Ford pick-up truck put it into reverse, however, A.P. was standing behind the truck and A.P. was forced backwards as the truck continued in reverse. (PSR, page 4; 5T63-9 to 10). A.P. called out to M.B. to use his Dodge Ram to block the Ford pick-up truck from leaving the parking lot. (PSR, page 4; 5T63-10 to 14). M.B. pulled his vehicle into the parking lot and blocked the roadway nearest the gas pumps. (PSR, page 4; 5T63-15 to 16). The Ford pick-up truck then made a K-turn. (PSR, page 4; 5T63-16 to 18). A.P. was now in front of the Ford truck. (PSR, page 4; 5T63-19 to 21).

The Ford truck was accelerated and A.P. was run over. (PSR, page 4; 5T63-21 to 25). The Ford truck continued around the rear of the Wawa building and sped around to the front of the store. (PSR, page 4; 5T63-21 to 25). The Ford truck sped away and almost struck another driver in a Nissan Murano. (PSR, page 4; 5T63-21 to 25). The driver of the Murano, C.R., told police he saw that the driver was a white male, and he did not notice anyone else in the truck. (PSR, page 4; 5T64-6 to 10).

Police also spoke to another witness, R.F., who told them that he saw a silver and white Ford truck F-150 Harley Davidson edition run over A.P. while driving toward the rear of the Wawa. (PSR, page 4; 5T64-1 to 4).

Police recovered a surveillance video from the Wawa, and the second teenager seen exiting Wawa was identified, and he told police that the driver was alone in the Ford truck when he ran over the victim after a dispute. (Da21; Da23).

Police contacted the Resource Officer at Old Bridge High School because they believed the driver of the Ford truck was of high school age. (PSR, page 4; 5T64-11 to 13). Police asked the Resource Officer if he could locate the Ford truck in the student parking lot. (PSR. Page 4; 5T64-13 to 15). He located one in parking lot 1, space number 357. (PSR, page 4; 5T64-15 to 16). The rear license plate was bent up to hide the license plate number.

(PSR, page 4; 5T64-16 to 19). The Ford truck parked in the student lot appeared to match the Ford truck police saw in the Wawa surveillance video. (PSR, page 4).

Police were informed that the driver of the Ford truck parked at the school was defendant. (PSR, page 4; 5T64-20 to 22). Defendant had signed in late that day for school at 8:06 a.m. (PSR, page 4; 5T64-22 to 23). When defendant was called to the Vice Principal's office, he was wearing a sweatshirt seen in the Wawa surveillance video. (PSR, page 4). Police seized defendant's cell phone and took him into custody. (PSR, page 4; 5T64-25 to 5T65-2). Defendant, who was 17 years old, was charged in a juvenile delinquency complaint, and police impounded the Ford truck. (PSR, page 4).

On December 5, 2023, A.P. called the Old Bridge police department and told them he was in the intensive care unit (ICU) at Jersey Shore Medical Center. (Da21; PSR, page 5; 5T65-6 to 8). He reported that he had three broken ribs, damage to his small intestines, internal bleeding and a bruised kidney. (PSR, page 5; 5T65-8 to 10). A.P. also told police that he had recognized defendant as someone who he believed had stolen gas from Wawa in October 2023. (Da21; PSR, page 5; 5T65-10 to 12). A.P. said he approached defendant as defendant left the Wawa with a shorter teenager. (PSR, page 5; 5T65-14 to 16). A.P.'s conversation with police was cut short

when a nurse entered the room to say A.P. needed to be taken in for testing. (PSR, page 5; 5T65-15 to 18). A.P. later underwent surgery and was placed into an induced coma. (Da21; PSR, page 5; 5T65-18 to 19). When police contacted the hospital on December 6, 2023, they were told that A.P. was in critical but stable condition; he was intubated, on a ventilator and in the induced coma. (PSR, page 5).

On December 12, 2023, police executed a search warrant on the Ford truck. (PSR, page 5; 5T66-6 to 7). The top corners of the truck's front grill had what appeared to be handprints and smudges in a light layer of dirt. (PSR, page 5; 5T66-7 to 9). The truck's left front tire's outer sidewall showed signs of rubbing as if it had struck something. (PSR, page 5; 5T66-10 to 12).

A.P. languished in the hospital for 50 days before passing away on January 23, 2024. (PSR, page 6; 5T65-20 to 5T66-22). During that time, A.P. had multiple exploratory laparotomies, had his large and small intestines resectioned, suffered recurrent fevers from peritoneal abscess and extended antibody therapy, suffered from atrial fibrillation, experienced respiratory failure, deep femoral vein thrombosis, and hemorrhagic shock due to artery rupture. (5T91-12 to 21). The laparotomy was done to do an "abdominal washout." (5T52-23 to 5T53-1). At one point, doctors took A.P. out of the induced coma, but they were compelled to induce the coma again because

A.P.'s internal organs had been crushed, and doctors had to remove part of his intestines. (5T52-6 to 12). A.P. also suffered strokes, and his body simply gave out. (5T52-19 to 22). The cause of death was listed as complications of blunt force injuries sustained when A.P. was run over by a vehicle. (PSR, page 6).<sup>3</sup>

When defendant pleaded guilty, he admitted that he drove his vehicle recklessly and hit A.P., who died six weeks after sustaining his injuries. (4T26-19 to 4T27-2). He admitted that A.P. was in front of his truck when he accelerated it and ran over A.P. (4T27-20 to 4T28-6; 4T28-14 to 18; 4T28-19 to 21). Defendant admitted he never checked to make sure A.P. was away from the truck and admitted he never called 9-1-1 after running A.P. over. (4T30-22 to 24; 4T29-17 to 22).

---

<sup>3</sup> The severity of the internal injuries that caused A.P.'s death must be viewed considering the type of vehicle that ran over him, which was a Ford F-150 truck. According to Ford's website, the "base curb weight" of the 2024 F-150 truck ranges from 4641 pounds to 5038 pounds, depending on the model and size of the engine. See [ford.com/trucks/f150/2024/models/f150-xl/](https://ford.com/trucks/f150/2024/models/f150-xl/).

## LEGAL ARGUMENT

### POINT I

DEFENDANT'S VOLUNTARY WAIVER TO ADULT COURT WAS PROPERLY TAKEN AND HIS UNCONDITIONAL GUILTY PLEA IN ADULT COURT WAIVES CONSTITUTIONAL CLAIMS BEFORE THE GUILTY PLEA. (Da32-33; 3T10-10 to 15).

Defendant, for the first time on appeal, contends that his voluntary waiver to adult court violated due process because he was not told that if his case was involuntarily transferred to adult court under N.J.S.A. 2A:4A-26.1, he could still be treated as a juvenile if he was convicted in adult court of a non-waivable offense, otherwise referred to as "reverse waiver" under N.J.S.A. 2A:4A-26.1(f)(2). Defendant's claim is without merit. Defendant agreed to ask the Family Court for a voluntary waiver/transfer to adult court under N.J.S.A. 2A:4A-27 because of a favorable plea agreement he reached with the State, which he was fully apprised about both in Family Court and then later in adult court when he pleaded guilty. His guilty plea in adult court was unconditional, and it constitutes a waiver of his due process claim.

To place defendant's claims into context, an overview of the applicable juvenile statutes is necessary. N.J.S.A. 2A:4A-26.1 is entitled, "Waiver of jurisdiction in juvenile delinquency case without consent of juvenile, hearing," and is referred to as involuntary waiver or transfer to adult court. The

Appellate Division has commented that use of the term “waiver” in this context is “somewhat peculiar,” because a waiver normally refers to relinquishment of a known right. State in the Interest of Z.S., 464 N.J. Super. 507, 512 n.3 (App. Div. 2020).

When waiver or transfer to adult court is sought without the juvenile’s consent, section 2A:4A:26.1 requires a hearing where the State must prove that the juvenile was fifteen years or older at the time of the offense and that there is probable cause to support the charge(s) of delinquency for any one of a number of enumerated offenses that can be waived or transferred to adult court. N.J.S.A. 2A:4A-26.1(c)(1), (2). The State must provide a written statement of reasons clearly setting forth the facts used in assessing factors that it must consider and which are specified in the statute, N.J.S.A. 2A:4A-26.1(a), (c)(2), and the family court must determine that the prosecutor’s decision to seek the involuntary waiver/transfer to adult court is not an abuse of discretion. N.J.S.A. 2A:4A:26.1(c)(3).

The juvenile has the right to present evidence at the involuntary waiver/transfer hearing. State v. J.M., 182 N.J. 402 (2005). If the juvenile testifies at the hearing, the testimony is not admissible for any purpose in any subsequent hearing to determine delinquency or guilt of any offense. N.J.S.A. 2A:4A-26.1(e). The juvenile is entitled to full and complete discovery from

the State before the involuntary waiver/transfer hearing is conducted. State v. N.H., 226 N.J. 242 (2016). The juvenile is entitled to the effective assistance of counsel at the involuntary waiver/transfer hearing. State v. Jack, 144 N.J. 240 (1996); State v. Ferguson, 255 N.J. Super. 530 (App. Div. 1992), certif. denied, 138 N.J. 265 (1994).

N.J.S.A. 2A:4A-26.1, in relevant part, also provides for what happens after a juvenile's case is involuntarily waived/transferred to adult court. Section 2A:4A-26.1(f)(1) provides that if the juvenile is convicted in adult court of a waivable offense set forth in section 2A:4A-26.1(c)(2), there is a presumption that the juvenile will serve any custodial sentence in a state juvenile facility operated by the JJC, now called the YJC, until the juvenile reaches the age of 21. The YJC may in its discretion transfer the juvenile to a state prison before the age of 21, N.J.S.A. 2A:4A-26.1(f)(1)(a), and if the juvenile consents, the YJC may continue to confine the juvenile to a juvenile facility after the juvenile turns 21. N.J.S.A. 2A:4A-26.1(f)(1)(b). Section (f) also provides for what is called "reverse waiver," which is if the juvenile is convicted in adult court of a waivable offense not set forth in section 2A:4A-26.1(c)(2), the conviction is deemed a juvenile adjudication, and the case must be sent back to Family Court for disposition. N.J.S.A. 2A:4A-26.1(f)(2).

In addition to involuntary waiver/transfer to adult court, the Juvenile Code provides for voluntary waiver or transfer under N.J.S.A. 2A:4A-27. State in the Interest of Z.S., 464 N.J. Super. at 512 n.3. Section 2A:4A-27 is titled, “Referral to other court at election of juvenile.” The statute provides, in relevant part, that “[a]ny juvenile 14 years of age or older charged with delinquency may elect to have the case transferred to the appropriate court having jurisdiction.” Any testimony from the juvenile at a hearing under section 2A:4A-27 is not admissible for any purpose in any hearing to determine delinquency or guilt of any offense. N.J.S.A. 2A:4A-29.

As defendant acknowledges, the statutory provisions under section 2A:4A-26.1 for involuntary waivers/transfers to adult court contrast with voluntary waivers/transfers under section 2A:4A-27. (Db12;14). The State submits that the substantive and procedural differences stem from the reality that a juvenile’s voluntary waiver/transfer to adult court pursuant to section 2A:4A-27 is effectuated after the juvenile and the State enter an agreement, which is what occurred in this case. In return for the juvenile’s consent to voluntarily waive/transfer to adult court, he receives the benefit of a plea agreement in adult court. Plea bargaining is “firmly institutionalized” and represents an appropriate accommodation of the conflicting interests of a

person charged with crime and the needs of the State to resolve cases. State v. Taylor, 80 N.J. 353, 360-61 (1979).

Unlike the juvenile in the involuntary waiver/transfer context, the juvenile in the voluntary waiver/transfer context who reaches a plea deal receives certainty of what he will be convicted of in adult court and what the recommended sentence is under the plea agreement. Consideration is tendered by both parties. The details of the plea agreement and the penal consequences of the plea agreement are what must be imparted to the juvenile, which was done here both in Family Court and in adult court.

When defendant committed his offense on December 4, 2023, he was two months shy of turning eighteen years old. (PSR, page 1). When the parties appeared before Judge Venezia in Family Court on February 6, 2024, defendant had by then turned 18 years old, and the State had upgraded the charged acts of delinquency to include the charge of purposeful or knowing murder. (Sca7; 1T4-21 to 22). Counsel informed the court that discussions were underway to resolve the case. (1T4-4 to 6).

When both counsels appeared before Judge Venezia on March 19, 2024, they informed the judge that plea discussions were still underway and that the State had amended its offer to a plea in adult court to vehicular homicide and leaving the scene of an accident. (2T3-22 to 2T4-6). The State's offer was

conditioned on defendant voluntarily waiving/ transferring his case to adult court. (2T4-7 to 12). If the defense chose to go the involuntary waiver/transfer route, the deal was off, and the State would proceed with a jury trial. (2T6-10 to 21). Defense counsel stated that defendant was “seriously considering” the State’s offer because it was a “great deal.” (2T5-4 to 5; 2T5-15 to 16). Defense counsel told the court that he had communicated “a lot” with defendant. (2T6-24 to 2T7-1).

On April 22, 2024, the parties appeared before Judge Venezia and told the court they had reached a resolution. (3T3-14 to 16). Defense counsel stated that defendant was ready to execute a voluntary waiver/transfer to adult court as part of the “global resolution” reached with the State. (3T3-20 to 22). The plea agreement called for defendant to plead guilty in adult court to second-degree vehicular homicide under N.J.S.A. 2C:11-5, and second-degree leaving the scene of an accident under N.J.S.A. 2C:11-5.1; the State agreed to recommend the minimum term of imprisonment for a second-degree offense: a five-year sentence, subject to NERA, on vehicular homicide, and a consecutive, five-year term on leaving the scene of an accident. (3T4-3 to 6).<sup>4</sup> The defense reserved the right to seek at sentencing a downgraded sentence in

---

<sup>4</sup> Consecutive sentencing is required under N.J.S.A. 2C:11-5.1.

the third-degree range. (3T4-14 to 16).<sup>5</sup> The State also agreed not to seek sentencing before September 2024 due to certain health issues for defendant. (3T4-8 to 11). The State also agreed to allow defendant to continue with pretrial monitoring. (3T4-11 to 13). Counsel advised the court that he had discussed with defendant “all of the risks.” (3T4-14 to 18).

Defendant was placed under oath and was questioned by counsel. (3T5-13 to 3T7-23). Defendant acknowledged his understanding that in a hearing to transfer his case to adult court, the State would have to establish probable cause for a waivable offense, and the State would have to call witnesses, and the defense would have the right to call witnesses and cross-examine the State’s witnesses. (3T5-25 to 3T6-18). Defendant acknowledged that the plea deal would not be in place if the waiver hearing was conducted. (3T6-19 to 24). Defendant acknowledged that the plea agreement explained to the judge in court was the agreement and he was willing to transfer his case to adult court. (3T7-11 to 19). Counsel also had defendant acknowledge that while he was not entering a plea of guilty in family court, once his case was waived to

---

<sup>5</sup> It was also agreed that defendant would serve his sentence in a state juvenile facility operated by the YJC, so the parties agreed to give defendant the benefit of section 2A:4A-26.1(f)(1) when there is involuntary waiver/transfer. (See 5T21-5 to 17).

adult court, his waiver would stand, and he could not “come back and do this over again.” (3T10-1 to 8).

Judge Venezia then asked defendant questions. She asked defendant if he had any questions for counsel or the court; defendant answered no. (3T8-20 to 3T9-2). She asked defendant if he had had enough time to discuss matters with counsel; defendant answered yes. (3T9-3 to 5). Defendant said he was satisfied with counsel’s performance. (3T9-6 to 8). Defendant told the judge he was not being forced or coerced to agree to a voluntary waiver/transfer to adult court. (3T9-9 to 12). He told the judge he was not under the influence of any substance that could affect his ability to understand the proceedings. (3T9-15 to 18). Judge Venezia ruled that defendant was voluntarily seeking a waiver or transfer to adult court and understood his rights. (3T10-10 to 14).

Execution of the plea agreement took place immediately after the case was transferred to adult court. (Da32-33). Defendant executed a waiver of his right to indictment by grand jury, (Sa1), an Accusation was drafted, (Sa2), and defendant went over the plea form, (Sa3-9), with counsel. The plea form set forth in Question 4(e) that defendant’s guilty plea was unconditional. (Sa4). The parties then appeared before Judge Abode where counsel informed the court of the plea agreement. (4T3-23 to 4T4-6; 4T5-17 to 18; 4T5-23 to 4T6-3; 4T6-22 to 24; 4T7-23 to 4T8-2).

Defendant was again sworn. (4T3-21). Judge Abode then addressed defendant to ensure that his guilty plea was being entered voluntarily, intelligently and knowingly along with a factual basis of guilt to the charges in the Accusation. (T9-10 to T29-22). Defendant told the court that he had gone over the plea form with counsel in its entirety “line by line” and “page by page.” (4T14-11 to 4T12-2). He acknowledged his initials on the bottom of each page of the plea form. (4T15-3 to 5; 4T15-10 to 12). Defendant acknowledged that he would plead guilty to second-degree crimes that carried a maximum of ten years in prison on each, which meant his maximum exposure was 20 years in prison. (4T17-21 to 4T18-2; 4T18-14 to 4T19-8). The court made sure defendant was aware of the parole bar mandated by NERA for the charge of vehicular homicide. (4T19-11 to 25).

Defendant told the court he was pleading guilty voluntarily and had had enough time to consult with counsel. (4T22-2 to 4; 4T22-8 to 13). Defendant affirmed that counsel had reviewed with him all the discovery in his case. (4T22-17 to 20). Defendant told the court he was satisfied with counsel’s performance and that he had had enough time to consult with his mother. (4T22-21 to 4T23-2).

In accordance with the plea agreement, sentencing took place in October 2024, after defendant’s medical issues were resolved. (5T). At no time prior

to sentencing did defendant raise any issue with respect to the validity of his guilty plea or his voluntary waiver/transfer to adult court. He argued in favor of a downgraded sentence at sentencing, but Judge Abode rejected those arguments and sentenced defendant in accordance with plea agreement to an aggregate sentence of 10 years in prison, subject to NERA on the conviction for vehicular homicide. (Da7). In accordance with the agreement, Judge Abode sentenced defendant to the custody of the YJC until he reached the age of 21. (Da7; 5T73-21 to 25; 5T74-10 to 15).

Now, for the first time on appeal, defendant argues that his hearing before Judge Venezia in Family Court failed to comport with due process because he was not informed that if a juvenile case is involuntarily waived/transferred to adult court, it will be remanded to Family Court for sentencing if in adult court the juvenile is convicted of a non-waivable offense, as is provided in section 2A:4A-26.1(f)(2). For the following reasons, defendant's claim should be rejected.

First, because this case involved a voluntary waiver/transfer to adult court under section 2A:4A-27, the provisions of section 2A:4A-26.1(f) regarding what happens after a case is involuntarily transferred to adult court were not pertinent. What was pertinent were the provisions in section 2A:4A-26.1(a), (b) and (c), regarding the type of hearing defendant would receive if

he did not consent to waiving/transferring his case to adult court, which included the State's burden to prove the prerequisites to an involuntary waiver/transfer as set forth in section 2A:4A-26.1(a), (b) and (c). Defendant was advised about the State's burden at an involuntary waiver/transfer hearing, and how he had the right to challenge the evidence at that hearing. He knew what he needed to know.

The details of the global agreement reached between the parties were made clear to him before Judge Venezia in family court. He was advised that a voluntary waiver or transfer meant he could not return to family court, which was correct, because this was not an involuntary waiver/transfer situation. He knew that if he did not consent to a waiver/transfer to adult court and the State had to move under section 2A:4A-26.1 for involuntary waiver/transfer, there was no plea deal. Defendant executed a knowing, intelligent and voluntary waiver/transfer of his case to adult court under section 2A:4A-27. Judge Venezia properly accepted the voluntary waiver/transfer to adult court.

The record refutes defendant's claim that the State's evidence did not support the delinquency charge of purposeful or knowing murder. (Db16-17). Murder is committed when the actor purposely or knowingly causes death or serious bodily injury that results in death. N.J.S.A. 2C:11-3(a)(1), (2). Serious bodily injury is bodily injury which creates a substantial risk of death

or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. N.J.S.A. 2C:11-1(b). A person acts purposely when it is his “conscious objective” to engage in conduct of a particular nature or to cause a certain result. N.J.S.A. 2C:2-2(b)(1). A person acts knowingly if he is aware of the nature of his conduct or if he is “practically certain” that his conduct will produce a certain result. N.J.S.A. 2C:2-2(b)(2). There was ample evidence to support the charged act of delinquency for murder, which was lodged shortly after the victim died.

In fact, the delinquency charges in this case were upgraded from the initial charge of third-degree leaving the scene of an accident that resulted in serious bodily injury, (Da34), as it became apparent to police that the victim might not survive. So, the second delinquency complaint contained the charge of attempted murder and aggravated assault. (Sca1). The third and final delinquency complaint charged defendant with murder and related offenses. (Sca7).

Defendant ran over the victim with his large Ford truck that weighed several thousand pounds. The victim was standing in front of the truck and there were witnesses who saw defendant accelerate his truck. Defendant knew the victim was in front of the truck and was trying to prevent him from leaving the parking lot. When defendant drove his several thousand pound truck over

someone standing in front of it, there was probable cause for purposeful or knowing murder. Defendant's "conscious objective" was to cause death or serious bodily injury resulting in death or he was "practically certain" it would cause death or serious bodily injury.<sup>6</sup> The victim suffered extensive abdominal injury due to the crushing caused when he was run over by defendant's several thousand pound truck. Defendant had the State's discovery and knew the State's delinquency charge of murder was supported by probable cause and could very well result in a conviction in adult court for that offense.

Contrary to defendant's claim, the plea offer that the State made to defendant was not because its proofs were lacking. (Db16). As outlined earlier, it was offered in exchange for defendant's voluntary waiver/transfer to adult court under section 2A:4A-27 and his willingness to plead guilty in adult court to the specified second-degree crimes, which would obviate the time involved with conducting an involuntary waiver/transfer hearing under section 2A:4A-26.1 and a jury trial in adult court.

In exchange for defendant's consideration, the State agreed to a plea to second-degree vehicular homicide and second-degree leaving the scene of an accident, which greatly reduced defendant's penal exposure. A sentence for

---

<sup>6</sup> At sentencing, the State mentioned that it learned from one of defendant's teachers that he spoke to friends on December 5, 2023, and told them he felt the "thump, thump." (5T37-13 to 18; 5T38-10 to 12; 5T38-18 to 20).

murder is either 30 years in prison without parole or to a term of years between 30 years and life imprisonment, of which 30 years must be served without parole. N.J.S.A. 2C:11-3(b)(1). The lesser included offense of aggravated manslaughter, which occurs when an actor recklessly causes death under circumstances manifesting extreme indifference to human life, also carries a substantial sentence of between 10 and 30 years in prison. N.J.S.A. 2C:11-4(a)(1), (c).

Under the plea agreement, defendant reduced his penal exposure to an aggregate of 10 years in prison. He received certainty on what he would stand convicted of in adult court and what his maximum sentence would be, as opposed to taking his chances on involuntary waiver/transfer and a jury trial in adult court. And, as part of the deal, he was sentenced to the custody of the YJC, not state prison.

The evidence against defendant for the delinquency charge of murder was compelling and it undoubtedly influenced defendant's decision to accept the State's plea offer and voluntarily waive/transfer his case to adult court and plead guilty to vehicular homicide and leaving the scene of an accident that resulted in death. The plea deal reached in this case was based on mutual advantage, which is what plea bargaining is all about. E.g., State v. Means,

191 N.J. 610, 618 (2007) (key component to plea bargaining is the “mutuality of advantage” it affords to both parties).

To the extent that defendant now belatedly argues a due process violation regarding his voluntary waiver/transfer to adult court, the Appellate Division has observed that due process “is little more than a metonym for fair play.” State v. Laganella, 144 N.J. Super. 268, 284 (App. Div. 1976). Due process connotes fundamental fairness, which, if missing, produces a reaction that is “shocking to the universal sense of justice.” Ibid. (quoting United States v. Russell, 411 U.S. 423, 432 (1973)). Due process means nothing more. Ibid. There was nothing fundamentally unfair with defendant’s voluntary waiver/transfer to adult court to receive the benefit of the State’s favorable plea bargain.

In addition to the arguments outlined above, defendant’s substantive challenge to his voluntary waiver/transfer to adult court fails due to a procedural hurdle. Defendant entered an unconditional guilty plea in adult court, and his guilty plea acts as a waiver to challenging his voluntary waiver/transfer to adult court. It is well-established that a guilty plea waives all issues which were or could have been addressed by the trial court before the guilty plea. State v. Robinson, 224 N.J. Super. 495, 498 (App. Div. 1988). This includes claims involving a constitutional right. State v. Knight, 183 N.J.

449, 470 (2005); J.M., 182 N.J. at 411; State v. Crawley, 149 N.J. 310, 316 (1997); State v. Marolda, 394 N.J. Super. 430, 435 (App. Div.), certif. denied, 192 N.J. 482 (2007). See also Tollett v. Henderson, 411 U.S. 258, 267 (1973).

The New Jersey Supreme Court explained in Knight that there are three exceptions to the waiver rule. The first exception is provided in Rule 3:5-7(d), which permits a defendant to challenge on appeal an unlawful search and seizure of physical evidence after entering a guilty plea. 183 N.J. at 470. The second, expressly permitted under Rule 3:28-6(d), permits an appeal after the entry of a guilty plea from an order denying entry into the pre-trial intervention program. Ibid. The third exception falls under Rule 3:9-3(f), which permits defendant, with the State's consent and the court's approval, to plead guilty and expressly preserve for appeal a challenge to "any specified pretrial motion." Ibid. None of the exceptions apply in this case.

That defendant's guilty plea in adult court was entered unconditionally underscores the point discussed above that voluntary waivers/transfers under section 2A:4A-27 occur when there is a global resolution of the case.

Compare Jack, 144 N.J. at 247 (after case involuntarily waived/transferred to adult court, juvenile entered a conditional guilty plea, preserving his right to challenge the involuntary waiver/transfer).

In sum, defendant's challenge to his voluntary waiver/transfer under section 2A:4A-27 should be rejected as it was properly accepted by Judge Venezia in Family Court and was followed by defendant's unconditional guilty plea in adult court before Judge Abode.

## POINT II

### DEFENDANT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IS IMPROPERLY RAISED ON DIRECT APPEAL.

Defendant contends that he received ineffective assistance from counsel, who he claims provided him with misinformation about the involuntary versus the voluntary waiver/transfer to adult court. The State submits that defendant's claim is improperly raised on direct appeal.

It is well-established that ineffective assistance of counsel claims are not considered on direct appeal because these claims involve allegations and evidence that lie outside the appellate record. State v. Castagna, 187 N.J. 293, 313 (2006). In cases where the trial court record discloses the facts essential to an ineffective assistance of counsel claim, the appellate court on direct review may adjudicate the claim. For example, in State v. Allah, 170 N.J. 269, 285 (2002), defendant argued on direct appeal that his attorney was ineffective because counsel did not file a motion raising a double jeopardy defense to a second trial after the first trial ended with a mistrial. The Supreme Court held

that the trial court record revealed trial counsel's position on the double jeopardy question when he objected to granting the mistrial during the first trial, so the Supreme Court ruled defendant did not have to wait for post-conviction relief to raise his claim. Ibid.

The trial record in this case does not disclose the facts essential to the ineffective assistance of counsel claim being raised by defendant. He is claiming that trial counsel failed to properly advise him regarding involuntary and voluntary waiver/transfer to adult court and that the misinformation prejudiced him. (Db21-22). Defendant's claim implicates information not contained in the trial record, because it challenges the legal advice provided to defendant during consultation with counsel. As outlined in Point I, trial counsel stated on the record that he had spent a lot of time consulting with defendant about the State's plea offer and had gone over all the risks with him.

Defendant's certification, (Da1-4), wherein he claims that trial counsel misadvised him, is dated April 24, 2025, and was prepared long after the Judgment of Conviction was entered and his Notice of Appeal was filed. In any event, his certification does not provide the court with the requisite record to adjudicate his ineffective assistance of counsel claim.

Defendant's specific claim in the certification that trial counsel never advised him about reverse waiver for involuntary waiver/transfers to adult

court under N.J.S.A. 2A:4A-26.1(f)(2), (Da3), is self-serving. His claim has not been subjected to the adversarial process, which includes credibility findings from the trial court. Nor has his trial counsel, Jordan B. Rickards, Esq., been afforded the opportunity to testify about the legal advice he provided to defendant in accepting the State's plea deal. Defendant has the burden to establish that not only was counsel's performance objectively unreasonable but that it prejudiced him within the meaning of Strickland v. Washington, 466 U.S. 668 (1984) and State v. Fritz, 105 N.J. 42 (1987). His burden cannot be met using the trial record and his self-serving certification.

Because defendant's ineffective assistance of counsel claim involves allegations that lie outside the current record, it is improperly raised on direct appeal and must be raised in an application for post-conviction relief.

### POINT III

#### DEFENDANT'S SENTENCE IS MANIFESTLY PROPER. (5T60-3 to 5T76-12).

Defendant contends that Judge Abode abused his discretion when he sentenced him to the aggregate sentence contemplated by the plea agreement. Defendant claims that the judge improperly found aggravating factors and failed to find certain mitigating factors. He also claims that the judge abused his discretion in denying the request to downgrade his convictions for purposes of sentencing and sentencing him within the range for a third-degree crime.

Defendant's sentence comports with the Code and there was no abuse of discretion on the trial court's part. Accordingly, defendant's sentence should be affirmed.

The appellate court reviews a sentence under the abuse of discretion standard and affirms a sentence unless the trial court's application of the sentencing guidelines to the facts of the case makes the sentence clearly unreasonable so as to shock the judicial conscience. State v. Fuentes, 217 N.J. 57, 70 (2014). The appellate court is not permitted to substitute its judgment for that of the trial court, provided that the aggravating and mitigating factors are supported by competent, credible evidence in the record and are properly balanced. State v. Case, 220 N.J. 49, 65 (2014).

Under N.J.S.A. 2C:44-1(f)(2), a conviction for a first- or second-degree crime may be downgraded for purposes of sentencing only if "the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands" the downgrade. The trial court must find that there are compelling reasons, in addition to and separate from the mitigating factors, which require the downgrade in the interest of justice. State v. Megargel, 143 N.J. 484, 505 (1996); State v. Locane, 454 N.J. Super. 98, 121 (App. Div.), certif. denied, 235 N.J. 457 (2018).. The trial court should consider the degree of the crime, whether the

surrounding circumstances make the offense like one of a lesser degree, and the defendant's characteristics as they relate to the offense. Megargel, 143 N.J. at 500-01.

The downgrade statute is an offense-oriented provision. State v. Lake, 408 N.J. Super. 313, 328 (App. Div. 2009). Thus, the focus remains on the crime. Ibid. The "interest of justice" analysis does not include consideration of defendant's overall character or contributions to the community. Locane, 454 N.J. Super. at 122.

At sentencing, Judge Abode, after reading all the materials submitted to him and hearing the arguments of counsel, found the following aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1a and b for both offenses to which defendant pleaded guilty. (5T69-15 to 18).

The judge found as aggravating factors the gravity and seriousness of harm inflicted on the victim, N.J.S.A. 2C:44-1a(2), and the need for general and specific deterrence, N.J.S.A. 2C:44-1a(9). (5T69-14 to 15; 5T71-15 to 18). The judge gave aggravating factor a(2) "heightened weight" and found that the victim endured 50 days in the hospital undergoing critical care for his injuries. (5T69-14 to 15; 5T69-18 to 22). The victim struggled during this period to recover, and the judge noted that his extended care put his family through an "emotional roller coaster." (5T69-22; 5T69-25 to 5T70-3; 5T70-6

to 8). With respect to aggravating factor a(9), Judge Abode found that although defendant was convicted of vehicular homicide, which is based on a reckless mental state, the crime here was not an accident, and defendant intentionally accelerated his truck to run over the victim and then intentionally left the scene. (5T71-19 to 23; 5T72-1 to 10).

Judge Abode found as mitigating factors that defendant had no prior history of delinquency or convictions, N.J.S.A. 2C:44-1b(7), that defendant's character and attitude indicated that defendant was unlikely to commit another offense, N.J.S.A. 2C:44-1b(9), and that defendant was under the age of 26 when he committed his offenses, N.J.S.A. 2C:44-1b(14). (5T68-1 to 8; 5T68-9 to 11; 5T68-21 to 23). With respect to mitigating factor b(9), the judge noted that defendant displayed no remorse on the date of the offense because he fled the scene of the crime, however, the judge accepted that defendant had reflected on what he had done since commission of the crimes, and he found defendant's statement of remorse at sentencing to be credible. (5T68-11 to 21). With respect to mitigating factor b(14), the judge found that defendant's youth was a contribution to his crimes, however, this fact did not alleviate defendant's responsibility for those crimes. (5T68-24 to 5T69-1). The judge gave "moderate" weight to mitigating factor b(9). (5T69-12 to 13).

The judge noted that his balancing of the factors had to relate to the offenses defendant committed. (5T67-19 to 24). To this effect, the judge commented that when someone drives a vehicle, he must drive with due care. (5T69-1 to 4). Here, defendant initially backed up the truck with the victim standing behind it and when the victim called out for someone to block defendant, defendant made the K-turn and accelerated forward with the victim standing in front of the truck. (5T69-4 to 11).

Judge Abode declined to downgrade defendant's convictions for purposes of sentencing because he determined that the aggravating factors outweighed the mitigating factors. (5T72-22 to 24). He therefore decided to sentence defendant in conformance with the plea agreement, which meant imposition of a five-year term of imprisonment on each conviction. (5T73-21 to 5T5; 5T74-9 to 18). Five years imprisonment is the minimum sentence for a second-degree crime. N.J.S.A. 2C:43-6a(2).

Contrary to defendant's claim, Judge Abode followed the Code in sentencing defendant. He identified the applicable aggravating and mitigating factors supported by the evidence, State v. Dalziel, 182 N.J. 494, 505 (2005), and weighed them in relation to the severity of defendant's crimes. State v. Roth, 95 N.J. 334, 368 (1984); State v. Hodge, 95 N.J. 369, 377-79 (1984). The judge explained his analysis to show that he had engaged in a thoughtful

weighing of the applicable factors. State v. Denmon, 347 N.J. Super. 457, 467-68 (App. Div.), certif. denied, 174 N.J. 41 (2002).

The judge's finding of aggravating factor a(2) was based on the record. The judge did not double count the victim's death to support this aggravating factor but instead considered the totality of the harm inflicted on him that led to his death 50 days after he was injured. State v. Krumphold, 162 N.J. 345, 358 (2000). The applicability of this factor was manifest due to the amount of time the victim spent in the hospital and the many surgeries and procedures the victim endured during that time. See State v. Devlin, 234 N.J. Super. 545, 557 (App. Div.) (court considered in vehicular homicide case that victim was a young wife and mother), certif. denied, 117 N.J. 653 (1989). The judge's focus was on the harm to the victim.

While harm to the victim's family is not relevant under aggravating factor a(2), State v. Radziwill, 235 N.J. Super. 557, 575 (App. Div. 1989), aff'd o.b., 121 N.J. 527 (1990), the judge's comment in this regard was nothing more than an acknowledgment that they had suffered while the victim suffered in the hospital. Members of the victim's family were present for the sentencing hearing and some of them spoke, which they had a right to do under state law. See State v. Hess, 207 N.J. 123, 156 (2011) (discussing Crime Victims Bill of Rights). The judge simply acknowledged the family's

emotional pain. (See 5T30-18 to 5T33-14). The judge's comment about the family's emotional turmoil leading up to A.P.'s death does not undercut his finding that aggravating a(2) applied in this case.

Defendant's claim that Judge Abode gave too much weight to aggravating factor a(9) and too little weight to mitigating factor b(14) improperly substitutes his judgment for that of the court and thus asks this court to do the same, which is not permitted. The trial court is required to weigh the applicable factors in a qualitative manner, not a quantitative one. State v. L.V., 410 N.J. Super. 90, 108 (App. Div. 2009), certif. denied, 201 N.J. 156 (2010). The judge followed that requirement here.

The same holds true for his claim that Judge Abode failed to find mitigating factor b(8), which applies when the defendant's conduct is the product of circumstances unlikely to recur. The crimes here occurred while defendant was operating a motor vehicle, so this circumstance was one that would arise in the future. The judge also considered applying mitigating factor b(11), which is found when imprisonment would entail "excessive hardship" to defendant or his dependents, but the judge discounted it because defendant's cancer was in remission and there was no evidence that the detention facility would be unable to attend to his medical needs. (5T48-18 to 21). The judge did not abuse his discretion in not finding mitigating factor b(11).

Defendant's challenge to Judge Abode's refusal to a downgrade is unavailing. The judge concluded that the aggravating factors outweighed the mitigating factors, so he could not sentence defendant in the third-degree range. The record supports the judge's finding that the interest of justice did not require it. The judge's focus was on the severity of defendant's crimes, which is the focus of the inquiry. As outlined above, it is not to be based on defendant's personal circumstances. Defendant was 17 years old at the time of his crimes, just shy of turning 18 by two months, and he was enrolled in high school. He drove to Wawa and got involved with the victim, who tried to stop him from driving away and who wound up getting run over by defendant. There was nothing compelling in this case to justify a downgraded sentence.

In sum, defendant's negotiated sentence comports with the Code. The trial court committed no abuse of discretion. Accordingly, this court should affirm defendant's sentence.

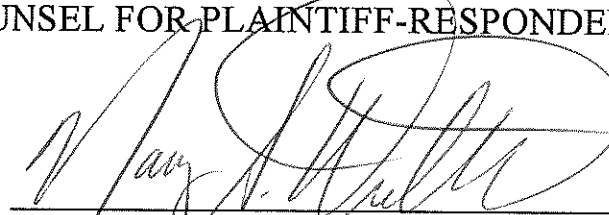
CONCLUSION

For the foregoing reasons, the State respectfully asks this court to uphold the Judgment of Conviction.

Respectfully submitted,

YOLANDA CICCONE  
MIDDLESEX COUNTY PROSECUTOR  
COUNSEL FOR PLAINTIFF-RESPONDENT

BY:

A handwritten signature in black ink, appearing to read "Nancy A. Hulett", is written over a horizontal line.

Nancy A. Hulett  
Assistant Prosecutor  
Attorney ID # 015511985

NANCY A. HULETT  
ASSISTANT PROSECUTOR  
MIDDLESEX COUNTY PROSECUTOR'S OFFICE

OF COUNSEL AND ON THE BRIEF

DATED: August 11, 2025