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**LETTER BRIEF**  
**ON BEHALF OF THE STATE OF NEW JERSEY**

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

Re: STATE OF NEW JERSEY (Plaintiff-Respondent)  
v. COREY J. OTTE (Defendant-Appellant)  
Docket No. A-2183-23

Criminal Action: On Appeal from a Final Order of the  
Superior Court of New Jersey, Law Division, Hudson  
County, Denying Pre-Trial Intervention.

Sat Below: Honorable Mitchell L. Pascual, J.S.C.

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Honorable Judges:

Pursuant to Rule 2:6-4(a), this letter brief is submitted in lieu of a formal  
brief on behalf of the State of New Jersey.

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## COUNTERSTATEMENT OF PROCEDURAL HISTORY

On June 28, 2023, defendant Corey J. Otte was charged in Hudson County Indictment No. 23-06-0780 with two counts of third-degree aggravated assault on a law enforcement officer causing serious bodily injury, N.J.S.A. 2C:12-1(b)(5)(a) (counts one and two); and one count of third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(3)(b) (count three). (Da1 to Da2).<sup>1</sup> Defendant pled guilty to count one as amended to fourth-degree aggravated assault on a law enforcement officer on August 28, 2023, and the State agreed to recommend dismissal of the balance of Indictment No. 23-06-0780. (Da13 to Da17). The State sought to impose mental-health treatment as a condition of probation. (1T3-24 to 25, 4-1 to 8).

On August 28, 2023, defendant moved to apply out of time to the pre-trial intervention (PTI) program. (1T12-23 to 13-3). The Honorable Mitchell L. Pascual, J.S.C., granted this first motion that same day. (Da18).

On October 20, 2023, the Criminal Division Manager recommended that defendant be denied PTI, citing defendant's prior and pending cases in New

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<sup>1</sup> The State adopts defendant's appendix and the abbreviations used in defendant's brief—including abbreviations for transcripts—while additionally designating "Db" to refer to defendant's brief and "Pa" to refer to the State's appendix.

York and New Jersey, “most assaultive in nature, indicative of a continuing pattern of antisocial behavior.” (Dca2).

Although the State did not initially oppose defendant applying out of time for PTI, the State agreed with the Criminal Division Manager’s recommendation to deny defendant PTI under Indictment No. 23-06-0780, citing the nature of the offense, the facts of the case, the assaultive or violent nature of defendant’s crime, and the fact that plea negotiations with defendant did not contemplate PTI. (Da20). The State made these findings in writing on October 25, 2023. (Da19 to Da21).

On October 27, 2023, Judge Pascual held a hearing in which the State moved to dismiss several pending indictments and a violation of monitoring against defendant. (2T3-11 to 6-17).

On October 31, 2023, Judge Pascual ordered reconsideration of defendant’s PTI application. (Da23).

On November 17, 2023, the Criminal Division Manager altered its initial recommendation against defendant’s entry into PTI. (Dca22).

At a sentencing hearing-turned-PTI appeal briefing schedule, held on December 8, 2023, the State expressed its position on the record that defendant

should remain ineligible for PTI based on its October 25 written findings, and Judge Pascual set a briefing schedule.<sup>2</sup>

After briefing by the parties, Judge Pascual heard oral argument on January 26, 2024. (3T).

On January 29, 2024, Judge Pascual issued a written opinion denying defendant's appeal from his PTI rejection. (Da25 to Da33).

On February 1, 2024, Judge Pascual sentenced defendant to one-year probation with mental-health counseling as a condition, pursuant to the State's recommendation at the plea hearing. (Da34 to Da36).

On February 4, 2025, Judge Pascual found defendant in violation of probation without improvement. (Pa1).

This appeal follows.

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<sup>2</sup> Defendant did not provide a transcript of this hearing. The State relies on its review of the CourtSmart audio.

COUNTERSTATEMENT OF FACTS

The following facts are derived from defendant's plea colloquy.

On April 10, 2023, at a Light Rail station in Bayonne, defendant encountered a police officer and—with full knowledge of the fact that this was a police officer—attempted to cause the officer bodily injury. (1T7-16 to 8-5).

## LEGAL ARGUMENT

### POINT I

DEFENDANT’S PTI APPEAL WAS CORRECTLY DENIED BECAUSE HE FAILED TO SATISFY HIS BURDEN OF ESTABLISHING BY CLEAR AND CONVINCING EVIDENCE THAT THE STATE COMMITTED A PATENT AND GROSS ABUSE OF DISCRETION.

Defendant challenges the denial of his PTI appeal by Judge Pascual, arguing the State committed a patent and gross abuse of discretion when rejecting defendant from PTI. (Db24). Defendant asks this court to vacate his conviction, reverse Judge Pascual’s order, and remand the matter with instructions to admit him into PTI. (Db34). Because defendant has failed to meet his burden of establishing a patent and gross abuse of discretion by the State, and because defendant sought to use his PTI appeal as a vehicle to collaterally attack his guilty plea, this court should affirm Judge Pascual’s order denying defendant’s PTI appeal.

PTI is “a diversionary program through which certain offenders are able to avoid criminal prosecution by receiving early rehabilitative services expected to deter future criminal behavior.” State v. Nwobu, 139 N.J. 236, 240 (1995) (emphasis added); see also N.J.S.A. 2C:43-12(a)(1), (2) (expressing public policy to afford PTI applicants “with opportunities to avoid ordinary prosecution” and also provide “an alternative to prosecution”) (emphasis

added); accord. Black’s Law Dictionary (12th ed. 2024) (discussing programs “that refer[] certain criminal defendants . . . to rehabilitative community programs, the charges being placed on hold until, and ultimately reduced or dismissed after, benchmarks such as counseling for mental health . . . are met. – Also termed pretrial diversion; pretrial intervention. Cf. deferred judgment under JUDGMENT (2).”) (emphasis added).

Upon withdrawal of a guilty plea, a defendant is “restored to pretrial status” for purposes of PTI. State v. Waters, 439 N.J. Super. 215, 225 n.3 (App. Div. 2015). “[P]ermitting a defendant found guilty of a criminal offense to seek admission to PTI transforms an effective pretrial diversionary program into an alternative sentencing option. Such action stands the PTI program on its head.” State v. Bell, 217 N.J. 336, 348 (2014); see also Waters, 439 N.J. Super. at 224-25 (noting this concern is no less “raised when a trial court grants a PTI appeal after a valid guilty plea”). “A PTI appeal should not be, and is not, a collateral attack on a guilty plea.” Id. at 224 (quoting State v. Moraes-Pena, 386 N.J. Super. 569, 578-89 (App. Div. 2006)).

“[A] primary purpose of PTI is to augment, not to diminish, a prosecutor’s options.” Dalglis, 86 N.J. at 509 (citing State v. Leonardis, 73 N.J. 360, 381 (1977)). Because pretrial diversion is “by its nature part of the prosecutor’s charging function,” Nwobu, 139 N.J. at 245, prosecutors’ decisions regarding

PTI are to be given great deference. State v. Johnson, 238 N.J. 119, 128 (2019) (citing State v. Roseman, 221 N.J. 611, 624 (2015)); cf. State v. Hermann, 80 N.J. 122, 127 (1979) (“We have long held that a prosecutor is vested with broad discretionary powers in the discharge of the manifold responsibilities of his office. . . . This discretion includes both the decision to prosecute an individual whom he has probable cause to believe has violated the law, and the converse decision to refrain from prosecuting such an offender.”).

The scope of review is “severely limited.” State v. Negran, 178 N.J. 73, 82 (2003) (citing Nwobu, 139 N.J. at 246). “Judicial review of a prosecutor’s decision about PTI admission is ‘available to check only the most egregious examples of injustice and unfairness.’” State v. Gomes, 253 N.J. 6, 18 (2023) (quoting Leonardis, 73 N.J. at 384 (1977)).

“A reviewing court must assume, absent evidence to the contrary, that the prosecutor’s office has considered all relevant factors in reaching the PTI decision.” Nwobu, 139 N.J. at 249.

Prosecutors’ PTI decisions “will rarely be overturned,” Leonardis, 73 N.J. at 380, except when the defendant shows through clear and convincing evidence that the prosecutor failed to consider all relevant factors or considered irrelevant or inappropriate factors, amounting to a patent and gross abuse of discretion, Nwobu, 139 N.J. at 247 (1995) (citing State v. Bender, 80 N.J. 84, 93 (1979)).

“In order for such an abuse of discretion to rise to the level of ‘patent and gross,’ it must further be shown that the prosecutorial error complained of will clearly subvert the goals underlying [PTI].” Johnson, 238 N.J. at 129. That is, a defendant must show the prosecutor’s decision “has gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention.” State v. Wallace, 146 N.J. 576, 582-83 (1996); see also Nwobu, 139 N.J. at 254 (“The question is not whether we agree or disagree with the prosecutor's decision, but whether the prosecutor’s decision could not have been reasonably made upon weighing the relevant factors.”).

To obtain remand of a PTI decision for reconsideration by the prosecutor, a defendant must show that (1) the prosecutor’s decision was based upon a consideration of inappropriate factors or not premised upon a consideration of all relevant factors; (2) the denial of PTI results from an incorrect evaluation of relevant factors; (3) the prosecutor’s belief that a particular factor is or is not present was unfounded or based upon unreliable information; or (4) the prosecutor’s statement of reasons denying PTI is inadequate, either because it lacks the necessary specificity or fails to rationally explain the result. State v. Dalglish, 86 N.J. 503, 509 (1981); see also State v. K.S., 220 N.J. 190, 203 (2015) (remanding when prosecutor “did consider but was not swayed by

defendant’s mental-health evidence” but improperly focused on dismissed juvenile charges).

New Jersey enacted its PTI program pursuant to N.J.S.A. 2C:43-12. N.J.S.A. 2C:43-12(b)(1) provides that “[a]dmission of an applicant into a program of supervisory treatment shall be measured according to the applicant’s amenability to correction, responsiveness to rehabilitation and the nature of the offense.”

N.J.S.A. 2C:43-12(e) lists seventeen factors for prosecutors to consider, including the nature of the offense; the facts of the case; the needs and interests of the victim and society; the extent to which the applicant’s crime is part of a continuing pattern of anti-social behavior; the applicant’s record of criminal and penal violations and the extent to which he may present a substantial danger to others; and whether or not the crime is of an assaultive or violent nature, be it in the criminal act itself or in the possible injurious consequences of such behavior.

The statute’s list of seventeen factors is not exhaustive. See N.J.S.A. 2C:43-12(e) (“Prosecutors and program directors shall consider in formulating their recommendation of an applicant’s participation in a supervisory treatment program, among others, the following criteria . . .”). These factors are not weighted. K.S., 220 N.J. at 197-98 (citing State v. Wallace, 146 N.J. 576, 585-

86 (1996)). Case facts “certainly can be discussed more than once within a PTI denial letter, insofar as they may bear on the discrete criteria for eligibility”; thus, “double-counting” principles have not been held to apply to PTI analyses. State v. Lee, 437 N.J. Super. 555, 570 (App. Div. 2014). “For . . . prior dismissed charges to be considered properly by a prosecutor in connection with a[ PTI] application, the reason for consideration must be supported by undisputed facts of record or facts found at a hearing.” K.S., 220 N.J. at 199.

Here, defendant did not meet his burden of showing that the decision to reject him from PTI after final resolution of his case clearly subverts the goals underlying the program. As Judge Pascual found, defendant’s plea agreement with the State did not contemplate PTI and “PTI is a pretrial diversionary program.” (Da33) (emphasis in original). Defendant’s claim that PTI applications are prohibited “post-trial” but not “post-guilty plea” makes a distinction without a difference. (Db20). Trial fact-finders and judges overseeing allocution differ only in method while reaching the same terminus of prosecuting an offense. Compare Bell, 217 N.J. at 348 (rejecting the transformation of “an effective pretrial diversionary program into an alternative sentencing option” for defendants who are “found guilty of a criminal offense”) with Waters, 439 N.J. Super. at 224-25 (noting concern expressed in Bell is also “raised when a trial court grants a PTI appeal after a valid guilty plea”).

By contrast, as our jurisprudence has long recognized, PTI is a process that serves as a diversion from prosecuting. See Nwobu, 139 N.J. at 245 (regarding PTI as corollary to prosecutor’s “charging function”). This is evidenced by the legislative findings animating the PTI statute and the meaning of its text.

N.J.S.A. 2C:43-12(a)(1) explains PTI’s intent to afford opportunities to “avoid ordinary prosecution.” Subsection (a)(2) further regards PTI as “an alternative to prosecution.” N.J.S.A. 2C:43-12(a)(2). And diversionary programs like PTI are analogous to a “deferred judgment.” Black’s Law Dictionary (12th ed. 2024).

Defendant’s claim before Judge Pascual—that PTI “is an alternative sentencing mechanism”—was properly rejected, for it flies in the face of precedents ruling that PTI is not “an alternative sentencing option.” E.g., Bell, 217 N.J. at 348 (rejecting “transform[ation of] an effective pretrial diversionary program into an alternative sentencing option”); Moraes-Pena, 386 N.J. Super. at 578-89. (3T11-21 to 22; Da33).

Judge Pascual properly held that “[a]dmitting the Defendant into PTI based upon the Criminal Division’s changed recommendation that occurred in part because of a dismissal as a result of the negotiated plea agreement would undermine the plea negotiation process.” (Da31). Defendant’s focus on the

Criminal Division Manager altering its recommendation is misplaced. After first recommending defendant's rejection from PTI, (Dca2), the Criminal Division Manager recommended defendant's admission into PTI following case dispositions on the State's motion to dismiss, (Dca22). Because "a primary purpose of PTI is to augment, not to diminish, a prosecutor's options," Dalglis, 86 N.J. at 509, allowing the State's proper use of discretion in dismissing cases against defendant to benefit him twice over—first, by having fewer charges to face, then again by avoiding a plea agreement he knowingly and voluntarily made—would countenance a diminishing of prosecutorial discretion that is foreign to our jurisprudence. See Hermann, 80 N.J. at 127-28 (noting that prosecutors' "broad discretionary powers" encompass "both the decision to prosecute an individual whom he has probable cause to believe has violated the law, and the converse decision to refrain from prosecuting such an offender").

Even if defendant can show that the State considered inappropriate or irrelevant factors, or did not consider relevant factors, this alone does not give rise to a patent or gross abuse of discretion. To meet his burden for obtaining PTI by an order from this court, defendant must also show that the State's decision clearly subverts the goals of PTI. Because it is defendant who—by his request for relief and his arguments—asks the State and this court to clearly subvert the goals of PTI, defendant fails at this additional step.

Defendant also fails to overcome the presumption that the State considered all relevant factors in denying PTI. See Nwobu, 139 N.J. at 249. Here, the State appropriately considered the nature of the offense, the facts of the case, and the assaultive and violent nature of this crime. (Da20). Noting defendant’s recommended sentence on the pleaded fourth-degree aggravated assault charge to “non-custodial probation with mental health treatment as a condition,” the State represented that it “agree[d] with the [Criminal Division Manager’s] rejection and ha[d] reviewed the [PTI] application in its entirety.” (Da19).

The State proceeded to assess the nature of the offense and the facts of the case with a view to gauging defendant’s amenability for rehabilitation: specifically, the prosecutor noted the assault on and flight from officers, finding that defendant’s transgressions “exhibit[ed] a disregard for law enforcement” and a “disregard for commands, obstruction of the administration of law, and then physical violence.” (Da20). Because the State may consider the seventeen criteria for PTI “among others,” N.J.S.A. 2C: 43-12(e), it was not arbitrary for the State here to consider that the plea agreement did not contemplate defendant’s entry in PTI: not “before, during, or after the entry of the plea.” (Da20). Furthermore, because the State itself sought mental-health treatment as a condition in the plea agreement—and so indicated in the denial letter—the

State is presumed to have considered defendant’s mental health absent clear and convincing evidence to the contrary. See Nwobu, 139 N.J. at 247, 249.

Unlike K.S., in which the Court remanded a denial of PTI for the prosecutor’s consideration when the State “did consider but was not swayed by defendant’s mental-health evidence” while improperly focusing on dismissed juvenile charges outside the record, 220 N.J. at 203, here, the State is presumed to have considered defendant’s mental health and still appropriately decided—in light of record facts about defendant’s “disregard for commands, obstruction of the administration of law, and then physical violence,” (Da20; 1T7-16 to 8-5)—that defendant was “not a good candidate for the PTI program,” (Da20).

Defendant’s six remaining contentions are unavailing. First, defendant claims that the State “improperly focused exclusively upon the [underlying] incident” itself. (Db27). Second, defendant claims that the State failed to consider defendant’s motivation and age in light of mitigating factor fourteen in our sentencing statute. (Db29). Third, defendant claims that the State failed to weigh in defendant’s favor the absence of the victim’s desire to forego prosecution. (Db30). Fourth, defendant claims that the State “should have . . . given substantial weight” to the likelihood that defendant’s crime was related to a condition or situation that would be conducive to change under supervisory treatment. (Ibid.). Fifth, defendant claims that the State should

have considered whether prosecuting him would exacerbate the problem that led to his criminal act. (Db31 to Db32). Sixth, defendant claims that the State did not consider whether he was involved in organized crime, whether he had a prior history of physical violence toward others, or whether he committed this crime with codefendants. (Db32).

Contrary to the assertion that the State “improperly focused exclusively” on the case facts, case facts “certainly can be discussed more than once within a PTI denial letter, insofar as they may bear on the discrete criteria for eligibility.” Lee, 437 N.J. Super. at 570. The State was well within bounds because it used the facts of defendant’s case to explain why it relied on multiple discrete factors when denying PTI.

Second, analogizing PTI analyses to a sentencing function—as defendant has repeatedly done in his arguments—is wholly improper. In the first instance, unlike sentencing factors, PTI factors individually carry no weight. Compare K.S., 220 N.J. at 197-98 (citing Wallace, 146 N.J. at 585-86) (PTI factors not weighted) with State v. Case, 220 N.J. 49, 65-66 (2014) (outlining how sentencing courts should treat aggravating factors when they substantially outweigh mitigating factors). Accordingly, any suggestion that the State should have given a particular degree of weight for some PTI factors over others in

favor of admitting defendant into the program lacks support in the case law and should be disregarded. (Db30, Db32).

Relatedly, the claim that the State should have considered whether prosecuting defendant would exacerbate the problem that led to his violent conduct is unfounded when, as here, defendant has long been prosecuted and is on probation with mental-health treatment as a condition imposed by the State. Defendant's mental health was considered when the State decided not to admit him into PTI. And it is indeed difficult to imagine how being free from incarceration while receiving mental-health treatment exacerbates mental health issues.

Lastly, defendant alleges the State considered irrelevant or inappropriate factors, while inviting the State to consider irrelevant factors on remand—in particular, whether defendant's offense involved organized crime or codefendants. Because this and other claims for remand are without merit, defendant has not established by clear and convincing evidence that he is entitled to that relief.

Should this court grant remand—which, to be sure, it should not—the State would be allowed to factor defendant's recent violation of probation in deciding whether to give defendant a third chance. (Pa1); cf. State v. Pellegrino, 254 N.J. Super. 117, 120, 121 (App. Div. 1992) (permitting a defendant's

dismissal from PTI when, “six months after being accepted into PTI,” the defendant was sentenced to probation for selling controlled substance to an undercover police officer because the defendant’s actions “can only be understood as a demonstration of unsuitableness for his further participation in [PTI]”). See generally Nwobu, 139 N.J. at 257 (“PTI closely resembles probation, which has been recognized as a criminal sanction.”).

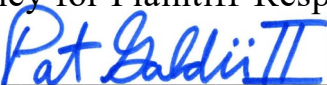
Given the foregoing, defendant’s PTI appeal was correctly denied because he failed to meet his burden of establishing by clear and convincing evidence that the State abused its discretion in rejecting PTI. Judge Pascual’s decision should be affirmed.

CONCLUSION

For the foregoing reasons, the State asks that the denial of defendant's PTI appeal be affirmed.

Respectfully submitted,

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