SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5226-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ISIAH T. MCNEAL, a/k/a ISIAH T. MCNEIL, and ISAIAH MCNEAL,

Defendant-Appellant.

Submitted December 21, 2017 – Decided March 22, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey, Law Division, Cape May County, Indictment Nos. 13-06-0614, 13-07-0725, 14-01-0032, 14-12-1056 and 15-06-0447.

Joseph E. Krakora, Public Defender, attorney for appellant (Marcia Blum, Assistant Deputy Public Defender, of counsel and on the brief).

Robert W. Johnson, Acting Cape May County Prosecutor, attorney for respondent (Gretchen A. Pickering, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant entered negotiated guilty pleas to count two of Indictment No. 14-12-1056, charging second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); count four of Indictment No. 13-06-0614, charging third-degree theft of a motor vehicle, N.J.S.A. 2C:20-3(a); count one of Indictment No. 13-07-0725, charging fourth-degree throwing bodily fluids at a law enforcement officer, N.J.S.A. 2C:12-13; count one of Indictment No. 14-01-0032, charging fourth-degree rioting, N.J.S.A. 2C:33-1(a); and count two of Indictment No. 15-06-0447, charging third-degree conspiracy to distribute controlled dangerous substances, N.J.S.A. 2C:5-2, 35-5(a)(1), and 35-5(b)(3). He was sentenced in accordance with the plea agreement to a ten-year prison term, subject to the No Early Release Act's (NERA) eighty-five percent period of parole ineligibility, N.J.S.A. 2C:43-7.2, on Indictment No. 14-12-1056, to run concurrent with an aggregate thirteen-year term imposed on the remaining four indictments. The aggregate thirteen-year term consisted of five years each on Indictment Nos. 13-06-0614 and 15-06-0447, and eighteen months each on Indictment Nos. 13-07-0725 and 14-01-0032. The remaining counts of the indictments as well as a sixth indictment were dismissed under the plea agreement.[1]

[1] Four of the indictments encompassed multiple counts, and two included first-degree charges.

Defendant now appeals his convictions and sentence raising the following single point for our consideration:

> DEFENDANT DID NOT ENTER THE PLEA KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY BECAUSE THE COURT AND COUNSEL GAVE DEFENDANT INCORRECT, CONFLICTING, AND CONFUSING ADVICE ABOUT HIS JAIL CREDIT; THEREFORE, THE PLEA MUST BE VACATED. (NOT RAISED BELOW).

We affirm.

A summary of the procedural history leading to the challenged plea will provide context for defendant's contention. After denying defendant's pre-trial motions to dismiss the indictment and suppress telephone recordings, the trial court commenced a bench trial on Indictment No. 14-12-1056, but adjourned the matter on the third day of trial. Several days later, when the trial resumed, the State tendered a new plea offer, which defendant accepted. The new offer would resolve all six indictments referenced above and differed from the ultimate offer that is the subject of this appeal in that it encompassed an eight-year, instead of a ten-year, term on the NERA offense, concurrent with the aggregate thirteen-year flat term on the remaining charges.

In the midst of the plea allocution on the new plea offer, when the judge asked defendant if he understood that he was waiving his right to "continue with [the] trial" by entering a guilty plea, defendant responded, "I understand you all tricked me.

That's what I understand." In response to the judge's additional questions seeking clarification of defendant's accusation, defendant stated, "I'm not answering no more questions. Whatever you're all gonna do, you're all gonna do it . . . . There's nothing else for us to talk about, point blank, period."

As defendant continued to utter a barrage of expletives in the courtroom and impugn his attorney's representation, the judge stated:

> [I]f you don't understand that when you plead guilty, you waive your right to a trial, which is what I explained to you from the very beginning, that if you wanted to plead guilty, you waive your right to a trial, you said you understood that.
>
> But now, you're telling me you don't understand? You think that you can plead guilty and still go to trial? That's not how it works. But clearly, you don't understand your constitutional rights so I'm not going to be able to accept this guilty plea.

The prosecutor responded by withdrawing the new offer and indicating that the State was ready to continue with the trial.

