

FuQuan Khalif
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Presently Incarcerated

STATE OF NEW JERSEY,

Respondent,

Vs.

FUQUAN KHALIF,

Defendant–Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No.: A-001471-24

CRIMINAL ACTION

ON APPEAL FROM MOTION TO
CORRECT AN ILLEGAL SENTENCE-
SUPERIOR COURT OF NEW JERSEY-
CRIMINAL DIVISION-ESSEX COUNTY

SAT BELOW: ,
HON. RONALD D WIGLER, J.S.C.

RECEIVED
APPELLATE DIVISION

MAY 06 2025

SUPERIOR COURT
OF NEW JERSEY

**REVISED LETTER BRIEF ON BEHALF OF FUQUAN KHALIF,
PRO- SE**

Honorable Judges:

This Letter Brief is submitted on behalf of Defendant–Appellant, Fuquan Khalif, pursuant to R. 2:6-2(b).

TABLE OF CONTENTS

Page(s)

PROCEDURAL HISTORY.....6

STATEMENT OF FACTS.....9

LEGAL ARGUMENTS

POINT ONE

DEFENDANT WAS ENTITLED “RETROACTIVELY,” TO YARBOUGH, GUIDELINES” AT HIS INITIAL SENTENCING IN 1992; ALONG WITH THE (STATEMENT OF REASONS) PURSUANT TO R. 3:21-4(g) IN VIOLATION OF HIS DUE PROCESS. (NOT RAISED BELOW) (TS 19-3 TO 26-24) (TS 30-24 TO 43-11)
.....10

POINT TWO

JUDGE WIGLER ERRONEOUSLY DENIED DEFENDANT’S MOTION “ON THE PAPERS” CITING “REPEATED CLAIMS IN PRIOR APPEALS,” WHEN IN FACT, PRIOR MOTION WAS DENIED PURSUANT TO: R. 3:21-10(c) AND R.4:49-2, NOT R. 3:22-5. (NOT RAISED BELOW)
.....17

CONCLUSION.....20

REFERENCE TO TRANSCRIPTS:

TS refers to May 8,1992, trial sentencing transcript

TABLE OF JUDGMENTS, ORDERS AND RULING¹

Pursuant to R. 2:6-1(a)(2) Defendant has submitted (point vii) of appellate counsel’s brief, at (104a) and (point iv) of his motion brief at (64a) because an inference was made that the Yarbough, claim raised on direct may be equal to the validity of that before the Court. Also, (27a-30a) was sent by the court in 1995, after partial reversal was Ordered, and has always been a “Xeroxed” copy.

May 8, 1992, First judgment of Conviction.....22a
May 8, 1992, Xeroxed “Back-Dated” (JOC) sent April 1995.....27a
April 6, 1995, Amended Change of Judgment.....36a
April 1, 2022, Order Denying Illegal Sentence.....39a
August 3, 2022, Order Denying Reconsideration.....47a
February 29, 2024, Appellate Opinion.....55a
December 6, 2024, Letter-Opinion.....70a
January 23, 1995, Appellate Opinion.....87a

INDEX TO APPENDIX

January 30, 1991, Indictment (18) counts.....1a
December 19, 2024, Court Transcript Request.....20a
May 8, 1992, First Judgment of Conviction.....22a
May 8, 1992, Xeroxed “Back-Dated” (JOC) sent April 1995.....27a
May 7, 2024, Request For Amended Judgment.....31a
May 2, 2024, Certification of Lost Verbatim Record.....32a
May 8, 2024, Amended Judgment of Conviction (Found).....35a
April 6, 1995, Amended Judgment of Conviction.....36a
April 1, 2022, Order Denying illegal sentence.....39a
August 3, 2022, Order Denying Reconsideration of Sentence.....47a
February 29, 2024, Appellate division Opinion.....55a
July 2, 2024, Point iv of Defendant’s Motion Brief.....64a
December 6, 2024, Letter-Opinion Denying Sentence.....70a
February 3, 2025, Amended Notice of Appeal.....72a
December 29, 2024, Notice of Motion.....75a
December 29, 2024, Certification/Support of Appeal.....76a
December 29, 2024, Motion For Abbreviated Transcript.....80a
December 29,2024, Certification Of Service.....81a
December 19, 2024,Notice to Judge, per R.2:5-1b.....83a
December 29, 2024, Criminal Case Information Statement.....84a
January 23, 1995, Appellate Division Opinion.....87a
November 11, 1993, Appellate Counsel’s Brief On Direct.....104a

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<u>Allen Ryan Alleyne v. United States</u> , 133 S. Ct. 215 (2013))	18
<u>Apprendi v. New Jersey</u> , 120 S. Ct. 2348 (2000)	18
<u>Erlinger V. United States</u> , 602 U.S. 821 (2024)	23
<u>Rose v. Clark</u> , 478 U.S. 570, 578 (1986)	23
<u>State v. Harris</u> , 181 N.J. 391, 494 (2004).....	21
<u>State v. Jamel Carlton</u> , A-0532-22 (2024)(App. Div.)(December 19, 2024)	23
<u>State v. Marshall</u> , 148 N.J. 89, 147-152, cert. denied 522 U.S. 850 (1997)	21
<u>State v. Marshall</u> , 173 N.J. 343, 30-353 (200)	21
<u>State v. McQuaid</u> , 147 N.J. 464, 484 (1997).....	21
<u>State v. Melvin</u> , 248 N.J. 321 (2021)	18
<u>State v. Williams</u> , 213 N.J. Super. 30 (1986).....	19
<u>State v. Yarbough</u> , 100 N.J. 627 (1985).....	22
<u>State V. Yarbough</u> , 100 N.J. 627 (1985).....	15
<u>State v. Zuber</u> , 227 N.J. 422, 437 (2017)	13
<u>RULES</u>	
R. 3:21-10(b)(5).....	11, 13, 19
R. 3:21-10(c).....	8, 13, 19
R. 3:22-5.....	9, 10, 19
R. 3:21-4(g).....	10, 11,24
R. 3:22-4[6].....	11
R. 4:49-2.....	13, 19
R. 1:4-4(b).....	22
<u>STATUTES</u>	
<u>N.J.S.A. 2C:12-1b(1)</u>	8, 15, 16
<u>N.J.S.A. 2C:11-3a(1),(2)</u>	8, 12, 15
<u>N.J.S.A. 2C:11-3a(3)</u>	8, 9
<u>N.J.S.A. 2C:11-3 and 2C:5-1</u>	8
<u>N.J.S.A. 2C:11-4</u>	8
<u>N.J.S.A. 2C:12-2</u>	12
<u>N.J.S.A. 2C:39-4(a)</u>	8, 15, 17
<u>N.J.S.A. 2C:1-8</u>	8
<u>N.J.S.A. 2C:44-3(b)</u>	8
<u>N.J.S.A. 2A:151-5</u>	14
<u>N.J.S.A. 2A:113-3</u>	15
<u>N.J.S.A. 2C:1-1</u>	16
<u>N.J.S.A. 2C:1-1(b)</u>	16

PROCEDURAL HISTORY

As a result of an (18) count indictment in 1991, and a capital murder trial, defendant was acquitted of counts (1)-(4) and count (13) murder was reduced to aggravated manslaughter See, (36a) On May 8, 1992, defendant was sentenced before the Honorable Betty J. Lester, J.S.C., and jury to 30 years to life count (14) felony murder; 10-20 years on count (18) possession of a weapon for an unlawful purpose; 10-20 years count (15) attempted murder; 10-20 years aggravated assault (concurrent). Count (6) aggravated assault, (3rd degree) 10-20 years was reversed on direct and resentenced to 5-10 years concurrent. Defendant also had (8) years of parole outstanding. All sentences are to run consecutive to each other and a \$330.00 V.C.C.P. fine was given.

The Court also ordered on direct that the transcript on resentencing reflect the same language in the new judgment of conviction. There was no (statement of facts) and the court found aggravating factors (3),(6) and (9). See, TS(65-4) The sentencing court did not sentence defendant pursuant to Yarbough, the court used N.J.S.A. 2C:1-8, merger and N.J.S.A. 2C:44-3(b), erroneously and then failed to merge (possession of a weapon for an unlawful purpose). On April 1, 2022, the Honorable Harold Fullilove Jr., J.S.C., denied defendant's motion to correct an illegal sentence, pursuant to R. 3:21-10(c). See, (45a). On appeal, February 29, 2024, this Court sided with Judge Fullilove. However, as part of the analysis, this

Court stated: “We affirmed defendant’s conviction and sentence, rejecting his argument that the trial court misapplied Yarbough, 100 N.J. 627 (1985), at sentencing. State v. Khalif, No. A-0553-92 (App. Div. Jan. 23, 1995).” See, (56a)

Here, the Court was referring to appellate counsel’s Brief on direct at Point VII. See, (107a). After acquiring documents referred to by Judge Fullilove, defendant resubmitted his illegal sentence motion, since it was never adjudicated on the merits. On December 6, 2024, before the honorable Ronald D. Wigler, J.S.C., the court appeared to have taken “that” statement literally to mean the Yarbough, claim before it at Point IV of defendant’s July 2, 2024 motion, had been dealt with. See, (64a)

That Yarbough, factor (6), was deleted Legislatively in 1993, thus, it could not have been brought again. There was no proper review on the merits, Judge Wigler merely referred to the February 29, 2024 Appellate opinion, then parroted the words of the Court: “the validity of your sentence was raised on direct.” See, (63a) and (71a) However, Judge Wigler cited no rule in support of that statement, nor did the Judge have his facts straight when he stated defendant had received a fair trial for the murders of François Walker and Lamont Booker.” Defendant was found guilty of (1) count of felony murder. See, (71a) and (36a)

The claims before the Court have been recently discovered and cannot be barred pursuant to R. 3:22-5, as the record shows. Judge Wigler abused his discretion in this case.

STATEMENT OF FACTS

These are facts material to issues on this appeal:

- 1) Judge Wigler did not give Defendant a proper review, which is afforded him pursuant to R. 3:21-10(b), when the court, instead, chose to prematurely rely on a statement taken “out of context” in the February 29, 2024, Appellate Opinion.
- 2) There is no limit on motions to the Court for claims of illegality, only R.3:22-5, which has to be demonstrated by the State and the Court when claiming a sentence is imposed according to law.
- 3) Defendant’s sentence was not imposed according to law, based on this Court’s ruling in State v. Williams, 213 N.J. 30; 516 A.2d 256; 1986 N.J. Super. LEXIS 1431 No. A-869-84T4.(Where possession for an unlawful purpose of a gun merges), when the “sole purpose” has been established in the Indictment and by the jury’s verdict.
- 4) The sentencing court used “acquitted offenses” to support aggravating factors used to enhance sentencing which is contrary to State v. Melvin [Mark], 248 N.J. 321; 258 A.3d 1075; 2021 N.J. LEXIS 890 A-44 September Term 2019, A-13 September Term 2020, 083298 and 084603. Defendant was acquitted of count (two) aggravated assault and count (13) knowing and purposeful murder.
- 5) On remand in 1995, the court failed to (1) again, sentence Defendant pursuant to the Yarbough, Guidelines established by the Supreme Court of New Jersey, (2) the court provided no “explicit statement” explaining the overall fairness of a sentence which amounted to 58 years to life, (3) there was no statement of reasons, pursuant to R. 3:21-4(g), and (4) the court failed to give a “qualitative analysis,” per the Supreme Court in Yarbough, and Torres,.

POINT ONE

DEFENDANT WAS ENTITLED “RETROACTIVELY” TO YARBOUGH, GUIDELINES” AT HIS INITIAL SENTENCING IN 1992, ALONG WITH THE STATEMENT OF REASONS, PURSUANT TO R. 3:21-4(g) IN VIOLATION OF HIS DUE PROCESS. (NOT RAISED BELOW) (TS 19-3 to 26-24);(TS 30-24 to 43-11)

Defendant appeals from a lower court” Letter-Opinion which was devoid any supporting facts or proper review, and contrary to any rule determined, “the validity of his sentence was raised on direct and any substantive challenges were rejected by every court since defendant’s 1995 remand for resentencing. Therefore, the Honorable Ronald D. Wigler, J.S.C., precluded, “on the papers,” defendant was not entitled to redress, notwithstanding, every claim is newly presented. An illegal sentence may be corrected at any time. Rule 3:21-10(b)(5), State v. Zuber, 227 N.J. 422, 437 (2017). An illegal sentence is one that exceeds the maximum penalty provided in the Code for a particular offense or a sentence not imposed in accordance with the law. State v. Murray, 162 N.J. 240, 247 (2000). See R. 3:22-4[6]. There is no bar against the claim of illegality of sentence. To be clear, there is no evidence, from any court supporting R. 3:22-5. This motion was filed on July 2, 2024, and heard by the court on December 6, 2024. Defendant would challenge any court to substantiate that any of the following claims represent the “validity of the sentence” raised on direct:

POINT I

The Sentencing Court Committed “Plain Error” Failing To Merge Gun Offense, Where The Underline Felony, Burglary, Stated It’s “Sole Purpose”. Violating Defendant’s VI, And XIV Amendments. (Not Raised Below)

POINT II

Sentencing Court Committed “Plain Error” In It’s Final Analysis, Weighing As “Factors” Acquitted Counts: (2) And (13), Capital Murder, To Support Enhancing Felony Murder Beyond It’s Statutory Mandatory Minimum, Contrary To Melvin, 248 N.J., Alleyne V. U.S. 133 S. Ct. And Due Process. (Not Raised Below)

POINT III

Ex Post Facto Clause Prohibits A Sentencing Court From Using A, 2a: Title 24 Offense That Involved A Gun, “Without A Conviction” To Enhance Sentencing . Also, Contravening N.J.S.A. 2C:1-1(b) In 1992 And Defendant’s VI And XIV Amendments. (Not Raised Below)

POINT IV

The Court Committed “Plain Error” Failing To Apply Yarbough, “Sentencing Guidelines” Which Resulted In Improper Use Of Merger, In Place Of Guidelines; “Double Counting” And Failing To Provide An “Explicit Statement Of Overall A fairness Of Sentence.” Violating Due Process Under The XIV Amendment. (Not Raised Below)

Defendant’s previous motion to correct an illegal sentence was initially filed March 23, 2020. It was heard before the Honorable Harold Fullilove Jr., J.S.C. however, he refused to review defendant’s claims because he failed to include the following: (1) the 1995 appellate opinion, (2) any transcript of the remand and resentencing ordered in that opinion, and (3) a copy of the change of judgment. See, (da 45) the motion was denied pursuant to r. 3:21-10(c). A motion for reconsideration of sentence was filed April 7, 2022, mistakenly, under R. 4:49-2, where Fullilove Jr. stated: “Defendant did not prove that I was arbitrary,

capricious, and unreasonable.” R. 3:21-10(C). The Rule States: “A motion filed pursuant to paragraph (b) hereof, shall be accompanied by supporting affidavits, and such other documents and papers as set forth the basis for the relief sought.”

Defendant eventually learned, what he thought was his “change of judgment” was actually a “Xeroxed copy” sent to him by the trial court 30 years ago with the word “changed” written next to each count that did not reflect the sentence transcript. See, (da27). The motion to correct an illegal sentence was resubmitted on July 2, 2024, in accordance with R. 3:21-10(C). In its denial of defendant’s motion, Judge Wigler appears to rely on this court’s February 29, 2024 Opinion, which stated in part: “We affirmed defendant’s conviction and sentence, rejecting his argument that the trial court misapplied State v. Yarbough, 100 N.J. 627 (1985), at sentencing. State V. Khalif, No. A-0553-92(App. Div. Jan. 23, 1995).

However, the court is demonstrably incorrect in assuming so, since “that” Yarbough, claim under factor (6) is not in this motion. Defendant’s sentence was illegal in 1995, that is why this court remanded for resentencing. Had the court used the Yarbough, Guidelines according to law, the ex post facto claim at Point III of the July 2, 2024 motion would have been discovered and resolved. The language of N.J.S.A 2A:151-5, (possession of a dangerous weapon) expressly states:

“That a person committing various offenses including robbery, when armed with or having in his possession any firearm, whether or not capable of being discharged or dangerous instrument of any kind [such as a black jack, metal knuckles, dagger, stiletto, or any object or device, whether toy or imitation, having an appearance similar to or capable of being mistaken for any of the foregoing] shall in addition to punishment provided for the crime, be punished on a first conviction by imprisonment for not less than one, nor more than ten years, upon a second conviction by imprisonment for not less than three years nor more than 15 years: upon a third conviction by imprisonment for not less than 5, nor more than 20 years and upon a fourth or subsequent conviction, for not less than 10 years nor more than life, in the discretion of the court. “No such additional punishment shall be imposed, unless, the indictment shall have averred that the person was armed or had in his possession any such instrument and a conviction was had thereon.”

(N.J.S. 2A:151-5) (Emphasis Added)

Exposing defendant to any kind of sentence enhancement, absent the (two) prongs cited, especially after the State dismissed any weapons offenses in lieu of a plea deal, was a clear violation of defendant’s due process, but has never been brought to light until now. Defendant’s N.J.S.A. 2A:113-3 prior murder and N.J.S.A. 2A:151-5, are not subject to provisions of N.J.S.A. 2C:39-4(a), under the 2C Code because those (two) predicates never took place, a “fact” known to the court at the time. See, TS (10-11 to 11-1). Moreover, defendant had protections under Title 24, the prior Code, as was previously expressed. Under this Code, however, N.J.S.A. 2C:1-1 states: “a. This Title shall be known and may be cited as the *New Jersey Code of Criminal justice*.”

b. Except as provided in subsection c. and d. of this section, the code does not apply to offenses committed prior to its effective date and prosecutions and dispositions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if the code was not in force.” *Title 2C New Jersey Code of Criminal Justice* 1992 Edition.

Thus, *Ex Post Facto* was violated by the court, a fact that was not adjudicated on direct or on motion by a court. The sentencing court’s further disregard to the Yarbough, guidelines contributed to the findings in Point II of the motion where the sentencing court used, “in support of aggravating factors,” acquitted counts: (2) aggravated assault and count (13), capital murder, contrary to Melvin, which held:

“The New Jersey Constitution’s guarantee of the right to criminal trial by jury is inviolate. N.J. Const. art. I, para. 9. In order to protect that right, the judiciary cannot allow the finality of the jury’s verdict to be put into question. To permit the re-litigation of facts in a criminal case under the lower preponderance of the evidence standard would render the jury’s role in the criminal justice process null and would be fundamentally unfair. In order to protect the integrity of the New Jersey Constitution’s right to criminal trial by jury, the judiciary cannot allow a jury’s verdict to be ignored through judicial fact-finding at sentencing. Such a practice defies the principles of due process and fundamental fairness.”

(State v. Melvin, 248 N.J. 321 (2021))

The court's use of those offenses the jury did not find, violates due process and are an abuse of discretion. They are not "facts" once disregarded by the jury.

The United States Supreme Court, in Alleyne, defined "facts," Holding:

"Headnotes:[4]

The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an "element" or "ingredient" of the charged offense. In Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), the U.S. Supreme Court held that a fact by definition is an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed..."

(Allen Ryan Alleyne v. United States, 133 S. Ct. 215, 325 (2013))

At sentencing none of the statements made by the court concerning counts (2) and (13) were proper. See, (TS 68-1 to 4);(72-19 to 22) Defendant further asserts, had he been given retroactivity to Yarbough, the court would have been reminded to include a (Statement of Reasons). That statement may have explained to the defendant why Point I of his motion was contrary to this Court's ruling in State v. Williams, 213 N.J. Super. 30 (1986), where this Court held:

"N.J. Stat. Ann. 2C:39-4 prohibits the possession of any kind of weapon with the purpose to use it unlawfully against the person or property of another. There should be a merger of possession of a weapon for an unlawful purpose and an aggravated assault with that weapon, if the defendant had possessed it for the sole purpose of committing the assault."

State v. Williams, 213 N.J. Super. 30, 36 (1986)

The Court wanted there to be no doubt as to “merger” when a separate offense is actually a part of the underlying offense as is in the instant case. Khalif was convicted of felony murder, according to the judgment of conviction. However, the court ran (possession of a weapon for an unlawful purpose) consecutive, without explanation. The Williams, Court further held:

“To avoid merger of possession for an unlawful purpose, four factors must be present: (1) defendant must have been charged in the indictment with the possession of a weapon with a broader unlawful purpose, either generally or specifically, than using the weapon to kill or assault the victim of the greater offense; (2) the evidence must support a finding that defendant had a broader unlawful purpose; (3) the judge must have instructed the jury of the differences between specific unlawful purpose of using the weapon against the victim of the greater offense and a broader unlawful purpose, and (4) the verdict must express the jury’s conclusion that the defendant had a broader unlawful purpose. There may be cases where merger is necessary despite these four factors.”

State v. Williams, 213 N.J. Super. 30, 36 (1986)

This procedural error by the court gave defendant another 20 year term that is not authorized in accordance to law. For all of the foregoing statements made and the “facts” that are clearly before the Court, defendant asks that this entire sentence be vacated, and remanded, correct according to law.

POINT II

JUDGE WIGLER ERRONEOUSLY DENIED DEFENDANT'S MOTION 'ON THE PAPERS' CITING 'REPEATED CLAIMS IN PRIOR APPEALS,' WHEN IN FACT, PRIOR MOTION WAS DENIED PURSUANT TO: R. 3:21-10(c) AND R. 4:49-2, NOT R. 3:22-5.(NOT RAISED BELOW)

There is no bar against a claim of illegality of a sentence. Moreover, prior adjudication of an issue on direct appeal, will ordinarily bar post-conviction relief. See e.g. State v. Harris, 181 N.J. 391, 494 (2004); State v. Marshall, 173 N.J. 343, 30-353 (200); State v. Marshall, 148 N.J. 89, 147-152, cert. denied 522 U.S. 850 (1997); State v. McQuaid, 147 N.J. 464, 484 (1997). However, on December 6, 2024, in the instant case, the Honorable Ronald D. Wigler, J.S.C. "contrary to credible evidence in the motion," denied defendant's motion "on the papers" contrary to the actual rule that governs the court, R. 3:22-5, which expressly states: "A prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in post-conviction proceeding brought pursuant to this rule or prior to the adoption thereof, or in any appeal taken from such proceedings."

The court was presented with a motion pursuant to R. 3:21-10(b)(5), which provides relief for "correcting a sentence not authorized by law, including the Code of Criminal justice. However, the court used a method "not provided" in that rule by simply stating:

“As the Appellate Division states in their February 29, 2024, Opinion, the validity of your sentence was raised on direct appeal repeated in a series of PCR petitions, and reiterated in a subsequent series of motions to correct an illegal sentence.” See, (71a)

The court seems to have been persuaded by other earmarks made by the appellate court, such as when the Court made the statement: We affirmed defendant’s conviction and sentence, rejecting his argument that the trial court misapplies State v. Yarbough, 100 N.J. 627 (1985), at sentencing. State v. Khalif, No. A-0553-92(App. Div. Jan. 23, 1995). See, (56a)

Judge Wigler did an excellent job reviewing the opinions of the Court, but neglected to give “any” review to defendant, who by way of the Rule has the right to a review. Judge Wigler was not “faithful to the law” in this instance because, after a total disregard to provide a “dignified and courteous” review, the court opined by making these comments: “Accordingly, since it had been repeatedly decided by the courts that you received a fair and lawful sentence for the murders of Fransoir Walker and Lamont Booker, your motion is *denied*.”

The court is not entitled to its own facts, only it’s opinion, which appears to be void of the facts. Defendant was not convicted under indictment 9-1-437-I of (two) murders, he was convicted of (one), felony murder, which would have come

to light under an actual review on the merits. The Code of Judicial Conduct, Canon 3(A), (Adjudicative Responsibilities) governs a judge's conduct, stating:

“(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interest, public clamor, or fear of criticism. (2) A judge should maintain order and decorum in judicial proceedings. (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

(Code of Judicial Conduct, Canon 3A)

These Cannons appear to have eluded Judge Wigler, because he displayed none of these attributes when he received the defendant's motion to correct an illegal sentence. The court appeared to express disdain at the efforts and lengths the defendant has gone through over the decades in search of relief for an unjust sentence. However, this very Court in, State v. Jamel Carlton, A-0532-22 (2024) (App. Div.)(December 19, 2024). Approved for Publication as Redacted, (quoting Erlinger), held:

“[i]n a free society respectful of the individual, a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers ‘regardless of how overwhelmin[g]’ the evidence may seem to a judge.” Ibid. (alteration in original)(quoting Rose v. Clark, 478 U.S. 570, 578 (1986)).”

(Erlinger V. United States, 602 U.S. 821 (2024))

Lastly, the original sentencing court, upon resentencing had the chance to correctly sentence the defendant back in 1995, but even then, the court gave no “explicit statement” explaining the overall fairness of the sentence.

If this “illegal sentence” is not corrected, defendant won’t begin serving the (two) 10-20 year terms until he is 69 years old, a circumstance that would not exist had Yarbough guidelines been used at sentencing. Our Supreme Court in Torres, expressly stated: “An explicit statement, explaining the overall fairness of a sentence imposed on a defendant for multiple offenses in a single proceeding or in multiple sentencing proceedings, is essential to a proper Yarbough, sentencing assessment. It is the necessary second part to a Yarbough, analysis as Miller, emphasized.” (Torres, 246 N.J. at 268 (citing Miller, 108 N.J. at 122 (1987))

The validity of defendant’s sentence has not been adjudicated, and should be reviewed under the abuse of discretion standard, vacated and remanded for resentencing.

CERTIFICATION IN LIEU OF OATH

I, Fuquan Khalif, do certify that the foregoing statements are true. If any of the foregoing statements made by me are willfully false, I am subject to punishment by law pursuant to R. 1:4-4(b).

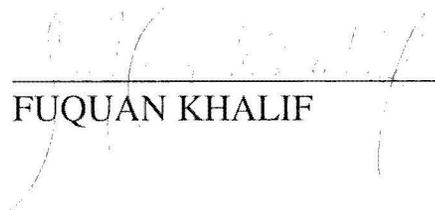
CONCLUSION

As argued above, the record clearly shows that the Defendant, Fuquan Khalif was denied “retroactivity to the New Jersey Supreme Court instituted Yarbough, Guidelines, which is his “right” under due process of law. The sentencing court’s failure to adhere to R. 3:21-4(g), left an ambiguous taint over Defendant’s entire sentencing procedure, not only resulting in an illegal sentence on direct, but again, 35 years later on motion.

The instant motion that was before the Honorable Judge Wigler, should have been “reviewed on the merits,” in spite of any position the court may have taken based on the February 29, 2024 Opinion, simply because “on its face,” statements made by the Court can be misconstrued. However, a “proper review” would have erased all doubt that the Yarbough, claim mentioned in that Opinion could not have been the claim now before the Court, simply because it was deleted Legislatively in 1993, therefore this appeal should be granted and remanded back down to the lower court.

Date: April 29, 2025

Respectfully Submitted,


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Filed: May 22, 2025

LETTER BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent) v.
Fuquan Khalif (Defendant-Appellant)
Docket No. A-1471-24

Criminal Action: On Appeal from an Order Denying Defendant's Motion to Correct an Illegal Sentence entered in the Superior Court of New Jersey, Law Division, Essex County.

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

Honorable Judges:

Please accept the State's letter brief and appendix in lieu of a formal brief pursuant to R. 2:6-2(b).

Table of Contents

	<u>Page Nos.</u>
Counterstatement of Procedural History.....	1
Counterstatement of Facts.....	7
A. Trial.....	7
B. Defendant’s Motion to Correct an Illegal Sentence.....	7

Legal Argument

Point I

Defendant’s Motion to Correct an Illegal Sentence Was Properly Denied.....	9
Conclusion.....	12

Index to State’s Appendix

Appellate Division Order Summarily Affirming Trial Court Order Denying PCR Docket No. A-4158-12 Dated November 13, 2014	Pa1-2
Appellate Division Opinion Docket No. A-3668-14T3 Dated June 28, 2017.....	Pa3-4
Appellate Division Opinion Docket No. A-5513-17T3 Dated August 26, 2019	Pa5-10

Counterstatement of Procedural History

On January 30, 1991, defendant Fuquan Khalif was charged in an eighteen-count Essex County Indictment, Number 91-01-00437, with numerous violent offenses, the most serious of which were murder (Count 13), felony murder (Count 14) and attempted murder (Count 15). (Da1-19).

Defendant was tried before the Honorable Betty J. Lester, J.S.C., and a jury. On March 13, 1992, the jury convicted defendant on Counts 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17 and 18, and the lesser-included offense of aggravated manslaughter under Count 13. Defendant was acquitted of the charges in Counts 1 through 4. (Da22-26).

At sentencing on May 8, 1992, Judge Lester imposed a sentence of life imprisonment with a mandatory thirty-year parole ineligibility term on the felony murder conviction (Count 14). Defendant received a consecutive term of twenty years with a ten-year parole ineligibility term on the conviction for attempted murder (Count 15). A concurrent sentence of five years with a two-and one-half-year parole bar was imposed on the conviction for unlawful possession of a weapon (Count 17). Judge Lester sentenced defendant as a second offender with a firearm pursuant to N.J.S.A. 2C:44-3d to a consecutive extended term of twenty years with a ten-year parole bar on Count 18. She

imposed the same mandatory extended term sentences of twenty years with ten-year parole bars on Counts 5, 6 and 9, except that these sentences were to run concurrently with the other sentences. On Counts 7, 8, 10 and 11, defendant was sentenced to concurrent five-year terms with two- and one-half-year parole bars. Counts 12, 13 and 16 were merged into other counts. Defendant's total aggregate sentence was life imprisonment plus 40 years with a 50-year period of parole ineligibility. (4T74-12 to 80-7; Da22-26).¹

Defendant appealed his conviction and sentence. As to his sentence, he argued that the three consecutive sentences on Counts 14, 15 and 18 violated Yarbough² and that the extended term sentence on Count 18 was illegal. (Da100-107). On January 23, 1995, this Court affirmed defendant's conviction and sentence, except that it remanded to correct the sentence on Count 6 (to reflect a sentence in the third-degree range, rather than the second-degree range), and to correct the judgment of conviction to reflect the sentencing court's imposition of consecutive sentences, rather than concurrent sentences, on the convictions for felony murder (Count 14) and attempted murder (Count 15). (Da87-103). An amended judgment of conviction was

¹ 1T – trial transcript dated March 10, 1992.

2T – trial transcript dated March 11, 1992.

3T – trial transcript dated March 13, 1992.

4T – sentencing transcript dated May 8, 1992.

² State v. Yarbough, 100 N.J. 627 (1985).

entered on April 6, 1995. (Da36-38). This correction did not affect defendant's overall aggregate sentence. The New Jersey Supreme Court denied defendant's petition for certification. State v. Khalif, 140 N.J. 327 (1995).

Defendant filed five petitions for post-conviction relief (PCR). On December 26, 1995, defendant filed his first PCR petition. Judge Lester denied the petition on September 16, 1997. (Da41). This Court affirmed the order denying PCR. (Ibid.). Defendant's petition for certification was denied on February 16, 2000. State v. Khalif, 163 N.J. 76 (2000).

Defendant filed a second pro se petition and request for counsel. On June 5, 2000, Judge Lester denied defendant's request for counsel and his second PCR petition. (Da41-42). This Court affirmed the denial of PCR. (Ibid.). The Supreme Court denied defendant's petition for certification on January 29, 2002. State v. Khalif, 171 N.J. 44 (2002).

On July 2, 2002, defendant filed a petition for a writ of habeas corpus in the United States District Court for the District of New Jersey. On September 28, 2005, the district court denied the petition. Khalif v. Hendricks, Civ. No. 02-3193, 2005 WL 237227 (D.N.J. Sept. 28, 2005). (Da42).

On May 21, 2007, defendant filed a third pro se PCR petition or motion to correct an illegal sentence. He argued that the mandatory extended terms of

parole ineligibility imposed on Counts 5, 6, 9 and 18 pursuant to N.J.S.A. 2C:44-3d were illegal. (Da42, 49). Judge Lester denied the petition on August 8, 2007, finding the matter was previously adjudicated on the merits. (Ibid.). This Court affirmed Judge Lester's order, agreeing with her that the claims were procedurally barred by Rule 3:22-5 and lacked substantive merit. (Ibid.). The Supreme Court denied certification on June 19, 2009. State v. Khalif, 199 N.J. 543 (2009).

Defendant filed a fourth pro se PCR petition on August 20, 2009. (Da42, 49). The trial court denied the petition as time barred under Rule 3:22-12(a). (Ibid.). This Court affirmed the order denying PCR. (Ibid.). The Supreme Court denied certification on June 16, 2011. State v. Khalif, 207 N.J. 35 (2011).

On January 2, 2013, defendant filed a fifth pro se PCR petition. (Pa1). On March 14, 2013, the trial court denied the petition because it was time barred and procedurally barred by the PCR rules, and it was otherwise frivolous. (Pa1-2). On November 13, 2014, this Court issued a summary disposition order affirming the lower court's order denying PCR. (Ibid.).

Defendant also filed five motions to correct an illegal sentence. Defendant's first pro se motion to correct an illegal sentence was denied by the Honorable Alfonse J. Cifelli, J.S.C., on February 25, 2015. (Da49). On June

28, 2017, this Court affirmed the order denying the motion. (Pa3-4). The Court noted “the extensive procedural history, including prior challenges to his sentence” and concluded that “the arguments lacked sufficient merit to warrant discussion in a written opinion.” (Pa4). The New Jersey Supreme Court denied certification on January 12, 2018. State v. Khalif, 232 N.J. 51 (2018).

On December 14, 2017, defendant filed yet another pro se motion to correct an illegal sentence. On April 11, 2018, the Honorable Arthur J. Batista, J.S.C., issued an order denying the motion. (Da43, 50). Defendant did not appeal the denial of the motion.

On May 23, 2018, defendant filed a third pro se motion to correct an illegal sentence. (Pa8-9). On July 19, 2018, Judge Batista denied the motion and on August 26, 2019, this Court affirmed the order denying the motion. (Pa5-10). The Court concluded that “[d]efendant’s arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(2)(E).” (Pa10). On March 13, 2020, the Supreme Court denied defendant’s petition for certification. State v. Khalif, 241 N.J. 142 (2020).

Defendant filed a fourth pro se motion to correct an illegal sentence and argued that the sentencing court failed to: merge the weapons conviction (Count 18) with the underlying offense; merge the conviction for attempted murder with felony murder conviction; properly analyze the Yarbough factors;

and double counted testimony or considered false evidence when assessing aggravating factors. (Da45). On April 1, 2022, the Honorable Harold W. Fullilove, Jr., J.S.C., issued an order denying defendant's motion to correct an illegal sentence for the reasons expressed in his written decision. (Da39-46). On August 3, 2022, Judge Fullilove denied defendant's motion for reconsideration of the April 1, 2022 order. (Da47-54). Defendant appealed, and on February 29, 2024, this Court affirmed the trial court's orders. (Da55-63). The Court stated that "[d]efendant's substantive challenges to his sentence were rejected by every court to adjudicate them. It has long since been decided by the courts that defendant received a fair and lawful sentence for the brutal, senseless murder of his cousin and the equally pointless attempted murder of her fiancé." (Da63). The Supreme Court of New Jersey denied defendant's petition for certification on May 8, 2025. State v. Khalif, __ N.J. __ (May 8, 2025).

On July 15, 2024, defendant filed a fifth motion to correct an illegal sentence, again raising Yarbough, merger and "double-counting" issues, as well as an ex post facto clause violation. (Da64-70). On December 6, 2024, the Honorable Ronald D. Wigler, J.S.C., denied the motion for the reasons expressed in his written opinion. (Da70-71).

On January 10, 2025, defendant filed a notice of appeal from the order denying his motion to correct an illegal sentence. (Da72-74).

Counterstatement of Facts

A. Trial

The State relies on the factual summary in the Appellate Division's opinion on direct appeal, to which this Court is respectfully referred. (Da89-92).

B. Defendant's Motion to Correct an Illegal Sentence

In his motion to correct an illegal sentence, defendant argued:

THE COURT COMMITTED "PLAIN ERROR," FAILING TO APPLY "YARBOUGH, SENTENCING GUIDELINES," WHICH RESULTED IN "IMPROPER USE OF "MERGER," IN PLACE OF GUIDELINES; "DOUBLE-COUNTING;" AND FAILING TO PROVIDE AN EXPLICIT STATEMENT OF "OVERALL-FAIRNESS" OF A SENTENCE. VIOLATING DUE PROCESS UNDER THE XIV AMENDMENT. (NOT RAISED BELOW).

[Da64-69].

On December 6, 2024, Judge Wigler denied defendant's motion. (Da70-71). The judge observed that these issues were raised and rejected in numerous prior proceedings, most recently this Court's February 29, 2024 opinion affirming Judge Fullilove's denial of defendant's motions to correct an illegal sentence and for reconsideration. Judge Wigler stated:

The basis for your argument is that the trial court committed error in sentencing you because it would have merged your conviction

of Possession of a Weapon for an Unlawful Purpose pursuant to R. 2C:1-8; “weighing as aggravating factors” counts the jury acquitted you of; violation of the Ex Post Facto Clause; failure to apply the counts the jury acquitted you of; violation of the Ex Post Facto Clause; failure to apply the Yarbough sentencing guidelines for sentences with multiple terms and consecutive sentences; and failure to conduct an “overall fairness” assessment or the record pursuant to State v. Roth, 95 N.J. 334 (1984).

However, on February 29, 2024, the Appellate Division affirmed [t]he Honorable Harold W. Fullilove, Jr., J.S.C.’s April 1, 2022, Order denying your motion to correct an illegal sentence and Judge Fullilove Jr.’s August 3, 2022, Order denying your motion for reconsideration of the April 1, 2022, Order. Please find the Appellate Division’s February 29, 2024, opinion attached.

As the Appellate Division states in their February 29, 2024, opinion, the validity of your sentence was raised in your direct appeal, repeated in a series of PCR petitions, and reiterated in a subsequent series of motions to correct an illegal sentence. The substantive challenges to your sentence were rejected by every court to adjudicate them since the matter was remanded for resentencing in 1995.

Accordingly, since it has been repeatedly decided by the courts that you received a fair and lawful sentence for the murders of Francois Walker and Lamont Booker, your motion is **DENIED**.

[Da70-71] [emphasis in original].

Legal Argument

Point I³

Defendant's Motion to Correct an Illegal Sentence Was Properly Denied.

Defendant argues that his sentence is illegal because the sentencing court failed to properly apply and assess Yarbough factors, illegally enhanced the sentence on Count 18 (possession of a handgun for an unlawful purpose), double counted testimony in weighing aggravating factors, and failed to merge the conviction for weapons possession under Count 18 with the felony murder conviction. (Db9-20). These claims were properly rejected by Judge Wigler, whose order denying relief should now be affirmed.

Rule 3:21-10(b)(5) provides that “[a] motion may be filed and an order may be entered at any time . . . correcting a sentence not authorized by law including the Code of Criminal Justice.” Under this rule, “a truly ‘illegal’ sentence can be corrected ‘at any time.’” State v. Acevedo, 205 N.J. 40, 47 n.4 (2011) (quoting R. 3:21-10(b)(5)). “[A]n illegal sentence is one that ‘exceeds the maximum penalty provided in the Code for a particular offense’ or a sentence ‘not imposed in accordance with law.’” Id. at 45 (quoting State v. Murray, 162 N.J. 240, 247 (2000)). A motion to correct an illegal sentence under Rule 3:21-10(b)(5)

³ This Point responds to Points I and II of defendant's letter brief.

may be brought “at any time” and is not procedurally barred by the post-conviction rules. See Rule 3:22-5 (preventing re-litigation of claims previously raised and decided).

An argument that the imposition of consecutive sentences violates the Yarbough guidelines “have historically been characterized as relating to the ‘excessiveness’ of the sentences, rather than their legality.” State v. Flores, 228 N.J. Super. 586, 596 (App. Div. 1988). “[A] claim of ‘excessive’ sentence by reason of the aggregation of the custodial terms imposed was ‘distinct from [an argument of sentence illegality] by reason of being beyond or not in accordance with legal authorization’ and was ‘not an appropriate ground of post-conviction relief. . . .’” Id. at 596-97 (quoting State v. Clark, 65 N.J. 426, 436-37 (1974)).

In this case, defendant raised the issue that the sentencing court’s imposition of three consecutive sentences violated Yarbough on direct appeal, and this Court affirmed the sentences. (Da101-102). He also raised the issue in his fourth motion to correct an illegal sentence and motion to reconsider, which were denied by Judge Fullilove and affirmed by this Court. (Da40-54). Judge Wigler correctly concluded that defendant’s claim was procedurally barred by these prior adjudications. See R. 3:22-5.

Secondly, the sentencing court correctly sentenced defendant to an enhanced term of twenty years with a ten-year parole bar for second-degree possession of a

handgun for an unlawful purpose (Count 18) because he was extended term eligible under N.J.S.A. 2C:44-3d as a second offender with a firearm. (1T76-23 to 77-12). Defendant raised this issue on direct appeal and this Court affirmed the sentence imposed on Count 18. (Da100-101). Defendant also raised this claim in prior motions to correct an illegal sentence. (Da42, 45). Judge Wigler correctly concluded that defendant's claim was procedurally barred by these prior adjudications. See R. 3:22-5.

Defendant's claim that the sentencing court improperly double counted testimony or considered false evidence when finding and weighing aggravating factors was raised in a prior proceeding. (Da45). Judge Wigler correctly determined that this claim was procedurally barred by the prior adjudication. R. 3:22-5. In addition, this claim concerns the excessiveness of defendant's sentence, not its legality. Because he could have raised the claim on direct appeal, it is procedurally barred by Rule 3:22-4(a), and the exceptions at subsections (a)(1), (2) and (3) do not apply. See Acevedo, 205 N.J. at 45-6 (observing that an excessive sentence claim must be raised on direct appeal).

Finally, defendant's claim that the conviction for possession of a handgun for an unlawful purpose (Count 18) should have been merged with the felony murder conviction was raised in a prior proceeding (Da45) and is procedurally barred. "[T]he failure to merge convictions results in an illegal sentence for which

there is no procedural time limit for correction.” State v. Romero, 191 N.J. 59, 80 (2007) (citing R. 3:22-2(c); R. 3:22-12(a)). However, no caselaw, statute or rule permits a criminal defendant to continue to raise the same illegal sentence claim. He is not permitted to take a second and third bite of the same apple because he couches his claim as one to correct an illegal sentence.

Conclusion

For forgoing reasons, the State respectfully asks this Court to affirm the trial court’s order denying defendant’s motion to correct an illegal sentence.

Respectfully submitted,

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Filed: May 22, 2025

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Honorable Justices:
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RECEIVED
APPELLATE DIVISION
JUN 24 2025
SUPERIOR COURT
OF NEW JERSEY

Re: State of New Jersey v. Fuquan Khalif
Docket No. A-001471-24 T3

Letter-Reply Brief on Behalf of the Appellant Pursuant to R. 2:6-2(b).

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

FUQUAN KHALIF, PRO-SE

TABLE OF CONTENTS

PAGE

PROCEDURAL HISTORY

STATEMENT OF FACTS

LEGAL ARGUMENT..... 6.

POINT ONE

THE RESPONDENT’S BRIEF FAILS TO ADDRESS “SPECIFICALLY” OR “SEPARATELY,” ANY ONE CLAIM “ACCURRATELY” ON THEIR MERITS AND HAS PURPOSELY MIS-LED THE COURT, CONFLATING PRIOR APPEALS BY (1) “MIS-QUOTING DEFENDANT” AND (2), “STATING FACTS BY THE SUPERIOR COURT IN “INACCURATELY” TO CONTINUOUSLY DENY DEFENDANT DUE PROCESS.”(NOT RAISED BELOW)

CONCLUSION.....14.

INDEX TO APPENDIX¹

Respondent’s Letter-Brief.....108a
Respondent’ Appendix.....122a
Exhibit (A) (10 pages).....134a

¹ Appendix numbers are continued in succession for clarity

PROCEDURAL HISTORY

Appellant will rely on the procedural history from his pro se Appellate Brief.

STATEMENT OF FACTS

Appellant will rely on the statement of facts from his pro se Appellate Brief.

LEGAL ARGUMENT
POINT I

THE RESPONDENT BRIEF FAILS TO ADDRESS “SPECIFICALLY” OR “SEPARATELY,” ANY ONE CLAIM “ACCURATELY ON THEIR MERITS AND HAS PURPOSELY MIS-LED THE COURT, CONFLATING PRIOR APPEALS BY (1), “MIS-QUOTING DEFENDANT AND (2), “STATING FACTS BY THE SUPERIOR COURT “INACCURATELY” TO CONTINUOUSLY DENY DEFENDANT DUE PROCESS. (NOT RAISED BELOW)

Defendant now addresses the State’s response and will dispel all inaccurate information, that this Court may once and for all, in the interest of “fundamental fairness,” provide an accurate review pursuant to R. 2:10-2, assessing a “Scope of Review.” The Court is fully aware of Defendant’s claims, thus, Defendant will point out what the State has not legally refuted. However, the false statements by the Prosecutor will be addressed first: (1) The very first paragraph of the State’s Letter-Brief states Defendant argues: “the sentencing court failed to “properly apply” and assess Yarbough, factors, and illegally enhanced the sentence on count (18) (possession of a weapon for an unlawful purpose),” See, (118a)

To insert the word, “properly,” implies that the court used Yarbough, Guidelines, when the court did not. Moreover, the Defendant never asserted that the court “illegally enhanced” the sentence on count (18), he stated that count (18) should have merged into the felony murder because there was no “broader purpose” found or asserted in the

Indictment. See, Defendant's Appellate brief dated April 29, 2025, point 1, page (9).and (10) Also see, (64a) and (69a), point iv of Defendant's motion.

In those documents, when read correctly, Defendant is either quoting, inre, "concurrent sentences," Torres, "Defense counsel during sentencing," or Yarbough., The Prosecutor then erroneously asserts that Judge Wigler properly rejected those claims, when in fact, Judge Wigler never addressed any of the claims, he merely took the position that since the Appellate Opinion of February 29, 2024, echoed the Order of Judge Harold Fullilove Jr., J.S.C., that he did not have to review the motion. Judge Wigler paid such little attention to the "facts," that he believed Defendant received a "fair and lawful sentence," for (2) murders, when there was only a conviction for one. See, (70a) ;(71a) State v. Torres, 246 N.J. 246 (2021);(State v. Yarbough, 100 N.J. (1985)

(2) The State correctly stated that claims of consecutive sentencing were raised by appellate counsel on direct. See, (101a) ;(102a). However, the state erroneously asserts that: Defendant raised "the issue," of three consecutive sentences in his fourth motion to correct an illegal sentence, and motion to reconsider, and was denied by Judge Fullilove Jr. and affirmed by this Court for that reason. See, (119a) This Court actually stated:

"Defendant filed his fourth motion to correct an illegal sentence, which gave rise to this appeal on June 10, 2020. The Judge found that defendant's motion was procedurally deficient because it did not include our 1995 Opinion remanding to the trial court for correction of the original judgment of conviction, the transcript of his re-sentencing proceeding, or his current judgment of conviction. In addition the court concluded that the validity of defendant's sentence had been affirmed and re-affirmed repeatedly over a period of twenty-seven years." See, (59a)

There was no re-assertion of (three consecutive sentences) mentioned, As a matter of fact, a closer look at (40a) to (54a), is also void of that assertion. There, the Court will mostly find the adverse Order on R. 4:49-2, and the failure of Judge Fullilove Jr., to even acknowledge receipt of the 1995 Appellate Opinion, or a second submission of what Defendant believed, at the time, was his second judgment of conviction, with the explanation that there were no Transcripts. Judge Fullilove Jr., merely concluded: “Defendant had failed to show that the court acted in an arbitrary, capricious, or unreasonable manner”. See, (40a)-(54a) The Prosecutor also erroneously and purposefully stated that Judge Wigler: “correctly concluded that defendant’s claim was procedurally barred by these prior adjudications. See, R. 3:22-5. In fact , Judge Wigler concluded:

“Accordingly, since it has been repeatedly decided by the courts that you received a fair and lawful sentence for the murders of Francois Walker and Lamont Booker, your motion is **DENIED**. See , (71a)

Defendant would assert however, that there is no mention of rule 3:22-5, and sadly no review and decision by Judge Wigler who had an obligation to, “after review,” hold a hearing in the interest of justice, in spite of “the courts.” (3) The reconfiguration of Defendant’s claims by the Prosecutor on page (11) of her brief is a perfect example of mischaracterization of Defendant’s position, where she inserted the word “excessiveness,” in place of the word “illegal,” when that word appears nowhere in this record. Moreover, the Prosecutor is fully aware that, that claim was raised and addressed on direct. See,

(104a)-(107a) The Prosecutor plays real loose with the facts before the Court, bordering on deception, in her effort to deny Defendant due process by reiterating count (18), which was (possession of a weapon for an unlawful purpose) and did require merger pursuant to State v. Williams, 213 N.J. Super. 30; 516 (1986). A-869-84T4 This Court, ruled on this subject years ago holding:

“To avoid merger of possession for an unlawful purpose, four factors must be present: (1) defendant must have been charged in the indictment with possession of a weapon with a broader unlawful purpose, either generally or specifically than using the weapon to kill or assault the victim of the greater offense; (2) the evidence must support a finding that defendant had a broader unlawful purpose; (3) the judge must have instructed the jury of the difference between specific un-lawful purpose of using the weapon against the victim of the greater offense and a broader unlawful purpose, and (4) the verdict must express the jury’s conclusion that defendant had a broader unlawful purpose. There may be cases where merger is necessary despite these four factors.”

(State v. Williams, 213 N.J. Super. 30; 516 (1986))

Knowing these facts, the Prosecutor falsely states that this issue was raised in a prior proceeding and is procedurally barred. See, (45a) Again, (45a) does not state that, Defendant was not denied on the merits, but a failure to comply pursuant to R. 3:21-10(c), which the Judge, Harold Fullilove Jr., J.S.C., interpreted the “plain language” to mean “specific documents” which he named, but there is no mention of Rule 3:22-5. Nevertheless, an issue not raised below may be considered by the Court if it meets the plain error standard or is otherwise of special significance to the litigant, to the public, or to the achieving of substantial justice and the record is sufficiently complete to permit it’s

adjudication. The Prosecutor clearly knows the law, as she correctly cites in her respondent's brief, State v. Romero, 191 N.J. 59, 80 (2007)(citing R. 3:22-2(c); R. 3:22-12(a)):

“[T]he failure to merge convictions results in an illegal sentence for which there is no procedural time limit for correction.”

(State v. Romero, 191 N.J. 59, 80 (2007)).

See, (120a)-(121a) Also see, Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 230 (1998); Simon v. Rando, 374 N.J. Super. 147, 150 n. 1 (App. Div. 2005), aff'd 189 N.J. 339 (2007); Monek v. Borough of South River, 354 N.J. Super. 442, 456 (App. Div. 2002). These facts are before the State and this Court, but the state refuses to concede that the sentencing court simply erred in 1992. In the Appendix, on behalf of the state, the Prosecutor takes pride in bolstering the Honorable Arthur J. Batista's Order denying Defendant's third motion to correct an illegal sentence. See, (131a)-(132a) Defendant concedes he, as a novice and lay person, mis-applied State v. Robinson, 127 N.J. 594; (2014)., in 2018, when he incorrectly stated that his felony murder conviction was the result of an “extended term” under N.J.S.A. 2C:44-3, as N.J.S.A. 2C:11-3(b), is absent from the record on behalf of the State or the court.

However, as result of the Prosecutor bringing that mis-application before the Court, Defendant took a closer look at Batista's Order, which ultimately revealed that Defendant did then and now have a Robinson, violation. When viewed with “fresh eyes,” count (15) (attempted murder), per the sentencing court, provides a “discretionary parole ineligibility

term.” See, TS(75-9 to 76-1) There is also a mandatory Graves act extended term on count (18), for (possession of a weapon for an unlawful purpose). See, TS(76-23 to 77-15).(State v. Robinson, 217 N.J. 594, 597 (2014)(citing State v. Connell, 208 N.J. Super. 688, 691 (App. Div. 1986) and N.J.S.A. 2C:44-5(a)(2)). The New Jersey Supreme Court in Robinson, held:

“We hold that the plain language of N.J.S.A. 2C:44-5(a)(2) bars the imposition of a discretionary extended term when the prosecutor has requested one and the trial court is obliged to impose a mandatory extended term on another offense in the same proceeding.”

State v. Robinson, 217 N.J. at 599.

An even “closer look,” reveals that judge Batista, unwittingly admits that, though defendant may have incorrectly named the “discretionary term,” at issue, he indeed was given sentences under both N.J.S.A. 2C:44-3 and N.J.S.A. 2C: 44-3(d). Please see, (141a)-(142a) This (exhibit) was provided solely to contravene the impression given by the State that Defendant’s claims over the years are “solely frivolous in nature” and have been addressed. Moreover, when closely examined overall, the State has merely provided the Court with Defendant’s extended procedural history, which was expressed to the superior court in the first motion. The State reiterating Defendant’s barred or misplaced PCR arguments over the years hardly satisfies any displaced. claim before this Court. The Ex Post Facto claim the State displays in Defendant’s procedural history from a 2015 PCR petition before the Honorable Alfonse J. Cifelli, J.S.C., is substantively different than the claim before the Court, both arguments merely cite the same Federal Law in their point

headings. State v. McQuaid, 147 N.J. at 484. In 2015, Defendant blamed the court's "plain error" by (1), "having "a" hearing," and (2) for giving any "extended term" based on that improper hearing. See, (127a) at (Pa4). The Ex Post facto claim at point iii of Defendant's brief in the appellate Court at page (10) is dynamically different. Here, Defendant does not cite the "Hearing" as the violation which would result in or constitute "the violation." The Defendant instead states that, "the Clause itself," would prohibit the court from using a prior Code's offense that, "without a conviction," (involved a gun) as it's justification for enhancement, and that an additional violation would be attributed, contravening N.J.S.A. 2C:1-1(b)., which was the law in 1992, expressly stating: "Except as provided in subsection c. and d. of this section, the code does not apply to offenses committed prior to it's effective date and prosecutions and dispositions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this section, an offense was committed after the effective date of the code if any of the elements of the offense occurred subsequent thereto." N.J.S.A. 2C:1-1(b). **2C New Jersey Code of Criminal Justice 1992 Edition.** State v. McQuaid, 147 N.J. 464 (1997) ; Picard v. Conner, 404 U.S. 270, 276-77 92 S. Ct. 509, 512-13, 30 L. Ed. 2d 438, 444 (1971); State v. Bontempo, 170 N.J. Super. 220, 234, 406 A.2d 203 (Law Div. 1979). This is more evidence of the State attempting to make meritorious arguments against claims that are no longer at issue. Here, the State effortlessly refutes Defendant's past claims, but fails to argue any claim that is before this

Court now on the merits. The State has failed to prove: (1) the Defendant is not entitled to “retroactively” to the Yarbough, Guidelines and a (Statement of Reasons) required pursuant to R. 3:21-4(g) and (Miller, 108 N.J. at 122) ; State v. Miller, 108 N.J. 112 (1987). Nor did the State attempt to disprove that the court “did not commit” plain error, in failing to apply Yarbough Guidelines, which resulted in the court’s improper use of merger to resolve a Yarbough, (3) Factor. See, TS(37-22 to 38-21) (2) The State also failed to prove that the court did not weigh “acquitted counts” and then “double-counted.” See, TS(68-2 to 4);(72-19 to 22) (3) The State has been particularly silent at even commenting on the court’s failure to provide an “explicit statement” of the “overall fairness” of Defendant’s sentence. See, (26a);(38a) The Prosecutor’s comment in (121a) that: “no case law, statute or rule permits a criminal defendant to continue to raise the same illegal sentence claim,” is well noted.

CONCLUSION

However, no Judge or Prosecutor is entitled to their own “crafted language,” in place of that established in R. 3:22-5, and without an “adjudication on the merits,” the sentence is de facto illegal. The proverbial “apple” the State speaks of was never offered, in fairness, to the Defendant, for had it been, State v. Williams, 213 N.J. Super. (1986), where “merger is required,” would have no place in this discussion. For the foregoing reasons, stated in fact, Defendant respectfully asks this Court to vacate and remand in the interest of “fundamental fairness” after 35 years and (two) illegal sentence exposures.

CERTIFICATION IN LIEU OF OATH

I certify that the foregoing statements made by me are true. If any of the foregoing statements made by me are willfully false, I am subject to punishment under the law pursuant to R. 1:4-4(b).

Dated: 6/2/2025

Respectfully Submitted,



Fuquan Khalif, pro-se