SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3295-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT RUCKER,

Defendant-Appellant.

Submitted November 1, 2016 – Decided June 8, 2017

Before Judges Leone and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 13-09-1176 and 13-09-1178.

Joseph E. Krakora, Public Defender, attorney for appellant (Rochelle Watson, Assistant Deputy Public Defender, of counsel and on the briefs).

Andrew C. Carey, Middlesex County Prosecutor, attorney for respondent (Brian D. Gillet, Deputy First Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Robert Rucker appeals from his judgments of conviction dated October 15 and 17, 2014. Defendant pled guilty

to unlawfully possessing a .45 caliber Glock handgun and to possessing it despite having a Michigan felony conviction. He challenges the suppression ruling and aspects of his sentence. We affirm his convictions, vacate his sentence in part, and remand.

I.

The following facts were found by the suppression court or where indicated were testified to at the suppression hearing. On July 8, 2013, Lieutenant Edgar Velasquez of the Piscataway Township Police was contacted by a homicide detective in the Detroit police department. The detective informed Velasquez that Detroit authorities had issued an arrest warrant for defendant for homicide, that he was a fugitive, and that he was believed to be in possession of a handgun which was the murder weapon. The detective also informed Velasquez defendant was "currently staying" in Piscataway in a Motel Six in Room 240 and that the length of stay was July 4 to July 18, 2013.[1] The detective added defendant was believed to be with a woman. The detective told Velasquez the room was registered under the name "Anna Cunnegan."[2]

[1] Velasquez initially stated, and the court's opinion repeats, that the length of stay was to July 14, but he corrected it to July 18 after consulting his report.

[2] This alleged name is spelled in various ways in the record.

Piscataway officers obtained a copy of the Detroit arrest warrant for defendant. They also confirmed the Piscataway Motel Six's Room 240 was registered under the name "Anna Cunnegan" through July 18, 2013. The suppression court found the Piscataway officers corroborated the "[h]otel, length of stay, name of person, [and] room."

Piscataway used its SWAT team to execute the arrest warrant.[3] One part of the team listened through the door and heard a male voice. According to Lieutenant Velasquez, the officers attempted to enter the room surreptitiously using a key card, but the door's security latch was engaged and the unsuccessful entry made noise. They used a ram to get through the door and employed a flash-bang device. They found defendant and a woman, J.S.[4] Defendant and J.S. were ordered to a prone position on the floor with their arms outstretched in front of them.

Patrol officer Allen Barboiu entered the room with the second part of the SWAT team. He saw a rolled-up air mattress within one to two feet of defendant's outstretched hands. Barboiu testified defendant was not handcuffed, the mattress was within his grasp,

[3] Velasquez testified "it was a high risk arrest warrant, because . . . it's a homicide suspect, with a weapon in his possession."

[4] We use her initials because the indictment was dismissed against her after defendant pled guilty and was sentenced.

and "his head was actually lifted and he had his eyes on" the rolled-up air mattress. Because of defendant's focus and proximity to the rolled-up air mattress, Barboiu secured and unrolled it, uncovering a concealed handgun. Barboiu testified he seized the handgun with a full magazine and another bullet.

In Indictment Nos. 13-09-1176 and 13-09-1178, defendant was charged respectively with second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), and second-degree certain persons not to have a firearm, N.J.S.A. 2C:39-7(b)(1). The trial court denied "defendant's motion to suppress evidence seized from his room at Motel Six." Defendant moved for reconsideration, and the court reaffirmed its denial of suppression. Defendant pled guilty to the charged offenses in return for a recommendation of five years in prison with three years of parole ineligibility for unlawful possession and a consecutive five years in prison with five years of parole ineligibility for the certain persons offense.[5] The court imposed the recommended sentence.

Defendant appeals, arguing:

> POINT I - POLICE ENTRY INTO THE HOTEL ROOM REGISTERED TO ANNE CUNNIGAN WITH ONLY AN ARREST WARRANT FOR ROBERT RUCKER WAS UNLAWFUL.
>
> POINT II - A REMAND FOR RESENTENCING IS NECESSARY BECAUSE DEFENDANT WAS NOT AWARDED

[5] Each of these sentences was the legal minimum for the offense. N.J.S.A. 2C:43-6(a)(2), (c) (2007); N.J.S.A. 2C:39-7(b)(1).

CREDITS TO WHICH HE IS ENTITLED UNDER STATE V. HERNANDEZ; AND THE TRIAL COURT FAILED TO PROVIDE REASONS FOR CONSECUTIVE SENTENCES.

II.

We first address the denial of suppression. We must hew to our "deferential standard of review." State v. Rockford, 213 N.J. 424, 440 (2013). "'[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record.'" Ibid. (alteration in original) (citation omitted). "Those findings warrant particular deference when they are '"substantially influenced by [the trial court's] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy."'" Ibid. (citation omitted). "Thus, appellate courts should reverse only when the trial court's determination is 'so clearly mistaken "that the interests of justice demand intervention and correction."'" State v. Gamble, 218 N.J. 412, 425 (2014) (citation omitted).

A.

The suppression claim defendant raises on appeal was not raised in the trial court. Before addressing that concern, it is helpful to review the law pertinent to that claim.

"[U]nder both the Fourth Amendment to the United States Constitution and Article I, Paragraph 7 of our State Constitution, searches and seizures conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid." State v. Elders, 192 N.J. 224, 246 (2007). "Under our constitutional jurisprudence, when it is practicable to do so, the police are generally required to secure a warrant before conducting a search of certain places, such as a hotel room." State v. Hathaway, 222 N.J. 453, 468 (2015) (citations omitted). Here, defendant conceded the officers had a valid arrest warrant.

"An arrest warrant 'implicitly carries with it the limited authority to enter a dwelling' where the suspect lives when there is reason to believe the suspect is inside." State v. Brown, 205 N.J. 133, 145 (2011) (quoting Payton v. New York, 445 U.S. 573, 603, 100 S. Ct. 1371, 1388, 63 L. Ed. 2d 639, 661 (1980)); see, e.g., State v. Jones, 143 N.J. 4, 15 (1995) (holding the arrest warrant for Collier allowed the officers the authority to enter the apartment "in which Collier lived when there was reasonable grounds to believe he was there"). "Generally speaking, this principle extends to the target's hotel or motel room, since such an accommodation is akin to a temporary residence." United States

v. Pelletier, 469 F.3d 194, 199 (1st Cir. 2006); see 3 LaFave, Search & Seizure § 6.1(b), at 381 (5th ed. 2012).[6]

Nonetheless, "[t]o search for the subject of an arrest warrant in the home of a third party, the police must also obtain a search warrant . . . absent exigent circumstances or consent." Brown, supra, 205 N.J. at 145 (citing Steagald v. United States, 451 U.S. 204, 216, 101 S. Ct. 1642, 1649-50, 68 L. Ed. 2d 38, 48 (1981)). "[A]bsent special circumstances, a police officer cannot search for the subject of an arrest warrant in a home where the subject is merely a visitor without first obtaining a search warrant." State v. Cleveland, 371 N.J. Super. 286, 294 (App. Div.), certif. denied, 182 N.J. 148 (2004).

To implement both precepts, we apply the standard that, "in the absence of consent or exigency, an arrest warrant is not lawfully executed in a dwelling unless the officers executing the warrant have objectively reasonable bases for believing that the person named in the warrant both resides in the dwelling and is within the dwelling at the time." Id. at 299 (quoting State v. Miller, 342 N.J. Super. 474, 479 (App. Div. 2001)). In Miller, supra, we affirmed suppression because the officers "did nothing to confirm independently the snippet of opinion they had received"

[6] "Target" is used as a shorthand for the person named in the arrest warrant. See Pelletier, supra, 469 F.3d at 199.

that the target was living with a woman, who credibly denied he lived there. 342 N.J. Super. at 500; cf. State v. Craft, 425 N.J. Super. 546, 554 (App. Div. 2012) (finding "the trial court's reliance on Miller was misplaced" because a detective "knew the [target's] family resided at the address provided by [a police] intelligence officer").

We have applied that standard to hotel rooms. In Cleveland, supra, a confidential informant told Officer Montgomery the "defendant was 'staying' with a woman" at a hotel and "the two were sleeping in room 304 at the time of the call." 371 N.J. Super. at 291. "Yet, this informant also told Montgomery that Ebony Brown . . . was the 'legal tenant' of room 304, which presumably meant that she, rather than defendant, had rented the room. And, while Montgomery said that he knew defendant frequented the Inn, he had no specific information that defendant resided at the Inn." Id. at 295. We ruled Montgomery lacked "'objectively reasonable [] grounds to believe that defendant was actually residing in . . . room 304,'" rather than that he "was a visitor in Brown's room." Ibid. (alteration in original).

Nevertheless, an arrest warrant is sufficient to authorize entry if the police have a reasonable belief, "regardless of the name in which the motel room was registered, [that] the defendant — and only the defendant — was occupying it." Pelletier, supra,

469 F.3d at 200-01. Similarly, "[a]s long as the officers reasonably believed [the target] was a co-resident of the room, the entry into the room to arrest [him with an arrest warrant] was a reasonable one" even if it registered to someone other than the target. United States v. Junkman, 160 F.3d 1191, 1194 (8th Cir. 1998), cert. denied, 526 U.S. 1094, 119 S. Ct. 1511, 143 L. Ed. 2d 663 (1999); see United States v. Jones, 696 F.2d 479, 486-87 (7th Cir. 1982), cert. denied, 462 U.S. 1106, 103 S. Ct. 2453, 77 L. Ed. 2d 1333 (1983); see also 3 LaFave, supra, § 6.1(b), at 379-80 & nn.100-01.

B.

On appeal, defendant claims a search warrant was required because the motel room was not his residence but the residence of a third party. However, in his suppression motion brief, at the suppression hearing, in his reconsideration motion brief, and at the reconsideration hearing, defendant sought suppression on the ground that the unrolling of the air mattress was not a valid search incident to arrest.[7] The trial court rejected that argument, and defendant does not renew it on appeal.

[7] Defendant raised only one point in his suppression brief:

> THE SEARCH OF THE AIR MATTRESS WAS ILLEGAL AND ANY EVIDENCE LOCATED THEREIN SHOULD BE SUPPRESSED.

Indeed, on reconsideration, in support of his challenge to the search of the air mattress, defendant argued "that he had established room 240 of the Motel 6 to be his residence," that "the subject hotel room was the defendant's residence on July 8, 2013," and "that this was Mr. Rucker's residence." This argument was apparently based on defendant's own certification.[8] When defendant pled guilty, he signed a plea form specifically preserving the "[d]efense that the Hotel room was his residence."

On appeal, defendant contends Room 240 was not his residence. He argues the officers unlawfully "entered Anne Cunnigan's hotel room — without a search warrant — to execute the arrest warrant against [him]." However, defendant never argued to the trial court that a search warrant was required because Room 240 was not his residence.

Defendant contends he raised that claim as part of a hearsay objection. If defendant raised any claim at all in that context, it was an incorrect assertion that a search warrant was required to arrest a person in his own residence.

While addressing a hearsay objection by defendant's suppression counsel, the trial court asked him if he was

---

In his reconsideration brief, he raised only a reworded version of that point.

[8] Neither party has supplied us with the certification.

challenging the entry into the room. He responded he was, because the police "need a search warrant to arrest somebody they have an arrest warrant for, in their house." The court correctly responded: "That's not the law[.]" Suppression counsel then argued that officers with "an arrest warrant for somebody" had to get a search warrant to "search somebody's house" and that the same principle applied when "a person's dwelling place is a hotel room." The court correctly replied that "to arrest the person, they don't need it." The court overruled the hearsay objection.

Because defendant did not claim that Room 240 was not his residence and that a search warrant was therefore required, the trial court did not address such a claim. The court did not make any finding on whether "Anna Cunnegan" was actually residing in the hotel room or whether that name was being used by defendant or J.S. to register the room in which one or both of them were staying. Although the court's order denied defendant's motion to suppress the gun seized in "his room," the court did not make a factual finding that defendant was residing in Room 240. When defendant asserted on reconsideration that the room was his residence, the court stated that "even if this was [his] 'residence[,]' and I put residence in quotes, it still does not negate the validity of the arrest warrant which gave the police the authority to enter the room."

The trial court also did not make any legal rulings on the unraised claim. In particular, the court did not determine whether the officers had "an objectively reasonable basis both for believing the residence to have been the home of the person named in the arrest warrant and that he was present in the home at the time the warrant was executed." Miller, supra, 342 N.J. Super. at 497.

We decline to consider this newly-raised claim. Our Supreme Court held in analogous circumstances it was improper to address on appeal a suppression claim the defendant failed to raise in the trial court. State v. Robinson, 200 N.J. 1, 22 (2009). Here, as in Robinson, "[b]ecause that issue never was raised before the trial court, because its factual antecedents never were subjected to the rigors of an adversary hearing, and because its legal propriety never was ruled on by the trial court, the issue was not properly preserved for appellate review." Id. at 18-19. Defendant's failure to raise the claim created "factual shortcoming[s]," id. at 20, such as the absence of findings about "Anna Cunnegan" and where defendant was residing on July 8, 2013.

> Moreover, the failure to raise defendant's present claim during the motion to suppress denied the State the opportunity to confront the claim head-on; it denied the trial court the opportunity to evaluate the claim in an informed and deliberate manner; and it denied any reviewing court the benefit of a robust

> record within which the claim could be considered.
>
> [Id. at 21.]

Here, as in Robinson, "defendant never asserts that" his new claim "creates an issue of trial error 'clearly capable of producing an unjust result' that must be addressed 'in the interests of justice.'" Robinson, supra, 200 N.J. at 21 (quoting R. 2:10-2). In any event, Rule 2:10-2 is "not intended to supplant the obvious need to create a complete record and to preserve issues for appeal." Id. at 20. "Given this record, an appellate court should stay its hand and forego grappling with an untimely raised issue." Id. at 21. Accordingly, it is "inappropriate to consider, for the first time on appeal, defendant's belated challenge to the manner in which the [arrest] warrant was executed." Id. at 22. Like Robinson, we uphold defendant's convictions. Ibid.[9]

III.

Defendant next challenges aspects of his sentence for the certain persons offense, namely the imposition of that sentence consecutively to the unlawful persons offense, and the quantity of jail credits awarded against that sentence. "[T]rial judges

[9] Because we do not reach the merits of defendant's sole suppression claim on appeal, we need not address the State's alternative argument that entry into the motel room was justified by exigent circumstances.

have discretion to decide if sentences should run concurrently or consecutively," State v. Miller, 205 N.J. 109, 128 (2011), and their decisions are reviewed for "abuse of discretion," State v. Spivey, 179 N.J. 229, 245 (2004). Regarding the awarding of jail credits, our review is "de novo." State v. DiAngelo, 434 N.J. Super. 443, 451 (App. Div. 2014). Moreover, "[a] sentence imposed pursuant to a plea agreement is presumed to be reasonable." State v. Fuentes, 217 N.J. 57, 70-71 (2014).

A.

Defendant argues the trial court failed to consider the standards for imposing a consecutive sentence set forth in State v. Yarbough, 100 N.J. 627 (1985), cert. denied, 475 U.S. 1014, 106 S. Ct. 1193, 89 L. Ed. 2d 308 (1986). In Yarbough, after acknowledging "there can be no free crimes in a system for which the punishment shall fit the crime," our Supreme Court ruled the factors "to be considered by the sentencing court should include" whether:

> (a) the crimes and their objectives were predominantly independent of each other;
>
> (b) the crimes involved separate acts of violence or threats of violence;
>
> (c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior;

(d) any of the crimes involved multiple victims;

(e) the convictions for which the sentences are to be imposed are numerous.

[Id. at 643-44.]

The Yarbough Court added: "[T]he reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision." Id. at 643.

At sentencing, the trial court did not mention Yarbough or its factors, but simply stated the certain persons "sentence shall be consecutive to the [unlawful possession] sentence." The court discussed the aggravating and mitigating factors, but that alone would not ordinarily satisfy Yarbough. See State v. Eisenman, 153 N.J. 462, 479 (1998). In the judgment of conviction, the court added "[t]his was a negotiated plea this Court is willing to accept." However, "the terms of a plea bargain do not control the inherent sentencing authority of the court" or satisfy the court's duty to "engage[] in its own analysis of the principles stated in Yarbough." State v. Friedman, 209 N.J. 102, 123 (2012).

"To be sure, sentences can be upheld where the sentencing transcript makes it possible to 'readily deduce' the judge's reasoning," but only "when the record is clear enough to avoid doubt as to the facts and principles the court considered and how

it meant to apply them." Miller, supra, 205 N.J. at 129-30. Thus, we have affirmed where "[n]o explicit assessment of the Yarbough factors was made in support of imposition of a consecutive sentence, but the reasons are self evident." State v. Soto, 385 N.J. Super. 247, 257 (App. Div.), certif. denied, 188 N.J. 491 (2006). In Soto, we affirmed because there "were separate crimes committed on separate occasions and the plea agreement itself called for consecutive sentences." Ibid.; see State v. Jang, 359 N.J. Super. 85, 97-98 (App. Div.) (affirming because there "were individual crimes with two separate victims"), certif. denied, 177 N.J. 492 (2003).

Here, the plea agreement called for consecutive sentences, but it is not as obvious what Yarbough factor(s) were relied upon to impose them. The prosecutor argued the State agreed to a plea agreement for consecutive sentences because unlawful possession and certain persons offenses "are two distinct offenses," because of "the legislative intent behind the two different offenses," and because of "the case law."[10] However, there is no indication the trial court adopted that rationale.

[10] A certain persons conviction does "not merge with the weapons possession conviction," State v. Lopez, 417 N.J. Super. 34, 37 n.2 (App. Div.), certif. denied, 205 N.J. 520 (2011), because they are "two distinct possessory crimes" and "[t]he Legislature could not have intended that a convicted felon who possesses or carries an

Thus, "the record does not reveal that the trial court expressly or implicitly considered [Yarbough's] guiding legal principles governing its discretion" and "does not reflect a direct or indirect discussion of the basis for imposing consecutive sentences." Miller, supra, 205 N.J. at 129-30. Moreover, "the record also supported Yarbough factors that might favor concurrent sentences." Id. at 129. As in Miller, "[b]ecause we cannot sufficiently discern the trial court's reasoning, we remand for resentencing" to determine whether, applying the Yarbough factors, the certain persons sentence should be concurrent or consecutive. Id. at 130. "We offer no view on the outcome of that hearing because the decision to impose consecutive or concurrent sentences rests in the first instance with the trial court." Ibid.

B.

Defendant next contends he was entitled to additional jail credits against his certain persons sentence. Rule 3:21-8 provides "[t]he defendant shall receive credit on the term of a custodial

---

operable gun . . . be treated the same as a defendant who is not such a felon," State v. Wright, 155 N.J. Super. 549, 553-55 (App. Div. 1978) (addressing predecessor statutes). Nonetheless, "there is no statutory mandate that the court impose a consecutive sentence for a certain persons conviction," Lopez, supra, 417 N.J. Super. at 37 n.2, so a certain person sentence "may either be concurrent with, or consecutive to, that for the [unlawful possession] conviction," Wright, supra, 155 N.J. Super. at 555.

sentence for any time served in custody in jail . . . between arrest and the imposition of sentence."

On the unlawful possession indictment, the trial court awarded jail credit of 464 days, representing the period from his July 8, 2013 arrest to his October 14, 2014 sentencing. On the certain persons indictment, the court awarded defendant jail credit of 400 days, representing the period from the September 10, 2013 filing date of the certain persons indictment to his October 14, 2014 sentencing.

Defendant claims that under State v. Hernandez, 208 N.J. 24 (2011), he should have received 464 days jail credit on the certain persons indictment as well as on the unlawful possession indictment, asserting he "was arrested on both offenses on July 8, 2013." The State disagrees, arguing defendant was not charged with the certain persons offense until that indictment issued on September 10, 2013.

Under Hernandez, the timing of the indictment is not dispositive. There, our Supreme Court addressed the unrelated cases of two defendants. Id. at 28. The Court's decision regarding defendant Rose is more pertinent here. Like defendant here, Rose was the subject of two indictments in the same county, and he pled guilty and was sentenced on both indictments simultaneously. Id. at 31-32. He sought jail credits against a

consecutive sentence on the drug indictment for time spent in custody after his first arrest on theft charges, but before the drug indictment issued. Id. at 32-33, 35. The trial court awarded jail credits for the period of his theft arrest to the sentencing solely against the sentence under the theft indictment, not against the consecutive sentence under the drug indictment that contained a parole ineligibility period. Id. at 33.

The Supreme Court "granted certification to consider the proper interpretation and application of Rule 3:21-8, the rule governing the award of jail credits, to cases involving defendants sentenced to imprisonment on multiple indictments." Id. at 28. The Court noted "[i]f multiple charges are embodied in a single indictment and two or more counts are disposed of, the total amount of jail credits reduces the aggregate custodial sentence imposed." Id. at 47-48. The Court rejected the proposition that the credits should be different "if they are embodied in separate indictments." Id. at 48. "The issue of credits simply cannot turn on such happenstance." Ibid.

Thus, under Hernandez, courts must "apply jail credit in a manner that prevents the real time served from turning on 'happenstance,' such as whether the same charges are included in one indictment or spread over multiple indictments." State v. Joe, 228 N.J. 125, 131 (2017). Moreover, "as interpreted by

Hernandez, Rule 3:21-8 requires that a defendant receive jail credit even though the charges are not directly responsible for his or her incarceration." State v. Rawls, 219 N.J. 185, 194 (2014).

The State tries to analogize to DiAngelo, supra, which concerned "a custodial term for a violation of probation (VOP)." 434 N.J. Super. at 446. There, "[w]e reject[ed] defendant's assertion credit against the VOP sentence begins upon her arrest on new charges." Id. at 461. We held "[t]he more appropriate date for credit against the VOP sentence is the date the VOP statement of charges issued." Id. at 462. The State argues the certain persons indictment should be treated like a VOP statement of charges. However, nothing in DiAngelo indicates that its ruling or rationale extends beyond the issues posed by a VOP. See, e.g., id. at 458-59 ("We confine our review to a defendant who is in custody after commission of another criminal offense while on probation, and against whom a summons for a VOP has been issued rather than an arrest warrant"). We decline to extend DiAngelo to alter the treatment of the issue of multiple indictments, which the Supreme Court addressed in Hernandez.

Nonetheless, we do not grant defendant's request to increase the jail credits on his certain persons sentence because our Supreme Court has recently made clear that the appropriate

treatment of jail credits depends on whether the sentences are consecutive or concurrent. State v. C.H., 228 N.J. 111 (2017). In C.H., the Court "consider[ed] whether a defendant who is simultaneously sentenced to consecutive sentences on two separate indictments is entitled to the application of jail credit against both indictments pursuant to Rule 3:21-8." Id. at 113. The Court recognized "some language in Hernandez may have caused confusion about whether jail credits can reduce sentences on each charge of a consecutive sentence." Id. at 121. The Court ruled "[n]either the disposition of Hernandez nor the overarching policy considerations in that opinion warrant the application of [such] double jail credit." Id. at 113.

To avoid double credit, the Court held in C.H.:

> Hernandez is modified as follows: double credit should not be awarded where a defendant is sentenced to consecutive sentences under separate indictments and receives the optimal benefits of jail credit for time spent in pre-sentence custody. To the extent that Hernandez has been read differently with respect to consecutive sentences we do not follow that approach.
>
> [Id. at 123.]

The Court instructed: "The appropriate course of action is to view the separate sentences together and apply jail credit to the front end of the aggregate sentence. This application maximizes the

benefits of jail credit for defendants without awarding double time." Id. at 121-22.

Accordingly, on remand the trial court should determine the appropriate allocation of jail credits at the same time it determines whether the sentences should be consecutive or concurrent. If the court imposes a consecutive sentence, then all 464 days of jail credits should be allocated against the unlawful possession sentence.[11] If the sentences are concurrent, the 464 days of jail credits should be applied once against the concurrent sentence for both offenses.

We vacate the portions of the certain persons judgment of conviction imposing that sentence consecutively and awarding 400 days of jail credit. We remand for a determination whether the certain persons sentence should be concurrent or consecutive and subject to the 464 days of jail credits. We do not retain jurisdiction. We affirm in all other respects.

Affirmed in part, vacated in part, and remanded.

[11] That will "maximize the benefits to the defendant by applying jail credit to the front end of the imprisonment term," namely the unlawful possession sentence. C.H., supra, 228 N.J. at 123. The 464 days of jail credits would be used up during the three-year period of parole ineligibility on the unlawful possession sentence, and any award of jail credits against the consecutive certain persons sentence would result in improper double credit.