SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1028-14T3
A-2838-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RORY T. WOOD,

Defendant-Appellant.

Submitted October 23, 2017 – Decided January 31, 2018

Before Judges Accurso, O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 10-04-0375.

Joseph E. Krakora, Public Defender, attorney for appellant (David A. Snyder, Designated Counsel, on the brief).

Scott A. Coffina, Burlington County Prosecutor, attorney for respondent (Alexis R. Agre, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

These back-to-back appeals have been consolidated for purposes of this opinion. In one appeal (A-1028-14), defendant Rory T. Wood challenges his convictions and sentence. In the other (A-2838-14), defendant appeals from an order denying his motion to reduce his sentence. We remand for reconsideration of the sentences imposed for financial facilitation of criminal activity, N.J.S.A. 2C:21-25(b)(2); we affirm in all other respects.

Before trial, co-defendant Nancy Cartagena pled guilty to third-degree forgery, N.J.S.A. 2C:21-1. Defendant did not plead guilty and, in December 2013, was convicted by a jury of two counts of second-degree theft by deception, N.J.S.A. 2C:20-4(a); three counts of second-degree financial facilitation of criminal activity, N.J.S.A. 2C:21-25(b)(2); two counts of second-degree conspiracy to commit theft, N.J.S.A. 2C:5-2(a); third-degree uttering a forged instrument, N.J.S.A. 2C:21-1(a)(3); and fourth-degree forgery, N.J.S.A. 2C:21-1(a)(2). Defendant's motion for a new trial was denied.

In February 2014, defendant was sentenced in the aggregate to fifteen years of imprisonment. In addition to imposing various penalties and assessments, defendant was ordered to pay restitution in the amount of $391,660.

I

Numerous witnesses testified during this fifteen-day trial. We summarize only the key evidence that puts the issues on appeal in context. The evidence that pertains to defendant's challenges to pretrial rulings is recounted where we address such rulings below.

In 2007, defendant was a plant manager for one of Rich Products' plants in New Jersey. This company, headquartered in Buffalo, makes frozen food. On average, the plant in which defendant worked employed 175 full-time and approximately seventy-five temporary employees. The temporary employees were obtained from local temporary employment agencies (agencies or agency).

One of defendant's responsibilities was to obtain the temporary employees necessary to meet the plant's production schedule each week. After such employees appeared for work at the plant, various supervisors or like personnel, which for simplicity we refer to as supervisors, were tasked with creating and maintaining time sheets, on which the daily hours of each employee from each agency were recorded. The supervisors had the option of either filling out a time sheet by hand or typing the information onto a time sheet in the supervisor's computer. They also had the choice of signing a time sheet by hand or

electronically; almost all filled out and signed their time sheets by hand.

At the end of the week, the time sheets were sent to each agency that had supplied temporary workers. From such time sheets the agency prepared and forwarded an invoice to defendant. Staff at the plant reconciled each invoice with the corresponding timesheet and, if the invoices appeared to be in order, they were given to defendant for his review and final approval.

Defendant testified he rarely reviewed and merely signed each invoice, indicating his approval of its contents. He then sent the invoices to headquarters, where the staff prepared and sent a check to the appropriate agency in satisfaction of each invoice. At that point, the agency prepared the paychecks, which were delivered to defendant for distribution to the temporary employees.

One of the conditions of co-defendant Cartagena's plea agreement was that she testify truthfully at defendant's trial. She testified as follows. She worked in one of the temporary agencies used by the plant. She and defendant frequently interacted and, over time, became good friends. They often discussed their respective financial and other problems and got together outside of work.

After Cartagena lost her job in one of the agencies, defendant helped her secure a position in Express Personnel (Express), another temporary employment agency used by the plant. In the summer of 2007, she and defendant devised and implemented a scheme in which defendant created time sheets containing the names of fictitious workers, which he forwarded to Express. Consistent with the practice between the plant and the various employment agencies, Express in turn prepared an invoice from the timesheets, which was forwarded to defendant and ultimately sent to headquarters for payment.

After Express received payment on an invoice, it prepared paychecks to forward to defendant for distribution to the employees listed on the subject timesheets. However, before those paychecks were forwarded to defendant, Cartagena intercepted and kept some of the checks made out to the fictitious employees.

The checks Cartagena did not intercept were forwarded to defendant or he picked up the remaining paychecks at the agency. Defendant retained the checks made payable to the fictitious employees, and arranged for the distribution of the checks made payable to the actual temporary employees. Defendant either cashed or deposited the checks he retained into a bank account he maintained.

In early 2008, Cartagena was terminated from Express, but defendant continued the scheme of receiving paychecks from Express for fictitious workers. Defendant offered to help Cartagena get a job at Ameritemps, another local agency, but she declined, telling him she was reluctant to continue their illegal activities.

Months later, Cartagena expressed to defendant her fear their scheme would be discovered. He said he would never implicate her, recommended she move to Puerto Rico, and mentioned he had obtained the documents necessary for his family to move to the Dominican Republic. Instead, Cartagena contacted an attorney, and subsequently reported their illegal conduct to the Burlington County Prosecutor's Office.

Eric Eynon, a certified public accountant and fraud examiner employed by Rich Products, testified about an audit he conducted from Buffalo after the Prosecutor's Office contacted the company to advise it of Cartagena's revelations. That audit included a meeting with defendant just days later, during which defendant confessed to his participation in the scheme. Among other things, in his review of the plant's records, Eynon noted the plant spent an inordinately high amount of money on temporary workers. He also noticed the plant was using Express, which had not been approved by "Agile One" (Agile), which he

characterized as a "red flag." Agile is a third-party agency that vets local temporary employment agencies to determine if they meet Rich Products' standards.

In addition, workers from agencies approved by Agile are required to punch in and punch out at the beginning and end of each shift at the plant, using a personal identifying number when doing so. Eynon noted that, although such system did not provide complete protection against the kind of fraudulent practice that occurred in this matter, it provided some.

Just days after he commenced his audit, Eynon went to the plant and interviewed various supervisors, managers, and other personnel. When defendant was not present, Eynon gained access to his office and laptop. He discovered defendant had been issuing time sheets from his computer that appeared as though they had been electronically signed by various supervisors in the plant.

Eynon interviewed several supervisors. One had saved a hard copy of all of the time sheets he had created and signed within the previous fourteen months. All of his time sheets were signed by hand. Eynon compared those time sheets with the ones generated from defendant's computer that ostensibly had been electronically signed by such supervisor; the latter time sheets contained the names of fictitious employees.

Eynon showed such time sheets to the supervisor, who disclaimed either creating or signing the sheets. Eynon spoke to other supervisors about time sheets found in defendant's computer that appeared to be electronically signed by them. Each disavowed either creating or signing such time sheets.

Defendant was instructed to attend a meeting with Eynon, William Stone, who was defendant's immediate supervisor, and Ruth Setzer, a human resources representative. The purpose of the meeting was to provide defendant an opportunity to explain the suspicious time sheets, following which Stone and Setzer were to determine whether to terminate defendant. Although defendant had never exhibited violence, consistent with the practice at Rich Products, the company arranged for a police officer to be at the plant during the meeting, in the event defendant were terminated and became agitated.

During the meeting, Eynon asked defendant about the time sheets, as well as other evidence indicating he had not only billed Express for the services of phantom employees, but also Ameritemps, another employment agency. Like Express, Ameritemps was not approved by Agile. Initially, defendant denied any wrongdoing. However, toward the end of the meeting, the police officer poked his head in the door and asked to speak to a supervisor. Eynon briefly left the room and, when he returned,

defendant asked to speak privately to Stone and Setzer. Eynon again left the room.

When Eynon returned, defendant admitted he created all of the time sheets that included the phantom employees, and affixed the supervisors' electronic signatures to such sheets. In addition, he admitted either he or Cartagena cashed and retained the proceeds of the paychecks Express or Ameritemps prepared for the fictitious employees. After the meeting, defendant was terminated and escorted by Stone to his vehicle. Eynon calculated the cost to Rich Products for the fraudulent billings was in excess of $391,000.

Defendant testified. Among other things, he asserted Cartagena's testimony about how she and defendant defrauded the company was false. He claimed he had never affixed any electronic signatures on time sheets, and that he only confessed to Eynon, Stone, and Setzer to the alleged wrongdoing in a desperate attempt to avoid arrest.

Specifically, defendant testified that after Eynon re-entered the room after speaking with the police officer, Eynon commented that once he turned the matter over to the authorities, there was nothing further he could do for him. Defendant assumed Eynon was referring to turning defendant over to the police officer. Therefore, defendant determined to tell

those in the meeting "whatever they needed to hear so I could get out of there, not get locked up[,] and go home to my family." He believed he faced nothing more serious than termination for "blindly signing some of the invoices" without having reviewed them, and "if I told them what they wanted to hear that I would just be fired and . . . that would be the end of it."

II

On appeal, defendant asserts the following contentions for our consideration.

> POINT I – THE TRIAL COURT COMMITTED ERROR BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENTS TO HIS SUPERVISORS DURING HIS MEETING WITH THEM.
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> POINT II – THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DENYING THE DEFENDANT'S MOTION TO DISMISS THE INDICTMENT ON DOUBLE JEOPARDY GROUNDS.
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> POINT III – THE TRIAL COURT COMMITTED ERROR WHEN IT DENIED DEFENDANT'S REQUEST TO CROSS EXAMINE ERIC EYNON ON THE SUBJECT MATTER OF OTHER ALLEGED FINANCIAL LOSSES BY [THE PLANT] BECAUSE THE RESTRICTION ON CROSS EXAMINATION VIOLATED THE DEFENDANT'S SIXTH AMENDMENT RIGHTS.
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> POINT IV – THE TRIAL COURT COMMITTED ERROR BY PERMITTING THE STATE'S WITNESS, TERESA GRUSCHKE, TO TESTIFY ON AN ISSUE THAT WAS SOLELY WITHIN THE PROVINCE OF THE JURY OVER THE OBJECTION OF THE DEFENSE COUNSEL.
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> POINT V – THE JURY'S VERDICT FINDING THE DEFENDANT GUILTY OF THE COUNTS IN THE

INDICTMENT REGARDING AMERITEMPS WAS AGAINST THE WEIGHT OF THE EVIDENCE.

POINT VI — THE DEFENDANT'S SENTENCE WAS EXCESSIVE.

POINT VII — THE COURT COMMITTED ERROR BY IMPOSING RESTITUTION WITHOUT AFFORDING THE DEFENDANT A HEARING, AND ALTERNATIVELY, THE RESTITUTION ORDERED WAS EXCESSIVE IN LIGHT OF THE DEFENDANT'S INABILITY TO PAY.

POINT VII — THE TRIAL COURT COMMITTED ERROR WHEN IT DENIED THE DEFEDANT'S PRO SE MOTION TO CHANGE HIS SENTENCE UNDER R. 3:21-10(b)(2).

We address these points seriatim.

A

In his first argument point, defendant contends the trial court erred when, following a suppression hearing, it denied his motion to suppress the confession made to Eynon, Stone, and Setzer. As he testified during the trial, defendant argues he only confessed after he became aware there was a police officer in the building. At the suppression hearing, defendant claimed the presence of the police officer constituted a form of psychological coercion that induced him to render an involuntarily confession.

During the suppression hearing, defendant conceded the meeting was "professional and matter of fact" and that Eynon, the only one who asked him questions, never raised his voice or "got in [his] face." At all times, defendant was free to leave

the room. However, when the police officer opened the door to the conference room, stuck his head in, and asked to speak to a supervisor, defendant assumed the officer was there to arrest him. Defendant did not see the officer before or after he poked his head in the room.

Defendant asked Eynon to confirm his suspicion. Eynon replied that if defendant helped Eynon, then Eynon could help him. Although no one stated defendant was going to be arrested, defendant concluded from Eynon's comment that if he did not help Eynon "get to the bottom of this matter," then the police were going to arrest him. Therefore, defendant fabricated and provided a confession believing that, if he did so, he would not be arrested, but none of his admissions was truthful.

The trial court found defendant's claim he was

> compelled to fabricate an inculpatory statement because he feared the prospect of immediate arrest, and . . . believed that by confessing he would be able to leave the plant without being arrested . . . preposterous. Equally unbelievable [is] defendant's assertion . . . his statements made after the policeman's knock on the door were false. . . The momentary presence of the police officer may have heightened his awareness of the seriousness of the matter, but it hardly served to coerce him. If mere presence of a police officer constitutes coercion, then any statement obtained by the police must be deemed involuntary. The court is satisfied beyond a reasonable doubt that defendant's statements were made

> voluntarily and are admissible in evidence.

Our review of a trial court's factual findings in support of granting or denying a motion to suppress is deferential; specifically, our review is limited to determining whether such "findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014). We may not reverse a court's findings of fact unless they are clearly erroneous or mistaken. State v. S.S., 229 N.J. 360, 380-81 (2017). However, we review issues of law de novo. Gamble, 218 N.J. at 425.

"[A]ny statements made by the accused, whether to the police or to a private person, are admissible [only if they are] made 'freely, voluntarily, and without compulsion or inducement of any sort.'" State v. Kelly, 61 N.J. 283, 293-94 (1972) (citation omitted). "Confessions obtained through undue compulsion or coercion are considered involuntary and, therefore, unreliable." State v. Cook, 179 N.J. 533, 560 (2004).

"At the root of the inquiry is whether a suspect's will has been overborne . . . ." State v. Presha, 163 N.J. 304, 313 (1998). The court must "assess the totality of circumstances surrounding" the statement, including the suspect's "age, education and intelligence," the "length of detention, whether

the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved." Ibid. (quoting State v. Miller, 76 N.J. 392, 402 (1978)).

Psychological ploys such as "playing on the suspect's sympathies" are not inherently coercive. State v. Galloway, 133 N.J. 631, 654-56 (1993) (citing Miller v. Fenton, 796 F.2d 598, 605 (3d Cir. 1986)). The test is whether the investigator's questions and comments "were so manipulative or coercive that they deprived [the defendant] of his ability to make an unconstrained, autonomous decision to confess." State v. DiFrisco, 118 N.J. 253, 257 (1990) (citation omitted). The case law has "typically required a showing of very substantial psychological pressure" and "the fact that [the suspect] was distressed and emotional is not by itself sufficient to render his confession involuntary." Galloway, 133 N.J. at 656-57.

We defer, as we must, to the trial court's factual finding that defendant's assertion his will was overborne by the presence of the police, causing him to capitulate and confess, was unworthy of belief. The court's finding is supported by sufficient credible evidence and, therefore, we are without authority to reverse its findings of fact. We fail to detect any evidence "substantial psychological pressure" was applied or that any of Eynon's questions were so manipulative they deprived

defendant of his ability to make an "unconstrained, autonomous decision to confess." DiFrisco, 118 N.J. at 257. Because there is no evidence defendant's confession was involuntary, we find no reason to disturb the trial court's conclusion the confession was admissible.

B

Defendant next contends the court erred when it denied his motion to dismiss the indictment on double jeopardy grounds.

Briefly, after a jury was impaneled and sworn but before opening statements were delivered, defendant moved to suppress defendant's confession. Given the factual questions involved, an evidentiary hearing was necessary. However, because the unavailability of a witness was going to elongate completing the hearing, compounded by the fact defense counsel intended to take two, week-long vacations in the upcoming weeks, the court suggested it declare a mistrial and select a new jury at a later date. The record is clear defendant agreed to the court's suggestion and the court then declared a mistrial.

The double jeopardy clauses of the United States and New Jersey Constitutions protect a defendant from repeated prosecutions for the same offense. State v. Torres, 328 N.J. Super. 77, 85 (App. Div. 2000). In the case of a trial by jury, "jeopardy attaches after the jury is impaneled and sworn."

State v. Veney, 409 N.J. Super. 368, 380 (App. Div. 2009) (quoting State v. Allah, 170 N.J. 269, 279 (2002)). Notwithstanding, "a trial judge may declare a mistrial and discharge a jury without foreclosing the defendant's reprosecution on the same charges if the mistrial was declared at the request of or with the acquiescence of the defendant." State v. Dunns, 266 N.J. Super. 349, 362-63 (App. Div. 1993)(emphasis added).

Here, there is no question but that defendant acquiesced in the court's suggestion — necessitated by defendant's last-minute request for a suppression hearing and his counsel's vacation schedule — to order a mistrial. We discern no basis to reverse the trial court's decision to declare a mistrial under these factual circumstances.

C

Defendant contends the court erred when it barred defendant from cross-examining Eynon about an audit he conducted to determine if yet a third temporary employment agency, Integrity Staffing (Integrity), was used to defraud Rich Products. Defendant was not charged with any offense pertaining to Integrity, but he asserted he should have been permitted to cross-examine Eynon on the audit, claiming such examination would have yielded evidence pertaining to Eynon's credibility.

During the lengthy colloquy between the trial court and counsel on this issue, defendant did not identify the specific connection between Integrity and another scheme to defraud the company. However, defendant indicated that, despite the fact the temporary workers from Integrity had to punch in at the beginning and punch out at the end of a shift, time sheets containing the names of fictitious workers were sent to Integrity. Although not well articulated, we discern from defendant's argument that Eynon's audit indicated someone other than defendant may have been creating and forwarding false time sheets to certain agencies.

The court permitted defendant to cross-examine Eynon on the fact there were:

> two separate systems in place, one for Ameritemps and Express Personnel[,] and another one for Integrity. Under Express Personnel and Ameritemps, time records were kept on written documents kept by supervisors at Rich Products. With respect to Integrity's temporary employees, they punched in on a clock. And despite the fact that there were two systems, frauds were committed in — under both systems.
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> The defense argues that the State is suggesting to the jury that only [defendant] could have committed the frauds because he signed the time records. Yet, the defense argues that that could not be so because clearly there were frauds committed under two systems, one of which — under one of which he had no control. The court believes the jury has the right to know that.

What the court did not permit was cross-examination on the fact a separate audit with respect to Integrity was prepared and the details about such audit, finding such evidence too collateral and confusing, and that the probative value of such examination would be outweighed by the risk of undue prejudice. We agree.

We apply a deferential standard of review to a trial court's decision to limit the scope of cross-examination. "[T]he precise parameters of cross-examination are . . . left to the trial court's discretion . . . ." State v. Simon Family Enters., 367 N.J. Super. 242, 257 (App. Div. 2004). "We will not interfere with the trial judge's authority to control the scope of cross-examination 'unless clear error and prejudice are shown.'" State v. Messino, 378 N.J. Super. 559, 583 (App. Div. 2005) (citation omitted).

We are not persuaded the trial court abused its discretion when it precluded defendant from questioning Eynon about the audit pertaining to Integrity. Defendant was not charged with any crime that in any way pertained to this agency, and there was no indication - or even any proffer by defendant – that evidence concerning the audit itself would have provided information material to Eynon's credibility. See State v. Engel, 249 N.J. Super. 336, 375 (App. Div. 1991) (stating "a

cross-examiner does not have a license to roam at will under the guise of impeaching credibility.").

D

Defendant complains the court permitted defendant's assistant, who reviewed and reconciled the invoices from the agencies with the timesheets, to express the opinion during her testimony that, on one occasion, she was "skeptical" whether all of the temporary employees on the worksheets were real. Defendant argues whether there were fictitious employees listed on the invoices was a question of fact to be determined solely by the jury.

We decline to dwell on the merits of this contention. Given the surfeit of evidence against defendant, even if the admission of this testimony were error, it was clearly harmless. See R. 2:10-2.

Defendant also maintains the court erred when it denied his motion for a new trial, arguing there was insufficient evidence he committed any of the offenses pertaining to Ameritemps. We disagree. Defendant confessed to including fictitious employees on the time sheets submitted to Ameritemps.

E

Defendant contends his sentence was excessive. After reviewing the record and the applicable legal principles, with

the exception of one issue, we conclude his arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). The one issue that merits attention is the sentence imposed on counts three and four, each of which was for financial facilitation of criminal activity, N.J.S.A. 2C:21—25(b)(2).

Specifically, the court ordered defendant to serve the sentence on these two counts consecutively. In its findings, the trial court stated N.J.S.A. 2C:21-27(c) requires that, if there is more than one conviction for this particular offense, each conviction must be served consecutively to the other. In our view, the statute does not mandate that result.

N.J.S.A. 2C:21-27(c) provides in pertinent part:

> [T]he sentence imposed upon a conviction of any offense defined in section 3 of P.L. 1994, c. 121 (C. 2C:21-25) shall be ordered to be served consecutively to that imposed for a conviction of any offense constituting the criminal activity involved or from which the property was derived. Nothing in P.L. 1994, c. 121 (C. 2C:21-23 et seq.) shall be construed in any way to preclude or limit a prosecution or conviction for any other offense defined in this Title or any other criminal law of this State.

Clearly N.J.S.A. 2C:21-27(c) does not require two or more convictions for financial facilitation of criminal activity to be served consecutively. To be sure, a sentence imposed for the conviction of this offense must be served consecutively to that

imposed for the conviction of any offense constituting the criminal activity involved or from which the property was derived. Ibid. However, the statute does not also mandate multiple convictions for financial facilitation of criminal activity be served consecutively, as well.

Because in its findings the court stated N.J.S.A. 2C:21-27(c) compelled it to impose consecutive sentences when there were two or more convictions for financial facilitation of criminal activity, we must remand this matter for the trial court to reconsider the sentences on counts three and four. By ordering this remand, we do not mean to suggest we approve or disapprove of any particular outcome.

F

Defendant next argues the court erred when it compelled him to pay restitution without holding an ability to pay hearing. The court ordered defendant to pay restitution in the total amount of $391,660, and to pay this sum at the rate $100 per month, commencing sixty days from his release from prison. In his brief, defendant claims the court ordered him to pay $100 per week, but the amount he is to pay is $100 per month.

A court shall "sentence a defendant to pay restitution . . . if (1) [t]he victim . . . suffered a loss; and (2) [t]he defendant is able to pay or, given a fair opportunity, will be

able to pay restitution." N.J.S.A. 2C:44-2(b)(1), -(2). When establishing the restitution amount and repayment schedule, "the court shall take into account all financial resources of the defendant, including the defendant's likely future earnings, and shall set the amount of restitution so as to provide the victim with the fullest compensation for loss that is consistent with the defendant's ability to pay." N.J.S.A. 2C:44-2(c)(2).

An order of restitution is discretionary and entitled to our deference. State v. Harris, 70 N.J. 586, 595 (1976). Further, the law recognizes that any "evaluation is necessarily imprecise because it contemplates an examination of the future ability to pay if the defendant currently does not have financial resources." State v. Newman, 132 N.J. 159, 169 (1993).

If "there is a good faith dispute over the amount of the loss or defendant's ability to pay, the trial court[,] as a matter of defendant's due process entitlement, must hold a hearing on the issue, the character of which should be appropriate to the nature of the question presented." State v. Jamiolkoski, 272 N.J. Super. 326, 329 (App. Div. 1994). However, if there is no dispute over either issue, a separate hearing on restitution is unnecessary. State v. Orji, 277 N.J. Super. 582, 589-90 (App. Div. 1994).

Here, there is no disagreement over the restitution amount. There is also no dispute defendant's ability to pay will be compromised. The court specifically found defendant has no assets, and his ability to earn income will be limited when he emerges from prison because of his present convictions, deteriorating health[1], age[2], and family obligations. Because the limitations upon defendant's ability to pay are not in question, nothing meaningful would have been achieved by holding an ability to pay hearing.

Mindful defendant wrongfully took a substantial sum from defendant, but recognizing defendant's ability to pay will be limited in the future, the court ordered defendant to pay the very modest sum of $100 per month, or $23.07 per week, after his release from prison. The nominal sum ordered likely will be manageable even under the tightest of budgets.

Accordingly, given there were no material facts in dispute and the court did in fact assume defendant will have very limited financial resources, we cannot say the trial court mistakenly exercised its discretion when it failed to conduct an ability to pay hearing and instead ordered defendant to pay a very limited sum toward restitution.

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[1] There was evidence defendant suffers from scleroderma.

[2] Defendant was forty-three years of age when sentenced.

G

Defendant's last point pertains to his separate appeal (A-2838-14), in which he asserts the court erred when it denied his motion to reduce his sentence. In that motion, filed approximately eight months after he was sentenced, defendant claimed the condition from which he suffers, scleroderma, had reduced the ability of his lungs to absorb oxygen. He stated he found a medical facility that had successfully performed lung transplants in patients with his particular condition and that he wanted his sentence reduced so he could go forward with this procedure. The court denied his motion on the ground defendant had failed to provide any proof he was a candidate for a lung transplant.

Having considered the record, we are satisfied none of defendant's arguments merits discussion in a written opinion. R. 2:11-3(e)(2). We further note that by operation of Rule 3:21-10(b), the order denying defendant's motion was without prejudice. See R. 3:21-10(b). Pursuant to this rule, a defendant may file a motion and an order may be entered at any time "(1) changing a custodial sentence to permit entry of the defendant into a custodial or non-custodial treatment or rehabilitation program for drug or alcohol abuse, or (2) amending a custodial sentence to permit the release of a

defendant because of illness or infirmity of the defendant[.]" Should defendant's medical circumstances change, he can file a motion seeking relief pursuant to this rule.

Finally, the first page of the judgment of conviction states in one portion that the "Total Custodial Term" is "005 years." On remand, the court shall correct the judgment to accurately reflect the term imposed.

In summary, in appeal A-1028-14, we affirm the convictions, and vacate the sentences imposed for counts three and four and remand for the resentencing of these counts in accordance with this opinion. Further, we direct the judgment of conviction be amended to correctly reflect defendant's total custodial term. As for appeal A-2838-14, we affirm. We do not retain jurisdiction.