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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1079-16T2

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

MATTHEW W. PUGLIA,

Defendant-Respondent.

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Submitted October 31, 2017 – Decided December 28, 2017

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey,  
Law Division, Gloucester County, Indictment  
No. 16-04-0336.

Sean F. Dalton, Gloucester County Prosecutor,  
attorney for appellant (Paul D. Colangelo,  
Assistant Prosecutor, of counsel and on the  
brief).

Weir & Partners, LLP, attorneys for respondent  
(John C. Eastlack, Jr., on the brief).

PER CURIAM

The State appeals from the November 4, 2016 order admitting defendant into the Pretrial Intervention (PTI) Program over the prosecutor's objection. The State argues:

THE TRIAL COURT ERRED IN HOLDING THAT THE GLOUCESTER COUNTY PROSECUTOR'S REJECTION OF THE DEFENDANT-RESPONDENT'S APPLICATION FOR ADMISSION TO THE PTI PROGRAM AMOUNTED TO A CLEAR ERROR IN JUDGMENT RESULTING IN A PATENT AND GROSS ABUSE OF HIS DISCRETION.

We agree and reverse.

After defendant was stopped for a non-moving violation, it was discovered – despite his attempt to conceal his identity from the patrol officer – that defendant's driving privileges had been suspended for ten years for driving while intoxicated (DWI).<sup>1</sup> Defendant was indicted for fourth-degree operating a motor vehicle during a period of license suspension for a second or subsequent violation of the driving while intoxicated statute, N.J.S.A. 2C:40-26(b).

Defendant applied to PTI and the PTI program director recommended he be admitted.<sup>2</sup> The Prosecutor's Office, in a July 25, 2016 letter, reviewed the seventeen statutory factors for PTI

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<sup>1</sup> N.J.S.A. 39:4-50.

<sup>2</sup> The State contends the director made the recommendation on July 14, 2016, although a statement of reasons was not issued until August 15, 2016. We were not provided with a copy of the director's initial recommendation.

eligibility under N.J.S.A. 2C:43-12(e) and Rule 3:28, and rejected the application. We summarize the prosecutor's reasons<sup>3</sup>:

- (1) defendant knowingly and intentionally ignored a court order, suspending his driving privileges for a third DWI in six years;
- (2) defendant, when asked for identifying information, gave a false name to the officer, and later divulged that the reason he lied was because his driving privileges were suspended after multiple DWI convictions – three between April 2004 and April 2010;
- (3) defendant was motivated to drive in contravention of the suspension order, of which he was well aware in light of his age – thirty-two – and his experience; so aware was he that he initially hindered the officer's attempt to learn his identity;
- (4) the prosecutor recognized this was a victimless crime;

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<sup>3</sup> The numbered paragraphs that follow correspond to the numbered paragraphs in N.J.S.A. 2C:43-12(e) for each of the statutory factors.

- (5) the prosecutor was unaware of any personal problems that prevented defendant from refraining from driving during the period of suspension;<sup>4</sup>
- (7) the mandatory period of incarceration imposed by the Legislature for the offense "evidenc[ed] a strong interest and need for traditional prosecution";
- (8) defendant's lack of criminal history<sup>5</sup> warranted consideration as a slight mitigating factor, but was insufficient to override the State's interest set forth in factor (7);
- (9) the "slightest weight" was given to defendant's prior DWI convictions because the prosecutor recognized defendant was not charged with DWI in connection with the instant offense;
- (10) the prosecutor recognized defendant was not operating the vehicle dangerously;
- (11) prosecution of defendant for the crime charged "has the potential to both punish and deter him and others from

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<sup>4</sup> The prosecutor averred he was without information regarding any condition or situation that would be conducive to change during supervision in PTI, and "[could] not consider [factor (6)] in any meaningful way."

<sup>5</sup> The prosecutor indicated defendant did not have any prior disorderly persons offenses; defendant concedes he has one such conviction.

violating the law in this manner, in recognition of the strong State interest in traditional prosecution, given the mandatory minimum period of incarceration contained in the statute";

(12) the prosecutor recognized defendant had no history of violent offenses;

(13) the prosecutor recognized defendant had no involvement with organized crime;

(14) the reasons given for factors (1), (2), (3), (7) and (11) also applied in determining that the nature of defendant's crime caused the public need for prosecution to outweigh the value of supervisory treatment;<sup>6</sup>

(17) the reasons given for factors (1), (2), (3), (7) and (11) also applied in determining that the harm done to society by abandoning criminal prosecution outweighed the benefits to society by diverting defendant to the PTI program.<sup>7</sup>

The trial court found the prosecutor's rejection was based on a patent and gross abuse of discretion because it "was both: (1) not premised upon a consideration of all relevant factors; and

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<sup>6</sup> The prosecutor reviewed factors (15) and (16) and found them to be inapplicable.

<sup>7</sup> Defendant submitted he has been alcohol-free since 2010.

(2) amounted to a clear error in judgment. In addition, the prosecutorial error complained of [would] clearly subvert the goals underlying [PTI]."

We review de novo a trial court's decision to override the prosecutor's rejection of a PTI application and admit defendant into PTI because "[i]ssues concerning the propriety of the prosecutor's consideration of a particular [PTI] factor are akin to 'questions of law.'" State v. Maddocks, 80 N.J. 98, 104 (1979). "Consequently, on such matters an appellate court is free to substitute its independent judgment for that of the trial court or the prosecutor should it deem either to have been in error." Id. at 105; see also Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (holding a "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference").

We decocted our standard of review in PTI cases in State v. Lee, 437 N.J. Super. 555, 562-63 (App. Div. 2014) (second, third and fourth alteration in the original) (footnote omitted) (citations omitted), recognizing first that

[a]dmission into PTI is "a quintessentially prosecutorial function." In carrying out this function, prosecutors are guided by a number of different principles. Primarily, prosecutors are required to consider the seventeen factors listed under N.J.S.A. 2C:43-12(e). "[U]nless and until a defendant

demonstrates the contrary, our judges must presume that all relevant factors were considered and weighed prior to a prosecutorial veto."

. . . .

The scope of judicial review of PTI decisions is "severely limited[,]" and interference by reviewing courts is reserved for those cases where needed "to check [] the 'most egregious examples of injustice and unfairness.'" Thus, on appeal, this Court reviews PTI decisions with "enhanced deference."

Under this focused lens, we conclude the trial court erred in overriding the prosecutor's decision. The trial court substituted its own judgment as to the statutory factors instead of examining the State's articulated reasons for rejecting defendant's admission. See State v. Wallace, 146 N.J. 576, 589-90 (1996) (reversing the trial court's override of prosecutor's PTI rejection, holding "[t]he court essentially evaluated the case as if it stood in the shoes of the prosecutor, whereas it should have been focused on whether it amounted to an 'arbitrary, irrational or otherwise an abuse of discretion' for the prosecutor to have assigned as much weight to the gravity of the offense as she apparently did in this case").

Contrary to the trial court's conclusion, the State never articulated that the violation of N.J.S.A. 2C:43-12(b) carried a presumption against PTI admission, or rejected defendant solely

because of the crime charged. The prosecutor properly recognized the significance of the crime as it related to some of the statutory factors. The State did not, as the trial court found, improperly relate the same facts to multiple interrelated PTI factors. Instead, the State applied the procedure countenanced in Lee in discussing the facts of this relatively simple case "more than once within a PTI denial letter, insofar as they may bear on the discrete criteria for eligibility." 437 N.J. Super. at 570. We add, the trial court's consideration of "an already overburdened criminal calendar" is not a PTI factor.

The trial court erred by predicating its decision upon its own assessment of the statutory factors, rather than examining whether the prosecutor failed to consider all relevant factors, considered inappropriate factors, or clearly erred in judgment. See id. at 563. Judicial disagreement with a prosecutor's reasons for rejection does not equate to prosecutorial abuse of discretion so as to merit judicial override. State v. DeMarco, 107 N.J. 562, 566-67 (1987). We conclude the prosecutor's decision did not disregard evidence favorable to defendant in assessing the PTI factors, but applied the facts known to the State to each factor. A prosecutor need not believe all evidence favorable to a defendant, and may credit the State's anticipated proofs. Lee, 437 N.J. Super. at 568. Here, the prosecutor's rejection was a



proper exercise of discretion, made after considering all pertinent factors and the facts related thereto; the State's decision did not constitute "a patent and gross abuse of discretion." Id. at 563. We are, therefore, constrained to reverse.

We note that an order, entered by the trial court during the pendency of this appeal, dismissed the indictment against defendant pursuant to Rule 3:28. The State filed an appeal within fifteen days of the trial court's order admitting defendant into PTI; the order was stayed by rule. R. 2:9-3(e), 3:28(f). The trial court was without authority to enter the order pending resolution of the appeal. R. 2:9-1(a). We remand the case for the trial court to vacate the order dismissing the indictment and for further proceedings consistent with this opinion.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION