	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
STATE OF NEW JERSEY, Respondent, v. MICHAEL J. MANIS, Appellant.	Docket No.: A-003936-23 Criminal Action On Appeal From: Superior Court of New Jersey, Law Division, Bergen County Trial Court No. 24-03-00081-A PROMIS No. 23 001061-001 Sat Below: Hon. James X. Sattely, J.S.C.

BRIEF OF APPELLANT MICHAEL J. MANIS

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TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS, AND RULING APPEALED

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Court Rules

PRELIMINARY STATEMENT

Defendant, Michael J. Manis ("Defendant"), appeals his sentence for conviction of aggravated manslaughter contrary to N.J.S.A. 2C:11-4a. The trial court sentenced Defendant, who is 72 years old, to twenty years in State prison pursuant to a plea agreement. In doing so, however, the trial court committed several errors that both separately and in the aggregate merit a remand for resentencing.

First, the trial court incorrectly found that aggravating factor 3 (the risk that the defendant will commit another offense) and aggravating factor 9 (the need for deterrence) were applicable. The trial court did so even though Defendant is a 72-year-old who led an unblemished life up until the commission of the offense and the record was otherwise devoid of any evidence that Defendant has a propensity to commit another offense. Indeed, the record is barren of any facts that support the finding of aggravating factor 3.

Second, the trial court erred in finding aggravating factor 3 while simultaneously finding mitigating factor 8 (the defendant's conduct was the result of circumstance unlikely to recur) and mitigating factor 9 (the defendant is unlikely to commit another offense). The trial court did not articulate what facts in the record supported these contradictory findings, and the court did not reconcile these inconsistent factors as required by the law.

Third, the trial court errored in simultaneously finding aggravating factor 9 while also finding mitigating factor 8. Similarly, the trial court did not reconcile these inconsistent findings and did not articulate what facts support them.

Finally, the trial court failed to articulate why it afforded "slight weight" to all of the mitigating factors, as well as how it concluded that the aggravating factors "substantially outweigh" the mitigating factors.

The trial court's application of an inappropriate aggravating factor (factor 3) and its failure to properly weigh and balance the aggravating and mitigating factors require this Court to remand the matter to the trial court for resentencing.

PROCEDURAL HISTORY[1]

On February 23, 2024, Defendant signed a plea agreement, in which he agreed to plead guilty to aggravated manslaughter contrary to N.J.S.A. 2C:11-4a, in the death of his wife, Judith Manis, which carried a statutory maximum penalty of thirty years in State prison. (Da10-15). In connection with the plea, the State agreed to recommend a maximum sentence of twenty years, subject to the conditions of the No Early Release Act ("NERA"). (Da13).

On March 1, 2024, Defendant was charged by way of Accusation of aggravated manslaughter. (Da9). Also on March 1, 2024, Defendant entered his

[1] 1T refers to the transcript dated March 1, 2024.
2T refers to the transcript dated June 28, 2024.

guilty plea, pursuant to the Accusation and plea agreement. (See generally 2T). Defendant entered a factual basis for the offense conduct, (2T15:7 to 19:1), and the trial court accepted Defendant's guilty plea, (2T21:1-25).

On June 28, 2024, the trial court sentenced Defendant to twenty years in State prison, the maximum sentence allowed pursuant to the plea agreement, subject to NERA, resulting in a period of parole ineligibility of seventeen years. (2T68:8-18; Da1). In reaching that sentence, the trial court found aggravating factors 3, 9, and 12.[2] (Da3). The trial court also found mitigating factors 7, 8, and 9. (Da3). The trial court concluded that the aggravating factors outweighed the mitigating factors. (Da3).

The Judgement of Conviction was filed on July 2, 2024. (Da1). On August 15, 2024, Defendant filed a Notice of Appeal, limited to review of the sentence entered by the trial court. (Da4).

On September 23, 2024, Defendant filed a motion to remove this matter from the Court's sentencing calendar and place this appeal on the Court's plenary calendar to allow full briefing of Defendant's sentencing appeal. (Da17). On October 16, 2024, the Court granted Defendant's motion and transferred this appeal to the Court's plenary calendar. (Da17).

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[2] The Judgment of Conviction does not list aggravating factor 12 (elderly victim), but the trial court found that factor 12 applied during Defendant's sentencing hearing. (2T65:12-17).

STATEMENT OF FACTS

A. The Offense Conduct

Defendant was born in the Bronx and moved to Paramus, New Jersey when he was five years old. (Da29). After graduating high school, Defendant attended North Hampton Junior College for one year and then completed one year of college at Bergen County Community College. (Da30). Ultimately, Defendant started his own business selling light bulbs and was self-employed until he semi-retired approximately fifteen years ago. (Da27-28).

Defendant and his wife married in 1975. (Da29). They had no children. (Da29).

On August 12, 2023, the Hasbrouck Heights Police Department and Bergen County Prosecutor's Office responded to an unattended death investigation at Defendant's home. (Da20). When the police officers arrived, Defendant was sitting on the front steps of his home. (Da20). The officers asked Defendant if he would go with them to the police station and provide a voluntary statement. (Da21). Defendant agreed. (Da21). After arriving at the police station, Defendant waived his Miranda rights and signed a corresponding waiver form. (Da21).

During the initial questioning, Defendant did not admit his guilt. Rather, Defendant informed the officers he had traveled to a Lowe's and a Home Depot, and

he later said that he had traveled to a casino in New York. (Da21). After further questioning, Defendant confessed to killing his wife. (Da21).

Defendant explained that he and his wife had argued and that he used a pillow in an attempt to suffocate her. (Da21). Defendant said that he removed the pillow, and his wife threatened to report what he did to law enforcement. (Da21-22). In that moment, Defendant again placed the pillow over his wife's face, resulting in her death. (Da22). Defendant also admitted to trying to think of different ways to dispose of her body, going so far as to take initial steps to prepare for moving the body. (Da22). Ultimately, however, Defendant confessed that he decided not to move the body and, instead, made the room look as if a home invasion had occurred. (Da22). Defendant was arrested and charged with murder (2C:11-3A(1)); unlawful movement, concealment, or disturbing human remains (2C:22-1A(1)); hindering apprehension (2C:29-3B(1)); and providing a false report to law enforcement (2C:28-4B(2)).

B. The Sentence

Accepting responsibility for his actions, Defendant quickly resolved the case. Defendant pled guilty to aggravated manslaughter on an Accusation. (Da9). At sentencing, Defendant faced a sentencing range of ten to twenty years in State prison based on the statutory minimum and the recommended maximum agreed to in Defendant's plea agreement.

Defendant's counsel addressed the trial court, noting Defendant, at the time, was 72 years old and had accepted full responsibility for his actions. (2T8:2-2-22). Counsel noted that Defendant had "[n]o prior criminal record, no prior arrest, no juvenile record." (2T10:1-2). Counsel further noted that Defendant had run his own business and "worked hard" and "lived a quintessential life." (2T10:3-6). Although Defendant and his wife did not have children of their own, counsel noted Defendant's significant involvement with his nieces and nephews and that his desire to resolve the case as quickly as possible was not only to accept responsibility for his actions but also to avoid putting his family through lengthy proceedings or a trial. (2T8:25 to 9:20).

In addition, to place the offense conduct in context, counsel explained to the trial court that the life Defendant and his wife lived behind closed doors was different than the life they lived publicly. Counsel noted that Defendant had dealt with "years of stress, years of verbal abuse." (2T11:1-19). Although the stress and verbal abuse did not justify Defendant's conduct in any way, counsel noted to the trial court that the offense was not related financial gain or any other sort of motive but was, instead, something that occurred that morning in the context of the turmoil that existed in the relationship between Defendant and his wife. (2T11:20 to 12:1).

Defendant then addressed the trial court. (2T19:10 to 23:2). After expressing his remorse and explaining to the trial court how he felt about his actions, Defendant

asked the trial court whether it may consider a suspended sentence with community service and a period of probation. (2T22:12-17).

In response, the State expressed outrage, calling Defendant's statement to the trial court "utterly offensive." (2T23:12 to 24:4). In arguing for the trial court to find aggravating factor 3, the prosecutor, pointing to the offense conduct itself, claimed "there's an objective risk that this person will commit another offense." (2T27:17-19). The prosecutor also argued to the trial court that it was not "appropriate" for the court to find mitigating factor 8 (the defendant's conduct was the result of circumstance unlikely to recur) while also finding aggravating factor 3 (the risk that the defendant will commit another offense). (2T30:13-17). The State asked for a sentence of twenty years in State prison. (2T32:5-7).

The trial court then heard victim impact statements, after which Defendant's counsel asked to add one comment. Counsel clarified to the trial court that Defendant's request for a time served equivalent sentence was not something that was planned.

The trial court then rendered its sentence. The trial court first summarized the facts of the offense, apparently from the narrative contained in the presentence report. (2T51:20 to 54:21). The trial court then summarized the procedural history of the case and outlined the statements made to the trial court by Defendant, including Defendant asking the trial court for the "ultimate leniency in . . . requesting a suspended sentence." (2T56:22-25). The trial court added that it was "perplexed beyond belief

that a request in that nature would be made" and that "it is beyond my belief that such a request could even be made here today." (2T57:9-13).

The trial court questioned whether Defendant was truly remorseful, referring again to Defendant's request for a suspended sentence. (2T58:24 to 59:2). Defendant tried to apologize, and the trial court again stressed its outrage over Defendant's request. (2T59:3-16).

The trial court also noted Defendant was 72 years old and had lived an otherwise law-abiding life. (2T60:16-20). The trial court noted Defendant was a productive member of society and had positive impact on family members prior to the offense. (2T60:25 to 61:6).

The trial court stated it had reviewed the statutory aggravating factors and mitigating factors and had "balanced them accordingly." (2T63:19-22). The trial court found "aggravating factor 3, risk of re-offense is applicable." (2T64:21-22). The trial court explained that it found aggravating factor 3 because the court had "read the letters of [Defendant], again, which this Court described as self-serving. And further, that the – there is a risk of re-offense based upon a totality of the circumstances presented." (2T64:24 to 65:3).

The trial court found aggravating factor 9, explaining there was "a strong need, very strong need to deter, not only folks like [Defendant] but others from committing these types of crimes and offenses." (2T65:7-10). The trial court gave "significant

weight to aggravating factor 9." (2T65:10-11). The trial court also found aggravating factor 12. (2T65:12-17).

The trial court then moved on to the mitigating factors. The trial court gave "slight weight" to mitigating factor 7, lack of criminal history. (2T66:4-10). The trial court did not explain why it gave slight weight to this factor.

The trial court also gave "slight weight" to mitigating factor 8, that the circumstances leading to the offense were unlikely to recur. (2T66:11-16). The trial court found this factor based on Defendant's age but did not explain why it only gave this factor slight weight. (2T66:13-16).

Similarly, the trial court found mitigating factor 9, that Defendant is unlikely to commit another offense, for the same reasons as mitigating factor 8. (2T66:17-19). The trial court gave mitigating factor 9 "slight weight," also without explaining why it was giving that factor slight weight. (2T66:17-19).

The trial court concluded, "based on a totality of the circumstances presented . . . everything this Court has heard here today, that the aggravating factors substantially outweigh the mitigating factors." (2T67:12-17). The trial court did not further explain its conclusion and sentenced Defendant to twenty years in State prison, subject to NERA. (2T67:18 to 68:13). As a result, Defendant's term will run until age 92, with his first parole eligibility at age 89.

STANDARD OF REVIEW

"An appellate court's review of a sentencing court's imposition of sentence is guided by an abuse of discretion standard." State v. Jones, 232 N.J. 308, 318 (2018) (citing State v. Robinson, 217 N.J. 594, 603 (2014)). "A judge's discretion in that area is bounded by the law and court rules." Ibid. (citing State v. Tedesco, 214 N.J. 177, 189 (2013)).

"[A]n abuse of discretion arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)). "In other words, a functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." Flagg, 171 N.J. at 187-88. "It may be an arbitrary, capricious, whimsical, or manifestly unreasonable judgment." Id. at 188 (quoting Coletti v. Cudd Pressure Control, 165 F.3d 767, 777 (10th Cir. 1999)).

LEGAL ARGUMENT

Rule 3:21-4(h) requires a sentencing court to state the "factual basis supporting a finding of a particular aggravating or mitigating factors affecting sentence." Sentencing courts must "explain and make a thorough record of their findings to ensure fairness and facilitate review." State v. Comer, 249 N.J. 359, 404 (2022); State v. Torres, 246 N.J. 246, 272 (2021) (noting need for "explanation for

the overall fairness of a sentence"). "A clear and detailed statement of reasons is thus a crucial component of the process conducted by the sentencing court, and a prerequisite to effective appellate review." State v. Fuentes, 217 N.J. 57, 74 (2014).

An appropriate sentence therefore "requires an explicit and full statement of aggravating and mitigating factors and how they are weighed and balanced." State v. McFarlane, 224 N.J. 458, 466 (2016) (quoting State v. Randolph, 210 N.J. 330, 348 (2012)). "[C]ritical to the sentencing process and appellate review is the need for the sentencing court to explain clearly why an aggravating or mitigating factor presented by the parties was found or rejected and how the factors were balanced to arrive at the sentence." State v. Case, 220 N.J. 49, 66 (2014) (citing Fuentes, 217 N.J. at 73).

When a sentencing court "fails to identify relevant aggravating and mitigating factors, or merely enumerates them, or forgoes a qualitative analysis, or provides little 'insight into the sentencing decision,' then the deferential standard [of review of sentencing decisions] will not apply." Case, 220 N.J. at 65 (quoting Kruse, 105 N.J. 354, 363 (1987)). Because [t]he absence of such a statement conceals both sound and improper reasons and bars informed evaluation on appeal," remand for resentencing is the appropriate appellate remedy. State v. Martelli, 201 N.J. Super. 378, 385 (App. Div. 1985).

I. The trial court failed to articulate an adequate basis for its findings of the aggravating and mitigating factors in this case.

a. The trial court erred in applying aggravating factor 3.

"In determining the appropriate sentence to impose within [a sentencing] range, judges must first identify any relevant aggravating and mitigating factors . . . that apply to the case." Case, 220 N.J. at 64 (citing Fuentes, 217 N.J. at 85). "The finding of any factor must be supported by competent, credible evidence in the record." Ibid. (citing State v. Roth, 95 N.J. 334, 363 (1984)). "Speculation and suspicion must not infect the sentencing process; simply put, the finding of aggravating or mitigating factors must be based on evidence." Ibid.

Here, the trial court found aggravating factor 3, the risk that the defendant will commit another crime. The trial court rested the finding of aggravating factor 3 on the suspicion that Defendant's letter to the trial court was "self-serving" and on the "totality of circumstances" in the case. (2T64:24 to 65:3). The trial court's finding of aggravating factor 3 is not supported by competent, credible evidence in the record; it was based on speculation and suspicion.

"In deciding whether a defendant is likely to offend in the future, sentencing courts frequently look to the defendant's criminal history." State v. Rivera, 249 N.J. 285, 300 (2021) (citing State v. Dalziel, 182 N.J. 484, 502 (2005)). But Defendant, as the trial court was obligated to acknowledge, has no prior criminal record. Indeed,

the trial court noted Defendant lived a law-abiding life until age 72 but apparently gave the lack of a criminal record no weight in finding aggravating factor 3.

To be sure, the lack of a criminal record is not a per se bar to finding aggravating factor 3. But the finding must be "supported by other credible evidence in the record." Ibid. (citing Case, 220 N.J. at 67). "That assessment . . . include[s] an evaluation and judgment about the individual in light of his or her history." Ibid. (citing State v. Thomas, 188 N.J. 137, 153 (2006)). "To support a finding of aggravating factor three, the record must contain evidence demonstrating a likelihood of re-offense—be it expert testimony, or the defendant's criminal history, lack of remorse, premeditation, or other competent evidence." Id. at 302.

In addition to a lack of criminal history, the record lacks any other credible evidence that Defendant is likely to commit another offense. In addition to never committing an offense or having a prior arrest in 72 years, the trial court failed to consider the other side of Defendant's age. That is, even if Defendant was sentenced to the statutory minimum of ten years in prison, he would not be released until age 82. The trial court made no findings and did not analyze the likelihood of recidivism for Defendant at that age or at any age during the sentencing range, which would see Defendant released somewhere between the age of 82 and 92.

The trial court instead fixated on Defendant's unplanned request for a suspended sentence. From that spur-of-the-moment statement, the trial court

extrapolated that Defendant may not have been remorseful. But that alone is a suspicion that runs contrary to the many statements Defendant made to authorities about his remorse and guilt over what he had done.

Further, and significantly, the uncontroverted facts demonstrate Defendant's acceptance of responsibility and remorse. Defendant voluntarily went to the police station to give a statement and waived his Miranda rights. Defendant confessed to the crime, providing full details of what he had done. Defendant decided not to mount any defense to avoid putting his family through lengthy proceedings or a trial. And Defendant quickly resolved the case through a plea deal on an Accusation. Defendant was sentenced just ten months after the offense conduct. All of that demonstrates that Defendant accepted responsibility for his conduct and is remorseful.

Those facts stand in stark contrast to other cases where courts have rightfully found that a defendant's conduct was indicative of a lack of remorse and likelihood to commit another offense. For example, in State v. O'Donnell, 117 N.J. 210, 213 (1989), the defendant, a police officer, beat an individual under arrest in a police garage. Afterward, the defendant bragged about the beating to an assistant prosecutor, stating: "We took him back to the garage and beat him. We took care of him. We laid into him with our nightsticks. We called Overberger down and 'he got licks in, too.'" Ibid. Finding that the defendant was likely to commit another offense,

the trial court stated that the defendant was "almost boastful about what happened." Id. at 216. Upholding the trial court's finding, the Supreme Court added that the conduct suggested "not only defendant's lack of remorse, but also some pride in the beating he had inflicted" on the victim. Ibid. This case is nothing like O'Donnell.

In addition, the trial court's finding here of aggravating factor 3 in combination with mitigating factor 7, no prior criminal history, obligated the trial court to explain how it balanced and assigned weight to those two factors. Rivera, 249 N.J. at 301. ("We have previously requested this type of detailed, reasoned explanation when presented with the conflict between aggravating factor three, risk of re-offense, and mitigating factor seven, no criminal history."). The trial court did reconcile aggravating factor 3 with mitigating factor 7, nor did the trial court explain how it weighed those factors in respect of each other and in connection with Defendant. Rather, the trial court found the factors separately without any qualitative analysis as required under the law.

Without more, the trial court's finding of aggravating factor 3 cannot be sustained. This Court should reject the finding of aggravating factor 3 and remand this case to the trial court for resentencing without consideration of aggravating factor 3.

b. The trial court erred in finding aggravating factor 3 while simultaneously finding mitigating factors 8 and 9.

"In exceptional circumstances, courts may find it necessary to apply seemingly contradictory aggravating and mitigating factors." Rivera, 249 N.J. at 300-01 (citing Fuentes, 217 N.J. at 80). "When doing so, the sentencing court must 'explain how it reconciles those two findings' by providing greater detail as to the weight assigned to each aggravating and mitigating factor and how those factors are balanced with respect to the defendant." Ibid.; see also State v. Morente-Dubon, 474 N.J. Super. 197, 215 (App. Div. 2022). Our courts have recognized the contradictory nature between aggravating factor 3 (the risk that the defendant will commit another offense) and mitigating factor 8 (the defendant's conduct was the result of circumstance unlikely to recur) and mitigating factor 9 (the defendant is unlikely to commit another offense), noting only that these factors may "overlap" and may be "related." State v. Baylass, 114 N.J. 169, 177 (1989); State v. Towey, 244 N.J. Super. 582, 593 (App. Div. 1990).

Here, the trial court failed to adequately explain why it found aggravating factor 3 or why it gave less weight to mitigating factors 8 and 9. Nor did the trial court give any explanation reconciling these findings. As discussed, the court rested its improper finding of aggravating factor 3 on its belief that Defendant's letters to the court were "self-serving" and the "totality of the circumstances," without further explanation. (2T64:24 to 65:3). With regard to mitigating factors 8 and 9, the trial

court rightly pointed out the fact that Defendant was 72 years old at the time of the offense conduct and had led an entirely law-abiding life up to that point. (2T60:19-20; 2T66:11-19). Nevertheless, the trial court stated that it gave "slight weight" to both of these mitigating factors. (2T66:11-19). But the trial court gave no explanation as to why the factors only warranted slight weight. (See ibid.). Nor did the trial court at any point reconcile its findings of aggravating factor 3 on the one hand and mitigating factors 8 and 9 on the other, despite their expressly contradictory nature.

Thus, the trial court's error was two-fold. The trial court failed in its obligation to provide "greater detail as to the weight assigned to each aggravating and mitigating factor" and it likewise failed in its obligation to provide greater detail on "how those factors are balanced with respect to" the Defendant. See Rivera, 249 N.J. at 300-01. Therefore, in addition to remanding this case to the trial court for resentencing without consideration of aggravating factor 3, this Court should hold that the trial court failed to give proper weight to mitigating factors 8 and 9 and failed to explain its inconsistent findings.

c. The trial court erred in finding a need for specific deterrence under aggravating factor 9 while also finding mitigating factor 8.

"In exceptional cases, even if the record demonstrates that the offense at issue arose in circumstances unlikely to recur, thus supporting a finding as to mitigating factor eight, a defendant could nonetheless pose a risk of recidivism, requiring

specific deterrence within the meaning of N.J.S.A. 2C:44-1(a)(9)." Fuentes, 217 N.J. at 80. "While such a case will be rare, we decline to hold that aggravating factor nine and mitigating factor eight can never apply in the same sentencing." Ibid.

Here, based on Defendant's age and the surrounding circumstances, which presumably included Defendant's lack of criminal history, let alone one of violent conduct, the trial court found mitigating factor 8 (that the offense arose in circumstances unlikely to recur). (2T66:11-16). Nevertheless, the trial court also found aggravating factor 9 (the need for deterrence). (2T65:4-11). In so doing, the court afforded aggravating factor nine "significant weight." (2T66:10).

However, despite affording aggravating factor 9 significant weight, the court failed to explain how this is case is a case that required finding aggravating factor 9 at all. Instead, the court simply declared that "[t]here is a strong need, very strong need to deter, not only folks like [Defendant], but others from committing these types of crimes and offenses." (2T65:7-10). That sweeping conclusion could be applied to every defendant being sentenced for any criminal offense.

Where, as here, the trial court found mitigating factor 8 in addition to aggravating factor 9, the record must contain evidence that the defendant poses a risk of recidivism such that specific deterrence is necessary. See Fuentes, 217 N.J. at 80. And, here, as previously noted, the record is devoid of any credible evidence that the Defendant is likely to commit another offense. Defendant lived a law-

abiding life for more than seven decades up to the time of the offense conduct. Moreover, even if Defendant received the statutory minimum sentence of ten years in prison, he would not be released until he is 82, and the trial court made no effort to analyze Defendant's risk of recidivism at that or any other post-release age.

Put simply, the record contains no evidence that this is one of those rare and exceptional cases under Fuentes that justified the finding of aggravating factor 9 along with mitigating factor 8.

II. The trial court's errors require resentencing.

"When the trial court fails to provide a qualitative analysis of the relevant sentencing factors on the record, an appellate court may remand for resentencing." Fuentes, 217 N.J. at 70 (citing State v. Kruse, 105 N.J. 354, 363 (1987)). "An appellate court may also remand for resentencing if the trial court considers an aggravating factor that is inappropriate to a particular defendant or to the offense at issue." Ibid. (citing State v. Pineda, 119 N.J. 621, 628 (1990)). This is because proper sentencing "requires an explicit and full statement of aggravating and mitigating factors and how they are weighed and balanced." Randolph, 210 N.J. at 348; see also Towey, 114 N.J. at 84 (criticizing "abbreviated discussion of the aggravating and mitigating factors [as] not reflect[ing] the qualitative weighing process contemplated by the Code").

Here, the trial court considered aggravating factors inappropriate to the Defendant (aggravating factor 3) and likewise failed to provide a qualitative analysis of the relevant sentencing factors on the record. As demonstrated above, the trial court found aggravating factor 3 based on nothing more than suspicion that Defendant's letters to the court were self-serving and the "totality of the circumstances" without providing any additional detail. (2T64:24 to 65:3). Likewise, the trial court inappropriately found aggravating factor 9 based on the nothing more than the general notion proposition that there was "a strong need, very strong need to deter, not only folks like [Defendant] but others from committing these types of crimes and offenses." (2T65:7-10). The court found both these factors despite its recognition of Defendant's otherwise law-abiding life prior to the offense conduct. (2T60:16-20). Moreover, the trial court did not analyze Defendant's age at the time of his future release.

Further, the trial court failed to explain why it gave only "slight weight" to mitigating factors 7, 8, and 9. (See 2T66:4-10; 2T66:11-16; 2T66:17-19). The trial court's explanation of why the aggravating factors outweighed the mitigating factors overall was insufficient. Indeed, the court stated that it was "mindful" of the fact that Defendant was 72 years old with "no history of any type of convictions of this type or any other type." (2T67:9-11). But the trial court then stated that, "based upon a

totality of the circumstances" and everything the court had reviewed and heard, "the aggravating factors substantially outweigh the mitigating factors." (2T67:12-17).

The trial court's statement of reasons falls far short of the required "explicit and full statement of aggravating and mitigating factors and how they are weighed and balanced." See Randolph, 210 N.J. at 348. Because the trial court failed "to provide a qualitative analysis of the relevant sentencing factors on the record," this court should remand this matter to the trial court for full resentencing. See Fuentes, 217 N.J. at 70.

CONCLUSION

Defendant respectfully submits that the sentence imposed by the trial court should be vacated. The record on appeal does not contains evidence to justify a finding of aggravating factor 3. In addition, the trial court failed to adequately explain the factual basis its findings, failed to reconcile its inconsistent findings of aggravating and mitigating factors, and failed to explain how it why it balanced the aggravating and mitigating factors in light of those facts and corresponding findings. As a result, the sentence should be vacated, and this matter should be remanded to the trial court for resentencing.

Respectfully submitted,
Mandelbaum Barrett PC

Dated: January 9, 2025

By: */s/ Andrew Gimigliano*
Andrew Gimigliano

New Jersey Superior Court
Appellate Division

DOCKET NO. A-003936-23T5

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Bergen County.
MICHAEL J. MANIS	:	
Defendant-Appellant.	:	Sat Below: Hon. James X. Sattely, P.J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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TABLE OF CONTENTS PAGE

TABLE OF REFERENCES

"Da" denotes defendant's appendix, and "Db" refers to defendant's brief.

1T refers to the plea transcript of March 1, 2024.
2T refers to the sentencing transcript of June 28, 2024.

TABLE OF APPENDIX[1]

CONFIDENTIAL APPENDIX[2]

[1] The complaint-warrant is comprised of the complaint (Pa1-6), commitment form (Pa7), affidavit of probable cause (Pa8,9) and preliminary law enforcement incident report (plier). These documents are included in the appendix as they are part of the record below and are relevant to defendant's sentence. Rule 2:6-1(a)(1)(B).

[2] Defendant's seven-page letter to the court (Pa11-17) was considered by Judge Sattely in his sentencing decision. Rule 2:6-1(a)(1)(I).

TABLE OF AUTHORITIES

Cases

Statutes

COUNTER-STATEMENT OF PROCEDURAL HISTORY AND FACTS[1]

On August 12, 2023, at 5:01 p.m., defendant Michael Manis called 911 and reported that he had returned home to find his wife dead, "possibly beaten" as result of what appeared to be "a robbery." (Pa2,8). At approximately 8:15 p.m., Detectives Jakub Glebocki and Daniel Tanelli from the Bergen County Prosecutor's Office (BCPO), Major Crimes Unit, responded to defendant's residence at 110 Hamilton Avenue in Hasbrouck Heights. (2T52-4 to 15;[2] Da20a). Upon arrival, defendant was observed sitting on the front steps of his residence. At that time, he provided law enforcement with verbal and written consent to search his residence. (2T52-16 to 19). Detectives asked defendant if he would be willing to travel to the police department to provide a voluntary statement, and defendant agreed. (2T52-20 to 24). Defendant was transported to the Hasbrouck Height police department and escorted into an interview room. (2T52-25 to 53-1).

Defendant was read and acknowledged his understanding of his Miranda rights and signed the waiver portion of the form, agreeing to speak with police.

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[1] Because the procedural history and facts are intertwined, the State has combined them.

[2] The facts are comprised primarily of the trial court's findings made at sentencing. (2T51-24 to 54-21).

(2T53-3 to 7). Initially, defendant said that he traveled to Lowe's and Home Depot to pick up certain items from his home. (2T53-8 to 12). He later explained that he had also traveled to a casino in New York State. (2T53-12 to 14).

Eventually defendant admitted to killing his wife, J.M., and that he used a pillow to suffocate her. (2T53-15 to 18). Defendant and J.M had been married for approximately forty-eight years at the time. (2T34-10 to 12; Da29a). Defendant explained that, after his first attempt to kill J.M. failed due to her struggle, J.M. threatened to report defendant to the police. (2T53-19 to 21). At that point, defendant decided to "finish this off" and suffocated J.M. which resulted in her death. (2T53-22 to 24). He explained to police that killing his wife by suffocation took longer than he anticipated and that it was not like they show in the movies. (2T53-25 to 54-3).

After he killed his wife, defendant said he began thinking of different ways to dispose of her body. (2T54-4 to 5). First, he decided to purchase a hand truck and straps from the Lodi Home Depot to help move the body. (2T54-6 to 8). After making the purchase, he changed his mind and returned his purchases. (2T54-8 to 10). Instead of moving the body, he "explained that because [J.M.] was still in her nightgown [when he] killed her, he decided to . . . dress her and subsequently staged the room to make it appear as if a home

invasion occurred." (2T54-11 to 14). To cover up his crimes, defendant ransacked his house, hid his wife's jewelry in the basement ceiling, removed other items belonging to his wife from the home, and discarded them in a dumpster behind a 711 in Woodridge. (Pa-1,2, 8).

On August 13, 2023, defendant was charged in Hasbrouck Heights Complaint Warrant No. W-2023-000065-0225, with first degree murder, N.J.S.A. 2C:11-3(a)(1(2); second degree desecrating human remains, N.J.S.A. 22-1(a); third degree hindering, N.J.S.A. 2C:29-3(b)(1); and fourth degree false reports, N.J.S.A. 2C:28-4(b)(2). (Pa1-7).

On February 23, 2024, defense counsel reviewed the plea forms with defendant. (Da15a-16a). On March 1, 2024, defendant appeared with counsel before the Honorable James X. Sattely, P.J.Cr., and pled guilty on Accusation 24-03-0-81A. (Da9a; 1T). As part of the plea agreement, the State agreed "to amend the criminal complaint from murder to aggravated manslaughter," dismiss the remaining charges, and recommend a maximum term of twenty years New Jersey State Prison pursuant to the No Early Release Act (NERA). (1T4-7 to 24; Da10a-16a).

As part of his plea colloquy, defendant acknowledged the following: On August 12, 2023, he was at his home in Hasbrouck Heights in the late morning when he and his wife, J.M. got into an argument. (1T15-7 to 20). As a result,

defendant took a pillow and put it over his wife's face. (1T15-22 to 16-24). At some point, defendant removed the pillow, but the argument continued. (1T16-1 to 7). Defendant again took the pillow and put it over J.M.'s face, this time smothering her until she died. (1T16-8 to 19). Defendant was aware that J.M. could die as a result of smothering her with a pillow, but he did it anyway. (1T18-19 to 25).

On June 28, 2024, Judge Sattely imposed the sentence of twenty years with a NERA parole disqualifier pursuant to the plea agreement. (Da34a-38a; 2T). Defendant was not ordered to pay $4,170 in restitution to the VCCO due to his incarceration. (2T69-19 to 70-25). Instead, defendant was ordered to pay only the mandatory fines and assessments: a $100 VCCO assessment; $75 to the Safe Neighborhoods Services Fund; and $30 to the Law Enforcement Officers Training and Equipment Fund. (2T69-1 to 6; Da2a).

On August 15, 2024, defendant filed a notice of appeal of his sentence. (Da17a). On September 23, 2024, defense counsel filed a motion to request this appeal be placed on this Court's plenary calendar. On October 16, 2024, this Court granted defendant's motion. (Da17a).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S SENTENCING OF DEFENDANT WAS FAIR AND APPROPRIATE AND SHOULD BE AFFIRMED

Defendant claims that the following trial court errors warrant a remand for resentencing: 1) the trial court erred in finding aggravating factor three because defendant was remorseful, lacked a criminal record, and the record does not indicate a "likelihood of recidivism" based on defendant's advanced age, (Db12-15); 2) the trial court erred in finding aggravating factor nine because the record is devoid of any credible evidence that defendant is likely to commit another offense, (Db18); 3) the trial court did not explain why it gave only minimal weight to mitigating factors eight and nine, (Db17); and 4) the court failed to reconcile its finding of the aggravating factors with its findings of mitigating factors. (Db15, 16, 18, 21). We vehemently disagree. The State will review Judge Sattely's sentencing analysis, the law, and address why this sentence was proper.

In making his sentencing decision, Judge Sattely considered the defendant's seven-page letter that he wrote to the court and his in-person remarks. (Pa11-17; 2T17-22 to 23-1; 2T55-24 to 56-11).

With respect to defendant's letter, defendant spent the first two pages describing his relationship with the victim's extended family and their children, and how much he loved them. (Pa1-2). He does this in order to explain his decision for not leaving the victim, whom he spent the next few pages demonizing and accusing of adultery and verbal/emotional abuse, (Pa2-5):

> When I confronted her about the affair, she wouldn't even apologize and refused to discuss it . . . I was seriously thinking of leaving her. But I realized that if I left her I would probably never see those children again or very little and it would never be the same. I loved them so much it would be torture not to be in their lives, it would be like giving up my own children. I would also lose touch with her mother and father and the extended family. So I had to weigh what I would gain and what I would lose, not an easy choice, so I stayed with her and tried to forgive and forget but that's not so easy to do.
> [Pa3].

While defendant claimed that he was "not trying to vilify [his] wife" (Pa5), he spent pages giving examples of how he endured constant abuse from the decedent whom he claimed was like "Jeckyl and Hyde . . . she was loving and kind to everyone else but horrible to [him] in private, so nobody heard her say these terrible things." (Pa3-5). Defendant's examples included:

> If I put something down on a table or the counter she would move it over an inch or two saying that's where it goes, when I would ask, why what's the difference, she'd say in a snotty tone BECAUSE IT'S MY F. . .

> ING HOUSE AND THAT'S W[H]ERE I WANT IT, AND IF YOU DON'T LIKE IT THERE'S THE DOOR, of course a stupid man would say, it's not your house it's ours, but of course I didn't say that because it will only escalate things, so I just swallowed more crap. When she's in the kitchen and I walk in she would immediately start screaming, DON'T COME IN HERE WHILE I'M IN HERE, once when chopping vegetables she actually turned with the knife, and said IF YOU DON'T GET OUT OF HERE, I'LL STAB YOU. [Pa4].

Defendant painted himself as a victim and explained that divorce and counseling were not options because despite his wife refused counseling and talked him out of going through with divorce. (Pa4-5).

Defendant spent the last few pages of his letter blaming the victim for goading him into killing her. (Pa5-6). Of course, once he "gained some clarity and realized what [he had] done" he explained his actions afterwards:

> I'm in full flop sweat panic, I don't know what to do[. S]hould I call the police and try to explain what happened, I'm truly scared out of my mind, my brain starts thinking crazy thoughts of what to do. I eventually come up with an idea to make it look like a home invasion that happened while I was somewhere else. When I came home the next day I called the police and played the distraught husband that found his wife dead and the house robbed. I was terrified inside but I was committed at this point. I was not trying to '[g]et away with it' in the sense that I planned it and wanted her dead, I was just scared. The police and the crime scene investigators came. When the detectives took me to police headquarters to interview me, I tried to answer his questions but at a point my story started to fall apart and I broke down, and told him everything. The

> detective assured me that if I was honest and forthcoming that it would speak volumes for me. So that's what I did, I truly hope he was right.
> [Pa6-7].

In person, when defendant had his opportunity to address the trial court at sentencing, he began by attempting to explain that what he said to law enforcement in his statement should be viewed leniently due to how much stress he was under after he killed his wife and staged a home invasion which made him look like the victim:

> Well, first off, while being interrogated by the detectives, I'm trying to recount what happened that day. I'm trying to recount my thoughts and actions of a time when I'm obviously . . . not in a rational frame of mind. So when . . . I'm talking to them, I'm under more stress than I've ever been under in my entire life. I mean . . . I don't know if you read the transcripts or see the video, but I was . . . practically suicidal. I . . . must have mentioned wanting to kill myself or wanting to die 20 times. And I even was shaking so much, and couldn't breathe that they had to call in paramedics.
> [2T18-6 to 17].

Defendant also said:

> I want to particularly highlight my nephew's [M's] letter, which obviously showed his pain and loss, but also touched me very deeply. His description of me, and the close loving relationship I had with him and his siblings, truly, truly demonstrates the man I always was and still am today. And that . . . momentarily irrational aberration was not me.
> [2T20-22 to 21-4].

While defendant claimed he took responsibility for his crimes and was remorseful for killing his wife, he continued to talk about himself and his pain, describing his crime as "a recurring nightmare that eats away at my heart every single day." (2T21-19 to 22-7). Defendant ended his remarks to the trial court with the following plea:

> And to finish up, Your Honor, . . . in most cases, incarceration is necessary to protect the public and allow time for rehabilitation. My hope is that perhaps you can see that neither of these are applicable to me in this situation. My attorney assures me that you're a fair man, and I know this is a huge request, but if you could possibly see your way through a suspended sentence and . . . community service and period of probation, it would have a three-pronged benefit. First, the State would save the cost of housing and medical costs; [s]econdly, the community would benefit; And third, and final would be that I could hopefully rebuild the relationship with [the victim's] family, who I love so very much and given my life to.
> [2T22-8 to 23-1].

In addition to considering defendant's written and in-person words, Judge Sattely also considered defendant's allocution, the pre-sentence report (PSR- Da18a-33a), the impact statements from the victim's family members (Da34a-40a), oral arguments (2T4-21 to 17-11; 2T23-12 to 32-7), and oral statements from the victim's family members (2T33-3 to 50-23).

The trial court made the findings as detailed in the statement of facts above. (2T52-4 to 53-7). In doing so, the trial court also considered the facts

contained in the PSR, which were connected to defendant's original charges of first-degree murder, second-degree desecration of human remains, third-degree hindering, fourth-degree false reports; and his guilty plea to first degree aggravated manslaughter, noting the range of sentencing for the crime is between ten and thirty years. (2T54-22 to 55-10),

Judge Sattely found the following aggravating factors: the risk that defendant would commit another offense, N.J.S.A. 2C:44-1a(3); the need to deter, N.J.S.A. 2C:44-1a(9); and that the victim was over 60 years of age, N.J.S.A. 2C:44-1a(12). As to aggravating factor three, the court explained that defendant's letter to the court was self-serving. (2T64-21 to 65-1).

Specifically, based on defendant's in-court and written submission, the trial court rejected defendant's claims of remorse for killing his wife as incredible, and found his in-person request for a suspended-sentence and community service troubling. (2T57-4 to 13; 2T58-23 to 59-16; 2T64-25 to 65-3). In considering defendant's in-person and written words to the court Judge Sattely noted:

> Additionally, [defendant] has also provided here today, using his words, he was under stress, practically suicidal. He did not wish to paint an unflattering picture of his wife, the decedent. Additionally, he was scared and, using his words, running around like a chicken with head cut off.

> The Court's mindful, again, that [defendant] has given an explanation as to what occurred and ultimately, again, asked this Court for the ultimate leniency in that requesting a suspended sentence and community service so that he could get, in his words, get his life back on track with his . . . with the family members. Again as the [p]rosecutor noted, he has never heard, nor have I heard throughout my tenure as a [c]riminal [j]udge here, anyone ask for a suspended sentence. Someone who ultimately took the life of another person . . . using his own hands. Again, the [c]ourt is perplexed beyond belief that a request in that nature would be made. Counsel did note that that was not a discussion he had had with [defendant].[3] Notwithstanding, again, it is beyond belief that such a request could ever be made here today.
>
> [Defendant], I've heard, and you have provided comments about you. Everything, the theme here in your letter to me, the seven page letter and the statements you made here today were all about you. I mean, I believe that you are somewhat remorseful for what happened, but the theme here was how it affected you. You were scared. You were under stress. You were again, running around like a chicken with your head cut off.
>
> Well, sir, again, after taking the life of another person, I hope you would be scared. I hope you would be- - I hope you would be, again, practically suicidal, was I believe a word you also used here. I heard all about you.

[3] Defendant's trial attorney advised the trial court before his ruling that he "was not aware [that defendant would ask for] a time served equivalent sentence. And [defendant] . . . it's not something you normally discuss in light of the plea agreement here. So I just ask that Your Honor consider it was not something that was planned, and I think it was just something spur of the moment." (2T51-7 to 14).

> Again, I gather from reading the seven-page letter, again, you had challenges in your marriage. I get it. All married couples, all persons in relationships have challenges.
> [2T56-16 to 58-6].

After noting that defendant had been married since 1975, and had filed for divorce two times, (2T58-7 to 13), Judge Sattely rejected defendant's excuses for killing his wife, stating:

> Sir again, I hear a common theme in all these papers about you. There . . . if you had challenges in your relationship, there are other options other than taking someone's life. There are other options that you could pursue.
> [2T58-14 to 18].

Moreover, Judge Sattely was perplexed by defendant's comments to law enforcement regarding the fact that "suffocating his wife took longer than he anticipated and that it was not like they 'show in the movies'" (Da22a):

> Again in reading the report, you said to law enforcement that "it's not like in the movies." I mean, sir, come one. I mean, that is . . . unfathomable that that would be a comment made to law enforcement who was investigating the death of a person at your hands. Again, I've very troubled.
> [2T60-10 to 15].

Thus, based on "the totality of the circumstances as presented," the trial court found aggravating factor three, a risk of re-offense. (2T64-21 to 65-3)

The court also found aggravating factor nine and placed "significant weight" on this factor given the strong need to deter, "not only folks like

[defendant,] but others" from committing violent crimes such as murder. (2T65-4 to 11).

Finally, the trial court found aggravating factor twelve based on J.M.'s age of seventy-two years old. (2T65-12 to 17).

As for mitigating factors, Judge Sattely found mitigating factors: N.J.S.A. 2C:44-1b(7), defendant's lack of a record, taking into consideration that defendant had no prior criminal history. (2T66-4 to 10; 2T67-9 to 11). The judge also found mitigating factor N.J.S.A. 2C:44-1b(8), defendant's conduct was the result of circumstances unlikely to recur, explaining that due to defendant's age and circumstances of the killing, "this incident is unlikely to occur [again]." (2T66-11 to 16). Finally, the trial court found mitigating factor N.J.S.A. 2C:44-1b(9), defendant's character and attitude indicate defendant is unlikely to commit another offense, "for the same reasons" it found mitigating factor eight. (2T66-17 to 19). The trial court only placed slight weight on the above mitigating factors.[4] (2T66-9 to 10; 2T66-15 to 16; 2T66-17 to 18).

Turning to the law, the severity of the crime is the critical factor in determining an appropriate sentence. State v. Evers, 175 N.J. 355, 387 (2003).

[4]Judge Sattely rejected defendant's arguments for several mitigating factors which are not discussed as defendant does not contest his rejection of those factors on appeal.

To arrive at a sentence, the trial judge (1) determines whether incarceration is appropriate, keeping in mind any statutory presumptions, (2) decides on the length of the sentence, and (3) decides whether parole ineligibility is required. Ibid; State v. Kruse, 105 N.J. 354, 358-360 (1987). The reasons for the sentence should be made clear on the record. Kruse, 105 N.J. at 359; State v. Fuentes, 217 N.J. 57, 73 (2014). The sentencing court does more than quantitatively compare the aggravating factors with the mitigating. Rather these factors are qualitatively assessed and assigned appropriate weight within a "case specific" balancing process. Fuentes, 217 N.J. at 72.

An appellate court's role is limited. "Appellate courts are cautioned not to substitute their judgment for those of our sentencing courts." State v. Lawless, 214 N.J. 594, 606 (2013). When "conscientious trial judges" followed the code guidelines, found aggravating and mitigating factors supported by the record and correctly balanced those factors, then the appellate court will not intervene, unless the sentence shocks the judicial conscience. Fuentes, 217 N.J. at 70; State v. Cassady, 198 N.J. 165, 180-81 (2009).

"A sentence imposed pursuant to a plea agreement is presumed to be reasonable because a defendant voluntarily '[waived]. . . his right to a trial in return for the reduction or dismissal of certain charges, recommendations as to sentence and the like.'" Fuentes, 217 N.J. at 71 (quoting State v. Davis, 175

N.J. Super. 130, 140 (App. Div. 1980)). Our courts have found that decisions to abide by plea agreements "should be given great respect." State v. S.C., 289 N.J. Super. 61, 71 (App. Div. 1996) (not requiring remand where defendant pleaded guilty pursuant to plea agreement and Yarbough criteria met albeit trial court did not articulate reasons for consecutive sentences).

Thus, "[w]hile the sentence imposed must be a lawful one, the court's decision to impose a sentence in accordance with the plea agreement should be given great respect, since a 'presumption of reasonableness . . . attaches to criminal sentences imposed on plea bargain defendants." S.C., 289 N.J. at 71 (quoting State v. Sainz, 107 N.J. 283, 294 (1987)); State v. Wright, 444 N.J. Super. 447, 367 (App. Div. 2016) (deference is warranted where "defendant has bargained for the sentence imposed pursuant to a plea agreement").

Indeed, our Supreme Court held that when a sentence is based on a defendant's guilty plea, the sentencing court's decision is not limited to the factual basis in the plea. Sainz, 107 N.J. at 293 (emphasis added). Instead, the sentencing court "may look to other evidence in the record" and "should consider 'the whole person', and all the circumstances surrounding the commission of the crime." Ibid. (citations omitted).

Finally, our high court recognized the importance of deference to the trial court's finding that defendant is likely to re-offend as "the trial court [is

generally] in a far better position to develop a 'feel of the case' than [is] the Appellate Division. . . ." State v. Carey, 168 N.J. 413, 427 (1999) (reversing the Appellate Division's decision "disturbing" the aggravating factors found by the trial court when those factors were supported by the record).

The sentencing range for purposeful or knowing murder is thirty years to life, subject to a thirty-year period of parole ineligibility and NERA. N.J.S.A. 2C:11-3(b)(1). Aggravated manslaughter, however, has a range of ten and thirty years, subject to NERA. N.J.S.A. 2C:11-4(c).

Based on the totality of circumstances, including defendant's original charges and the facts underlying his crimes, Judge Sattely found that the balance of the aggravating and mitigating factors supported sentencing defendant to the fair and reasonable plea bargain that his attorney was able to negotiate for him. (2T54-22 to 55-10; 2T68-1 to 7; 2T68-8 to 18).

During sentencing Judge Sattely considered all of the facts and circumstances of his case. (2T51-17 to 68-18). Specifically, that defendant used a pillow in an attempt to suffocate J.M., his wife of forty-eight years; that he stopped himself after the initial struggle with J.M.; after J.M. threatened to report him to police, defendant made a calculated decision to "finish the job" and killed his wife; (2T53-15 to 24); that defendant explained to police "that suffocating his wife to death took longer than he anticipated, and that it was

not like . . . 'they show in the movies'. . ." (2T53-25 to 4); that defendant knew he had other options to walk away, but made a choice to murder his wife (2T58-5 to 22; 2T62-14 to 22); that after defendant killed his wife, he explained that he began planning of different ways to dispose of her body; then changed his mind and decided to dress J.M.'s body and stage the room to make it appear as if a home invasion occurred. (2T54-4 to 14).

Given the severity of the crimes defendant actually committed, nothing about defendant's mid-range sentence for aggravated manslaughter "shocks the judicial conscience." Unquestionably, the above facts clearly justify placing heavy consideration on aggravating factor three despite the fact that defendant had no prior record.

New Jersey courts have consistently held that a sentencing judge may consider aggravating factor three even in absence of a prior conviction. State v. Thomas, 188 N.J. 137, 140-142 (2006) (factor three was based on the quantity of drugs defendant had in his possession for sale which exceeded that necessary for the degree of his conviction); see also State v. Varona, 242 N.J. Super. 474, 491 (App. Div. 1990) ("Although the fact that defendant had no prior record and apparently was an established businessman in his community tends to militate against this finding[,]" aggravating factor three was justified due to the large amount of drugs defendant possessed during the arrest).

"A court's findings on the risk of re-offense should involve determinations that go beyond the simple finding of a criminal history and include an evaluation and judgement about the individual in light of his or her history." State v. Locane, 454 N.J. Super. 98, 125 (App. Div. 2018).

An examination of Locane underscores the importance of evaluating the facts and circumstances of the case for the risk of re-offense, not the likelihood of it. Id. at 125. In Locane, defendant was convicted of vehicular homicide and assault by auto after striking a vehicle with two passengers while traveling at approximately fifty-three miles per hour in a thirty-five mile an hour zone with a blood alcohol concentration over the legal limit. Id. at 109. At sentencing, the trial court rejected aggravating factor three and gave slight weight to aggravating factor nine solely because of defendant's successful rehabilitative efforts. Id. at 114, 125. In evaluating factor three, the appellate panel criticized the fact that the trial judge did not consider that "defendant became intoxicated in a social situation in which she could have easily called for a cab, asked a friend for a ride home, been driven home by her husband or simply spent the night. She made no arrangements to protect others from her state of inebriation." Id. at 125. Thus, this Court found that the trial court erred in not finding aggravating factor three and should have recognized that "[d]efendant's substantial level of intoxication when the accident occurred . . .

at a minimum, means that there is a risk that [defendant] may relapse at some point in her life despite her best efforts. And that possibility means there is a risk that she will again commit an offense while intoxicated."). Id. at 114; see also Carey, 168 N.J. at 426 (defendant's letter to court which expressed remorse but did not directly accept responsibility for crash or admit his problem with drinking and driving, coupled with his mother stating that he acted in a manner indicative of denial when she encountered him at a grocery store, sufficient to support trial court's finding of aggravating factor three); State v. Rivera, 249 N.J. 285, 300 (2020) ("For example, a sentencing judge may reasonably find aggravating factor three when presented with evidence of a defendant's lack of remorse or pride in the crime.") (citing State v. O'Donnell, 117 N.J. 210, 216 (1989)).

Here, Judge Sattely's findings adequately addressed why aggravating factor three applied to defendant. The trial court reviewed defendant's history, finding defendant had no medical diagnosis, no allergies, no prescribed medication, no mental health diagnosis, learning disabilities or recent drug or alcohol abuse; and grew up in what defendant described as "a good childhood, [and] was raised by both his parents." (2T61-7 to 62-8; Da26a). Moreover, defendant had the support of his family, describing his relationship with his mother as "great" and his relationship with his brother as "good." (2T61-25 to

62-1; Da29a). As the trial court also pointed out, defendant filed for divorce two times, but those filings were dismissed.

Given the above facts, Judge Sattely found "it's clear that [defendant] understood that [he] had other options . . . available to [him]." (T62-18 to 19). "As [M.M.] said, [defendant] could walk away, make a phone call, go on a vacation, go bowling, go for a walk, something else other than what ultimately resulted here." (2T58-14 to 22). But instead, defendant suffocated his wife, and then when he realized he had killed her, he planned on how to dispose of her body so he could get away with his crimes. (2T53-19 to 54-10). Even after defendant decided not to get rid of J.M.'s body, defendant staged a home invasion, dressing up his dead wife's body, ransacking his home, hiding her valuable jewelry, disposing of her other possessions in a dumpster, and calling 911 to make a false report. (2T54-11 to 14). These findings undoubtedly support the trial court's findings of a risk of re-offense.

While defendant now argues that aggravating factor three is not supported by the record, (Db12); during sentencing defendant conceded to the trial court that it believed aggravating factor three existed, albeit "nominal[ly]." (2T13-9 to 13). Notwithstanding the shift in defendant's position, nothing about defendant's advanced age or lack of prior criminal history negates the fact that defendant exhibited alarming conduct when he

killed J.M., and a complete disregard for human life. That, coupled with defendant's poor judgment, lack of remorse for the victim, and his solipsistic nature as Judge Sattely found, supports the trial court's finding that risk of re-offense exits.[5]

Finally, defendant's criticism that the trial court rested its finding of lack of remorse on its "suspicion that [his] letter was self-serving" (Db12) and "fixation on [his] unplanned request for a suspended sentence" (Db 13) warrants short shrift.[6] Judge Sattely made a detailed record of why he rejected

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[5] Defendant also argues that the trial court was required to make a special finding of the likelihood of recidivism for aggravating factors three and nine due to defendant's advanced age and his expected age at the time he is released from prison. (Db13, 18, 19). The State submits that there is no law that requires a sentencing court to consider a defendant's advanced age when evaluating aggravating factors. Such an argument is contrary to the principles that age should not be considered as to an aggravating factor. See Rivera, 249 N.J. at 303 ("[Y]outh could be considered only as a mitigating factor in sentencing and could not support an aggravating factor.").

[6] It should be noted that defendant's repeated characterization of his request for a suspended sentence as "unplanned," and "spur of the moment" (Db12) is unsupported by any evidence in the record. That defendant did not discuss his request for a suspended sentence with his attorney before making it, does not mean his plea to the court was spontaneous. (2T51-6 to 14). The State submits that it is unfathomable that defendant, who approved his plea deal and pled guilty almost four months before sentencing, did not contemplate ahead of time, what he would say to the court to receive a more lenient sentence. Indeed, defendant's recitation to the trial court of the litany of reasons as to why his request for a suspended sentence should be granted demonstrates his forethought. (2T51-6 to 14).

defendant's claims of remorse for the victim. Those findings were based not only on defendant's written submission, but in conjunction with his in-court comments to the trial court at sentencing, and the other facts and circumstances the court discussed in his decision as noted above. Those findings are entitled to deference. See Carey, 168 N.J. at 427.

Additionally, as to aggravating factor nine, the New Jersey Supreme Court has recognized that "[t]he need for public safety and deterrence increase proportionally with the degree of the offense," State v. Carey, 168 N.J. 413, 426 (2001), and that "demands for deterrence are strengthened in direct proportion to the gravity and harmfulness of the offense," Fuentes, 217 N.J. at 79 (internal citation omitted). "The paramount reason we focus on the severity of the crime is to assure the protection of the public and the deterrence of others." Locane, 454 N.J. Super. at 126; State v. Megargel, 143 N.J. 484, 502 (1996) ("Where the crime includes an enhanced penalty, the Legislature has declared the crime especially serious, thus elevating the need for deterrence.")).

As the trial judge pointed out to defendant, while defendant had previously lived a law-abiding life, that does not change the fact that he committed "the ultimate crime. You took someone's life. I mean . . . there's

nothing that could be worse than why you're here today. You took someone's life." (2T60-19 to 24).

Defendant argues that in order to find aggravating factor nine, the record must contain evidence that defendant poses a risk of recidivism such that specific deterrence is necessary. (Db18). However, the trial court specifically found that defendant, who had the support of a family with whom he had a great relationship; and who had no disabilities or handicaps, chose to commit the worst crime that one could commit; he took the life of J.M., his wife of forty-eight years. And instead of calling for help when he realized that he killed her, he planned on how to dispose of her body, staged a robbery, hid and disposed of J.M.'s personal belongings, and called law enforcement to report he was a victim of a robbery. Defendant's advanced age did not deter this horrendous conduct, nor did his lack of prior history prevent him from committing these acts. These facts alone make it abundantly clear that there is a specific and strong need to deter not only defendant, but others from committing this type of domestic violence killing. Locane, 454 N.J. Super. at 126 (finding that the trial court erred in its virtual rejection of aggravating factor nine, citing the importance of general deterrence as well as specific).

Here the State recognizes that in only certain types of cases does general deterrence, by itself, carry much weight. See id. ("In more typical situations,

general deterrence sometimes has relatively little weight in the sentencing balance. But [in vehicular homicides and assault by autos] which by its very nature makes general deterrence absolutely meaningful."). However, the State submits that the same, strong public policy reasons that makes general deterrence, by itself, "more meaningful" in drugged driving offenses also apply in cases such as this involving domestic violence.

Finally, defendant argues that the trial court failed to explain why it found aggravating factor three or why it gave less weight to aggravating factors eight and nine, and that the court failed to reconcile these findings. (Db16). As explained above, there is an abundance of evidence in the record to support Judge Sattely's finding of aggravating factor three and nine in the record and the court thoroughly detailed its findings as explained above.

Clearly, courts have recognized that there are times when aggravating and mitigating factors are odds with each other. Rivera, 249 N.J. at 300-301 (trial court improperly used defendant's youth to support aggravating factor when age can only be used to support mitigating factor). In those cases, the sentencing judge must reconcile the two factors and provide greater detail as to the weight assigned to each factor. Ibid.

Here, the trial judge explained his findings. Even though defendant committed "the ultimate crime" of taking one's life, he had lived a law-abiding

life, which justified a finding of mitigating factor seven. As far as aggravating factors eight and nine, the trial court found that based on defendant's advanced age of seventy-two, it was unlikely that defendant would kill another long-term domestic partner. (2T66-11 to 19). The court also considered the victim-impact letters describing defendant as a father-figure to the victim's family members:

> But notwithstanding, again, I've heard the impact that this has had on the people in the audience here. You were like a father figure to these people. I read all their letters. I've heard them today. You taught them how to ride bikes, to ski, how to drive a car. You were there for every life event in these people's lives throughout their lives. And, again, to take . . . [J.M.'s] life in this fashion, again, I find that. . . [t]here is zero justification for this.
> [2T59-17 to 23].

As required, the trial court explained that it only applied "a small amount" of weight to the mitigating factors. While defendant complains that the court did not explain why it gave mitigating factors eight or nine less weight (Db18, 20), he did not demonstrate nor does he adequately explain why those factors were entitled to any more weight.

At sentencing, defendant did not present the trial court with certificates attesting to his completion of behavioral modification and/or counseling programs. Instead, defendant appeared in court empty-handed, expecting the court to give great weight to his unbuttressed contention that his acts were

anomalous and attributable to circumstances unlikely to recur. However, defendant's self-serving letter to the court demonstrated the opposite; instead of taking responsibility for his actions, defendant blamed his actions on his wife. (Pa11-17; 2T59-23 to 60-2).

Based on the utter lack of proofs as to any true acceptance of culpability or evidence of efforts toward rehabilitation, the record supports the trial court's finding that this defendant is likely to re-offend. Defendant's actions displayed his utter disregard for human life; and his decisions demonstrated that he is a dangerous man who displayed lethal judgment. That said, Judge Sattely considered defendant's age and lack of prior history as to mitigating factors and gave slight weight to the fact that given defendant's advanced age, his conduct of killing a long-term spouse was unlikely to recur, (b)(8), and that he is unlikely to commit another offense, (b)(9). However, the trial court did not find those factors excused or mitigated his deadly decisions and actions that resulted in J.M.'s death. More importantly, the trial court did not find that the mitigating factors warranted sentencing defendant to less than the terms of his negotiated plea.

Judge Sattely sentencing decision was well supported by competent credible evidence. Defendant's argument that he should get another sentencing hearing when he has not shown that the trial court failed to consider

or adequately weigh any factor that would warrant a sentence of less than what he bargained for should be rejected. Finality is an important interest to the State, the victim's family, and the community at large. A remand would only serve to retraumatize the victim's family, who have a right to closure. And a remand is simply not warranted as defendant's sentence was fair and reasonable, supported by the trial record, and contemplated by all parties. S.C., 289 N.J. at 71.

As the trial court acknowledged "this plea agreement that was reached based on an accusation." (2T67-18 to 21). Defendant got the benefit of a mid-range aggravated manslaughter plea based on the fact that his attorney resolved this case early, on an accusation, and in-part, due to defendant's advanced age. (2T24-13 to 22). The "sentence in and of itself contemplates leniency." (2T24-22 to 23). And the trial court clearly recognized, defendant's negotiated plea to aggravated manslaughter, instead of murder, already took into account, substantial mitigation.

Therefore, the State requests that this court affirm the trial court's sentencing decision. Ample consideration has already been given to this defendant and considered in the plea bargain struck.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the trial court's rulings and sentence be affirmed in all respects.

Respectfully submitted,

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	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
STATE OF NEW JERSEY, Respondent, v. MICHAEL J. MANIS, Appellant.	Docket No.: A-003936-23 Criminal Action On Appeal From: Superior Court of New Jersey, Law Division, Bergen County Trial Court No. 24-03-00081-A PROMIS No. 23 001061-001 Sat Below: Hon. James X. Sattely, J.S.C.

REPLY BRIEF OF APPELLANT MICHAEL J. MANIS

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TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS, AND RULING APPEALED

TABLE OF AUTHORITIES

Page(s)

Cases

Court Rules

Other Authorities

PRELIMINARY STATEMENT

Although a criminal sentence generally is entitled to deference on appeal, that deference is not absolute. When a sentencing court's decision is unsupported by the record or a sentencing court fails to adequately explain its conclusions, a reviewing court owes the sentence no deference at all. That is this case.

The sentencing court found aggravating and mitigating factors without conducting a detailed evaluation of the facts supporting those findings. The court also did not articulate why it gave corresponding weight, or lack of weight, to the various factors. And the sentencing court found contradictory aggravating factors and mitigating factors without explaining how it reconciled those inconsistent findings. On that record, Defendant's sentence should be vacated and the matter remanded for resentencing.

More specifically, the sentencing court found aggravating factor 3, likelihood of recidivism, without explaining what facts supported that conclusion, and despite finding a lack of criminal history or any other factors that ordinarily lend themselves to a risk of recidivism. The court also did not explain why it gave significant weight to this factor.

The sentencing court found mitigating factors 8 and 9, that Defendant is unlikely to reoffend and that the offense arose from circumstance unlikely to recur. Those mitigating factors directly contradict aggravating factor 3. Yet, the sentencing

court did not reconcile those inconsistencies and did not explain why it gave slight weight to the mitigating factors but significant weight to aggravating factor 3. Absent that explanation, this Court is left with an incomplete record to review.

Finally, the sentencing court found the need for general deterrence, without finding the need for specific deterrence. And, again, the court did not explain or reconcile those findings. The court also placed significant weight on the need for general deterrence without providing any explanation or evaluation for that conclusion, once again leaving this Court with a scant record for meaningful appellate review.

For those reasons, and as set forth more fully below, the Court should vacate the sentence and remand this matter for resentencing.

LEGAL ARGUMENT

I. The trial court failed to adequately explain its basis for the aggravating and mitigating factors.

Defendant is not asking this Court "to substitute [its] judgment for [that] of the sentencing court" as suggested by the State. (State. Br. at 14). Defendant's position is that the trial court failed to adequately explain its rationale for the aggravating and mitigating factors found by the court. Further, the trial court found contradictory aggravating and mitigating factors but did not reconcile those factors as required by the mandates set by the Supreme Court.

The first step in sentencing requires a sentencing court to identify which aggravating factors and mitigating factors apply. State. v. Fuentes, 217 N.J. 57, 72 (2014). "Each factor found by the trial court to be relevant must be supported by competent, reasonably credible evidence." Ibid. (quoting State v. Roth, 95 N.J. 334, 363 (1984)). "The court must then balance the relevant aggravating factors and mitigating factors." Ibid. "The sentencing court does more than quantitatively compare the number of pertinent aggravating factors with the number of applicable mitigating factors; the relevant factors are qualitatively assessed and assigned appropriate weight in a case-specific balance process." Id. at 72-73 (citing State v. Kruse, 105 N.J. 354, 363 (1987)).

More than that, the sentencing court must explain the basis for its findings and balancing of the aggravating and mitigating factors. "At the time of sentencing, the court must "state reasons for imposing such sentence including . . . the factual basis supporting a finding of particular aggravating or mitigating factors affecting sentence." Id. at 73 (quoting R. 3:21-4(g)). "A clear explanation of the balancing of aggravating and mitigating factors with regard to imposition of sentences . . . is particularly important." Ibid. (quoting State v. Pillot, 115 N.J. 558, 565-66 (1989)). "That explanation should thoroughly address the factors at issue." Ibid.

"A clear and detailed statement of reasons is thus a crucial component of the process conducted by the sentencing court, and a prerequisite to effective appellate

review." Id. at 74; see also State v. Bieniek, 200 N.J. 601, 608 (2010) ("[W]hen an appellate court determines that the trial court has found aggravating and mitigating factors unsupported by the record, the appellate court can intervene and disturb such a sentence with a remand for resentencing.").

"Having balanced the relevant factors, the sentencing court does not set the term of incarceration in accordance with an inflexible rule." Fuentes, 217 N.J. at 73 (citing State v. Natale, 184 N.J. 458, 488 (2005) (noting "every just must 'state on the record' how he or she arrived at a particular sentence). Instead, sentencing courts generally should look to "the middle of the sentencing range as a logical starting point for the balancing process." Ibid. "So, for example, if the aggravating and mitigating factors are in equipoise, the midpoint will be an appropriate sentence." Ibid. "Moreover, reason suggests that when the mitigating factors preponderate, sentences will tend toward the lower end of the range, and when the aggravating factors preponderate, sentences will tend toward the higher end of the range." Ibid.

Here, the record before the Court demonstrates that the sentencing court did not comply with those requirements and did not adequately explain how and why it found and weighed the aggravating and mitigating factors and sentenced Defendant to a term at the top of the sentencing range.[1]

[1] The State contends Defendant was sentenced to a "mid-range sentence." (State Br. at 17). While aggravated manslaughter carries a maximum sentence of thirty years, in this case, the plea agreement set the top of the range at twenty years and permitted

a. The record does not support the sentencing court's finding of aggravating factor 3.

First, and most significantly, the trial court failed to explain its finding of, and the weight given to, aggravating factor 3, the risk that Defendant will commit another offense. Defendant, who is 72, has no prior criminal history, he fully confessed his conduct, and quickly accepted a plea. Despite all of that, the trial court concluded Defendant is likely to re-offend based almost entirely on the offense conduct. More is required to find aggravating factor 3.

To be sure, a finding of aggravating factor 3 does not rest solely on whether a defendant has a prior criminal history. State v. Locane, 454 N.J. Super. 98, 125 (App. Div. 2018) (quoting State v. Thomas, 188 N.J. 137, 153 (2006)). But, rather than resting solely on the offense conduct or criminal history, sentencing courts are to "include an evaluation and judgment about the individual in light of his or her history." Ibid. Here, other than the offense conduct, nothing about Defendant's history is indicative of a likelihood that he will re-offend. Indeed, the trial court made no findings about Defendant's history that would support the required evaluation to find aggravating factor 3. To the contrary, as the State points out, the trial court noted Defendant "had no medical diagnosis, no allergies, no prescribed medication, no mental health diagnosis, learning disabilities or recent drug or alcohol abuse." (State

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Defendant to argue for a lower sentence. (See Da13). As such, the twenty-year sentence imposed was a top-of-the-range sentence, not a mid-range sentence.

Br. at 19). Despite that history, the State (and apparently the trial court) concluded Defendant's history makes him likely to reoffend. (Id. at 20). That conclusion does not follow the facts.

And the cases cited by the State do not support its conclusion. For example, in Locane, the defendant committed an offense while intoxicated. 454 N.J. Super. at 125. The panel tied aggravating factor 3 to the risk that the defendant "may relapse at some point in her life despite her best efforts," creating a "possibility . . . she will again commit an offense while intoxicated." Ibid. This case presents no equivalent concern. Defendant does not have a substance abuse problem or, as noted above, any mental health or conditions that present the risk of relapse.

In State v. Thomas, aggravating factor 3 was not based solely on the quantity of drugs possessed by the defendant as the State contends. (State Br. at 17). Rather, the quantity of drugs was one factor; another factor was the defendant's "seven prior convictions." 188 N.J. 137, 139-40 (2006).[2]

In State v. Varona, the court found aggravating factor 3 without a criminal history based on the defendant's possession of a kilo of cocaine. 242 N.J. Super. 474, 491 (App. Div. 1990). The panel reasoned that quantity was far more than necessary "to constitute a first degree crime" and found it likely the defendant "had access to

[2] The panel noted that the defendant misread the trial court transcript in arguing that the sentencing court did not rely on the defendant's prior criminal history. Thomas, 188 N.J. at 141 * n.1.

large amounts of drugs and would distribute again in the future if allowed to remain free.' Ibid. Even so, "the trial court did 'not give a large amount of weight to' this aggravating factor." Ibid. The facts of Varona are nothing like this case. The record contains no facts to suggest Defendant would commit another offense after release from custody. And, notably, in Varona, the facts led the sentencing court to give little weight to aggravating factor 3. These cases all weigh against finding aggravating factor 3 in this case and, certainly, against giving significant weight to factor 3 if it could be sustained.

Moreover, the trial court did not factor Defendant's advanced age into the analysis or consider what the likelihood of re-offense would be for Defendant upon release in his 80s. Although the aggravating and mitigating factors do not expressly require consideration of advanced age in sentencing, that consideration makes common sense. In considering the history and makeup of a defendant, the advanced age of a defendant at the time of release is germane to the risk of recidivism. See United States Sentencing Commission, The Effects of Aging on Recidivism Among Federal Offenders at 3 (Dec. 2017) ("Older offenders [are] substantially less likely than younger offenders to recidivate following release."), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

The absence of a detailed evaluation and explanation of how Defendant's history led to a finding of aggravating factor 3 is fatal to the trial court's conclusion, and, regardless, the record does not support the finding. Finally, Defendant respectfully submits that if this Court concludes the record does support a finding of aggravating factor 3, that factor, like in Thomas, should be given slight weight on balance with the other facts in the record.

b. The sentencing court failed to adequately balance the aggravating and mitigating factors.

The sentencing court found contrary aggravating and mitigating factors. The trial court found aggravating factor 3 (the risk that the defendant will commit another offense) and mitigating factor 8 (the defendant's conduct was the result of circumstance unlikely to recur) and mitigating factor 9 (the defendant is unlikely to commit another offense). Despite the facially contradictory nature of those factors, the sentencing court made no findings and offered no explanation for how it found those factors or how it balanced those factors in light of the inherent tension in the factors. Nor does the State explain how those factors can be reconciled.

Only in rare cases should courts find contradictory aggravating and mitigating factors. State v. Rivera, 249 N.J. 285, 300-01 (2021). When a sentencing court does make contradictory findings, the court "must explain how it reconciles those [contradictory] findings by providing a detailed, reasoned explanation." State v. Morente-Dubon, 474 N.J. Super. 197, 214-15 (App. Div. 2022) (emphasis added)

(remanding sentence where sentencing court failed to explain contradictory aggravating and mitigating factors and directing sentencing court to "explain how it reconciles" factors "by providing greater detail as to the weight assigned to each aggravating and mitigating factor and how those factors are balanced with respect to the defendant") (internal citations omitted).

Here, the trial court found Defendant was likely to commit another offense while also finding Defendant was unlikely to commit another offense and Defendant's offense was predicated on circumstances unlikely to recur. Those factors are, without doubt, contradictory and require a detailed explanation as to how the court concluded that Defendant was likely to re-offend and unlikely to re-offend.

Further, the sentencing court did not provide a thorough analysis of how those factors apply to Defendant and why the trial court placed greater weight on the one aggravating factor than on the two mitigating factors. This reversible error stands out especially considering the gravity of the offense and severity of the sentence imposed. To appropriately sentence Defendant, and to provide an adequate record for appellate review, the sentencing court must provide a detailed and thorough analysis to justify these contradictory factors and to explain how and why it weighed each of the factors.[3]

[3] The State suggests Defendant bears the burden of explaining why the mitigating factors should be given more weight than the aggravating factors. (State Br. at 25). The problem with the State's argument is that Defendant is at a disadvantage in

c. The sentencing court's finding of the need for deterrence is conclusory, and the sentencing court did not articulate any basis for its finding.

Aggravating factor 9, the need for deterrence "incorporates two interrelated but distinguishable concepts, the sentence's general deterrent effect on the public [and] its personal deterrent effect on the defendant." Fuentes, 217 N.J. at 79 (quoting State v. Jarbath, 114 N.J. 394, 405 (1989)).

The trial court made one short statement regarding aggravating factor 9, the need for deterrence. The court concluded: "There is a strong need, very strong need to deter, not only folks like Mr. Manis, but others from committing these types of crimes and offenses." (2T65:7-10). With that said, the sentencing court gave "significant weight to aggravating factor 9." (2T65:10-11).

On its face, the trial court appears to have found a need for general deterrence rather than specific deterrence, which makes sense because the court also concluded Defendant was unlikely to re-offend and the offense arose from circumstances unlikely to recur. Given those mitigating factors, the court would have no basis to find the need for specific deterrence of Defendant. In other words, a strong need for specific deterrence would not follow from the trial court's findings of mitigating factors 8 and 9. See Fuentes, 217 N.J. at 79 (noting difficulty of finding need for specific deterrence while also finding mitigating factor 8).

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addressing the balancing and weight given to the factors because the sentencing court did not provide the required thorough explanation of its decision.

Further, and significantly, the Supreme Court has held that "[i]n the absence of a finding of a need for specific deterrence, general deterrence has relatively insignificant penal value." Ibid. Indeed, the Supreme Court has recognized for nearly forty years that "the absence of any personal deterrent effect greatly undermines the efficacy of a sentence as a general deterrent." Jarbath, 114 N.J. at 405; see also State v. Gardner, 113 N.J. 510, 520 (1989).

Here, the trial court gave no explanation for its finding of the need for general deterrence in the absence of a finding of the need for specific deterrence. The trial court also did not explain why it gave significant weight to this aggravating factor while also finding contrary mitigating factors to which it gave slight weight. Put simply, the sentencing court arrived at a conclusion without explanation or analysis.

Granted, courts have found the need for general deterrence in certain cases, such as those involving drunk driving. See, e.g., Locane, 454 N.J. Super. 126. But, in that instance, the panel explained in detail, with citation to relevant authority, the basis for placing an emphasis on the need for general deterrence. Defendant further submits that courts should be cautious to overemphasize the need for general deterrence because the need for general deterrence could be found to exist to a degree in any criminal case by virtue of a general policy to prevent crime. See State v. Gardner, 215 N.J. Super. 84, 95-96 (App. Div. 1987) (Dreier, J.A.D., concurring).

To be clear, Defendant does not argue that general deterrence has no place in sentencing. But, Defendant does argue that a finding of the need for general deterrence, and applying significant weight to the factor, cannot be affirmed without the requisite explanation—and further cannot be affirmed without a detailed balancing in the face of finding mitigating factors 8 and 9. This is especially true where the sentencing court did not find specific deterrence.

CONCLUSION

Defendant respectfully submits that the sentence imposed by the trial court should be vacated. The trial court did not adequately explain the basis for its contradictory findings and did not properly evaluate the aggravating and mitigating factors in connection with Defendant. In addition, the record before the Court does not support a finding of aggravating factor 3 and does not support giving significant weight to aggravating factors 3 and 9. As a result, the imposition of a top-of-the-range sentence is unsupported by the record and not entitled to this Court's deference. Defendant respectfully submits that the sentence should be vacated, and this matter should be remanded to the trial court for resentencing.

Respectfully submitted,
Mandelbaum Barrett PC

Dated: May 2, 2025

By: */s/ Andrew Gimigliano*
Andrew Gimigliano