When the trial resumed two days later, defendant apologized both directly and through his attorney for his disruptive behavior. According to defense counsel, after being advised "that he would be entitled to [2438] days' jail credit as to [I]ndictment 14-12-1056 just because of the nature of the plea and the actual consecutive sentences on some of the other counts," defendant

"want[ed] to go forward with the plea." The prosecutor responded that the plea was "not being reoffered to . . . defendant." The court concluded:

> [T]he plea on the record was rejected. This [c]ourt found that it could not even accept the plea, and thereafter, the defendant himself said he didn't want the plea, he wanted to go to trial. He didn't want to go to trial with his attorney at that time, that he believed that he was being tricked, and I took it as he was being tricked by the [c]ourt and by counsel . . . . There's absolutely no trickery that took place; there was no collusion. If anything, it was possibly the frustrations at that point and possibly a misunderstanding. But this is a situation where . . . the [c]ourt agrees that the plea was not accepted; it's been withdrawn.

At that point, instead of requesting a mistrial, defendant indicated through his attorney that he would accept "the State's original plea offer, which was ten years at 85 percent concurrent to the [thirteen] flat." Defense counsel added it had "been represented to counsel, and to the [c]ourt, and to the State, and therefore, [he] represented it to [defendant] that . . . with respect to [] [I]ndictment 14-12-1056, [he was] going to be entitled to . . . [2438] days of jail credit. And he [was] entering this plea with that understanding."

The prosecutor promptly countered:

> [W]hat I would just note for that purpose is . . . there['s] absolutely no question from the State's perspective that the

> defendant [is] entitled to whatever credit he lawfully is entitled to. But . . . if the defendant gets, for instance, six years' credit for being in jail for three years, I don't know . . . how that makes any sense. I don't know if their calculations are mistaken or not, but the defendant has been in jail for less than three years on this matter.
>
> . . . And I don't . . . believe that that should be part and parcel of the plea negotiations. He's entitled to the days that he's entitled to, but the idea that he somehow will be able to bypass through . . . [eight-and-one-half][2] years is not something that the State is signing off on at this point in time whatsoever. It seems clear from the State's perspective . . . he's going to have to do a minimum of [eight-and-one-half] years' real time. He's not going to get bonus time for the fact that he's in . . . jail on more than [one] case.
>
> Obviously, there's certainly a possibility . . . that I'm wrong in terms of my assessment, that somehow [eight-and-one-half] years can be satisfied with five years or something like that . . . . [But] I would submit that he's going to have to do [eight-and-one-half] years and . . . to the extent that his reliance upon this number that's been proffered out there is potentially being determined by Ms. Caruso and Ms. Brand,[3] and I have great respect for both of those women, . . . I would submit that . . . common sense would indicate that a person pleading to a sentence which requires [eight-and-one-half] years of parole [stipulation], would

[2] The prosecutor was referring to the eighty-five percent parole ineligibility period on the ten-year NERA sentence, which amounted to eight years, six months, and two days.

[3] The reference was presumably to probation officers who are responsible for preparing the pre-sentence reports.

> actually have to do [eight-and-one-half] years. So anyway, . . . that's something that I just want to make sure is clear on the record.

After defendant was sworn, the following colloquy occurred between the judge and defendant:

> [COURT] [B]efore we put the . . . plea through[,] . . . the jail credit . . . that has been provided to me is . . . [2438]. I cannot represent to you how that will affect you on this sentence and, in particular, the parole ineligibility. Do you understand that?
>
> [DEFENDANT] Yeah.
>
> [COURT] You understand in other words that you're entering into this plea negotiation . . . understanding that nobody's making you any promises other than the fact that that is your jail credit . . . .
>
> [DEFENDANT] Yes, I understand that.
>
> [COURT] Okay. So any . . . plea . . . negotiations that you're entering into should not be entered into by you thinking that [2438] days comes out to [six] years and . . . that's all going to go towards your parole ineligibility. It may; I just can't represent it to you, and I don't want you to accept this plea thinking that anybody is telling you that it is going to be applied to your parole ineligibility. Do you understand that?
>
> [DEFENDANT] Yes.
>
> . . . .
>
> [COURT] So again, . . . you're entering into this guilty plea and you understand that there's no representation made as to how those

> credits would be applied in particular to your sentence and/or to your parole ineligibility; is that correct?
>
> [DEFENDANT] Yes.

