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This opinion shall not "constitute precedent or be binding upon any court."
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-2870-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JESSE CHAMBERS, a/k/a
JESSIE D. CHAMBERS, a/k/a
DION POPE, a/k/a DION E.
ANDERSON, a/k/a JOE SANDERS,
a/k/a DION A. CHAMBERS,

Defendant-Appellant.

Argued September 14, 2017 – Decided October 27, 2017

Before Judges Simonelli, Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment
Nos. 09-02-0329, 13-01-0059 and 13-03-0340.

Elizabeth C. Jarit, Assistant Deputy Public
Defender, argued the cause for appellant
(Joseph E. Krakora, Public Defender, attorney;
Ms. Jarit, of counsel and on the brief).

Joie D. Piderit, Assistant Prosecutor, argued
the cause for respondent (Andrew C. Carey,
Middlesex County Prosecutor, attorney; Ms.
Piderit, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Jesse Chambers appeals from his judgment of conviction entered after the Law Division accepted his guilty plea to committing violations of probation (VOP). Defendant challenges his conviction and his sentence to a twelve-year term with a fifty-four-month period of parole ineligibility imposed by the VOP court on August 28, 2014. On appeal, defendant specifically argues:

POINT I

CHAMBERS WAS DENIED HIS RIGHT TO DUE PROCESS BECAUSE THE COURT FAILED TO HOLD A HEARING TO DETERMINE WHETHER CHAMBERS HAD VIOLATED THE CONDITIONS OF PROBATION, AND PLACED THE BURDEN OF PROOF ON THE DEFENDANT TO [ESTABLISH] HIS INNOCENCE.

POINT II

CHAMBERS' RIGHTS TO DUE PROCESS AND CONFRONTATION WERE VIOLATED BY THE COURT'S PRESUMED RELIANCE ON AN UNCERTIFIED LAB REPORT AND THE ALLEGATIONS WITHOUT REQUIRING LIVE TESTIMONY. (Partially Raised Below).

A. RELIANCE ON THE ALLEGATIONS READ INTO THE RECORD AND ON AN UNCERTIFIED LAB REPORT VIOLATED THE DEFENDANT'S RIGHTS TO DUE PROCESS AND CONFRONTATION.

B. EVEN IF THE ADMISSION OF AND RELIANCE UPON THIS EVIDENCE WAS PROPER, IT WAS INSUFFICIENT TO

SUBSTANTIATE THE CHARGES AGAINST THE DEFENDANT.

POINT III

CHAMBERS WAS DENIED HIS RIGHT TO DUE PROCESS AND TO CONTEST THE CHARGES AGAINST HIM BY THE COURT'S REFUSAL TO GRANT AN ADJOURNMENT.

POINT IV

REVOCAION OF CHAMBERS' PROBATION BASED ON A MISSED PAYMENT OF COURT FINES BECAUSE HE WAS INCARCERATED VIOLATED EQUAL PROTECTION, FUNDAMENTAL FAIRNESS, AND DUE PROCESS.

POINT V

TERMINATION OF CHAMBERS' PROBATION BASED ON THE CHARGES TO WHICH HE PLED GUILTY WAS IMPROPER AND NOT WARRANTED.

A. THE GUILTY PLEAS WERE NOT KNOWING OR VOLUNTARY.

B. REVOCATION OF PROBATION BASED ON THE NEW CHARGES VIOLATED CHAMBERS' PLEA AGREEMENT CONCERNING THOSE OFFENSES AND IMPLICATED DOUBLE JEOPARDY CONCERNS.

C. THE THREE OLD DRUG TESTS DO NOT SUPPORT THE COURT'S DECISION TO TERMINATE CHAMBERS' DRUG COURT SPECIAL PROBATION.

POINT VI

A REMAND FOR RESENTENCING IS REQUIRED BECAUSE THE COURT IMPOSED

AN EXCESSIVE SENTENCE, FAILED TO ABIDE BY THE CRIMINAL CODE, AND SUMMARILY IMPOSED THE "ALTERNATIVE SENTENCE" WITHOUT CONDUCTING AN INDIVIDUALIZED SENTENCING ASSESSMENT.

We conclude from our review of the record that defendant's VOP convictions based upon his guilty plea to certain charges must be vacated because the VOP court failed to accept defendant's guilty plea in a manner consistent with Rule 3:9-2.

The facts we glean from the record can be summarized as follows. Defendant was indicted in 2009 and 2013 for charges related to his possession of controlled dangerous substances (CDS). In 2009, defendant pled guilty pursuant to a plea agreement to one offense in exchange for the State's recommended five-year sentence to Drug Court special probation, N.J.S.A. 2C:35-14. When defendant was indicted in 2013, the State again recommended that he continue his probation in Drug Court rather than terminate him from the program and sentence him to State prison.

Both plea agreements contained alternate sentences that would be imposed if defendant did not satisfactorily complete Drug Court. Under defendant's 2009 plea agreement, the State recommended an alternative sentence of nine years with a fifty-four month period of parole ineligibility. The 2013 plea

agreement called for a three-year alternate sentence that would run consecutive to the 2009 sentence. When the court accepted defendant's 2013 plea, it confirmed that he understood that if he violated probation by not satisfactorily completing Drug Court, he would be facing a twelve-year term with a fifty-four month period of parole ineligibility.

In July 2014, defendant was charged with four counts of violating his probation. The first charge alleged that in 2011, 2012 and 2014, defendant tested positive for various CDS. The second charge related to defendant being charged with the two new offenses that led to his 2013 guilty plea and his continuation in Drug Court. The third charge alleged that defendant had been non-compliant with Drug Court because he was discharged from two treatment programs, one in 2009, and one in 2014. The final charge alleged that defendant failed to pay "[c]ourt imposed financial obligations," claiming that up until July 18, 2004, defendant only paid \$2004 out of the \$4952 imposed fines as part of his sentences, with the last payment made on June 4, 2014.

At the ensuing VOP hearing on August 28, 2014, the VOP judge first addressed defendant's objections to the admission of certain lab reports that the State intended to rely upon to prove defendant tested positive for CDS while in Drug Court.

The judge rejected defendant's argument, denied his adjournment request, and proceeded to address the VOP charges.

The VOP judge spoke directly to defendant and elicited from him confirmation that he committed some of the charged offenses. The colloquy with the defendant consisted of the judge asking defendant how he was pleading, and defendant either explaining what he did that supported the violation or why he was not guilty of the charge. The judge then gave defense counsel an opportunity to place on the record anything she wanted to "substantiate [defendant's] not guilty pleas." After considering statements from defense counsel, a member of the community who spoke on defendant's behalf, the prosecutor, and defendant, the VOP judge proceeded to recount defendant's experience in Drug Court and his failure to succeed despite the support he received in that program. The judge turned to defendant's guilty plea to some of the charges and stated:

I am accepting his guilty pleas in light of what his statement was, in light of his plea of guilty, in light of the fact that I do not find that [defendant] is under the influence of any narcotic or drug that would impair his ability to understand these proceedings and make the decision that he has made with regard to entering guilty pleas.

The judge concluded the hearing by addressing each of the charges and, based on defendant's guilty plea and a finding that

the preponderance of the evidence established a violation, the judge found that defendant violated probation. The judge immediately sentenced defendant in accordance with the alternate sentences in his plea agreements to an aggregate term of twelve years with fifty-four months of parole ineligibility. This appeal followed.

Our review of a trial judge's fact finding underlying a violation of probation is "exceedingly narrow." See State v. Locurto, 157 N.J. 463, 470 (1999); see also State v. Johnson, 42 N.J. 146, 161-62 (1964). We defer to the lower court's findings of fact, especially those that are substantially influenced by the trial judge's "opportunity to hear and see the witnesses and to have the feel of the case." State v. Elders, 192 N.J. 224, 244 (2007). Thus, we will not disturb a court's finding of a violation of probation when supported by sufficient credible evidence in the record. See Johnson, supra, 42 N.J. at 162.

We apply a similar standard of review to a trial court's findings when a defendant pleads guilty. We "consider[] 'whether the findings made could reasonably have been reached on sufficient credible evidence present in the record.'" State v. Campfield, 213 N.J. 218, 229 (2013)(quoting Locurto, supra, 157 N.J. at 471).

We conclude from our review that we are constrained to vacate defendant's conviction for violating probation because the VOP judge did not satisfy the requirements of Rule 3:9-2 when she accepted defendant's guilty plea. Although the Rule does not mention guilty pleas to VOPs, we previously stated that "[w]e perceive no practical difference between a plea to a criminal charge and a plea to a violation of probation," and held that the Rule's requirements must be followed in VOP proceedings. State v. Lavoy, 259 N.J. Super. 594, 602-03 (App. Div. 1992).

The Rule requires that the VOP judge address

defendant personally . . . and determin[e] by inquiry of the defendant . . . that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea.

[Rule 3:9-2]

To satisfy the Rule's requirements, a trial court

should inquire "among other things, (1) whether anyone had forced, threatened, or put [defendant] under pressure to plead guilty, (2) whether the defendant understood that he was relinquishing certain constitutional rights, (3) whether the defendant understood the nature of the charge and content of the sentencing recommendation, and (4) whether the

defendant was in fact guilty of the specific charge[.]"

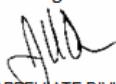
[Campfield, supra, 213 N.J. at 230-31 (quoting State ex rel. T.M., 166 N.J. 319, 336 (2001)).]

We have carefully examined the record to determine whether the VOP judge complied with the Rule's requirements and conclude that the judge did not satisfy all of them. There was no attempt by the judge to ascertain whether defendant understood the charges against him, or that he was pleading guilty voluntarily, without coercion, and that his plea was not the result of any undisclosed promises or agreements. Further, the judge made no inquiry as to whether defendant, a known drug user, was under the influence of CDS or any other drug that would interfere with his understanding of the proceedings or the consequences of his plea. The judge also did not review in detail with defendant that a guilty plea to the VOP could result in the court imposing the substantial alternative sentence that was part of his original plea agreements. Other than addressing defendant about facts that would support a guilty plea, the judge did not attempt any further compliance with the Rule. Under these circumstances, the VOP judge's acceptance of defendant's guilty plea was a mistaken exercise of her discretion.

Because we are vacating defendant's VOP judgment of conviction and remanding for a new hearing, we need not address defendant's other appellate arguments.

Defendant's guilty plea to the violations of probation and the resulting amended judgments of conviction are vacated. The matter is remanded to the trial court for a new hearing. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION