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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-1649-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JENNIFER TORRES, a/k/a  
JENNIFER GALLICCHIO,

Defendant-Appellant.

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Submitted March 21, 2017 – Decided April 27, 2017

Before Judges Gilson and Sapp-Peterson.

On appeal from the Superior Court of New  
Jersey, Law Division, Somerset County,  
Indictment No. 15-02-0106.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Solmaz F. Firoz, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Michael H. Robertson, Somerset County  
Prosecutor, attorney for respondent (James L.  
McConnell, Special Deputy Attorney  
General/Acting Assistant Prosecutor, of  
counsel and on the brief).

PER CURIAM

Defendant, Jennifer Torres, appeals from the Law Division order denying her application for admission into the Pre-Trial Intervention Program (PTI). We affirm.

A Somerset County grand jury indicted defendant for fourth-degree operating a motor vehicle during a period of license suspension in violation of N.J.S.A. 39:3-40, when her driver's license had been suspended or revoked for a second or subsequent violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4, in violation of N.J.S.A. 2C:40-26 (b). The indictment arose out of defendant's arrest on December 19, 2014, by a Warren Township detective, who, through a radar unit, clocked her speed at eighty-nine miles per hour. The detective turned on his overhead lights, but defendant's vehicle did not slow down. After activating his siren, defendant's vehicle abruptly swerved toward the curb before coming to a complete stop.

When the detective approached the vehicle, he immediately detected a strong odor of alcohol emanating from the vehicle. He requested defendant's driving credentials. She produced an expired registration card and was unable to locate her driver's license. Because of the strong odor of alcohol detected, he administered field sobriety tests, which defendant failed.

The detective placed defendant under arrest and transported her to the Warren Township Police Headquarters, where she underwent a breathalyzer test that revealed a blood alcohol content (BAC) of 0.12%. Defendant's driving abstract disclosed that she had two prior driving while intoxicated (DWI) convictions and had been ordered to install an ignition interlock device in her vehicle, which defendant admitted to the detective she had not done.

Approximately one month prior to her indictment, defendant applied for admission into PTI. The PTI Director rejected her application, finding that: (1) defendant's offense represented a continuing pattern of anti-social behavior; (2) the nature of the offense was such that "the public need for prosecution outweigh[ed] the value of supervisory treatment;" (3) defendant's driving privileges had been suspended on two prior occasions for the same offense, and (4) although ordered to install an interlock device in her vehicle, she failed to do so. Based upon these stated reasons, the Program Director concluded that defendant was an inappropriate candidate for the PTI program. The Somerset County Prosecutor concurred with this determination.

Defendant appealed to the Law Division arguing that the Prosecutor abused his discretion when he failed to consider relevant factors in connection with her prior offense history, namely, the fact that her prior offense history was not based upon

typical criminal behavior, but rather, prior non-criminal acts. Defendant additionally argued that the Prosecutor improperly adopted a "blanket policy" to reject admission into PTI, persons charged with violating N.J.S.A. 2C:40-26. Finally, defendant maintained that given her maturity and the fact that the offense places a lifetime of accomplishments on the line, she recognized the long-term benefits that would inure to her by complying with the PTI program.

In a written opinion, Judge Julie Marino determined that defendant failed to clearly and convincingly establish that the Prosecutor's decision to reject her admission into PTI was a patent and gross abuse of discretion. The judge found that defendant had repeatedly operated her vehicle while under the influence of alcohol and disobeyed a court order to install the interlock device in her car. Further, the judge reasoned that although defendant may be amenable to rehabilitation, "that one factor [was] not enough for this [c]ourt to reverse the decision of the PTI Director and the [Prosecutor] in denying [her] entry into the PTI program." This appeal followed.

On appeal, defendant raises one point for our consideration, namely, that the Prosecutor's rejection of her PTI application constitutes a patent and gross abuse of discretion, warranting reversal. We disagree.

"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. Roseman, 221 N.J. 611, 621 (2015) (quoting State v. Nwobu, 139 N.J. 236, 240 (1995)). In Roseman, the Court discussed the parameters of PTI decisions:

The assessment of a defendant's suitability for PTI must be conducted under the Guidelines for PTI provided in Rule 3:28, along with consideration of factors listed in N.J.S.A. 2C:43-12(e). These factors include "the details of the case, defendant's motives, age, past criminal record, standing in the community, and employment performance[.]" [State v.] Watkins, 193 N.J. [507,] 520 [(2008)]; see N.J.S.A. 2C:43-12(e). Additionally, a PTI determination requires that the prosecutor make an individualized assessment of the defendant considering his or her "'amenability to correction' and potential 'responsiveness to rehabilitation.'" Watkins, supra, 193 N.J. at 520 (quoting N.J.S.A. 2C:43-12(b)).

[Roseman, supra, 221 N.J. at 621-22.]

The analysis must be fact-sensitive and "requires consideration of 'idiosyncratic' circumstances demonstrating that denial of PTI has resulted in a 'serious injustice.'" Id. at 624 (quoting Nwobu, supra, 139 N.J. at 252). Guided by the statute and rule, prosecutors are granted broad discretion to determine if a defendant should be diverted into PTI. State v. K.S., 220 N.J. 190, 199-200 (2015). "This discretion arises out of 'the

fundamental responsibility of prosecutors for deciding whom to prosecute.'" Id. at 200 (quoting State v. Dalqlish, 86 N.J. 503, 509 (1981)). "Thus, it has clearly been acknowledged that this decision lies, in the first instance, with the prosecutor, and once he has determined that he will not consent to the diversion of a particular defendant, his decision is to be afforded great deference." State v. Kraft, 265 N.J. Super. 106, 111 (App. Div. 1993) (citing State v. Leonardis, 73 N.J. 360, 381 (1977)). See also Roseman, supra, 221 N.J. at 624 ("[T]he decision to grant or deny PTI is a 'quintessentially prosecutorial function.'" (quoting State v. Wallace, 146 N.J. 576,582 (1996))).

On appeal, our standard of review is "severely limited." Nwobu, supra, 139 N.J. at 246, (quoting Kraft, supra, 265 N.J. Super. at 111). Indeed, this severe limitation contemplates that a prosecutor's decision "will rarely be overturned." State v. Wallace, 146 N.J. 576, 585 (1996) (citing Leonardis, supra, 73 N.J. at 380). Consequently, our role, as a reviewing court, is to check the "most egregious examples of injustice." Ibid.

Here, the record disclosed that defendant was not only driving while under the influence, she was driving erratically while speeding at nearly ninety miles per hour, and driving while suspended for a prior DWI. The Prosecutor's contention that defendant's conduct represented a continuing and escalating

problem with her drinking and driving is supported by the record. While there was a five-year period between defendant's first and second DWI convictions, the arrest in the present matter came a mere two months following her second DWI conviction. In addition, as part of her second DWI conviction, the court ordered defendant to install an ignition interlock device on her car and she failed to do so.


The Prosecutor considered and evaluated the relevant factual information, thereby following N.J.S.A. 2C:43-12(e). Those factors bore upon the Prosecutor's individualized assessment of defendant's "'amenability to correction' and potential 'responsiveness to rehabilitation,'" Watkins, supra, 193 N.J. at 520 (quoting N.J.S.A. 2C:43-12(b)), and do not reflect a "blanket policy" of refusing admission into PTI those persons charged with a violation of N.J.S.A. 2C:40-26. Those factors also represented individual characteristics of defendant that clearly militated against admission into PTI and far outweighed any positive factors that she raised.

We are satisfied, as found by Judge Marino, the stated reasons for defendant's denial of PTI admission were based on unrefuted evidence. We discern no "extraordinary and unusual" circumstances from which we can conclude the denial of defendant's PTI

application constituted a clear error in judgment or a patent or gross abuse of discretion.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION