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Although it is posted on the internet, this opinion is binding only on the  
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-1778-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KATY MILES,

Defendant-Appellant.

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Submitted February 27, 2017 – Decided March 9, 2017

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Indictment No. 10-  
04-1013.

Joseph Krakora, Public Defender, attorney for  
appellant (Adam W. Toraya, Designated Counsel,  
on the brief).

Carolyn A. Murray, Acting Essex County  
Prosecutor, attorney for respondent (Lucille  
M. Rosano, Special Deputy Attorney  
General/Acting Assistant Prosecutor, of  
counsel and on the brief).

PER CURIAM

A jury convicted defendant in abstentia of third-degree  
aggravated assault, and a judge sentenced her to three years

probation. Thereafter, defendant violated her probation, and the judge sentenced her to a three-year custodial term. On appeal, defendant raises the following arguments:

POINT ONE

THE TRIAL COURT ERRED IN FAILING TO GRANT THE DEFENDANT AN ADJOURNMENT OF THE TRIAL.

POINT TWO

THE SENTENCE IMPOSED IS MANIFESTLY EXCESSIVE.

For the reasons that follow, we affirm.

An Essex County grand jury charged defendant with one count of third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7). On October 4, 2010, in defendant's absence, a judge denied defendant's motion for an adjournment. The State then tried defendant in abstentia and a jury found defendant guilty as charged. Years later, after defendant was arrested on a bench warrant, the trial judge sentenced her to three years probation, imposed special conditions, and ordered her to pay required penalties and assessments.

Less than one month after the judge sentenced her, defendant violated the terms of her probation. The judge sentenced her to a three-year custodial term, and defendant appealed.

The evidence the State presented at trial established defendant lived on an upper floor of an apartment building and the

victim lived alone on the floor immediately below. On an October morning in 2009, the victim heard very loud music and banging doors coming from defendant's apartment. After the victim complained to defendant, defendant's neighboring tenant, and the landlord, she returned to her apartment. Later that morning, defendant and a friend entered the victim's apartment and beat her. Defendant's friend hit and punched the victim's face, and both defendant and her friend kicked her after she fell to the ground. The victim sustained cuts to her mouth, face, head, and back. At the hospital, medical personnel used sixteen stitches to close the cut on the victim's mouth and prescribed pain medication.

The facts resulting in defendant's trial in absentia are as follows. During an August 30, 2010 conference, defendant rejected the State's plea offer and requested trial to begin on October 4, 2010. After explaining the consequences of rejecting the State's plea offer, the judge scheduled the trial for October 4. At that time, defendant signed a form acknowledging trial would proceed in her absence should she fail to appear.

On October 4, after the trial judge called defendant's case and the attorneys entered their appearances, the following colloquy ensued:

The court:                      Where is Katy Miles?

Defense counsel: Judge, I had my supervisor . . . speak to her earlier today and he was speaking to her at lunchtime. We just went out in the hall to look for her, and we called her on her cell phone.

The court: Well, I'm not granting an adjournment, if she's not here.

Defense counsel: Judge, the reason I'm asking for the adjournment –

The court: I understand your reasons and I have discussed this, but I'm not granting an adjournment if she's not here.

Defense counsel: I understand, Judge. I believe there may have been a miscommunication when I indicated to her that I would ask for an adjournment. She may –

The court: That miscommunication is not my fault and if she is not here, I will issue a bench warrant.

Defense counsel: Thank –

The court: Better yet, if she's not here, I'll proceed to trial, assuming that Hudson warnings were given.<sup>1</sup> Did I give the trial date?

Prosecutor: [Another judge] gave a trial date.

The court: Well, I'll assume she gave the warnings and I will proceed to trial without her, if she's not here.

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<sup>1</sup> State v. Hudson, 119 N.J. 165 (1990). "Hudson warnings" refer to information given to the defendant regarding the date of trial, the defendant's right to be present at trial, and notice that trial will proceed in defendant's absence and he or she will be bound by the verdict reached. See State v. Grenci, 197 N.J. 604, 624 (2009).

Defense Counsel: Judge, I will try and reach out for her.

The court: You do that.

Trial commenced two days later before a different judge, who confirmed defendant had been given her Hudson warnings. Defense counsel addressed the court concerning defendant's absence:

On Monday, [defendant] was in court, as was [myself], and [the prosecutor] . . . . At that point . . . [defendant] indicated . . . she could not stay. She [lives] in North Carolina . . . . Her husband is in the military and he's getting ready to be deployed overseas. She has child care issues.

We were able to meet with [the judge] and . . . . he did . . . in chambers indicate . . . he would adjourn the matter to November 9th when [defendant] had indicated . . . she would be available to spend a week up here . . . . While that was done, we came back out on the record. By that point in time, [defendant] had already left because she indicated she had a 2:30 bus to catch to North Carolina.

Since [defendant] was then not available to be advised of any adjournment request, [the judge] indicated he was no longer willing to . . . adjourn the matter to November 9th.

According to defense counsel, the State would have had Hudson warnings administered had defendant remained in court.<sup>2</sup>

Defendant did not appear for her trial, where she was found guilty of third-degree aggravated assault. Defendant remained at

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<sup>2</sup> Defendant is not raising the absence of Hudson warnings as an issue on appeal.

large for nearly four years until arrested on a bench warrant in 2014.

At sentencing, while the prosecutor initially intended to request a term of imprisonment, she did not believe such a sentence would address defendant's "cavalier attitude" towards the case. Instead, as a consequence of defendant's behavior, the prosecutor recommended defendant be required to stay in a courtroom for the entirety of the court day for forty-five consecutive days.

The judge found aggravating factors three, the risk defendant will commit another offense, N.J.S.A. 2C:44-1(a)(3); six, the extent of defendant's prior criminal record and the seriousness of the offense for which she has been convicted, N.J.S.A. 2C:44-1(a)(6); and nine, the need for deterring defendant and others from violating the law, N.J.S.A. 2C:44-1(a)(9). The judge found mitigating factors six, the defendant will participate in a program of community service, N.J.S.A. 2C:44-1(b)(6); and ten, the defendant is particularly likely to respond affirmatively to probationary treatment, N.J.S.A. 2C:44-1(b)(10). The judge held the aggravating factors preponderated over the mitigating factors.

The judge sentenced defendant to three years probation and required her to sit in the courtroom as recommended by the prosecutor. The judge also ordered defendant maintain employment, refrain from frequenting unlawful or disreputable places, refrain

from consorting with disreputable people, enroll in anger management, perform twenty-five hours of community service, possess no firearms or deadly weapons, and provide a DNA sample. The court also imposed fines and penalties, instructed defendant to refrain from contacting the victim, and ordered defendant to pay the victim's medical bills. The judge advised defendant of the penal consequences that might result from a violation of probation, which defendant understood.

Less than one month later, defendant appeared in court on a violation of probation charge stemming from her failure to attend court as required by her probation. The judge noted defendant had difficulty arriving at court on time or had failed to attend at all. The prosecutor requested a three-year term of incarceration because of defendant's failure to comply with the terms of probation and her demonstrated disrespect for the court and court personnel. Defense counsel acknowledged defendant had been disrespectful and lacked "graciousness," but argued a three-year prison sentence was excessive. For that reason, defense counsel asked the judge to give defendant another opportunity to obey the conditions of her probation.

Defendant maintained she had no childcare services for her sick daughter and planned to move from Virginia to New Jersey within the week. However, she claimed no one was helping her move

and "places" were not taking her insurance. She then reaffirmed her commitment to completing her probationary term.

The judge agreed with the State. The judge noted defendant never took her daughter to the doctor or provided documentation regarding the child's medical care. Although a violation of probation would ordinarily "be considered strike two, and everyone gets a toothbrush lecture from the court when it happens," the judge found defendant's particular situation warranted incarceration.

The judge found mitigating factor ten, N.J.S.A. 2C:44-1(b)(10), no longer applied because defendant did not respond affirmatively to probation. The judge again concluded the aggravating factors preponderated over the mitigating factors, and sentenced defendant to a flat three-year prison term. The court ordered defendant's daughter be placed in the State's care unless family was available to provide supervision.

On appeal, defendant first contends the trial court erred when it denied her request for a trial adjournment. We disagree.

"The granting of an adjournment is a matter singularly within the discretion of the trial court and refusal of an adjournment will not lead to reversal absent manifest wrong or injury to the defendant by reason of such refusal." State v. Smith, 66 N.J. Super. 465, 468 (App. Div. 1961), aff'd, 36 N.J. 307 (1962); see



also State v. Miller, 216 N.J. 40, 47 (2013) (citation omitted) (stating "a trial court's abuse of discretion in denying an adjournment request does not require reversal absent a showing of prejudice"), cert. denied, \_\_\_\_ U.S. \_\_\_\_, 134 S. Ct. 1329, 188 L. Ed. 2d 339 (2014).

Factors a trial court may consider when determining whether an adjournment is warranted include:

the length of the requested delay; whether other continuances have been requested and granted; the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; whether the defendant has other competent counsel prepared to try the case, including the consideration of whether the other counsel was retained as lead or associate counsel; whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature; the complexity of the case; and other relevant factors which may appear in the context of any particular case.

[State v. Hayes, 205 N.J. 522, 538 (2011) (emphasis added).]

Here, the trial judge ultimately refused to grant an adjournment because defendant decided to leave the courthouse. Rule 3:16(a) states "[t]he defendant must be present for every scheduled event unless excused by the court for good cause shown."

Defendant unilaterally decided not to attend the entire proceedings on the day of her scheduled trial, despite the court not having excused her for good cause. Defendant's disregard of court procedure and protocol was a legitimate reason for the judge to deny her adjournment request. The trial judge did not abuse his discretion in doing so.

In her second point, defendant argues the sentence imposed for her probation violation should be reduced because it is excessive and violates the provisions of the New Jersey Code of Criminal Justice. Again, we disagree.

When imposing sentence, "[a] trial court should identify the relevant aggravating and mitigating factors, determine which factors are supported by a preponderance of the evidence, balance the relevant factors, and explain how it arrives at the appropriate sentence." State v. O'Donnell, 117 N.J. 210, 215 (1989) (citation omitted). An appellate court may not substitute its judgment for that of the trial court, but "is bound to affirm a sentence, even if it would have arrived at a different result, as long as the trial court properly identifies and balances aggravating and mitigating factors that are supported by competent credible evidence in the record." Ibid. (citation omitted). "Assuming the trial court follows the sentencing guidelines," an appellate court may reject a sentence imposed by the trial court only if the

sentence "shocks the judicial conscience." Id. at 215-16 (citing State v. Roth, 95 N.J. 334, 365 (1984)).

"After revoking [a] defendant's probation, the trial judge [is] required to impose a sentence based upon . . . the balancing of the aggravating factors existing at the time of the initial sentence and the mitigating factors which survived the violation of probation." State v. Frank, 280 N.J. Super. 26, 41 (App. Div.), certif. denied, 141 N.J. 96 (1995).

Here, the trial court identified the relevant aggravating and mitigating factors, which were supported by competent credible evidence in the record, and balanced those factors before imposing defendant's sentence following her violation of probation. Moreover, the sentence is the minimum custodial sentence for a third-degree offense. Defendant's sentence is not excessive, nor does it violate the New Jersey Code of Criminal Justice.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION