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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5136-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN H. KINCH, a/k/a
JOHN LANG-KINCH,

Defendant-Appellant.

Submitted March 13, 2017 – Decided March 27, 2017

Before Judges Sabatino and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 14-
06-1564 and Accusation No. 14-02-0046.

Joseph E. Krakora, Public Defender, attorney
for appellant (Ruth E. Hunter, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Carol M. Henderson,
Assistant Attorney General, of counsel and on
the brief).

PER CURIAM

Defendant John Kinch appeals the sentences imposed by the
trial court following his guilty pleas to certain charges under

an indictment and a separate accusation. Defendant also appeals the trial court's denial of his request for an additional thirty-seven days of jail credits. For the reasons that follow, we affirm the trial court's disposition, except that, as conceded by the State, defendant's conviction of possession of a weapon for an unlawful purpose merges with his conviction for aggravated assault in the indictment and he is entitled to four days of jail credits to reconcile discrepancies in the forms of judgment of conviction.

The pertinent background is as follows. The charges against defendant arose out of an armed robbery and a fatal shooting on November 1, 2013, and a subsequent drug transaction that he was observed taking part in on January 6, 2014.

The identity of the shooter in the November 1, 2013 armed robbery and homicide was initially not uncovered by investigators. In the meantime, defendant was arrested on January 6, 2014 for his involvement in the drug transaction that occurred that day and found in possession of numerous glassine envelopes of heroin.

Pursuant to a plea agreement negotiated with the State, defendant pled guilty on February 10, 2014 to count two of Accusation No. 14-02-0046, which charged him with third-degree possession with the intent to distribute heroin, N.J.S.A. 2C:35-5(a). The plea agreement provided that the State would recommend a probationary term, with time served as a condition of probation.

Defendant was released that day, pending his sentencing for this narcotics offense.

On March 11, 2014, the State obtained information that defendant was the shooter in the November 2013 armed robbery and homicide. The following day, the State issued an arrest warrant for defendant on the robbery and murder charges. He was arrested on that warrant on either March 14 or March 18.¹ A grand jury charged defendant on June 13, 2014 with first-degree murder of Jihad Anderson, second-degree unlawful possession of a handgun, second-degree possession of a handgun for an unlawful purpose, and second-degree aggravated assault of a different victim in the armed robbery, Anthony Brown.

Nearly a year after the indictment was issued, defendant and the State completed plea negotiations. In accordance with that plea agreement, defendant pled guilty under the Indictment to an amended charge of first-degree manslaughter, N.J.S.A. 2C:11-4(a) (count one); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count two); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count three); and second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count four). The plea agreement specified that the State

¹ There is a discrepancy between the judgments of conviction as to the arrest dates.

would recommend a seventeen-year custodial sentence with an 85% parole ineligibility term pursuant to the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2.

On May 12, 2015, defendant was sentenced on the Indictment to the recommended seventeen-year term, subject to NERA, plus a concurrent eight-year term with a NERA parole disqualifier on the aggravated assault conviction, and a concurrent eight-year term with a five-year parole disqualifier pursuant to the Graves Act, N.J.S.A. 2C:43-6(c), with respect to the unlawful-purpose weapons count. Count two, involving the unlawful possession of a weapon charge, merged with count three. The court imposed various fines and penalties. The court also awarded 420 days of jail credit.

The same trial judge sentenced defendant that same day in the narcotics case, Accusation No. 14-02-0046. Specifically, the judge imposed a three-year custodial term, to be served concurrently with the sentences on the Indictment. Defendant was awarded 461 days of jail credit on the Accusation.

Defendant raises the following points on appeal:

POINT I

DEFENDANT SHOULD HAVE RECEIVED 37 ADDITIONAL DAYS OF JAIL CREDITS FOR INDICTMENT NO. 14-06-01564 PURSUANT TO STATE V. HERNANDEZ, 208 N.J. 24 (2011).

POINT II

UNDER INDICTMENT NO. 14-06-01564, THE CONVICTION FOR POSSESSION OF A WEAPON FOR AN UNLAWFUL PURPOSE ON COUNT THREE SHOULD HAVE MERGED WITH THE AGGRAVATED MANSLAUGHTER CONVICTION ON COUNT ONE.

POINT III

DEFENDANT'S SENTENCE WAS EXCESSIVE. U.S. Const. Amend. VI, XIV; N.J. Const. Art. I, ¶¶ 1, 9, 10.

Having considered these arguments in light of the record and the applicable law, we are satisfied that defendant's arguments have no merit, except with respect to the conceded need to merge the unlawful-purpose weapons charge with the aggravated manslaughter charge and a slight correction concerning the jail credits. R. 2:11-3(e)(2).

As a matter of law, defendant is not entitled to any additional jail credits beyond those he was granted by the trial court. We reject defendant's claim that he is entitled to thirty-seven additional days of credit on his manslaughter sentence for the time he spent in jail on the drug charges between January 6, 2014 and February 11, 2014. The Supreme Court in State v. Hernandez, 208 N.J. 24, 28 (2011), overruled in part on other grounds, State v. C.H., ___ N.J. ___ (2017), made clear that a defendant is not entitled to jail credits until the date of his arrest on the offense in question. Here, defendant was arrested

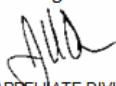
for murder in March 2014, after the State determined that he was responsible as the shooter in the armed robbery. His entitlement to jail credits on the Indictment did not begin until that arrest date. See also R. 3:21-8 (providing that a defendant is to receive jail credit "for any time served in custody in jail or in a state hospital between arrest and the imposition of sentence") (emphasis added).²

We likewise find no merit in defendant's argument that his sentence on the Indictment, which was consistent with the terms of the negotiated plea agreement, was manifestly excessive. The trial court reasonably considered the aggravating and non-existing mitigating factors, particularly including defendant's past record of two juvenile adjudications for robbery and possession of a weapon. See State v. Case, 220 N.J. 49, 64-65 (2014); State v. Fuentes, 217 N.J. 57, 72 (2014). Despite firing the gun in the robbery that resulted in the death of another man, he received a custodial term well between the thirty-year maximum for aggravated manslaughter.

² We accept the State's concession in its brief that defendant should receive an additional four days of jail credit on the Indictment to be consistent with the March 14 arrest date used on the Accusation.

Affirmed, as modified. The trial court shall issue a corrected judgment of conviction on the Indictment within thirty days.

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

A handwritten signature in black ink, appearing to be 'JWA', is written over the typed name of the clerk.

CLERK OF THE APPELLATE DIVISION