

Duan Shaheed
138975/276412-C
East Jersey State Prison
Lock Bag R
Rahway, New Jersey 07065

STATE OF NEW JERSEY,

Plaintiff-Respondents,

vs.

DUAN SHAHEED,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003418-23-T5

CRIMINAL ACTION

On Appeal from an Order of the Superior Court of New Jersey, Law Division, Atlantic County Denying a Motion to Correct an Illegal Sentence

Sat Below: Hon. Siobhan A. Teare, J.S.C.

**LETTER-BRIEF
ON BEHALF OF DEFENDANT**

Your Honors:

Pursuant to R. 2:6-2(b), please accept this letter-brief in lieu of a formal brief to be filed on behalf of the defendant-appellant.

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PROCEDURAL STATEMENT OF FACTS

The procedural history and statement of facts are closely intertwined and have been combined for brevity and convenience to the court.

Essex County Indictment Number 00-04-1155, filed April 27, 2000, charged the defendant with second-degree conspiracy to commit carjacking, robbery, and arson, contrary to N.J.S.A. 2C:5-2, N.J.S.A. 2C:5-2a, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:17-1b (Count One); first-degree carjacking, contrary to N.J.S.A. 2C:15-2a (Count Two); first-degree robbery, contrary to N.J.S.A. 2C:15-1 (Counts Three, Four, Seven, Eight, Nine, and Ten); second-degree aggravated assault contrary to N.J.S.A. 2C:12-1b (Counts Five, Six, and Eleven); first-degree felony murder, contrary to N.J.S.A. 2C:11-3a(3) (Count Twelve); first-degree murder, contrary to N.J.S.A. 2C:11-3a (1) or (2) (Count Thirteen); third-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5b (Count Fourteen); second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a (Count Fifteen); and second-degree arson, contrary to N.J.S.A. 2C:17-1b (Count Sixteen).

A trial was held before the Honorable Richard Camp, J.S.C., and a jury from May 23 to June 14, 2001. The jury returned a verdict finding the defendant not guilty of the conspiracy charges (Count One), guilty of first-degree robbery (Counts Seven and Eight), guilty of third-degree unlawful possession of a weapon (Count Fourteen), guilty of second-degree possession of a weapon for an unlawful purpose (Count Fifteen) and not guilty of arson (Count Sixteen). Count Five (aggravated

assault) was dismissed at the end of the case and the jury was unable to reach a verdict on the remaining counts.

Judge Camp presided over a second jury trial on the unresolved counts from January 15, 2002, through January 31, 2002. The defendant was found guilty of first-degree carjacking (Count Two), first-degree robbery (Counts Three and Four), second-degree aggravated assault (Counts Five, Six, and Eleven), and the lesser offense of first-degree aggravated manslaughter (Count Thirteen). Counts Nine, Ten, and Twelve were dismissed.

On May 17, 2002, the defendant was sentenced to an aggregate sentence of forty (40) years with 85% parole ineligibility under the No Early Release Act (NERA). On Count Two, a term of twenty (20) years with NERA was imposed for carjacking. On Count Three, a consecutive term of twenty (20) years with NERA was imposed for robbery. On Counts Four, Seven, and Eight a concurrent term of twenty (20) years with NERA was imposed for robbery. On Counts Five, Six, and Eleven, concurrent terms of ten (10) years with NERA were imposed on the defendant's convictions for aggravated assault. On Count Thirteen, a concurrent term of twenty (20) years was imposed for aggravated manslaughter. On Count Fourteen, a concurrent term of five (5) years with a five (5) year period of parole ineligibility was imposed for unlawful possession of a weapon. On Count Fifteen, a concurrent term of five (5) years with NERA was imposed for possession of a weapon for an unlawful purpose. The sentences on Counts Four, Five, Six, Seven, Eight, Eleven, Thirteen, Fourteen, and Fifteen are all concurrent to Count Two, which itself is consecutive to

Count Three. (23T 34-7 to 35-17) Also imposed were a total VCCB penalty of \$1050, a total SNSF penalty of \$825, and a \$30 LEOTEF penalty. A notice of appeal was filed on January 24, 2003.

On January 24, 2003, a notice of appeal was filed on the defendant's behalf. On May 5, 2006, the Superior Court of New Jersey - Appellate Division, affirmed the defendant's convictions but remanded the matter for resentencing.

On November 1, 2007, during the resentencing hearing, Judge Camp merged Counts Five, Six, and Eleven into Counts Three, Four, and Ten, thereby reimposing the same sentences as he had originally imposed. (25T 17-18 to 21-10). There was no allocution conducted during the resentencing.

A Notice of Appeal was filed on the defendant's behalf. On February 8, 2010, an order was entered by the ESOA Panel of the Appellate Division, which again remanded the matter to the trial court for resentencing.

On May 4, 2012, the Honorable Alfonse J. Cifelli, J.S.C. during the resentencing hearing imposed the same sentence as originally imposed by Judge Camp on November 1, 2007. Again, there was no allocution conducted at the resentencing hearing. A notice of appeal was filed on the defendant's behalf. On August 1, 2012, and, on October 16, 2012, the ESOA Panel of the Superior Court of New Jersey - Appellate Division affirmed the sentence imposed but remanded the matter to the trial court to amend the Judgment of Conviction to reflect 1,231 days of jail credit.

On or about January 24, 2023, the defendant filed a motion to correct an illegal sentence pursuant to Rule 3:21-10(b). The defendant argued that his sentence

was illegal because the judge failed to merge the robbery count with the carjacking count. Also, because the record established this was one criminal episode, the trial judge never specified a broader purpose for the carjacking apart from the robbery. The defendant argued the sentence is unconstitutionally disparate to offenders in identical cases involving one criminal episode of first-degree carjacking and first-degree robbery, which also violates the right to Equal Protection.

On April 16, 2024, a hearing was held on the defendant's motion before the Honorable Judge Siobhan A. Teare, J.S.C., and she reserved her decision. On May 31, 2024, Judge Teare issued an order and written opinion denying relief, thus this appeal.

STATEMENT OF THE MATTER

The defendant in this matter before the Court filed a motion to correct an illegal sentence under R. 3:21-10(b)(5) arguing that the failure of the judge to merge his robbery conviction with his carjacking conviction based on the facts before the court was an illegal sentence that was not in accord with the Code.

The defendant argued his sentence was illegal for the following reasons: (1) failure to merge the robbery count with the carjacking count where the record establishes there was one criminal episode, and the trial judge never specified any broader purpose for the carjacking apart from the robbery or separate acts of violence; (2) the sentence is unconstitutionally disparate to similarly situated defendants in cases involving one criminal episode or the same single act of violence for first-degree carjacking and first-degree robbery; and (3) The sentence violates defendant's Equal Protection afforded to similarly situated defendants, which subjects him to cruel and unusual punishment under the State and Federal Constitutions. These claims were not addressed by the lower court; therefore, the defendant's claims were not properly adjudicated.

The lower court summarily rejected the defendant's claim without fully reviewing the record. Instead, the lower court judge simply stated "This Court has reviewed the decision of the Appellate Court in this matter issued in 2007. The Appellate Division affirmed the Defendant's convictions but remanded the case for consideration of the judge to impose a lesser sentence. On remand, this issue of merging counts was already previously addressed. . ." (Aa 2 to 4). The lower court judge

relied on the fact that the resentencing judge had performed a merger of some counts, which were the same counts that were previously merged during the original sentencing proceeding. The counts the resentencing judge merged had nothing to do with the robbery and carjacking counts supporting the defendant's merger issue. This perfunctory review of the resentencing record to reject the defendant's claims by stating that the merger issue has already been addressed simply because the judge had merged some counts on resentencing is an abuse of discretion.

When a defendant properly raises a merger claim in a motion to correct an illegal sentence the standard of review is whether the sentence was one imposed in accord with the Code. As such, the focus should be on the claim raised and if the sentence was imposed in accord with the Code, not on a cursory review of the record for a similarly raised issue, the term of the sentence imposed, or recharacterizing a defendant's claims. In this case, the judge erroneously focused on the fact that the defendant's case had been remanded twice for resentencing, which overshadowed the fact that the merger issue was not previously raised and could be raised at any time as an illegal sentence issue. More importantly, because "[m]erger implicates a defendant's substantive constitutional rights" State v. Tate, 216 N.J. 300, 302 (2013), his sentence is therefore illegal. Also, the judge's ruling did not amount to an express adjudication on the merits of the defendant's merger issue raised in his motion to correct an illegal sentence. As such, the lower court's decision is not based on sufficient, credible evidence in the record.

LEGAL ARGUMENT

POINT ONE

THE LOWER COURT'S ORDER DENYING THE DEFENDANT'S MOTION TO CORRECT AN ILLEGAL SENTENCE WAS NOT SUPPORTED BY SUFFICIENT, CREDIBLE EVIDENCE IN THE RECORD, THEREFORE, THE ORDER SHOULD BE REVERSED AND THE MATTER REMANDED FOR RESENTENCING (Aa 1)

Under the doctrine of merger, "a separate sentence should not be imposed on the count which must merge with another offense." State v. Trotman, 366 N.J. Super. 226, 237 (App. Div. 2004). "The doctrine of merger is based on the concept that 'an accused [who] committed only one offense . . . cannot be punished as if for two.'" State v. Tate, 216 N.J. 300, 302 (2013) (quoting State v. Davis, 68 N.J. 69, 77 (1975)).

Finally, "[a]ppellate courts review sentencing determinations in accordance with a deferential standard." State v. Fuentes, 217 N.J. 57, 70 (2014). We review the legality of a sentence de novo, "affording no special deference to the court[s] interpretation of the relevant statutes." State v. Nance, 228 N.J. 378, 393 (2017). We may correct an illegal sentence "at any time before it is completed." State v. Murray, 162 N.J. 240, 247 (2000); see also R. 3:21-10(b). If a defendant's sentence is illegal, it must be remanded for resentencing. See State v. Romero, 191 N.J. 59, 80-81 (2007).

"[T]he failure to merge convictions results in an illegal sentence for which there is no procedural time limit for correction" because merger implicates a

defendant's substantive state constitutional right against double jeopardy. Romero, 191 N.J. at 80. Thus, "a reviewing court is not free to ignore an illegal sentence," State v. Moore, 377 N.J. Super. 445, 450 (App. Div. 2005), and should correct it, State v. Tavares, 286 N.J. Super. 610, 617 (App. Div. 1996).

Generally, State v. Brown, 138 N.J. 481, 561 (1994), sets forth this Court's "approach" to merger issues: "Convictions for lesser-included offenses, offenses that are a necessary component of the commission of another offense, or offenses that merely offer an alternative basis for punishing the same criminal conduct will merge." In following this approach, we look to N.J.S.A. 2C:1-8a, "as it establishes the legislative parameters for merger of offenses," the purpose being to "avoid double punishment for a single wrongdoing." State v. Diaz, 144 N.J. 628, 637 (1996). The standard set forth in N.J.S.A. 2C:1-8a has been characterized as "mechanical" and a more "flexible" approach was pronounced in the pre-Code case of State v. Davis, 68 N.J. 69 (1975).

In the defendant's case, the jury convicted the defendant of first-degree carjacking (Count Two) and first-degree robbery (Count Three) of Vladimir Jimmy Francois. These two offenses are based on the same underlying conduct, thus involving one victim — taking, at gunpoint, Francois's car and coat — therefore these two convictions must merge.

The defendant argued below that the doctrine of merger was clearly violated in his case, and the failure to merge his robbery and carjacking convictions violate the concept that an accused [who] only committed one offense. . . cannot be

punished for it as it was two.” State v. Tate, 216 N.J. 300, 302 (2013) (quoting Davis, supra, 68 N.J. 69, 77 (1975)) (internal quotation marks omitted and alterations in original). Therefore, “[m]erger implicates a defendant's substantive constitutional rights.” Ibid. (citing State v. Miller, 108 N.J. 112, 116 (1987)).

Under N.J.S.A. 2C:1-8 (a), a defendant may not be convicted of more than one offense if:

- (1) One offense is included in the other, as defined in subsection d. of this section;
- (2) One offense consists only of a conspiracy or other form of preparation to commit the other;
- (3) Inconsistent findings of facts are required to establish the commission of offenses; or
- (4) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.

Under the above plain language of subsection (4), convictions for the carjacking and robbery of Francios must merge. The State's theory throughout the defendant's trial shows that these two convictions were for a single criminal act, i.e. taking Mr. Francios's vehicle along with his coat at gunpoint. Both crimes occurred at the same place and time. Throughout the trial, the prosecutor treated both crimes as a single incident, repeatedly conceding to the jury there was only one act of threatening force. The prosecutor opened the State's case telling the jury that:

The carjacking that the state alleges occurred on the same night, at approximately 8:55 in the City of East Orange during which a Mazda Millennia, blue in color, with the plate number _____ was taken from two young men, the owner, James Francois, also known as Vladimir James François, and his passenger, Dion Henderson. You will also hear testimony about how on that evening those two young men were also robbed of personal possessions and

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money. After the car was taken, at the same time the car was taken -- and you will hear testimony regarding how the car was taken -- by force.

(15T 65-22 to 15T66-8).

The prosecutor closed its case reasserting that the carjacking and robbery were the result of a single use of force that occurred simultaneously against Vladimir Jimmy Francois. In closing summation, the prosecutor stated that:

Right in East Orange, 8:55, 9:00 pm, a carjacking is reported by Deon Henderson and James Vladimir Francois. And what's the carjacking of, what's taken from Mr. Francois? The dark colored Millenennia WH744E with the star chrome rims, and some personal property, some coats and some money ---

(20T127-10 to 15).

The prosecutor never argued or elicited any testimony from any of the victims at any point during the defendant's trial that the carjacking and robbery were separate acts or based on a separate use of force. As such, if the carjacking and robbery convictions do not merge under the plain language of this statute, they still must merge under the "flexible" approach taken by New Jersey courts. The statutory standard, "providing that offenses are different when each requires proof of facts not required to establish the other, has been characterized as 'mechanical.'" Tate, supra, 216 N.J. at 307 (citing State v. Hill, 182 N.J. 532, 542 (2005); Diaz, supra, N.J. 628, 637-38 (1996). Thus New Jersey instead follows "a 'flexible approach' in merger issues." Hill, supra, 182 N.J. at 542 (quoting Brown, supra, 138 N.J. 481, 561 (1994), overruled on other grounds, State v. Cooper, 151 N.J. 326 (1997)).

The sentencing judge in the defendant's case failed to apply a "flexible approach" or to focus on the specific facts of the defendant's case establishing that there was one criminal episode and a single act or threatened use of violence. The New Jersey Supreme Court emphasized this point in Hill, supra, stating that "This approach requires courts 'to focus on the elements of the crimes and the Legislature's intent in creating them, and on the specific facts of each case.'" Under this approach, the Supreme Court further stated that courts should analyze "the evidence in terms of, among other things, the time and place of each purported violation; whether the proof submitted as to one count of the indictment would be a necessary ingredient to a conviction under another count; whether one act was an integral part of a larger scheme or episode; the intention of the accused; and the consequences of the criminal standards transgressed." Tate, supra, 216 N.J. at 307 (quoting Davis, supra, 68 N.J. at 81).

Applying these standards here, the convictions for robbery and carjacking must merge. Although carjacking and robbery have different elements, the same evidence was used to prove both offenses: that the defendant threatened Mr. Francios with a handgun. The State in this case did not have to present different evidence such as injuries sustained by victims in other cases because Mr. Francios suffered no injuries. The State also did not have to present evidence of differing force used to take the car and the coat. The record established a single episode, single act of threatened use of force or violence unlike most cases where there are separate acts of violence during separate episodes.

Furthermore, "[i]n examining the intent of the accused, courts look to whether or not the defendant had a different purpose with each offense." State v. Eckert, 410 N.J. Super. 389, 405 (App. Div. 2009). Here, the evidence shows that the defendant's intent was to take Mr. Francios's car and coat at gunpoint during a single criminal episode. Both offenses were the product of the same criminal intent and the same threatened use of force. There was no evidence presented at trial that the defendant had a different purpose or intent.

Finally, even with merged counts, the consequences of the criminal transaction are severe. Defendant was sentenced to 20 years subject to NERA for the carjacking of Mr. Francios. He was also sentenced to 20 years subject to NERA for the robbery of Mr. Francios, to be served consecutively to the carjacking sentence. As, in State v. Mirault, 92 N.J. 492 (1983), where the defendant was sentenced to a 60-year term of imprisonment on one count and a concurrent five-year term on another count, "the predominant legislative purpose, judged by the severity of the sentence, has been served even if the charges are merged." Id. at 504 (internal quotation marks omitted). Because the carjacking and robbery convictions are essentially punishing the same criminal behavior, they must be merged.

The lower court motion judge failed to adjudicate the merger claim raised by the defendant. Instead, the judge simply to the record showing that the resentencing judge had performed the same mergers as performed during the original sentencing proceeding. However, these mergers are irrelevant as they have nothing to do with the robbery and carjacking offenses that are the focus of this issue.

This result is not changed by the fact that the Supreme Court and Appellate Division have concluded that under certain circumstances, carjacking and robbery are separate crimes. See State v. Drury, 190 N.J. 197 (2007); State v. Garretson, 313 N.J. Super. 348, 359 (App. Div. 1998). In Drury, the Supreme Court held that a jury's verdict finding the defendant guilty of carjacking did not constitute "commission of a robbery sufficient to elevate the sexual assault [defendant] committed from a second-degree to a first-degree offense." Drury, supra, 190 N.J. at 200. The Court therefore concluded that "the Legislature did not intend to include triggering of offenses other than those specifically enumerated in the statute defining aggravated sexual assault and that, therefore, defendant could only have been guilty of second-degree sexual assault." Ibid. In Garretson, the Appellate Division held that robbery should not be considered a lesser-included offense of carjacking. Garretson, supra, 313 N.J. super. at 359.

However, while under many circumstances carjacking and robbery are different offenses requiring proof of different conduct, here the crimes are so intertwined as to negate any presumption that they are separate acts, therefore, they must be merged. Here, both offenses occurred simultaneously, involved the same victim, and involved the same single or isolated conduct.

The motion judge failed to adjudicate the merger issue raised by the defendant. Instead, the motion judge mistakenly recharacterized the defendant's claim stating that he raised as an issue about consecutive sentences under State v.

Torres, 246 N.J. 246 (2021), which defendant had never even mentioned in his supporting papers. (Aa 2 to 4)

DISPARITY ISSUE:

The New Jersey Supreme Court has consistently stressed uniformity as one of the major sentencing goals in the administration of criminal justice. Achieving greater uniformity is a firm judicial commitment. "[T]here can be no justice without a predictable degree of uniformity in sentencing." State v. Hodge, 95 N.J. 369, 379 (1984). In State v. Roth, 95 N.J. 334 (1984) this Court emphasized the importance of uniform and proportionate sentencing in light of sentencing standards instituted by the Legislature in the Code of Criminal Justice. "The central theme" of sentencing jurisprudence is the exercise by our courts of "a structured discretion designed to foster less arbitrary and more equal sentences." Id. at 345. The Courts struggle continuously to overcome non-uniformity in sentencing: "We must not forget that the driving force behind sentence reform was the tragic disparity in sentences inflicted upon defendants under the old model." Hodge, supra, 95 N.J. at 379. (citation omitted).

In comparing the defendant's case to other similarly situated cases, the sentencing judge arrived at a dissimilar result: See State v. Martin L. Goins, Appellate Division Docket No. A-6163-05T4, Decided February 7, 2008 (Aa 38); see also, State v. Judson Porter, Appellate Division Docket No. A-4134-17T4, decided February 28, 2020 (Aa 55); These cases involved very similar robberies and carjackings to that of the defendant except for the dissimilar sentencing results. "The dominant, if not

paramount, goal of the Code is uniformity in sentencing." State v. Kromphold, 162 N.J. 345, 352 (2000). The Code was intended to replace "the unfettered sentencing discretion of prior law with a structured discretion designed to foster less arbitrary and more equal sentences." State v. Roth, 95 N.J. 334, 345 (1984); see also State v. Dunbar, 108 N.J. 80, 97 (1987). Indeed, the Code's drafters "'establishe[d] a general framework to guide judicial discretion in imposing sentences'" to ensure that similarly situated defendants did not receive dissimilar sentences. State v. Hodge, 95 N.J. 369, 374-75 (1984) (quoting State v. Maguire, 84 N.J. 508, 532 (1980)). In choosing a remedy, we remain mindful that "there can be no justice without a predictable degree of uniformity in sentencing." Hodge, supra, 95 N.J. at 379. It is our task to conform the Code to the Constitution in a way that the Legislature would have intended. State v. Natale, 184 N.J. 458, 485 (2005).

The defendant presented the court below with the cases of Porter and Goins as similarly situated defendants that were convicted of the same multiple offenses (Carjacking and Robbery). These cases resulted from one act of criminal conduct for which in the most recent decision of State v. Porter, the sentencing court had initially imposed concurrent sentences, and the Appellate Division overruled that decision holding that under those simultaneous circumstances in which the crimes had arose in, those convictions/offenses must merge at sentencing. The case of State v. Goins, in which, a consecutive had been imposed was subsequently ruled improper by the Appellate Division and remanded for the imposition of concurrent sentences.

Although the outcome of each of the cases was different, in both instances, the Appellate Division ruled that the offenses present circumstances that are not to be served separately. The defendant in the case at bar contends that when comparing his offenses and circumstances to that of State v. Porter, the offenses and circumstances are indistinguishable; however, the defendant's sentencing judge arrived at a dissimilar result. For that reason, this defendant is entitled to the same treatment afforded Porter by the Appellate Division.

The defendant relies upon the cited cases of State v. Martin Goins, and State v. Judson Porter, in support of his argument of disparate treatment and non-uniformity. However, this defendant also relies on Porter in support of his argument for merger. Although, the defendant's sentence was imposed almost two decades before State v. Porter, the recent Appellate Division decision is still significant to the instant case, not "only" because of its "situational similarities", but more importantly, because the Porter case was merely interpreting the Legislature's mandate as well as a law that existed at the time of the defendant's sentencing. State v. Porter, is not a new rule of law, therefore, retroactivity is not an issue here. Rather, this is an issue of disparity, merger, and Equal Protection.

Sentencing uniformity is one of the fundamental goals of the Code of Criminal Justice ("Code"). The Legislature lists among the purposes of the sentencing provisions of the Code the intent to "safeguard offenders against excessive, disproportionate or arbitrary punishment," and to "give fair warning of the nature of the sentences that may be imposed on conviction of an offense." N.J.S.A. 2C:1-2. State v.

Roth, the first case to address in detail the standards that guide sentencing under the Code, stated, "[i]t is our view that the Code established an entirely new sentencing process. It displaced standards established under prior decisional law, created presumptive terms of imprisonment, and limited the discretionary power of sentencing courts." Hodge, supra 95 N.J. 334, 340 (1984). The Court continued, "[t]he central theme of the Code's sentencing reforms is the replacement of the unfettered sentencing discretion of prior law with a structured discretion designed to foster less arbitrary and more equal sentences." Id. at 345. The Court emphasized that the "paramount goal of sentencing reform was greater uniformity." Id. at 369.

In State v. Hodge, the Court repeated these sentiments. 95 N.J. 369 (1984). The Court in that case stated that "there can be no justice without a predictable degree of uniformity in sentencing. We must not forget that the driving force behind sentence reform was the tragic disparity in sentences inflicted upon defendants under the old model." Hodge, supra, 95 N.J. at 379. Governor Brendan Byrne, upon signing the new law, also commented, "[t]he Criminal Code is intended to make sentencing more definitive. ...It is designed to reduce the possibility of one judge giving a stiff sentence and another a light sentence for similar crimes." Roth, supra, 95 N.J. at 354 (citing *Statement of Gov. Byrne* (Aug. 10, 1978)).

Consistent with this statutory scheme, this Court has repeatedly "acknowledged the dominance, if not paramount, of uniformity as one of the Code's premier sentencing goals." State v. Pillot, 115 N.J. 558, 571-72 (1989) (citing State v. Jarbath, 114 N.J. 394, 400 (1989); Hodge, supra, 95 N.J. at 379; State v. Hartye,

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105 N.J. 411, 417 (1987)); see also State v. Roach, 146 N.J. 208, 231-32, cert. denied, 519 U.S. 1021 (1996) (invalidating defendant's sentence where a co-defendant charged with the same or similar crime received slightly less onerous terms); State v. Hicks, 54 N.J. 390 (1969) (same). State v. Brimage, 153 N.J. 1, 20 (1998).

In the defendant's case, the dissimilar result is unjust and it is not minimal -- it is huge. The difference in terms of prejudice is that defendant would be required to serve an entirely separate 20-year sentence pursuant to N.E.R.A., unlike the similarly situated Porter case, in which the robbery conviction was merged into the carjacking conviction.

Accordingly, the defendant maintains that he must be resentenced so that his sentence conforms to the Legislature's mandated guidelines regarding merger as well as the Code of uniformity in sentencing. See Roth, supra.

For the reasons detailed above, the obvious disparity and non-uniformity between the final sentences of this defendant and the final sentence of the defendant in State v. Judson Porter amounts to an illegal sentence imposed on this defendant. The defendant's sentence is not in accord with the sentencing Code of uniformity, and is unconstitutionally disparate, therefore the defendant's sentence is illegal. This defendant respectfully requests this Court to amend his sentence by merging his conviction for first-degree robbery into his conviction for first-degree carjacking, similar to the relief granted in the matter of State v. Judson Porter.

The lower court did not expressly adjudicate this portion of the defendant's motion to correct an illegal sentence. In the interests of justice, the decision denying

relief should be reversed, and the matter should be remanded for resentencing.

EQUAL PROTECTION ISSUE:

The defendant also presented the claim below that non-uniformity touches on the defendant's right of Equal Protection under the law, in that, the dissimilar results are unjust. The defendant incorporates Points One and Two in support of this contention. As stated, the similarly situated defendant in the case of State v. Judson Porter, had his sentence vacated and remanded by the Appellate Division for his first-degree robbery conviction to be merged into his first-degree carjacking conviction. (Aa 55) Although the defendant in this matter was tried and convicted for the identical offenses, this defendant's conviction/sentence for his first-degree robbery is currently running consecutive to his conviction/sentence for his first-degree carjacking. As a result of these two similarly situated and equally culpable defendants receiving markedly disparate sentences for the identical offenses based on instances of a single act, and a single threatened use of force, defendant contends his sentence violates the Equal Protection Clause of the United States Constitution and the New Jersey State Constitution.

The Equal Protection Clause of the United States Constitution mandates that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const, amend. XIV, 1. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313, 320 (1985). "Persons are similarly situated under the Equal Protection

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Clause when they are alike 'in all relevant aspects.'" Startzell v. City of Philadelphia, 533 F.3d 183, 203 (3rd Cir. 2008), quoting Nordlinger v. Hahn, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d (1992).

Unlike its federal counterpart, the New Jersey Constitution does not contain an equal protection clause. Instead, the New Jersey Supreme Court has held that "equal protection is implicit in Art. I, ¶ 1 of the 1975 New Jersey Constitution...." Mcdenney v. Byrne, 82 N.J. 30 (1980). Therefore, even though Article I, par. 1 of the New Jersey Constitution does not include the phrase "equal protection," "it is well settled law that the expansive language of that provision is the source for [this] fundamental guarantee []." Sojourner A. v. N.J. Dep't of Human Servs., 177 N.J. 318, 332 (2003).

"Although conceptually similar, the right under the State Constitution can in some situations be broader than the right conferred by the Equal Protection Clause." Doe v. Poritz, 142 N.J. 1, 94 (1995). The Court stated that the New Jersey Constitution provides "analogous or superior protection to our citizens" in the context of equal protection. Peper v. Princeton Univ. Bd. of Trs., 77 N.J. 55,79 (1978) .

The defendant submits that his sentence is unconstitutionally disparate to the sentence imposed on the similarly situated defendant in the matter of State v. Judson Porter for no justifiable reason. State v. Judson Porter was remanded by the Appellate Division for resentencing to merge his conviction for first-degree robbery into his conviction of first-degree carjacking based on the facts in the Porter case the carjacking and robbery took place during a single criminal episode at the same

place and time, which were the product of the same criminal intent and the same threatened use of force. As in Porter, the evidence in the defendant's case before this Court showed that he committed the theft of Francois's vehicle at gunpoint under "fear of [] immediate bodily injury" and simultaneously took his coat under the same "fear of immediate bodily injury." As such, the defendant submits that failure to modify his sentence via merger of his first-degree robbery into his sentence of first-degree carjacking would be in violation of the state and federal constitutions.

For these reasons, this defendant's markedly unequal sentence violates the Equal Protection Clause of the United States Constitution and its counterpart in the New Jersey State Constitution. The defendant respectfully requests this Court to modify his sentence and to order the merger of his sentence/conviction for first-degree robbery into his conviction/sentence for his first-degree carjacking, similar to the relief granted in State v. Judson Porter.

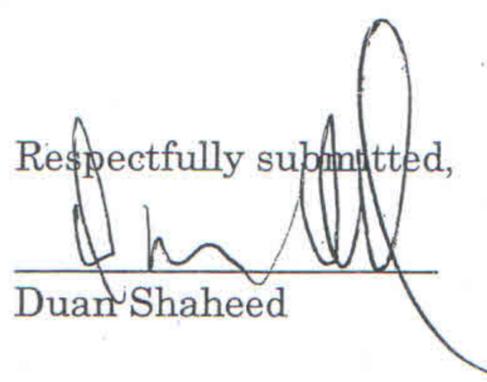
The lower court failed to expressly adjudicate this claim, therefore the order denying relief should be reversed and the matter should be remanded for resentencing.

CONCLUSION

The defendant has advanced a claim that his sentence is illegal by the failure to merge the first-degree robbery and the first-degree carjacking, especially, given that the record establishes there was a single criminal episode and a single threatened use of force on a single victim. The defendant properly presented his claim, which was not expressly adjudicated because the lower court recharacterized the claim as one not raised, therefore, the order denying relief is not supported by sufficient, credible, evidence in the record it should be reversed, and the matter should be remanded for resentencing in the interests of justice.

January 30, 2025

Respectfully submitted,


Duan Shaheed

OFFICE OF THE ESSEX COUNTY PROSECUTOR

THEODORE N. STEPHENS, II
ESSEX COUNTY PROSECUTOR

ESSEX COUNTY VETERANS COURTHOUSE, NEWARK, NEW JERSEY 07102

Tel: (973) 621-4700

Fax: (973) 621-5697

ALEXANDER B. ALBU
FIRST ASSISTANT PROSECUTOR



MITCHELL G. McGUIRE III
CHIEF OF DETECTIVES

Lucille M. Rosano No. 017631983
Assistant Prosecutor
Appellate Section
appellate@njecpo.org
Of Counsel and on the Letter Brief

Filed: April 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.
Duan Shaheed (Defendant-Appellant)
Docket No. A-3418-23

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. Siobhan A. Teare, 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).

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Counterstatement of Procedural History

Essex County Indictment Number 00-04-1155 charged defendant Duan Shaheed with the following crimes: second-degree conspiracy to commit carjacking, robbery and aggravated arson, N.J.S.A. 2C:5-2, 2C:15-1, 2C:15-2 & 2C:17-1 (Count One); first-degree carjacking, N.J.S.A. 2C: 15-2a(2)(Count Two); first-degree robbery, N.J.S.A. 2C:15-1 (Counts Three, Four, Seven, Eight, Nine and Ten); second-degree aggravated assault, N.J.S.A. 2C:12-1b(1)(Counts Five, Six and Eleven); first-degree felony murder, N.J.S.A. 2C:11-3a(3)(Count Twelve); first-degree murder, N.J.S.A. 2C:11-3a(1), (2)(Count Thirteen); third-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5b (Count Fourteen); second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4a (Count Fifteen); and second-degree aggravated arson, N.J.S.A. 2C:17-1b (Count Sixteen). (Pa1-17).¹

¹ Pa refers to the appendix to the State’s brief.

Da refers to the appendix to defendant’s brief (designated “Aa” in the brief).

Db refers to defendant’s brief.

1T refers to the trial transcript dated January 16, 2002.

2T refers to the trial transcript dated January 29, 2002.

3T refers to the sentencing transcript dated May 17, 2002.

4T refers to the resentencing transcript dated November 1, 2007.

5T refers to the resentencing transcript dated May 4, 2012.

6T refers to the motion hearing transcript dated April 16, 2024.

Defendant was tried before the Honorable Richard C. Camp, J.S.C., and a jury and was found guilty of two counts of first-degree robbery of T.W. and J.B. (Counts Seven and Eight), third-degree unlawful possession of a handgun (Count Fourteen), and second-degree possession of a handgun for an unlawful purpose (Count Fifteen). He was acquitted on Counts One and Sixteen. The jury was unable to reach a verdict on the remaining counts. (Pa20).

Defendant was retried before Judge Camp and a jury. The judge granted defendant's motion for judgment of acquittal as to the robberies of Ariel Santiago and Carlos Velez (Counts Nine and Ten) and the felony murder of Santiago (Count Twelve). (Pa20-21). Defendant was found guilty of first-degree carjacking (Count Two), two counts of first-degree robbery of Vladimir Francois and Deon Henderson (Counts Three and Four), and three counts of second-degree aggravated assault of Francois, Henderson and Velez (Counts Five, Six and Eleven). Defendant was acquitted of the murder of Santiago (Count Thirteen) and found guilty of the lesser-included offense of first-degree aggravated manslaughter. (Ibid.).

On May 17, 2002, defendant was sentenced to an aggregate term of 40 years with an 85% parole ineligibility term pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, as follows:

Count Two (first-degree carjacking) – 20 years subject to NERA;

Count Three (first-degree robbery) – 20 years subject to NERA, to run consecutively to Count Two;

Counts Four, Seven & Eight (first-degree robbery) – 20 years subject to NERA, all concurrent to Count Two;

Counts Five, Six & Eleven (second-degree aggravated assault) – 10 years subject to NERA, all concurrent to Count Two;

Count Thirteen (lesser included second-degree reckless manslaughter) – 20 years, concurrent to Count Two²

Count Fourteen (third-degree unlawful possession of firearm) – 5 years, concurrent to Count Two; and

Count Fifteen (second-degree possession of handgun for an unlawful purpose) – 5 years with 5 years parole ineligibility, concurrent to Count Two.

[(3T34-6 to 35-17); Da5-7].

Defendant appealed his convictions and sentence. On May 5, 2006, this Court affirmed his convictions and the 20-year sentence for carjacking under Count Two. (Pa52-54). It remanded the matter to the trial court for reconsideration of the sentences imposed on Counts Three, Four, Five, Six, Seven, Eight, Eleven and Fourteen in light of State v. Natale, 184 N.J. 458

² The trial court stated at sentencing that due to an omission during trial, the jury was not presented with, and therefore did not find, that aggravated manslaughter was a “violent crime” for purposes of imposing a NERA sentence (under the former statute). (3T34-12 to 18).

(2005), and for the trial court to “state his reasons for imposing a consecutive sentence in accordance with Yarbough³.” (Pa54-55).⁴

On November 1, 2007, Judge Camp reconsidered the aggravating and mitigating factors and the consecutive aspect of the original sentence and imposed the same sentence. (4T17-18 to 21-1).

Defendant appealed, and on February 8, 2010, this Court again remanded the matter to the trial court for reconsideration of sentence to:

(1) consider mergers of certain counts; (2) determine whether, in light of [Natale], a lesser sentence should be imposed on certain counts in the absence of presumptive terms; and (3) articulate reasons for imposing consecutive sentences on certain counts in accordance with the factors set forth in [Yarbough].

[Pa57].

On May 4, 2012, the Honorable Alfonse J. Cifelli, J.S.C., held a resentencing hearing and imposed the same sentences. (5T15-10 to 28-21; Pa58-61). As to the issue of merger, the judge noted that the State and defense counsel agreed the convictions on Counts Two and Three did not merge, and

³ State v. Yarbough, 100 N.J. 627 (1985).

⁴ This Court also directed the trial court sua sponte to merge the “convictions on Counts Five, Six and Eleven (second-degree aggravated assaults of Francois, Henderson and Velez, respectively) . . . into the convictions for the first-degree robbery of the same victims (Counts Three, Four and Ten, respectively).” (Pa 55-56). However, this was in error because Count Ten (robbery of Velez) was dismissed at trial. (See Da5; 5T14-1 to 13; 5T20-20 to 21). On remand, Judge Camp mistakenly merged Count Eleven with Count Ten (4T17-17 to 21), and Judge Cifelli later corrected the error (Pa60).

thus he did not merge them. (5T5-17 to 6-10; 5T13-9 to 11; 5T16-13 to 19; Pa58-61). Judge Cifelli also reconsidered and re-weighed the applicable aggravating and mitigating factors and arrived at the same sentences on all counts, as previously imposed by Judge Camp. (5T16-20 to 20-3; Pa58-61). Finally, the judge considered the Yarbough factors and reimposed consecutive sentences on Counts Two and Three. (5T25-11 to 28-21; Pa58-61).

Defendant appealed, and on October 16, 2012, this Court affirmed his sentence and remanded the matter to the trial court to amend the judgment of conviction to reflect 1,231 days of jail credit. (Pa62).⁵

On or about January 16, 2023, defendant filed a pro se motion to correct an illegal sentence. (Da8-70). Counsel was assigned to represent him. On April 16, 2024, the Honorable Siobhan A. Teare, J.S.C., heard argument on the motion. (6T). On May 31, 2024, the judge denied the motion for the reasons expressed in her written opinion. (Da1-4). Defendant now appeals the order denying his motion.

⁵ The judgment of conviction was amended on November 7, 2024, to reflect an additional 1,231 days of jail credit. (Pa63-66).

Counterstatement of Facts

A. Trial

The State respectfully refers this Court to the factual summary in its opinion on direct appeal in State v. Duan Shaheed, No. A-2654-02T4 (App. Div. May 5, 2006). (Pa22-27).

B. Defendant's Motion to Correct an Illegal Sentence

Defendant argued that the sentencing court was required to merge the first-degree robbery conviction under Count Three with the first-degree carjacking conviction under Count Two because the two convictions involved the same victim and the same criminal episode. Instead, the court imposed separate sentences on each count and ran the sentences consecutively, resulting in an illegal sentence as defined at Rule 3:21-10(b)(5). (6T3-17 to 6-24; T8-4 to 13; Da23-29). In his motion papers, defendant also asserted that the trial court's decision to not merge the two counts and impose consecutive sentences violated his right to equal protection and was "unconstitutionally disparate to other defendants in identical cases involving one criminal episode of first[-] degree carjacking and first[-]degree robbery." (Da30-70).

The State opposed the motion. It argued that defendant's motion was procedurally barred by Rule 3:22-5 because the merger and consecutive-sentence issues were already raised and adjudicated in prior proceedings. In

addition, the carjacking and robbery convictions did not merge because the crimes involved different objectives. (6T7-1 to 24).

Following oral argument, Judge Teare denied the motion. (Da1-4). She determined that the merger issue had already been adjudicated in prior proceedings and Counts Two and Three were correctly found not to merge. (Da2). In addition, the sentencing court properly exercised its discretion to run those counts consecutively based on its assessment of the Yarbough factors and the overall fairness of the sentence. (Da2-3).

Legal Argument

Point I

Defendant's Motion to Correct an Illegal Sentence by Merging Counts Two and Three Was Properly Denied.

Defendant argues that his sentence is illegal because the sentencing court was required to merge the convictions on Count Two (first-degree carjacking) with Count Three (first-degree robbery of Francois).⁶ Judge Teare correctly determined that the merger issue had already been addressed in a prior proceeding, and the two counts were properly determined to not merge. This

⁶ Defendant states in his brief that he did not challenge in the lower court, nor does he now challenge on this appeal, the consecutive aspect of his sentence. (Db13-14). Rather, his argument is that his sentence is illegal because Counts Two and Three should have been merged. (Db7-14).

decision is based on competent, credible evidence in the record and 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) 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). “[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.

In this case, the merger of the convictions on Counts Two and Three was addressed and rejected in prior proceedings and is thus procedurally barred. R. 3:22-5. This Court first considered the issue of merger sua sponte on direct appeal. It determined Counts Five and Six merged with Counts Three and Four. See (Pa55-56). See also n.4, ante. It did not find that Count Three (robbery of Francois) merged with Count Two (carjacking). It affirmed the sentence on Count Two. (Pa52-54).

Thereafter, defendant raised the issue of merger at the Sentencing Oral Argument (SOA), and this Court remanded the matter to “consider merger of certain counts[.]” (Pa57). On remand, defense counsel conceded that Counts Two and Three did not merge because “they’re obviously separate crimes or they would have been merged. We’re not arguing for merger here.” (5T5-17 to 19). The State agreed that the “carjacking is separate from robbery when it comes to merger. . . .” (5T13-9 to 10). Based on the parties’ representations, Judge Cifelli determined the counts did not merge. (5T16-13 to 19). Defendant’s appeal of his resentencing was affirmed by this Court. (Pa62).

Even assuming defendant was permitted to again raise the merger issue in a motion to correct an illegal sentence, defendant fails to show that Judge Teare erred by failing to merge Counts Two and Three. The concept of merger is constitutionally based and is designed to prevent multiple punishments for a

single crime. State v. Truglia, 97 N.J. 513, 522 (1984). “If an accused has committed only one offense, he cannot be punished as if for two.” State v. Davis, 68 N.J. 69, 77 (1969). N.J.S.A. 2C:1-8a(1) codifies the test for merger, which states in relevant part:

a. Prosecution for multiple offenses; limitation on convictions.

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) One offense is included in the other, as defined in subsection d. of this section; . . .

(3) Inconsistent findings of fact are required to establish the commission of the offenses; or

(4) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct. . . .

d. Conviction of included offense permitted. A defendant may be convicted of an offense included in an offense charged whether or not the included offense is an indictable offense. An offense is so included when:

(1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged.

Our Supreme Court recognizes a “flexible approach” to merger. State v. Miller, 108 N.J. 112, 116-18 (1987) (quoting State v. Brown, 138 N.J. 481, 561 (1994)). “That approach requires [courts] to focus on ‘the elements of [the] crime[s] and the Legislature’s intent in creating them,’ and on ‘the

specific facts of each case.’’ State v. Cole, 120 N.J. 321, 327 (1990) (citing Miller, 108 N.J. at 116-17). Merger applies to “lesser-included offenses, offenses that are a necessary component of the commission of another offense, or offenses that merely offer an alternative basis for punishing the same criminal conduct.” Brown, 138 N.J. at 561 (emphasis omitted).

“The carjacking statute creates a new kind of robbery that is punishable more severely than robbery under N.J.S.A. 2C:15-1, with the specified added element in the carjacking statute of the taking of a motor vehicle under the circumstances specified in the statute.” State v. Garretson, 313 N.J. Super. 348, 355 (App. Div. 1998). Under N.J.S.A. 2C:15-2a(2) as charged in the indictment (Pa3), a person is guilty of carjacking “if in the course of committing an unlawful taking of a motor vehicle, . . . [he] threatens an occupant or person in control with, or purposely or knowingly puts an occupant or person in control of the motor vehicle in fear of, immediate bodily injury[.]”

In State v. Drury, 190 N.J. 197, 210-11 (2007), our Supreme Court undertook an analysis of the elements of robbery and carjacking and concluded that carjacking was not “simply a form of robbery.” In Garretson, this Court found that the trial court did not err by refusing to charge the robbery and theft as lesser included offenses of carjacking “[b]ecause it was undisputed that a

motor vehicle with an occupant was involved,” and there was no evidence from which a “rational jury could not acquit [the] defendant of carjacking and convict of robbery or theft.” Id. at 359.

Drury and Garretson are instructive in this case to support the conclusion that the robbery and carjacking convictions do not merge. The facts adduced at trial establish that two distinct and separate crimes occurred. Each crime required proof of an element not required by the other. State v. Eckert, 410 N.J. Super. 389, 393 (App. Div. 2009). The carjacking under Count Two involved the “unlawful taking of a motor vehicle” from Francois, its owner-occupant, N.J.S.A. 2C:15-2a, and the armed robbery under Count Three involved the commission of “a theft” of Francois’ jacket, N.J.S.A. 2C:15-1a. The carjacking was complete when defendant forced Francois from his car at gunpoint and took control of it. The robbery occurred when defendant took Francois’ jacket at gunpoint, after he forced Francois from his car. (Pa22-23).

Defendant’s reliance on State v. Goins, No. A-6163-05T4 (App. Div. February 7, 2008), is misplaced because that case supports the State’s position that the carjacking and robbery convictions do not merge. (Da39-54). In Goins, the defendant was convicted of carjackings and robberies of two taxicab drivers occurring on two different dates. (Da40). Goins robbed both drivers of their money and wallets inside their cabs, forced them from their

vehicles and drove away. (Da40-41). This Court concluded, based on Drury and Garretson, that Goins' robbery convictions did not merge with his carjacking convictions. (Da49).

State v. Porter, No. A-4134-17T4 (App. Div. February 28, 2020) (Da55-70), on which defendant relies, is also unhelpful to his position. In Porter, the defendant forced the driver from her vehicle at gunpoint, searched her pockets and drove away in the vehicle. The driver's personal belongings, including her purse, wallet, cellphone and some cash were in the car. (Da58). Defendant was convicted of first-degree carjacking and first-degree robbery of the driver. (Da56). Significantly, the State initially conceded at sentencing that the carjacking and robbery convictions should merge, but on appeal reversed its position and argued the merger was improper because the crimes represented two different courses of conduct. (Da64). This Court determined that the merger was appropriate because both crimes involved the same criminal intent and same threatened use of force. (Da66-67). Also, defendant was charged with carjacking under N.J.S.A. 2C:15-2a(2) and robbery under N.J.S.A. 2C:15-1a(2), which contain the common element of "fear of[] immediate bodily injury." (Da67-68).

Defendant also argues that the merger of Counts Two and Three is required to address the disparity between his sentence and similarly-situated

defendants, relying on Goins and Porter. (Db14-19). A claim of disparity in sentencing implicates the same considerations as a claim of an excessive sentence. State v. Tango, 287 N.J. Super. 416, 422 (App. Div. 1996) (“Our scope of review when disparity is alleged does not appear to be any different from a case in which a defendant maintains that the sentence imposed was excessive.”).

In this case, defendant raised claims of excessiveness of sentence on direct appeal, and twice following remands for reconsideration of his sentence. On all three occasions, his sentence was determined not to be excessive. He did not raise a claim that his sentence was excessive based on a disparity claim. Because he could have raised that claim in a prior proceeding, it is procedurally barred by Rule 3:22-4(a), and the exceptions at subsections (a)(1), (2) and (3) do not apply.

Even assuming defendant’s claim is not procedurally barred, he fails to demonstrate that his sentence was unfairly excessive by comparison to the defendants in Goins and Porter. See State v. Roach I, 146 N.J. 208, 231 (1996) (“This Court has consistently stressed uniformity as one of the major sentencing goals in the administration of criminal justice.”). Indeed, as argued ante, this Court did not merge the carjacking and robbery convictions in Goins. While sentencing disparity typically concerns the dissimilar treatment of co-

defendants, see e.g., id. at 231-33 (and cases cited therein), the factors the trial court must consider in assessing whether disparity is justified would appear to apply here as well. Those factors are whether defendant and his co-defendant are identical or substantially similar as to all relevant sentencing criteria, the basis for the sentences imposed on the co-defendant and the length, terms and conditions of that sentence. Id. at 233-34. Defendant does not meet these criteria.

Finally, defendant argues that the disparate sentencing treatment between him and the defendant in Porter violates his right to equal protection under the law. (Db19-21). Because defendant's sentencing disparity claim is procedurally barred or unsupported, no equal protection violation has occurred.

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,

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT

s/ Lucille M. Rosano

Lucille M. Rosano – No. 017631983
Assistant Prosecutor
Appellate Section
appellate@njecpo.org
Of Counsel and on the Letter Brief

Filed: April 22, 2025