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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-3933-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY ENRICO,

Defendant-Appellant.

Submitted July 11, 2017 – Decided August 7, 2017

Before Judges Nugent and Accurso.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
15-10-1396.

Galantucci, Patuto, DeVencentes, Potter &
Doyle, LLC, attorneys for appellant (David J.
Altieri, on the brief).

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for respondent.

PER CURIAM

The Supreme Court has remanded this Graves Act motion for
leave to appeal for our reconsideration on the merits. By way of
background, a Bergen County grand jury charged defendant Anthony

Enrico in a single-count indictment with unlawful possession of a weapon, N.J.S.A. 2C:39-5(b). The sentencing provision for this second-degree crime requires the court to impose a term of imprisonment that includes a period of parole ineligibility, which "shall be fixed at one-half the sentence imposed by the court or 42 months, whichever is greater." N.J.S.A. 2C:43-6(c).

The Legislature provided "a limited exception that allows certain first-time offenders to receive a reduced penalty if the imposition of a mandatory term would not serve the interests of justice." State v. Benjamin, 228 N.J. 358, 368 (2017). The exception is contained in N.J.S.A. 2C:43-6.2. This statute requires either that the prosecutor make a motion to the assignment judge, or the sentencing judge may, with the prosecutor's consent, refer the matter to the assignment judge. The statute authorizes the assignment judge to place the defendant on probation or to reduce the period of parole ineligibility to one year.

In Benjamin, the Court determined that adequate procedural safeguards exist in the Graves Act, which delegates sentencing discretion to prosecutors. Supra, 228 N.J. at 371-72. That is so because "written guidelines exist to channel prosecutorial discretion." Id. at 372. Prosecutors are required by a Directive issued by the Attorney General to "document in the case file [their] analysis of all the relevant aggravating and mitigating

circumstances, even if a Graves Act waiver is not being sought." Ibid. (alteration in original) (citation omitted). Defendants are "able to seek judicial review of prosecutors' waiver decisions." Ibid.

In the case before us, following defendant's indictment, the prosecutor initially decided not to seek a Graves Act waiver. Defendant requested the prosecutor provide written reasons for that decision as well as other waiver case files containing the aggravating and mitigating factors the prosecutor considered. The prosecutor refused to comply with defendant's request, but extended another plea offer in which he agreed to recommend a five-year custodial term with a twelve-month period of parole ineligibility. The trial court conducted oral argument on defendant's discovery demands and thereafter denied both defendant's motion to compel discovery and his motion to compel the prosecutor to provide "written reasons for withholding consent to waiver [of] the custodial sentence of the Graves Act."

Defendant filed a motion for leave to appeal. We denied defendant's motion in a September 15, 2016 order. On April 5, 2017, the Supreme Court decided Benjamin. On May 16, 2017, in the case now before us, the Supreme Court granted defendant's motion for leave to appeal and summarily remanded the matter to us to

reconsider the merits of the motion in light of Benjamin. State v. Enrico, ___ N.J. ___ (2017).

Defendant raised two points in his motion for leave to appeal:¹

POINT I

LEAVE TO APPEAL SHOULD BE GRANTED TO REVIEW THE COURT'S FINDING THAT THE STATE IS NOT REQUIRED TO PROVIDE OTHER GRAVES ACT WAIVER FILES BECAUSE THE ISSUE IS CURRENTLY UNDER REVIEW BY THE NEW JERSEY SUPREME [COURT].

POINT II

LEAVE TO APPEAL SHOULD BE GRANTED TO REVIEW THE COURT'S FINDING THAT THE STATE IS NOT REQUIRED TO PROVIDE WRITTEN REASONS FOR WITHHOLDING CONSENT TO WAIVER OF A MANDATORY MINIMUM SENTENCE OF THE GRAVES ACT.

In Benjamin, the Supreme Court stated:

We agree with the Appellate Division that, when denying a Graves Act waiver, the prosecutor must provide the defendant with a statement of reasons. However, we hold that defendants are not entitled to discovery of the prosecution's files for cases in which Graves Act waivers have been granted to other defendants.

[Supra, 228 N.J. at 361.]

¹ After the Supreme Court issued its remand order, we permitted the parties to file supplemental briefs addressing Benjamin, supra, 228 N.J. 358. Defendant did not submit a supplemental brief. Consequently, it was unnecessary for the State to submit a response.

In view of the Supreme Court's holding, we reverse that part of the trial court's order denying defendant's application to compel the prosecutor to provide written reasons for its decision. Providing a defendant with such reasons is one of the procedural safeguards that renders valid the delegation of sentencing discretion. Id. at 372. We remand this matter for the prosecutor to provide, within thirty days, a statement of reasons. Either party may pursue appropriate review after the prosecutor has issued the written statement of reasons.

Reversed and remanded for further proceedings consistent with this opinion. 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