

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001137-23

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

LUIS MANSO,

Defendant-Appellant.

CRIMINAL ACTION

*On Appeal from the Letter Opinion
Denying a Motion to Correct an Illegal
Sentence, filed on November 1, 2023, in
the Superior Court of New Jersey, Essex
County, Indictment No. 98-11-04417-I*

Sat Below: Hon. Ronald D. Wigler, J.S.C.

**BRIEF AND APPENDIX ON BEHALF OF
APPELLANT, LUIS MANSO
(DA-1 TO DA-19)**

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PRELIMINARY STATEMENT

Luis Manso, who has been incarcerated for the past twenty-four years, appeals the denial of his motion for modification of an illegal sentence. Every defendant has the constitutional right to be sentenced in accord with due process under the 14th Amendment to the Constitution. This includes the right to be sentenced under a proper interpretation of the law and under the correct facts. Any error in either leaves a sentencing determination constitutionally infirm.

Mr. Manso was tried and convicted as part of a conspiracy that resulted in the deaths of two individuals. When Mr. Manso was sentenced, the sentencing judge repeatedly stressed that under New Jersey law there can be no free crimes, which required the imposition of consecutive sentences for the two deaths, rather than concurrent sentences. Ultimately, Mr. Manso was sentenced to a total sixty year prison sentence. In practical terms, he will not be eligible for release until he is eighty-six years old.

After Mr. Manso's sentencing, the New Jersey Supreme Court has clarified that, while consecutive sentences may often be appropriate with multiple victims, the inclusion of the pronouncement that there should be no free crimes in case law is not a mandate that all cases with multiple victims must necessarily result in consecutive sentences. Rather, all defendants must be sentenced on an individual

basis and the sentencing court must provide the rationale for that sentence on the record so that a reviewing court can determine the reasonableness of that sentence.

Mr. Manso was sentenced by a judge under the misapprehension that consecutive sentences were required to give effect to the concept of no free crimes. This was an incorrect application of the law and as such violative of Mr. Manso's due process rights to a legal sentencing under the 14th Amendment. Mr. Manso now seeks to correct that illegal and constitutionally infirm sentence pursuant to Rule 3:21-10(b)(5).

PROCEDURAL POSTURE

In 1998 an Essex County grand jury indicted Luis Manso with conspiracy, kidnapping, attempted murder, and murder charges relating to the deaths of two gang members. Mr. Manso was indicted with six co-defendants.

A pretrial motion to sever the cases was denied, and the matter proceeded to trial before the Honorable Betty J. Lester, J.S.C. on January 24, 2000. The trial continued for seven weeks until March 17, 2000. After deliberations the jury returned a verdict finding Mr. Manso guilty on all counts of the indictment.

Mr. Manso was sentenced on April 25, 2000, to a term of sixty years imprisonment, without parole for the two first degree-murder convictions. The sentences on the remaining counts were set to run concurrent to the sentences on the murder convictions, or were deemed to have merged with the other convictions.

On September 13, 2000, appeal was timely taken. The Appellate Division affirmed Mr. Manso's conviction on March 8, 2004. A notice of petition for certification was timely filed with the New Jersey Supreme Court. The certification was denied on September 21, 2004.

A first petition for post-conviction relief was filed in this matter on April 25, 2005. A non-testimonial hearing was scheduled in the matter for September 18, 2009. On June 14, 2012, the Defendant's request to compel witness testimony and declare certain plea agreements illegal was denied. On January 7, 2013, the first post-conviction relief motion was denied. A notice of appeal was timely filed on January 15, 2013. On August 26, 2015, the Appellate Division affirmed the denial of the first post-conviction relief motion.

Mr. Manso filed a second petition for post-conviction relief on August 6, 2018. That petition was denied on November 7, 2018.

On October 10, 2023, Mr. Manso filed a Motion to Correct an Illegal Sentence with the Superior Court of New Jersey, Essex County Vicinage. Without hearing, or response from the state, that motion was denied in a letter opinion on November 1, 2023, by the Honorable Ronald D. Wigler, J.S.C. This appeal follows.

STATEMENT OF FACTS

In November 1998, Luis Manso and nine co-defendants were indicted on eighteen counts with crimes stemming from a dispute among members of the Latin Kings that resulted in the killing of two individuals. 1T:40:4-10.¹ The defendants were all charged with four counts of second-degree conspiracy to commit kidnapping in violation of N.J.S.A. 2C:5-2 and 2C:13-1; four counts of first-degree kidnapping, in violation of N.J.S.A. 2C:13-1(b); four counts of second-degree conspiracy to commit murder, in violation of N.J.S.A. 2C:5-2 and 2C:11-3; two counts of murder, in violation of N.J.S.A. 2C:11-3(a)(1) and (2); two counts of felony murder, in violation of N.J.S.A. 2C:11-3(a)(3); and two counts of attempted murder, in violation of N.J.S.A. 2C:5-1 and 2C:11-3. DA-3. Defendants who were charged with additional counts pled guilty pursuant to agreements with the State. The trial judge denied motions for separate trials. DA-14.

Mr. Manso and four co-defendants were tried jointly between January 24 and March 17, 2000. DA-14. The State relied on testimony from the co-defendants who had entered plea agreements, and who at points had recanted or wavered in their testimony. 1T:6:13-8:6. Ultimately, Mr. Manso was convicted on all counts. DA-1.

¹ For purposes of citation throughout this brief, references to the transcripts will be made as follows: 1T refers to the transcript of sentencing dated April 25, 2000.

The matter proceeded to sentencing on April 25, 2000. DA-14. As part of that sentencing, the court recognized that it had to determine whether the sentences for Mr. Manso's convictions should run concurrent or consecutive to one another. T1:47:4-6. The court did not qualitatively weigh the factors identified in determining whether to sentence concurrently or consecutively. T1:47:7 – 48:19. The court instead identified repeatedly that the sentencing law requires that there be "no free crimes." 1T:48:18. The court determined that this required consecutive sentences because of the message that consecutive sentences sent to the families of the victims, and the deterrent value to the public at large. 1T:48:9 - 15. The court did not engage in any evaluation of the overall fairness of the sentence to Mr. Manso. 1T:47:4 – 51:17. Instead, the court focused on the necessity to adhere to the concept that there be no free crimes. 1T:48:18. In accordance with that, the court sentenced Mr. Manso to two consecutive thirty-year terms without the possibility of parole, resulting in an aggregate sentence of sixty years without parole eligibility. DA-1. Mr. Manso will not be eligible for release until 2058 when he is 85 years old. DA-1.

LEGAL ARGUMENT

I. MR. MANSO IS ENTITLED TO BE RESENTENCED BECAUSE THE TRIAL COURT ILLEGALLY SENTENCED HIM UNDER A MISAPPREHENSION OF THE APPLICABLE LAW IN VIOLATION OF HIS DUE PROCESS RIGHTS. (DA-13-19)

A. The Incorrect Application of The Law During Sentencing Results in an Illegal Sentence

The trial court incorrectly analyzed Mr. Manso's petition to correct an illegal sentence as an argument that the sentencing court incorrectly weighed the factors to impose a concurrent or consecutive sentence under State v. Yarbough, 100 N.J. 627 (1985). This was not the argument put forth in Mr. Manso's motion to the court. Rather, Mr. Manso argued that he had been given an illegal sentence because the sentencing court's misapprehension of the applicable law violated his due process rights under the 14th Amendment. The denial of Mr. Manso's motion without addressing the merits of the contention was improper.

Under Rule 3:21010(b)(5) an individual may challenge an illegal sentence imposed at any time. State v. Acevedo, 205 N.J. 40, 47 n.4 (2011). An illegal sentence is one which is not in accordance with the law including a sentence that is "imposed without regard to some constitutional safeguard." State v. Tavares, 286 N.J. Super. 610, 618 (App. Div. 1996). Imposition of a sentence without regard to constitutional safeguards occurs when a sentence is imposed on contravention, or at least alleged contravention of a right guaranteed by the Constitution. State v. Zuber, 227 N.J. 422, 437 (2017) (holding that an allegation that a sentence, even

though in accordance with the sentencing range provided by statute, violates the 8th Amendment prohibition on cruel and unusual punishment, is an allegation of an illegal sentence). In Zuber, the petitioners who were juveniles at the times of their offenses, argued that their sentence, which included consecutive terms that would be the equivalent of a life sentence violated the 8th Amendment. 227 N.J. at 428-29. The petitioners raised their claims nearly 10 years after their direct appeals. Id. at 433. The court considered the subsequent application to correct the illegal sentence because it raised a constitutional issue without any controversy. Id. at 437. Accordingly, any allegation that a sentence violates a constitutional protection is an allegation of an illegal sentence that must be reviewed.

It is a violation of a defendant's 14th Amendment due process rights to be sentenced under a materially false apprehension of fact or law. See Townsend v. Burke, 334 U.S. 736, 741 (1948); United States v. Tucker, 404 U.S. 443, 447 (1972). In Tucker, the defendant had been tried and convicted of armed bank robbery. 404 U.S. at 450 (J. Blackmun dissenting). At sentencing, in fashioning a lengthy sentence, the court relied upon several prior convictions that had been obtained without the defendant having the benefit of counsel in accordance with the Sixth Amendment and Gideon v. Wainwright, 372 U.S. 335 (1963). Id. at 447. The court held that to be sentenced under a misapprehension of the correct factual circumstances resulted in a violation of due process, and vacated the sentence. Id.

at 448-49. In the present circumstances, the sentencing court incorrectly interpreted and applied the Yarbough factors as requiring a consecutive sentence because there were two victims, when Yarbough, in fact, requires a weighing of all factors, without a bias towards either consecutive or concurrent sentences. State v. Torres, 246 N.J. 246, 270-71 (2021). Additionally, any sentencing court must provide a statement of the overall fairness of a sentence, rather than a rote listing of the presence or absence of Yarbough factors. Id. at 271. The failure to properly follow the Yarbough rules results in a sentence that denies a defendant their due process rights under the 14th Amendment, and is consequently, an illegal sentence.

B. The Sentencing Court Sentenced Mr. Manso Under an Incorrect Application of the Yarbough Factors

The sentencing court incorrectly sentenced Mr. Manso under the impression that it was constrained to apply consecutive sentences when there are multiple victims without regard or consideration of the overall fairness of the sentence. This was an illegal application of the sentencing law which denied Mr. Manso his constitutional rights to due process.

Courts have wrestled with the decision to impose concurrent or consecutive sentences when a defendant has been convicted of multiple crimes. While state statutes vested trial judges with the power to impose either type of sentence, the statutes did not provide any guidance as to when a concurrent or consecutive sentence is appropriate. The New Jersey Supreme Court addressed the issue in

State v. Yarbough, 100 N.J. 627 (1985). There, the court identified the factors to consider when weighing whether to impose concurrent or consecutive sentences in order to promote greater uniformity in sentences. 100 N.J. at 635. The Yarbough factors identify the following criteria by which to evaluate the appropriateness of concurrent or consecutive sentences:

- (1) there can be no free crimes in a system for which the punishment shall fit the crime;
- (2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;
- (3) reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not: (a) the crimes and their objectives were predominantly independent of each other; (b) the crimes involved separate acts of violence or threats of violence; (c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior; (d) any of the crimes involved multiple victims; (e) the convictions for which the sentences to be imposed are numerous;
- (4) there should be no double counting of aggravating factors; and
- (5) successive terms for the same offense should not ordinarily be equal to punishment for the first offense.

Id. at 643-45. The court has noted that unlike other states, there is no presumption of imposition of a concurrent or consecutive sentence. State v. Torres, 246 N.J. 246, 266 (2021). Further, the existence of any given factor does not create a presumption of consecutive or concurrent sentences. Id. Rather, it is the sentencing court's duty to weigh the factors, and explain the reasoning employed to

arrive at an overall fair sentence. Id. at 267. Indeed, in Torres, the court observed that the “no free crimes” factor was “often seized upon by sentencing courts searching for greater direction” Id. at 269. But the court further clarified that the “no free crimes” factor is not “a blanket mandate that consecutive sentences be imposed.” Id. And, indeed the existence of multiple victims does not mandate or presume such a result. Id.

In Torres, an individual had been charged with committing several bank robberies. Id. at 253-54. Three occurred in 2010 and 2011. Id. When the defendant was arrested, he ultimately confessed to two other robberies in 2006 and 2009. Id. The earlier in time robberies were severed and tried separately. Id. Ultimately, the defendant was convicted in both trials. Id. After a remand for re-sentencing, he was sentenced to consecutive terms amounting to seventy five years of incarceration. Id. at 258. The sentencing court elaborated that the consecutive sentence was based on there being multiple victims at different times, but provided no further analysis. Id. at 257. The court remanded the matter for re-sentencing observing that the ticking of boxes does not create a mandate for a consecutive sentence, but rather is a guidepost to determine the overall fairness of a sentence for the defendant. Id. at 270-71. The court further observed that assessing “the overall fairness of a sentence requires a real-time assessment of the consequences

of the aggregate sentences imposed, which perforce includes taking into account the age of the person being sentenced.” Id. at 273.

Mr. Manso’s sentence was premised on the presumption that the presence of multiple victims required consecutive sentences without regard to the overall fairness of the sentence to Mr. Manso. Mr. Manso was convicted for his role in the deaths of two men in an assault. He was convicted with his co-defendants and stood for sentencing. While imposing sentence the judge addressed the question of concurrent or consecutive sentences as follows:

I had to decide . . . whether the sentences should run consecutively or concurrently. As to the murders, this was not a decision I took lightly. **I have reviewed the Yarborough [sic] criteria, one of which is that there should be no free crimes in a system for which the punishment shall fit the crime.** . . . And where there are two victims and two decedents, obviously the stakes for Mr. Manso are extremely high just by virtue of the restrictions on sentencing for . . . knowing purposeful murder, minimum of thirty years without eligibility for parole is where the Court is to start going anywhere up to life sentences.

I can not say in this case that the Court is prepared to tell victim’s mother here that one of her son’s life doesn’t count as the other. I realize that the offenses were committed during the course of conduct that culminated in the events in the park They clearly weren’t separated in terms of the times they were served and certainly not separated in terms of the places they occurred. But the key point for me is that they required separate acts of violence. There are situations where given the right set of facts that can not as easily be said as it can be said here. There was a specific intention directed at both of these people by separate people acting

under orders. There was a motivation toward each of these people. What happened was intended to happen and it required that each be dealt with separately. And they were. **The Court feels for that reason it would be inappropriate to suggest not even only to Mr. Manso but to anyone else who might be listening that if you find yourself in the circumstances of taking two lives, even if you take them at about the same time and you direct violence towards two people, that you should be better off than someone who takes one life.** I can not in good conscience make that ruling. I do not feel it justified in this case. To come to that conclusion would be to give Mr. Manso the benefit of a free crime to which on this record he is not entitled.

T1:47:4 – 48:19. Based on that analysis, the court imposed consecutive thirty year terms without parole eligibility.

However, this explanation exhibits a presumption of consecutive sentences that is explicitly prohibited in Torres. At sentencing the judge frequently reiterates that there are multiple victims and the Yarbough factor that states there should be “no free crimes.” The court, in beginning there created a presumption that consecutive sentences was appropriate, perhaps to only be rebutted by other factors. This presumption is an incorrect understanding of the law of sentencing. The law does not create a presumption of consecutive sentences under any circumstance. Torres, 246 N.J. at 269. However, the discussion of the Yarbough factors at Mr. Manso’s sentencing makes clear that the judge believed that the presence of multiple victims mandated the imposition of consecutive sentences in all cases. Indeed, rather than addressing the issue of fairness to Mr. Manso, the

court couched its analysis in its obligations to the mother of the victim and the deterrent effects of a consecutive sentence on the public. This does not indicate an effort to balance or determine fairness required by Yarbough and further explained in Torres, but rather an explanation of why consecutive sentences are mandated by the “no free crimes” factor. It is clear that there can be no presumption of concurrent or consecutive sentencing, and that the presence or absence of any Yarbough factor does not mandate concurrent or consecutive sentences. The sentencing court’s belief that the no free crimes factor required a consecutive sentence was a fundamentally incorrect application of the law. This misapplication of the law denied Mr. Manso his due process rights under the 14th Amendment and resulted in an illegal sentence. The matter must be remanded so that Mr. Manso can be resentenced under the proper application of the sentencing laws.

C. The Sentencing Court’s Lack of a Clear Statement of Reasons Requires the Matter Be Remanded for Resentencing

The sentencing court also incorrectly sentenced Mr. Manso without providing a statement as to the court’s analysis of the overall fairness of the sentence. The failure to provide this comprehensive statement similarly denies Mr. Manso his due process rights to fully appeal his sentence and accordingly requires that the matter be remanded for resentencing.

Beyond the explanation that the Yarbough factors and sentencing law contain no presumption of consecutive sentences, the Torres court explained the

necessity of a court providing an explanation of why the imposition of consecutive sentences satisfies the goal of overall fairness to the defendant. The Torres court observed that an “explanation of overall fairness provides a proper record for appellate review of the sentencing court’s exercise of discretion.” 246 N.J. at 272. Ultimately, they noted that “an explanation for the overall fairness of a sentence by the sentencing court is required” Id. This question of overall fairness is necessary to craft a sentence that takes “into account the single person being subjected to the sentence imposed.” Id. Additionally, that consideration of the individual defendant must include consideration of the defendant’s age and the “real-time assessment of the consequences of aggregate sentence imposed.” Id. at 273. The failure to provide a clear analysis of the overall fairness of a sentence, denies a defendant due process and mandates that the matter be remanded for resentencing. See id.

The sentencing court in Mr. Manso’s case failed to provide any such statement of the overall fairness of consecutive sentences. The only statement the court made at all as to the imposition of consecutive terms was its belief that the existence of multiple victims, the justification to the families of those victims, and the need for deterrence required consecutive sentences. This does not provide any analysis as to the overall fairness of consecutive sentences. To the extent that it provides any analysis at all, the sentencing court is not concerned with analyzing

the fairness of the sentence to the defendant, but the fairness of the sentence to the victims and society. This is not what is required by Yarbough and Torres.

It is essential that the sentencing court explain the overall fairness of imposing consecutive terms to properly address inappropriate sentencing disparities and the abuse of discretion. Here, the court provided no such analysis or statement as to the overall fairness of the consecutive terms. Without this statement it is impossible for there to be any meaningful review of the sentencing court's findings.

The court which ruled on Mr. Manso's motion to correct his illegal sentence incorrectly failed to grasp the necessity of a statement as to overall fairness, ruling that such a determination of fairness can be reached without that statement. But, a determination as to overall fairness cannot be based upon conjecture by a subsequent court. Id. Rather, as the Torres court makes clear, the lack of a statement as to overall fairness requires that the matter be remanded for resentencing with the consideration of overall fairness addressed. Id. The reviewing court conceded that there was no statement as to overall fairness. Accordingly, the matter must be remanded for resentencing to give Mr. Manso his full due process rights to challenge his lengthy sentence.

The analysis of the overall fairness of the sentence cannot be solely focused on the victims' families or on the needs for general deterrence, as the sentencing

court indicated. Rather, it must focus on Mr. Manso himself. It necessarily must take into account Mr. Manso's relatively young age at the time of the offenses and his age after the time that the consecutive sentences requires. It must take into account the circumstances of the offenses. And it also must take into account Mr. Manso as he stands today-- no longer a young man, but a model prisoner who has taken every opportunity to rehabilitate himself and serve as a positive role model for those around him. A proper evaluation of the overall fairness of Mr. Manso's sentencing is necessary to give effect to the sentencing goals of avoiding excessive, disproportionate, or arbitrary sentences. N.J.S.A. 2C:1-2(b)(4).

The failure to provide any analysis of the overall fairness of Mr. Manso's sentence as required by law denied Mr. Manso his due process right under the 14th Amendment to challenge his sentence, and denied a reviewing court the opportunity to determine if the sentence was imposed with sound discretion. Accordingly, Mr. Manso's sentence was illegally imposed, and the matter must be remanded for resentencing.

CONCLUSION

Based upon the foregoing, Mr. Manso respectfully requests that the trial court decision be reversed and that his case be remanded for resentencing and an impartial determination of the overall fairness of any sentence imposed.

RESPECTFULLY SUBMITTED,
LAW OFFICES OF ALAN L. ZEGAS

/s/ Joshua M. Nahum

By: Joshua M. Nahum

Dated: June 21, 2024

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**REPLY BRIEF AND APPENDIX ON BEHALF OF
APPELLANT, LUIS MANSO
(DRA-1 TO DRA-6)**

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PRELIMINARY STATEMENT

Luis Manso has served nearly twenty-five years of a sentence that was imposed illegally. The illegality stemmed from a misapplication of the sentencing law that was only recently clarified by the New Jersey State Supreme Court. This error led to the imposition of consecutive sentences resulting in a sentence that will not allow Mr. Manso's release until July of 2058, when Mr. Manso is 85 years old.

Mr. Manso was convicted of counts of kidnapping and murder related to his involvement in the deaths of two Latin Kings gang members when he was 25 years old. When he was sentenced the court imposed a consecutive sentence based entirely on the idea that there should be "no free crimes" under the sentencing law. There was no qualitative weighing of the aggravating and mitigating factors that occurred. Rather the sentence was imposed to send a message to the families of the victims and to deter the public at large. The court did not engage in any determination of the fairness of the sentence with respect to Mr. Manso specifically.

The failure to qualitatively weigh the factors and the reliance on the "no free crimes" analysis resulted in the imposition of an illegal sentence. The failure to engage in any analysis of the overall fairness of the sentence with specific reference to Mr. Manso further violates the sentencing law and Mr. Manso's constitutional rights. This illegal sentence, and failure to provide an analysis of the

overall fairness of the sentence requires that the matter be remanded for resentencing of Mr. Manso in accordance with the proper constitutional safeguards provided for those being sentenced.

PROCEDURAL POSTURE

Defendant relies upon the procedural posture as set forth in his opening brief.

STATEMENT OF FACTS

Defendant relies upon the statement of facts as set forth in his opening brief.

LEGAL ARGUMENT

I. THE COURT'S CLARIFICATION OF THE SENTENCING REQUIREMENTS PURSUANT TO STATE V. YARBOUGH IN STATE V. TORRES APPLIES TO DEFENDANT'S CASE.

Mr. Manso is entitled to the benefit of the Supreme Court's clarification of the proper sentencing procedure in State v. Torres, 246 N.J. 246 (2021). As the State's brief acknowledges, Torres did not announce a new rule of law. Rather, Torres clarified the procedure and requirements for sentencing when a lengthy consecutive sentence is imposed. Torres, 246 N.J. at 270-71. All defendants are entitled to the benefit of a clarification of a law that was in effect at the time of their sentencing. Fiore v. White, 531 U.S. 225, 228 (2001). This is true even if the clarification does not occur until after the defendant's conviction is final. See also,

Bunkley v. Florida, 538 U.S. 835 (2003) (holding that when a subsequent case announces a correct formulation of substantive law, rather than a change of law, relief is required without regard to retroactivity). New Jersey has similarly adopted this approach. State v. Jackson, Doc. No. A-1687-20 (App. Div. Dec. 23, 2022). In a case similar to the present matter, a youthful defendant was convicted of kidnapping and murder charges and sentenced to consecutive sentences. Id. at *11. Ultimately, the defendant's consecutive sentences were confirmed in 2020. Id. After that, Torres was decided. On appeal in 2022, the court remanded for resentencing based on Torres and the failure to consider the overall fairness of lengthy consecutive sentences. The court there observed that Torres clarified the need for an explicit consideration of the overall fairness of a consecutive sentence and that failing that "there needs to be [a] remand and resentencing to consider the overall fairness of the sentence." Id. Mr. Manso, similarly was a youthful defendant sentenced to lengthy consecutive sentences, where at sentencing there was no discussion of the overall fairness of the sentence. Accordingly, as the Torres clarification applied in Jackson, it must apply to Mr. Manso.

II. THE INCORRECT INTERPRETATION OF THE YARBOUGH FACTORS RESULTS IN AN ILLEGAL SENTENCE.

The State does not address Mr. Manso's primary contention, that the incorrect interpretation of the Yarbough factors results in an illegal sentence. The

sentencing court's incorrect interpretation of those factors will result in an illegal sentence, as it does here, because it denies a defendant the fundamental due process right to be sentenced under a correct understanding of the law. As the courts have noted a sentence will always be illegal when imposed without regard to a constitutional safeguard. State v. Tavares, 286 N.J. Super. 610, 618 (App. Div. 1996). A constitutional safeguard is that sort of right created by the Constitution to prevent the unfair treatment of citizens. See, e.g., State v. Zuber, 227 N.J. 422, 437 (2017) (reversing a life sentence given to a youthful offender ten years after direct appeals had been exhausted pursuant to an eighth amendment challenge). The Fourteenth Amendment to the United States Constitution guarantees an individual's right to due process. When an individual is sentenced under a materially false apprehension of fact or law that constitutional right is violated. United States v. Tucker, 404 U.S. 443, 447 (1972). The State does not dispute this, but simply argues without citation or support, that the existence of some other argument that attacks the result precludes addressing the constitutional issue. There is no such support for this argument. Rather, the court must address any constitutional infirmity that results from sentencing a defendant under a misapprehension of the law. Accordingly, the motion to correct an illegal sentence is appropriate and not prohibited by Rule 3:22-5. The illegal sentence must be addressed and remanded for resentencing.

III. JUDGE LESTER INCORRECTLY INTERPRETED THE YARBOUGH FACTOR REQUIREMENTS WHEN SENTENCING MR. MANSO.

The sentencing court misapprehended the purpose and application of the Yarbough factors when ordering Mr. Manso's sentence. Yarbough identifies factors to evaluate and determine the appropriateness of consecutive or concurrent sentences for multiple offenses. 100 N.J. 627, 643-45 (1985). However, it does not create a priority or presumption for any type of sentence. State v. Torres, 246 N.J. 246, 266 (2021). Indeed, unlike other states that is no presumption of a concurrent or consecutive sentence. Id. Even the existence of any particular factor does not create a presumption for or against any type of sentence. Id.

In Mr. Manso's case, however, the court identified the primacy of the "no free crimes" aspect of Yarbough, as mandating the need for a consecutive sentence. The court frequently reiterated that there were multiple victims and that Yarbough stated that there should be no free crimes. The court further performed this analysis in the context of the court's obligations to the victims' mothers and the deterrent effects of consecutive sentences in the context of multiple homicides. While the state contends that this analysis is sufficient to satisfy all of the court's obligations, what it really does is make clear that the court misapprehended the proper interpretation of the Yarbough factors, demonstrating a belief that the "no

free crimes” concern predominates over any other aspect. This is exactly the improper balancing that the Supreme Court clarified in Torres.

In Torres, the court specifically addressed concerns about the improper reliance on the “no free crimes” factor. The court observed that the factor was “often seized upon by sentencing courts searching for greater direction” Id. at 269. But, then clarified their concern that the factor not be used as “a blanket mandate that consecutive sentences be imposed.” Id. Indeed, the factor is only a guidepost to determine the overall fairness of a sentence, it is not a mandate in favor of consecutive sentences. Yet, in Mr. Manso’s case the presence of multiple victims was treated as determinative of the outcome.

The state’s argument that the sentencing court was aware that a consecutive sentence was not mandatory, and that this is dispositive of the issue. However, this misstates the argument. The issue is not whether the sentencing judge believed that the law required consecutive sentences, but whether the judge believed that once the “no free crimes” prong had been raised by the existence of multiple victims, a consecutive sentence would always be appropriate. It is the judge’s statements in that regard that suggest a belief that the existence of multiple victims uncontrovertibly weighed in favor of consecutive sentences. This belief was the

misapprehension of the law of Yarbough, as explained in Torres, and this is what requires Mr. Manso's case be remanded for resentencing.

The failure to sentence Mr. Manso based on the totality of the Yarbough factors and placing improper reliance on only one factor with the belief that the presence of the factor required a consecutive sentence, resulted in an illegal sentence which must be corrected on remand.

IV. JUDGE LESTER FAILED TO PROVIDE A STATEMENT AS TO THE OVERALL FAIRNESS OF MR. MANSO'S SENTENCE AS REQUIRED BY LAW.

The sentencing court failed to provide any statement or explanation of the overall fairness of the consecutive sentences as applied to Mr. Manso. As the law requires, and Torres made clear, whenever consecutive sentences are imposed the court must provide an explanation of the overall fairness of the sentence to the defendant. Id. at 272. This is done because an "explanation of the overall fairness provides a proper record for appellate review of the sentencing court's discretion."

Id.

In Mr. Manso's sentencing there was no discussion of the overall fairness of the sentence to Mr. Manso. Rather, the court only justified the imposition of consecutive sentences by reference to the existence of multiple victims. But this does not address the fairness of the consecutive sentences to Mr. Manso, who was,

in effect being sentenced to life in prison. Indeed, there was no discussion of the impact of the sentence on Mr. Manso, who was in his early twenties at the time of the crimes at issue. The fairness of the sentence to society does not address the overall fairness as required by Yarbough and Torres.

The state's argument that such overall fairness can be determined by the appellate review of the sentencing decision on direct appeal is incorrect. This argument elides and misunderstands the requirements of Torres. The point of the remand in Torres was that a determination as to overall fairness cannot be based on conjecture by a subsequent court. Id. at 273. Rather, it must be based on a review of the sentencing court's opinion as to overall fairness. Id. Further, as the opinion makes clear, the remedy for the lack of a statement as to overall fairness, is not for a reviewing court to craft its own statement of fairness. Id. Instead, the matter must be remanded for resentencing with the consideration of overall fairness addressed. Id.

The reviewing court conceded that there was no statement as to overall fairness. Accordingly, a remand is necessary for resentencing which addresses the overall fairness of the consecutive sentence. This evaluation of overall fairness must take into account, not only the victims and need for deterrence, but also Mr. Manso himself. This includes Mr. Manso's young age at the time of the offenses,

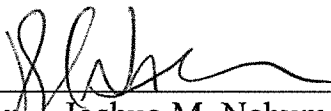
Manso's extensive rehabilitation over his past twenty-five years of incarceration, during which he has been a model prisoner and positive role model for all those around him.

Because there was never a consideration of the overall fairness of Mr. Manso's sentence Mr. Manso was denied his due process rights to be sentenced under a correct understanding of the law. Accordingly, Mr. Manso's sentence was imposed illegally and his matter must be remanded for resentencing.

CONCLUSION

Based upon the foregoing, and Mr. Manso's opening brief, Mr. Manso requests that his motion be granted and the matter remanded for resentencing.

Respectfully submitted:
LAW OFFICES OF ALAN L. ZEGAS


By: Joshua M. Nahum

Dated: September 25, 2024

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001137-23

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

LUIS MANSO,

Defendant-Appellant.

CRIMINAL ACTION

*On Appeal from the Letter Opinion
Denying a Motion to Correct an Illegal
Sentence, filed on November 1, 2023, in
the Superior Court of New Jersey, Essex
County, Indictment No. 98-11-04417-1*

Sat Below: Hon. Ronald D. Wigler, J.S.C.

**REPLY BRIEF AND APPENDIX ON BEHALF OF
APPELLANT, LUIS MANSO
(DRA-1 TO DRA-6)**

On the Brief:
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PRELIMINARY STATEMENT

Luis Manso has served nearly twenty-five years of a sentence that was imposed illegally. The illegality stemmed from a misapplication of the sentencing law that was only recently clarified by the New Jersey State Supreme Court. This error led to the imposition of consecutive sentences resulting in a sentence that will not allow Mr. Manso's release until July of 2058, when Mr. Manso is 85 years old.

Mr. Manso was convicted of counts of kidnapping and murder related to his involvement in the deaths of two Latin Kings gang members when he was 25 years old. When he was sentenced the court imposed a consecutive sentence based entirely on the idea that there should be "no free crimes" under the sentencing law. There was no qualitative weighing of the aggravating and mitigating factors that occurred. Rather the sentence was imposed to send a message to the families of the victims and to deter the public at large. The court did not engage in any determination of the fairness of the sentence with respect to Mr. Manso specifically.

The failure to qualitatively weigh the factors and the reliance on the "no free crimes" analysis resulted in the imposition of an illegal sentence. The failure to engage in any analysis of the overall fairness of the sentence with specific reference to Mr. Manso further violates the sentencing law and Mr. Manso's constitutional rights. This illegal sentence, and failure to provide an analysis of the

overall fairness of the sentence requires that the matter be remanded for resentencing of Mr. Manso in accordance with the proper constitutional safeguards provided for those being sentenced.

PROCEDURAL POSTURE

Defendant relies upon the procedural posture as set forth in his opening brief.

STATEMENT OF FACTS

Defendant relies upon the statement of facts as set forth in his opening brief.

LEGAL ARGUMENT

I. THE COURT'S CLARIFICATION OF THE SENTENCING REQUIREMENTS PURSUANT TO STATE V. YARBOUGH IN STATE V. TORRES APPLIES TO DEFENDANT'S CASE.

Mr. Manso is entitled to the benefit of the Supreme Court's clarification of the proper sentencing procedure in State v. Torres, 246 N.J. 246 (2021). As the State's brief acknowledges, Torres did not announce a new rule of law. Rather, Torres clarified the procedure and requirements for sentencing when a lengthy consecutive sentence is imposed. Torres, 246 N.J. at 270-71. All defendants are entitled to the benefit of a clarification of a law that was in effect at the time of their sentencing. Fiore v. White, 531 U.S. 225, 228 (2001). This is true even if the clarification does not occur until after the defendant's conviction is final. See also,

Bunkley v. Florida, 538 U.S. 835 (2003) (holding that when a subsequent case announces a correct formulation of substantive law, rather than a change of law, relief is required without regard to retroactivity). New Jersey has similarly adopted this approach. State v. Jackson, Doc. No. A-1687-20 (App. Div. Dec. 23, 2022). In a case similar to the present matter, a youthful defendant was convicted of kidnapping and murder charges and sentenced to consecutive sentences. Id. at *11. Ultimately, the defendant's consecutive sentences were confirmed in 2020. Id. After that, Torres was decided. On appeal in 2022, the court remanded for resentencing based on Torres and the failure to consider the overall fairness of lengthy consecutive sentences. The court there observed that Torres clarified the need for an explicit consideration of the overall fairness of a consecutive sentence and that failing that "there needs to be [a] remand and resentencing to consider the overall fairness of the sentence." Id. Mr. Manso, similarly was a youthful defendant sentenced to lengthy consecutive sentences, where at sentencing there was no discussion of the overall fairness of the sentence. Accordingly, as the Torres clarification applied in Jackson, it must apply to Mr. Manso.

II. THE INCORRECT INTERPRETATION OF THE YARBOUGH FACTORS RESULTS IN AN ILLEGAL SENTENCE.

The State does not address Mr. Manso's primary contention, that the incorrect interpretation of the Yarbough factors results in an illegal sentence. The

sentencing court's incorrect interpretation of those factors will result in an illegal sentence, as it does here, because it denies a defendant the fundamental due process right to be sentenced under a correct understanding of the law. As the courts have noted a sentence will always be illegal when imposed without regard to a constitutional safeguard. State v. Tavares, 286 N.J. Super. 610, 618 (App. Div. 1996). A constitutional safeguard is that sort of right created by the Constitution to prevent the unfair treatment of citizens. See, e.g., State v. Zuber, 227 N.J. 422, 437 (2017) (reversing a life sentence given to a youthful offender ten years after direct appeals had been exhausted pursuant to an eighth amendment challenge). The Fourteenth Amendment to the United States Constitution guarantees an individual's right to due process. When an individual is sentenced under a materially false apprehension of fact or law that constitutional right is violated. United States v. Tucker, 404 U.S. 443, 447 (1972). The State does not dispute this, but simply argues without citation or support, that the existence of some other argument that attacks the result precludes addressing the constitutional issue. There is no such support for this argument. Rather, the court must address any constitutional infirmity that results from sentencing a defendant under a misapprehension of the law. Accordingly, the motion to correct an illegal sentence is appropriate and not prohibited by Rule 3:22-5. The illegal sentence must be addressed and remanded for resentencing.

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In Mr. Manso's case, however, the court identified the primacy of the "no free crimes" aspect of Yarbough, as mandating the need for a consecutive sentence. The court frequently reiterated that there were multiple victims and that Yarbough stated that there should be no free crimes. The court further performed this analysis in the context of the court's obligations to the victims' mothers and the deterrent effects of consecutive sentences in the context of multiple homicides. While the state contends that this analysis is sufficient to satisfy all of the court's obligations, what it really does is make clear that the court misapprehended the proper interpretation of the Yarbough factors, demonstrating a belief that the "no

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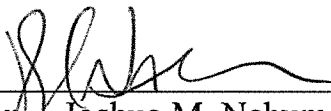
Manso's extensive rehabilitation over his past twenty-five years of incarceration, during which he has been a model prisoner and positive role model for all those around him.

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CONCLUSION

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Respectfully submitted:
LAW OFFICES OF ALAN L. ZEGAS


By: Joshua M. Nahum

Dated: September 25, 2024