

Supreme Court of New Jersey

DOCKET NO. 090743

CRIMINAL ACTION

ON PETITION FOR
CERTIFICATION FROM A FINAL
JUDGEMENT OF THE SUPERIOR
COURT OF NEW JERSEY,
APPELLATE DIVISION

STATE OF NEW JERSEY
PLAINTIFF-RESPONDENT

v.

JAMAR MYERS
DEFENDANT-APPELLANT

SAT BELOW:

Hon. Robert J. Gilson, P.J.A.D.
Hon. Lisa A. Firko, J.A.D.
Hon. Avis Bishop-Thompson,
J.A.D.

SUPPLEMENTAL BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

ERIN REIN
Assistant Prosecutor
Of Counsel and On the Brief
erein@mercercounty.org
Attorney ID 410042022

JANETTA D. MARBREY
PROSECUTOR
Office of the Mercer County
Prosecutor
209 South Broad Street
Trenton, NJ 08650

TABLE OF CONTENTS

COUNTERSTATEMENT OF PROCEDURAL HISTORY..... 1

COUNTERSTATEMENT OF FACTS 5

LEGAL ARGUMENT 6

POINT I 6
 THE CONDITIONAL PLEA RULE DOES NOT APPLY

POINT II 12
 THE TRIAL AND APPELLATE COURTS CORRECTLY
 APPLIED THE FACTORS SET FORTH IN STATE V.
 SLATER

POINT III 14
 APPLYING DEFENDANT’S READING OF THE
 CONDITIONAL PLEA RULE IS IMPRACTICAL AND
 DETRIMENTAL TO OUR JUSTICE SYSTEM

POINT IV 16
 IN THE INTEREST OF JUSTICE, DEFENDANTS
 SHOULD BE REQUIRED TO ASSERT A COLORABLE
 CLAIM OF INNOCENCE WHEN ATTEMPTING TO
 WITHDRAW A PLEA UNDER THE CONDITIONAL
 PLEA RULE

CONCLUSION 19

TABLE OF APPENIDX

State v. Dunns, No. A-0851-19T1 (App. Div. Mar. 9, 2020) Pa1

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, New Jersey; second, was defendant's armed robbery and murder at the Brunswick Avenue Pharmacy in Trenton, New Jersey.

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 agreement,

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 on 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. On March 11, 2025, the Appellate Division again heard oral argument on the matter. On May 6, 2025, the

Appellate Division affirmed the denial of defendant's motion to withdraw his guilty plea and issued an opinion supporting its decision. Defendant then petitioned for certification to this Court, and on September 9, 2025, this Court granted certification. This brief follows.

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 regarding 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.

At the appellate argument, the court probed defendant. Defendant was clear, he is not asserting his innocence.

LEGAL ARGUMENT

POINT I

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 robbery being overturned, he is entitled to withdraw his guilty plea to the pharmacy homicide, a wholly separate case.

Plea agreements are governed by “basic principles of contract law.” State v. Means, 191 N.J. 610, 622 (2007); see U.S. v. Barnes, 83 F.3d 934, 938 (7th Cir. 1996) (“Plea agreements are governed by ordinary contract principles.”); U.S. v. Floyd, 1 F.3d 867, 870 (9th Cir. 1993) (“A plea agreement is contractual in nature and is subject to contract law standards.”). “It requires a meeting of the minds upon the negotiated pleas and is an executory agreement since it depends on the approval of the sentencing court.” State v. Smith, 306 N.J. Super. 370, 383 (App. Div. 1997); see also Means, 191 N.J. at 622.

As a contract, “all material terms and relevant consequences” must be “clearly disclosed, fully understood, and knowingly and voluntarily accepted” by the

defendant and the State. State v. Warren, 115 N.J. 433, 444 (1989); see also State v. Bell, 250 N.J. 519, 542 (2022) (emphasizing “clearly agreed-upon delineations of the terms of the sentence recommendations” as supporting fair administration of justice); R. 3:9-3(b) (requiring terms of plea agreement to be “placed on the record in open court at the time the plea is entered.”); Goldfarb v. Solimine, 245 N.J. 326, 339 (2021) (stating contract “must be sufficiently definite ‘that the performance to be rendered by each party can be ascertained with reasonable certainty.’”) (citation omitted).

When an alleged condition is not made explicit and clear, it is not part of the agreement. See, e.g., State v. Davila, 443 N.J. Super. 577, 586 (App. Div. 2016) (finding defense counsel’s “casual mention of ‘all the motions’” and “a difficult-to-read handwritten list” insufficient to preserve issue for appellate review). It is irrelevant which party asserts this alleged condition. State v. Conway, 416 N.J. Super. 406, 412 (App. Div. 2006) (“[I]f the State wanted to condition this plea agreement on the co-defendants accepting a plea bargain, the State should have explicitly stated that condition in the written plea agreement or in the prosecutor’s confirmation of the agreement on the record.”).

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. 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). This is consistent with requiring all plea agreements to expressly outline all conditions. See, e.g., State v. Davila, 443 N.J. Super. 577, 586 (App. Div. 2016).

In Dunns, the defendant pled guilty 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.

Here, the Appellate Court correctly ruled that, using the basic principles of contract law, defendant received the benefit of his bargain. (Dpa14). Defendant accepted a plea bargain that sentenced him to the mandatory statutory minimum of thirty years in the Pharmacy murder, resolved an entirely separate case for concurrent time in the 7-Eleven robbery, resolved three violations of probation for concurrent sentences, and resolved an out of state case for a concurrent sentence.

Most importantly for this matter, in section 4(e) of the plea agreement, the right to appeal certain pretrial motions were listed separately and distinctly. In that regard, defendant did reserve his right to appeal the suppression decision in the 7-Eleven case. He separately reserved his right to appeal the N.J.R.E. 404(b) decision in the Pharmacy case. Additionally, written into the plea was defendant's right to withdraw from the agreement if Pennsylvania refused to run his out of state sentence concurrently. Defendant was afforded each of those rights and got exactly what he bargained for in his plea agreement.

It is notable, defendant was afforded the opportunity to appeal the ruling in the N.J.R.E. 404(b) motion. Defendant repeatedly cites the N.J.R.E. 404(b) evidence as a strengthening factor of their argument. (Db 24, 25). This, however, is irrelevant. The State could still have used the video footage from the 7-Eleven to prove defendant's identity. Moreover, the State could have used the letter defendant had written to show consciousness of guilt. Lastly, the State would have had the testimony of the codefendant concerning defendant's participation in the robbery and murder at the Brunswick Pharmacy. Defendant had the opportunity to appeal the N.J.R.E. 404(b) decision, and that appeal was denied. Addressing the N.J.R.E. 404(b) evidence in this appeal conflates the issue at hand, and is nothing more than defendant's attempt at getting a second bite of the apple.

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).

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. This silence is in stark contrast to how the parties handled the Pennsylvania robbery. (3T48-7 to 13). 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.

POINT II

THE TRIAL AND APPELLATE COURTS CORRECTLY APPLIED THE FACTORS SET FORTH IN STATE V. SLATER

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, both the trial court and the appellate court correctly analyzed defendant's motion to withdraw his guilty plea using the 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 extensively discussed these factors and their applicability to the present case. 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). Ultimately the trial court found that every factor weighed against allowing defendant to withdraw his plea. The appellate court found the trial court applied the correct standard of law and was "well within" its discretion when denying defendant's guilty plea. Ibid.

Defendant has not asserted a colorable claim of innocence. In his certification, he baldly stated that he is innocent, and that he "only accepted the plea because he could not get a fair trial." Those statements do not refute the testimony that he gave under oath when he pled guilty. In pleading guilty in 2016, defendant admitted that he had entered the Brunswick Pharmacy on April 29, 2011, armed with a handgun. He then admitted that he pulled out the gun, demanded that the victim give him Percocet, that during the course of the robbery, the gun "went off," and the victim was shot and killed. Notably, defendant also admitted that he entered the pharmacy with the intent to commit armed robbery. At the appellate argument, this was again made clear; as a part of this appeal, defendant is not asserting his innocence.

Additionally, withdrawing defendant's plea to felony murder at this stage would result in unfair prejudice to the State. When defendant entered his guilty plea

in 2016, the State was prepared to go to trial in the Pharmacy case. The record also demonstrates that the State had substantial evidence against defendant, including the agreement of his co-defendant to testify against defendant.

Given the passage of nearly fifteen years since the homicide, it is not clear that the State would be able to litigate this in a substantially similar manner as to the way it was prepared to on the date of the plea. Notably, these two cases have a tortured history that potentially impacts witnesses' availability and willingness to cooperate.

POINT III

APPLYING DEFENDANT'S READING OF THE CONDITIONAL PLEA RULE IS IMPRACTICAL AND DETRIMENTAL TO OUR JUSTICE SYSTEM

Plea negotiations are a fundamental cornerstone of our criminal justice system. “Plea bargaining [is] firmly institutionalized in this State as a legitimate, respectable and pragmatic tool in the efficient and fair administration of justice.” State v. Means, 191 N.J. 610, 618 (2007) (quoting State v. Taylor, 80 N.J. 353, 360-61 (1979)). Plea bargaining accommodates societal interests “by helping the criminal justice system keep pace with the ever-burgeoning caseload” and benefits defendants “by reducing penal exposure.” State v. Pennington, 154 N.J. 344, 362 (1998); State v. Rodriguez, 466 N.J. Super. 71, 108 (App. Div. 2021) (“One of the quintessential

features of plea bargaining is the State’s agreement to reduce a defendant’s penal exposure in exchange for the defendant’s guilty plea.”). The conditional plea rule was created to further these ideals, specifically “to permit preservation of issues for appeal without the necessity of full trials.” State v. Robinson, 224 N.J. Super. 495, 499 (App. Div. 1988).

Defendant asks this Court to impose a nonsensical standard that is the epitome of form over substance. Under defendant’s interpretation, if the same deal had been documented on separate plea forms for each indictment instead of on a single form, or if defendant pleaded guilty to the felony murder on one day and the robbery the next instead of at the same hearing, the conditional aspect of each case would not currently be at issue. Ultimately, this interpretation of the law would lead to absurd requirements in practice.

In the present case, the plea bargain allowed for judicial economy – it allowed the trial court to resolve six separate cases on one date. As discussed above, this was beneficial to all parties involved, but particularly beneficial to the economy of the courts. If this Court were to appease defendant and impose a rigid rule of law, it would be contrary to the need for expediency and economy, and would have widespread negative consequences on the New Jersey Courts and on criminal defendants. If this Court makes a brightline rule, as defendant requests, allowing defendants to withdraw from global plea agreements under these circumstances, the

State will have little incentive to offer global resolutions. Courts would be inundated with cases requiring multiple scheduling dates, multitudes of paperwork, and significantly more time and resources for resolution of multiple cases.

Additionally, the discouragement of global plea resolutions would negatively impact defendants. See Bell, 250 N.J. at 542 (noting plea-bargaining “reduc[es] penal exposure”); State v. Rodriguez, 466 N.J. Super. 71, 108 (App. Div. 2021) (“One of the quintessential features of plea bargaining is the State’s agreement to reduce a defendant’s penal exposure in exchange for the defendant’s guilty plea.”). Global plea agreements often – with this case as a prime example – offer defendants lesser sentences, concurrent sentences, and dismissal of cases. The State would have little incentive to offer these benefits, without the benefit of finality and expediency.

POINT IV

IN THE INTEREST OF JUSTICE, DEFENDANTS SHOULD BE REQUIRED TO ASSERT A COLORABLE CLAIM OF INNOCENCE WHEN ATTEMPTING TO WITHDRAW A PLEA UNDER THE CONDITIONAL PLEA RULE

The Slater Court did a comprehensive analysis of the competing interests of the State and a defendant when a defendant attempts to retract a plea. All of these considerations are still relevant when analyzing a request to withdraw under the conditional plea rule. It is undisputable that both the State and defendants, as well as

other citizens, have a long recognized “important interest of finality to pleas.” Smullen, 118 N.J. at 416. Defendants are entitled to “fairness and protection of basic rights.” State v. Taylor, 80 N.J. 353, 365 (1979). The State has a strong interest “in having criminal wrongdoers account and in the finality of that accounting.” Ibid. Importantly, “victims of an offense also have an obvious interest in the finality of criminal proceedings.” Slater, 198 N.J. at 155. These principles apply to all plea bargains and negotiations, not just those under R. 3:9-3(e).

To balance the interests of all parties, the Slater Court discussed in detail four factors a court should use to evaluate plea withdrawal motions. First and foremost, the Court identified the “core concern underlying motions to withdraw guilty pleas is to correct the injustice of depriving innocent people of their liberty.” Slater, 198 N.J. at 467. The Court repeatedly demonstrated that the primary interest was “justice” for all parties. Both standards articulated by the court have the common goal of a fair and just outcome. See Slater, 198 N.J. at 467, explaining “interest of justice” and “manifest injustice.” Ultimately, the Court mandated a “flexible approach will help ensure that justice is done in each case” when considering motions to withdraw pleas. Slater, 198 N.J. at 467.

In the present case, defendant’s guilt is not in question. The appellate record is clear, “Defendant has not asserted a colorable claim of innocence.” State v. Myers, No. A-2045-22, at *15 (N.J. Super. Ct. App. Div. May 6, 2025) In fact, during the

appellate argument, defendant expressly stated he was not making the argument that he was innocent. Defendant murdered Arjun Reddy Dyapa. He admitted that during his plea. This is not a case involving deprivation of an innocent person's liberty. At its core, this case is not comparable to the cases in our body of law that permit a defendant to withdraw a guilty plea. Clearly, there is no "manifest injustice" occurring in this matter. In fact, it would not only be against the "interest of justice" to allow defendant to withdraw his plea, it would be a travesty of justice.

Arjun Reddy Dyapa was a husband. He was a father. He was a brother. He was an uncle. He was a human. Defendant heinously took Mr. Dyapa's life and has already received the minimum sentence for it. The victims in this case, who survived Mr. Dyapa, have the same rights articulated throughout our case law. They have the right to finality, fairness, and justice. These victims 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. They were subjected to defendant's first appeal. Defendant's newest attempt to relitigate a crime that he has already admitted to and previously used all avenues of the criminal justice system to challenge, despite his guilt, is directly against the interest of these victims and our well establish law.

Here, the State continuously maintains that defendant's motion to withdraw is governed by the law in Slater. However, defendant disagrees. Regardless, the

principles of finality, fairness, and justice should guide this Court. It is irrelevant what standard the Court applies, it is not in the interest of justice for all to allow defendant to withdraw his plea. Analogous to the Court's actions in Slater, this Court should distill a flexible approach that ensures justice is done in each case that balances the rights of all parties. Using the overlapping considerations from our body of law, the Court should outline a balancing test used to analyze motions to withdraw a guilty plea under Rule 3:9-3(f). Specifically, this Court can apply previously distilled common principles from our body of law and require defendants to assert a colorable claim of innocence as a precursor to relief.

CONCLUSION

For all the above-stated reasons, the State respectfully requests that this Court affirm the judgment of the Appellate Division and affirm defendant's conviction and sentence.

Respectfully submitted,

JANETTA D. MARBREY
Mercer County Prosecutor

/s/Erin Rein
BY: ERIN REIN
Assistant Prosecutor
NJ ID 410042022