The judge continued the plea allocution, ensuring that defendant was satisfied with his attorney's representation, reviewed the discovery in all his cases, discussed any potential defenses with his attorney, reviewed and answered the questions on the plea forms truthfully, and understood the terms of the plea agreement and the consequences of his guilty pleas. Defendant indicated that he understood that by pleading guilty, he was giving up his constitutional rights, including the right to continue with his trial and to go to trial on the remaining indictments. Defendant also provided a factual basis for each offense that was satisfactory to the judge and the State. Upon determining that defendant was entering the guilty pleas "freely and voluntarily," was not promised anything other than what was discussed, and was not "forced or coerced" into pleading guilty, the judge accepted the pleas in accordance with Rule 3:9-2. When defendant was sentenced on May 20, 2016, he received 1012 days of jail credit

on the NERA offense.[4] The judgments of conviction were entered on June 8, 2016, and this appeal followed.

On appeal, defendant argues for the first time that "[b]ecause the trial judge, as well as defense counsel, gave [him] incorrect, contradictory, and confusing advice about his jail credit, he did not enter the plea knowingly, intelligently, and voluntarily . . . in violation of his right to due process." Therefore, according to defendant, he should be allowed to withdraw his plea. We disagree.

Rule 3:9-2 governs the taking of pleas. In particular, it mandates that a court not accept a guilty plea to a criminal charge without first "determining . . . that there is a factual basis for the plea and that the plea is made voluntarily . . . and with an understanding of the nature of the charge and the consequences of the plea." R. 3:9-2. "The specificity and rigor embodied in Rule 3:9-2 manifest a systemic awareness that a defendant waives significant constitutional rights when pleading guilty, which places an affirmative obligation on a court to reject a plea of guilty when that court is not independently satisfied that the

[4] Defendant also received 1060 days of jail credit on Indictment No. 13-06-0614, 1043 days of jail credit on Indictment No. 13-07-0725, 891 days of jail credit on Indictment No. 14-01-0032, and 721 days of jail credit on Indictment No. 15-06-0447.

Rule's prerequisites are met." State ex rel. T.M., 166 N.J. 319, 326 (2001).

"Although a court is not responsible for informing a defendant of all consequences flowing from a guilty plea, at a minimum the court must ensure that the defendant is made fully aware of those consequences that are 'direct' or 'penal.'" State v. Johnson, 182 N.J. 232, 236 (2005) (quoting State v. Howard, 110 N.J. 113, 122 (1988)). "The requirement that the court be satisfied in that respect serves several salutary ends. It avoids having a defendant enter into a plea hampered by being 'misinformed . . . as to a material element of a plea negotiation, which [he] has relied [on] in entering his plea.'" Id. at 236-37 (alterations in original) (quoting State v. Nichols, 71 N.J. 358, 361 (1976)). It also "promotes the binding resolution of charges because it serves to ensure that a defendant's 'expectations [are] reasonably grounded in the terms of the plea bargain.'" Id. at 237 (alteration in original) (quoting State v. Marzolf, 79 N.J. 167, 183 (1979)).

In State v. Alevras, we acknowledged:

> [T]hat, at least in certain circumstances, a defendant's misunderstanding of credits may affect his understanding of the maximum exposure. Hence, a guilty plea based on this misunderstanding may fail to satisfy the constitutional requirement that a plea be voluntarily, intelligently and knowingly entered, at least where the denial of the expected credits results in the imposition of

> a sentence longer in duration than the maximum contemplated. This would be particularly true if a misunderstanding not clarified during the plea colloquy had an impact on his decision to enter the guilty plea.
>
> [213 N.J. Super. 331, 338-39 (App. Div. 1986) (citations omitted).]

Rule 3:21-1 permits a court to vacate a guilty plea after sentencing only if withdrawal of the plea is necessary to correct a "manifest injustice." "To demonstrate a manifest injustice, defendant must show that the lack of information prejudiced him in making his decision to plead." Johnson, 182 N.J. at 244. Here, we find no manifest injustice. While misrepresentations regarding jail credit may upend a knowing and voluntary guilty plea, a review of the record in its entirety contradicts defendant's claim. Thus, we conclude that defendant entered his guilty pleas knowingly, intelligently, and voluntarily. See R. 3:9-2.

Affirmed.