SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5261-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KURT A. KNOWLES, JR.,

Defendant-Appellant.

Submitted December 20, 2017 – Decided February 23, 2018

Before Judges Alvarez and Currier.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 14-09-1069.

Jack Venturi, attorney for appellant.

Andrew C. Carey, Middlesex County Prosecutor, attorney for respondent (David M. Liston, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Kurt Knowles appeals from the March 30, 2015 and August 4, 2016 orders confirming the denial of his application for entry into the pre-trial intervention (PTI) program. He also

appeals the March 30, 2016 order denying his suppression motion. We conclude that defendant has not established that the prosecutor's decision to deny PTI was a patent and gross abuse of his discretionary authority. In addition, we are satisfied that the denial of the motion to suppress was supported by the credible evidence in the record. We affirm.

Defendant was stopped at a routine DWI checkpoint. When he rolled down his window, police officers detected the odor of marijuana coming from his vehicle. When questioned about the odor, defendant denied there was any marijuana in his car, suggesting that the smell might have come from a dog that was in the car earlier or from a marijuana vaporizer in the center console of the vehicle. Defendant consented to a search of the car, and three pounds of marijuana was found in a backpack in the vehicle's trunk.

Defendant was charged in an indictment with fourth-degree possession of a controlled dangerous substance, marijuana, N.J.S.A. 2C:35-10(a)(3); third-degree possession with intent to distribute marijuana, N.J.S.A. 2C:35-5(a)(1); third-degree possession with intent to distribute marijuana on or near school property, N.J.S.A. 2C:35-7; and second-degree possession with intent to distribute marijuana within 500 feet of public property, N.J.S.A. 2C:35-7.1.

Defendant's application for admission into the PTI program was initially accepted by the program director. However, the prosecutor subsequently rejected the application, advising, among other reasons, that defendant denied knowledge of any marijuana when stopped at the checkpoint; after the discovery of the cannabis, he said it must have belonged to a cousin who had recently used his car. Due to the quantity of the drugs recovered, and defendant's denial of the personal use of marijuana, the prosecutor stated the possession must have been purely profit-driven. The street value of three pounds of marijuana was conservatively $7500 with a higher worth if repackaged for sale in smaller quantities. Defendant appealed the decision.

In considering defendant's appeal, Judge Dennis V. Nieves issued a comprehensive written decision on March 30, 2015. He analyzed each of the seventeen factors listed in N.J.S.A. 2C:43-12(e), determining a number of the factors were favorable to defendant and others weighed in favor of the State. The judge also noted the "numerous character recommendation letters." Judge Nieves concluded that he could not "say that [defendant] clearly and convincing[ly] demonstrated that the State's decision to reject him from Pretrial Intervention constituted a patent and gross abuse of discretion."

Defendant also filed a motion to suppress the evidence seized from his trunk, arguing that his consent was involuntary and coerced. Following a hearing, Judge Alberto Rivas found that defendant had voluntarily and knowingly agreed to a search of the car. He noted that defendant was an intelligent person and had ample time to consider the consent form that advised him he had the right to object to a search. As Judge Rivas found defendant was not credible in his testimony that he was coerced or threatened to sign the consent form, the motion to suppress the seized evidence was denied.

Following an amendment to the PTI statute in 2016,[1] defendant appealed the denial of his entry into PTI a second time. After oral argument, Judge Rivas denied the appeal, stating that after a complete review of the briefs and Judge Nieves's decision, he was

> satisfied that the State has presented sufficient facts to sustain its decision to reject [d]efendant's PTI application. . . . [T]he Court finds that the State did not make a clear error in judgment, such that remand is required; nor did the State's decision to preclude [defendant] from admission into [] PTI clearly subvert the goals underlying the

[1] N.J.S.A. 2C:34-12 was amended in 2015. As amended, the eligibility requirements were expanded to allow defendants who plead guilty to certain violent crimes to be admitted to the program. N.J.S.A. 2C:12(g)(3). Defendant was not charged with a violent crime, and we have not been apprised of the reasons for permitting a second appeal of the PTI denial.

> program. Additionally, this Court finds that [d]efendant has not established by clear and convincing evidence that the State's decision to reject his PTI application was either a patent and gross abuse of discretion or arbitrary and irrational nor has [d]efendant presented compelling reasons for [his] entry into PTI.

Defendant subsequently entered a guilty plea and was sentenced. On appeal, he raises the following issues:

> POINT I: THE STATE'S REJECTION OF MR. KNOWLES FROM PTI, AGAINST THE RECOMMENDATION OF THE PTI DIRECTOR, SHOULD BE REVERSED, BECAUSE IT WAS A PATENT AND GROSS ABUSE OF DISCRETION; THE STATE FAILED TO CONSIDER POSITIVE FACTORS IN FAVOR OF MR. KNOWLES' PTI ENTRANCE; AND THE STATE'S DECISION IS A CLEAR ERROR IN [JUDGMENT] WHICH SUBVERTS THE GOALS OF PTI.
>
> POINT II: IT WAS ERROR FOR JUDGE RIVAS TO DENY MR. KNOWLES'[] MOTION TO SUPPRESS BECAUSE HIS CONSENT WAS COERCED, AND NOT VOLUNTARILY MADE.

Our scope of review of a prosecutor's decision to deny admission to PTI is "severely limited." State v. Negran, 178 N.J. 73, 82 (2003). We afford the prosecutor's decision great deference. See State v. Wallace, 146 N.J. 576, 582, 589 (1996). A trial judge can only overturn a prosecutor's decision to deny PTI upon finding a patent and gross abuse of discretion. See State v. Kraft, 265 N.J. Super. 106, 112-13 (App. Div. 1993).

Our review of a PTI application exists "to check only the most egregious examples of injustice and unfairness." State v.

Nwobu, 139 N.J. 236, 246 (1995) (quoting Kraft, 265 N.J. Super. at 111). In short, it is expected that a prosecutor's decision to reject a PTI applicant "will rarely be overturned." Wallace, 146 N.J. at 585 (quoting State v. Leonardis, 73 N.J. 360, 380 n.10 (1977)). Absent evidence to the contrary, a reviewing court must assume that "the prosecutor's office has considered all relevant factors in reaching the PTI decision." Nwobu, 139 N.J. at 249 (citing State v. Dalglish, 86 N.J. 503, 509 (1981)).

Despite defendant's contentions, we are satisfied that both trial judges conducted the proper review of the prosecutor's decision to deny defendant entrance into the PTI program. Each noted that the prosecutor had considered the required factors under N.J.S.A. 2C:43-12(e). It is not the judge's function to "second guess" the State's decision. Here, the prosecutorial decision has not "gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention." Wallace, 146 N.J. at 583 (quoting State v. Ridgeway, 208 N.J. Super. 118, 130 (Law Div. 1985)). Rather, the trial judges applied the appropriate deferential standard of review to reach a sound decision. Defendant has not met his burden of proving the prosecutor's decision was a patent abuse of discretion.

Defendant's argument pertaining to the denial of the suppression motion lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.