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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-3248-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LEROY SUMMERS, a/k/a
KEVIN BLAKE,

Defendant-Appellant.

Submitted March 13, 2018 – Decided April 3, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment
Nos. 09-03-0388, 09-09-1632 and 10-12-1746.

Leroy Summers, appellant pro se.

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Patrick F. Galdieri,
II, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

Defendant appeals from an order dated March 11, 2016, denying
his motion to correct an illegal sentence. We affirm.

Between March 4, 2009, and December 8, 2010, defendant was charged with numerous offenses under three separate indictments. On December 14, 2011, defendant, who was extended term eligible, pled guilty to: (1) counts one (second-degree endangering the welfare of a child) and eight (second-degree distribution of a controlled dangerous substance (CDS) near public housing) of the first indictment; (2) count four (second-degree possession of a CDS with intent to distribute near public property) of the second indictment; and (3) count one (second-degree robbery) of the third indictment.

In return, the State agreed to dismiss all remaining counts under the three indictments, and recommend the court sentenced defendant to: (1) an extended fourteen-year prison term with an eighty-five percent period of parole ineligibility on count one of the third indictment; and (2) to three concurrent ten-year prison terms with five-year parole ineligibility periods on the other counts under the second and third indictments.

On February 3, 2012, the trial court sentenced defendant in accordance with the plea agreement. Throughout both the plea hearing and the sentencing hearing, it was repeatedly noted that: (1) defendant could only receive one extended-term sentence under the global plea deal; and (2) that the extended-term sentence would be imposed on the robbery charge. Defendant repeatedly

indicated that he understood his extended-term eligibility and the single extended term sentence he was to receive.

Defendant appealed, and we affirmed his convictions and sentences. State v. Summers, No. A-4010-11 (App. Div. July 19, 2013). The Supreme Court denied certification. State v. Summers, 217 N.J. 287 (2014).

In January 2016, defendant filed a motion to correct an illegal sentence, arguing that the sentencing court had improperly imposed multiple extended prison terms, in violation of N.J.S.A. 2C:44-5(a)(2).

On March 11, 2016, without hearing oral argument, the trial court denied defendant's motion, finding that the only extended term defendant had received was for the charge of second-degree robbery contained in the third indictment. Defendant filed this appeal, renewing the argument made in the Law Division.

A petition to correct an illegal sentence can be filed at any time. R. 3:21-10(b)(5); State v. Zuber, 227 N.J. 422, 437 (2017); State v. Acevedo, 205 N.J. 40, 47 n.4 (2011). An illegal sentence is defined as one "not imposed in accordance with the law." Zuber, 227 N.J. at 437 (quoting Acevedo, 205 N.J. at 45).


"While the ordinary term range for a second-degree offense is five to ten years, N.J.S.A. 2C:43-6(a)(2), the extended term range for a second-degree crime is five to twenty years"

State v. McDonald, 209 N.J. 549, 557 n.1 (2012); N.J.S.A. 2C:43-7(a)(3).

As the PCR court found, defendant received one extended-term sentence and three concurrent sentences at the top of the ordinary second-degree sentencing range. Because defendant did not receive an illegal sentence, we affirm.

Affirm.

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


CLERK OF THE APPELLATE DIVISION