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The Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Post Office Box 006
Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Respondent)
v. Jamar Myers (Defendant-Appellant)

Docket No. A-002045-22

Criminal Action: On Petition for Reconsideration of Denial of
Defendant's Appeal of Motion to Withdraw Guilty Plea
in the Superior Court, Law Division (Criminal), Mercer
County

Sat Below: Honorable J. Peter Warshaw, J.S.C.

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of a more
formal brief submitted on behalf of the State of New Jersey.

TABLE OF CONTENTS

COUNTERSTATEMENT OF PROCEDURAL HISTORY 1

 A. April 29, 2011 Homicide and Armed Robberies

 B. May 7, 2011 Armed Robbery

COUNTERSTATEMENT OF FACTS 5

LEGAL ARGUMENT 6

POINT I DENIAL OF DFENDANT’S PLEA WAS PROPER..... 6

 a. THE CONDITIONAL PLEA RULE DOES NOT APPLY TO DEFENDANT’S SEPARATE PLEA

 b. THE TRIAL COURT CORRECTLY APPLIED SLATER

 c. RELITIGATON OF THIS MATTER IS A VIOLATION OF VICTIM’S CONSTITUTIONAL RIGHTS

CONCLUSION 12

COUNTERSTATEMENT OF PROCEDURAL HISTORY¹

A. April 29, 2011, Homicide and Armed Robberies

On February 26, 2014, a Mercer County Grand Jury returned Indictment Number 14-02-0232-I, charging defendant with murder, first degree, contrary to N.J.S.A. 2C:11-3a (Count I); murder as an accomplice, first degree, contrary to N.J.S.A. 2C:11-3a; 2C:2-6 (Count II); felony murder, first degree, contrary to N.J.S.A. 2C:11-3a(3) 1 (Count III); robbery, first degree, contrary to N.J.S.A. 2C:15-1 (Count IV); four counts of possession of a weapon for an unlawful purpose, second degree, contrary to N.J.S.A. 2C:39-4a (Counts V, VI, VII, XII); two counts of unlawful possession of a weapon, second degree, contrary to N.J.S.A. 2C:39-5b (Counts VIII, IX); tampering with evidence, fourth degree, contrary to N.J.S.A. 2C:28-6(1) (Count X); and attempted robbery, first degree, contrary to N.J.S.A. 2C:15-1; 2C:5-1 (Count XI). Da1-13. These charges resulted from two related crimes committed by defendant on April 29, 2011: first, was defendant's attempted robbery of Vizzoni's Pharmacy in Hamilton; second, was defendant's armed robbery and murder at the Brunswick Avenue Pharmacy in Trenton.

¹ Due to the unrelated nature of defendant's two cases, these sections have been separated for accuracy of the record.

The State filed a pretrial motion pursuant to N.J.R.E. 404(b) to introduce evidence of other wrongs and/or other acts. On September 30, 2016, the trial court granted, in part, and denied, in part, this motion.

On November 29, 2016, defendant pled guilty to first-degree felony murder, Count III of Indictment Number 14-02-0232-I. The State agreed to dismiss all other counts of the indictment and to recommend the mandatory minimum sentence. On July 27, 2017, defendant was sentenced in accordance with this plea deal to thirty-years of incarceration without parole. Defendant acknowledged what he was pleading to, acknowledged the concurrent nature of the sentences, and stated he did not have any questions about the consequences of this plea. Defendant was also advised of the burden related to attempting to undo a guilty plea.

Defendant appealed all of his pretrial rulings together. On April 12, 2019, the Appellate Division affirmed the trial court's decision on the N.J.R.E. 404(b) motion. On February 12, 2021, the Supreme Court of New Jersey issued an Order in which it declined to hear defendant's case regarding the N.J.R.E. 404(b) issue.

On April 14, 2022, defendant filed a motion to withdraw his guilty plea. After hearing oral argument, the trial court denied defendant's motion on March 3, 2022.

On March 13, 2023, defendant filed a notice of appeal of the denial of the motion to withdraw the guilty plea with the Superior Court, Appellate Division. On March 19, 2024, the Appellate Division heard oral argument in this matter and

affirmed the denial of defendant's motion to withdraw the guilty plea. Defendant filed a Motion for Reconsideration on March 28, 2024.

B. May 7, 2011 Armed Robbery

On August 23, 2011, a Mercer County Grand Jury returned Indictment Number 11-08-0833-I, charging defendant with robbery, first degree, contrary to N.J.S.A. 2C:15-1 (Count I); theft by unlawful taking, third degree, contrary to N.J.S.A. 2C:20-3a (Count II); aggravated assault, fourth degree, contrary to N.J.S.A. 2C:12-1b(1) (Count III); terroristic threats, third degree, contrary to N.J.S.A. 2C:12-3a (Count IV); possession of a firearm for an unlawful purpose, second degree, contrary to N.J.S.A. 2C:39-4a (Count V); unlawful possession of a handgun, second degree, contrary to N.J.S.A. 2C:39-5b (Count VI); possession of a defaced firearm, fourth degree, contrary to N.J.S.A. 2C:39-3d (Count VII); theft by receiving stolen property, third degree, contrary to N.J.S.A. 2C:20-7a (Count VIII); unlawful taking of a means of conveyance, fourth degree, contrary to N.J.S.A. 2C:20-10d (Count X). Da14-25. These charges were a result of defendant's armed robbery of a 7-Eleven in Hamilton that occurred on May 7, 2011.

Defendant subsequently filed a motion to suppress evidence. On October 4, 2013, the trial court granted defendant's motion to suppress in part. Specifically, the court suppressed the gun found in the vehicle, but found that the clothing and money found in a separate area of the vehicle would be admissible.

On November 29, 2016, the State, in an attempt to resolve all of defendant's cases, offered defendant a plea deal to resolve this case. Defendant accepted, and plead guilty to first-degree robbery, Count I of Indictment Number 11-08-0833-I, in exchange for a recommendation of a 12-year term of incarceration, subject to the No Early Release Act, to run consecutive to the sentence on Indictment Number 14-02-0232-I. On July 27, 2017, defendant was sentenced in accordance with this plea deal.

Defendant appealed all of his pretrial rulings in a single appeal. On April 12, 2019, the Appellate Division affirmed the trial court's decision on the suppression motion. Subsequently, the New Jersey Supreme Court granted limited certification, solely of the suppression issue in *this* case. The Supreme Court declined to hear the issues regarding defendant's other case.

On January 25, 2022, the Supreme Court issued an opinion reversing the denial of defendant's suppression motion on the 7/11 robbery. The Supreme Court dismissed defendant's conviction for this case and remanded the matter to the trial court. At that time, the State declined its right to further prosecute this matter because defendant was already serving a thirty-year sentence on his felony murder conviction.

COUNTERSTATEMENT OF FACTS

During the plea colloquy, defendant admitted that on April 29, 2011, he entered the Brunswick Pharmacy on Brunswick Avenue in Trenton, New Jersey. He further admitted he was armed with a handgun, and entered the store for the purpose of obtaining Percocet with a fraudulent prescription. Defendant admitted that after entering the store, he decided to commit armed robbery. Specifically, defendant admitted that he pulled out the gun and demanded that the victim give him Percocet. Most importantly, defendant stated that during the course of this attempted robbery the gun “went off” and shot and killed the victim. (1T:21-12 to 23-1).

At the motion to withdraw the guilty plea, the trial court noted the heavy burden was on the defendant. The court highlighted that defendant’s assertion of innocence was a blanket, bald statement. Additionally, the court found defendant’s reason for withdrawal weak. Defendant knew the consequences of his plea and his reasonable expectations were met. Most notably, the trial court found “the parties contemplated retaining a lot of rights in terms of appeal [at the time of the plea]... but there was never any discussion or preservation of any rights to do anything regarding the homicide conviction if the robbery conviction ultimately got reversed.” (2T:48-7 to 48-13). Finally, the court acknowledged the rights the State gave up when entering this plea and highlighted the unfairness which would result if defendant were permitted to withdraw his plea.

LEGAL ARGUMENT

POINT I

a. THE CONDITIONAL PLEA RULE DOES NOT APPLY

Defendant argues the trial court wrongly denied his motion to withdraw his guilty plea under the conditional plea rule. R. 3:9-3(f). Defendant cites basic contract law in support of this argument. In short, defendant explicitly states that as a result of the pretrial motion in the 7-eleven case being overturned, he is entitled to withdraw his guilty plea on this pharmacy robbery, a wholly separate case.

The conditional plea rule states that “[w]ith the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant shall be afforded the opportunity to withdraw his or her plea.” R. 3:9-3. Additionally, R. 3:5-7(d) expressly permits “a defendant to challenge on appeal an unlawful search and seizure of evidence after entering a guilty plea.” State v. Davila, 443 N.J. Super. 577, 586, (App. Div. 2016).

There is no law, nor case law, that allows the conditional plea rule to apply to a defendant’s multiple unrelated indictments and pleas. This is a matter of common sense and logic. Rather, our courts have already determined that the conditional plea rule does not apply to multiple unrelated indictments, unless there was explicit

intention from both the State and defendant at the time of the pleas. State v. Dunns, No. A-0851-19T1 (App. Div. Mar. 9, 2020) (slip op. at 6).

In Dunns, the defendant pled to separate indictments, and was sentenced to serve one sentence concurrent to the other. Thereafter, defendant appealed the trial court's denial of his motion to sever on one of his two cases. The appellate court reversed the trial court's decision. Defendant was then allowed to withdraw his plea in that case only. The State then moved to withdraw the second plea, citing principles of basic contract law and fairness. See ibid.

The appellate court upheld the denial of the State's motion, and illustrated the difference between plea agreements and general contract law. Dunns, slip op. at *5. The appellate court found the "two plea agreements were separate and were not intended by both parties to represent a single global resolution of all criminal matters pending against defendant." Ibid. In this decision, the court highlighted that it was not "expressly state[d] on the record that the second agreement was part and parcel of the first agreement. Nor did the prosecutor expressly set as a condition of its plea offer that the State could withdraw from the second agreement if defendant were permitted to withdraw from the first agreement." Dunns, slip op. at *6. The appellate division's opinion made it clear that "[i]n the absence of a clear indication in the record that *both* parties intended for the two agreements to rise or fall together," plea

agreements on separate indictments should be viewed separately for the purposes of withdrawing a guilty plea. Dunns, slip op. at *1.

Following the persuasive opinion and reasoning in Dunns, here the crimes underlying the concurrent – but separate – sentences were committed by defendant over a week apart. The cases each had different facts, victims, and codefendants. Additionally, the indictments to which defendant pled were filed years apart. When the State articulated the plea deals on the record, it was clear the pleas were separate. (1T:5-15 to 5-20). The State specifically offered, “that he plead guilty to murder, to receive a 30-year period of New Jersey State Prison with a 30-year period of parole ineligibility. That would run concurrent to not only the Pennsylvania charge but to the robbery in Hamilton as well, I believe the number we placed on it was 12 NERA.” Ibid. A review of the record illustrates that the State clearly intended two separate, distinct resolutions, while allowing defendant the benefit of serving those two separate, distinct sentences at the same time. This is further evidenced by the fact that, at the time of the guilty pleas, the trial court took the factual basis for the guilty pleas one at a time. (1T:21-12 to 24-18). Additionally, there are two separate Judgement of Convictions in this matter. Da64-70.

It is clear defendant pled to two unrelated indictments. In addition, the trial court created a thorough record at the time of the plea which is absent any proof that the State intended to allow defendant to withdraw from the second agreement if

defendant were permitted to withdraw from the first agreement. Contrary to defendant's assertions, the reversal of a pretrial motion in an unrelated case is wholly irrelevant when determining whether a defendant is entitled to withdraw his plea in the case at hand. As such, the conditional plea rule is not applicable in the current case.

b. THE TRIAL COURT CORRECTLY APPLIED THE SLATER FACTORS.

Defendant states that the trial court's decision must be reversed because it applied the wrong standard of law to defendant's motion to withdraw his guilty plea. Here, the trial court correctly analyzed defendant's motion to withdraw his plea using Slater factors. See State v. Slater, 198 N.J. 145, 151 (2009).

In Slater, the Court outlined a framework to assess claims to withdraw a plea:

[I]n evaluating motions to withdraw a guilty plea, trial courts should consider the following factors: (1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused.

[State v. Lipa, 219 N.J. 323, 332 (2014)].

At the hearing for the motion to withdraw, the trial court discussed these factors and their applicability in the present case extensively. (2T:44-13 to 52-1.) The court found that defendant was merely making a bald assertion of innocence.

(2T:45-18 to 46-8). Additionally, the trial court found the nature of defendant's reasons for withdrawal unpersuasive, and the strength of the reasons to be without proof. (2T:49-3 to 49-16). Lastly, the trial court found clear prejudice to the State and unfair advantage to the defendant. (2T:50-14 to 51-20).

“The withdrawal of a guilty plea is within the broad discretion of the trial court.” State v. Bellamy, 178 N.J. 127, 135 (2003); see also R. 3:21-1. “We will ... reverse the denial of a motion to withdraw a guilty plea ‘only if there was an abuse of discretion which renders the lower courts' decision clearly erroneous.’ ” State v. Hooper, 459 N.J. Super. 157, 180 (App. Div. 2019) (quoting State v. Simon, 161 N.J. 416, 444 (1999)). “Although the ordinary ‘abuse of discretion’ standard defies precise definition, it arises when a decision is ‘made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.’ ” Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigration & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

In the present case, the trial court applied the correct standard of law with fleshed out reasoning and thorough explanation. As cited above, the trial court went through every factor individually and found that every factor weighed against allowing defendant to withdraw his plea. It is clear the trial court was well within its discretion when denying defendant's guilty plea.

c. RELITIGATION OF THIS MATTER IS A VIOLATION OF VICTIM'S
CONSTITUTIONAL RIGHTS

The New Jersey Legislature has a clear interest in protecting the rights of victims of crimes. The Victims' Rights Amendment (VRA) set forth enumerated rights of crime victims. N.J. Const. art. 1, para. 22. The New Jersey Constitution specifically states, "A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system." N.J. Const. art. I, ¶ 22. The court must interpret the above principles and apply them in every case involving a victim, as to not violate the rights of those who have already been violated. In the present case, this Court must balance the defendant's constitutionally based interests with the victim's constitutional rights.

On April 29, 2011, this Defendant murdered Arjun Reddy Dyapa. He was a husband. He was a father. He was a brother. He was an uncle. The victims in this case, who survived Mr. Dyapa, have the right to fairness, compassion, and respect from the criminal justice system. They waited over five years for Defendant to admit that he murdered their loved one. Nothing can bring back Mr. Dyapa, but at least his family got justice and closure. Defendant's newest attempt to relitigate a crime that he has already admitted to is directly against the interest of these victims. These

victims will be retraumatized. As directly stated in the Constitution, it is the job of the this Court to respect these victims.

CONCLUSION

Based on the aforementioned reasons, the State respectfully requests that this Court deny defendant's Motion for Reconsideration of Denial of Defendant's Appeal of Motion to Withdraw Guilty Plea.

Respectfully submitted,

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