

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Court. In the interest of brevity, portions of any opinion may not have been summarized.)

State v. Rainlin Vasco (A-54-17) (080426)

(NOTE: The Court did not write a plenary opinion in this case. Instead, the Court reverses the judgment of the Appellate Division substantially for the reasons expressed in Judge Espinosa’s dissenting opinion, which is published at ___ N.J. Super. ___, ___ (App. Div. 2017) (Espinosa, J.A.D., dissenting).)

Argued October 9, 2018 -- Decided October 30, 2018

PER CURIAM

A majority of an Appellate Division panel affirmed defendant Rainlin Vasco’s judgment of conviction. The Court considers whether, under the circumstances presented, defendant provided a sufficient factual basis for his guilty plea.

Defendant was arrested when his mother called 9-1-1 to report that he had threatened his girlfriend, N.C., with a knife and was punching N.C. in the leg. N.C. gave a statement to police on the night of the incident. Defendant was initially charged with simple assault, terroristic threats, and possession of a weapon for an unlawful purpose. In September 2015, pursuant to a plea agreement, he pleaded guilty to fourth-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(d).

During defendant’s plea allocution, he was asked, “[Y]ou didn’t have a lawful purpose for that knife, right?” He answered, “I had a lawful purpose, like, I didn’t want to do anything unlawful. I just possessed it.” The judge then indicated he could not accept the plea because defendant had not presented an adequate factual basis and suggested the parties return after the lunch break. When they did, counsel asked defendant, “And you didn’t have a lawful purpose for that knife, right?” to which defendant said, “I did not.” The judge indicated he was satisfied defendant provided an adequate factual basis for his guilty plea.

Defendant later moved to withdraw his plea, arguing that it lacked an adequate factual basis. He submitted a certification stating that he held the knife to move it away from N.C. for fear she would use it against him, not to use it as a weapon. He also provided a statement N.C. gave to his investigator in which she recanted her prior allegations. Defendant’s mother gave a statement indicating that defendant had a knife. The motion judge found there was an adequate factual basis for defendant’s plea.

A majority of the Appellate Division panel affirmed the motion judge’s determination. ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 1).

Judge Espinosa dissented. She observed that the issue in this case is whether defendant “admitted his guilt” -- “not whether the State could prove defendant’s guilt” -- and stressed that “the threshold for [appellate] review must be a recognition of the difference between a conviction following a trial, in which the defendant has been afforded his constitutional rights, and a conviction following a guilty plea, in which he has waived those rights.” Id. at ___ (Espinosa, J.A.D., dissenting) (slip op. at 1). “Before a court can accept a defendant’s guilty plea, it first must be convinced that (1) the defendant has provided an adequate factual basis for the plea; (2) the plea is made voluntarily; and (3) the plea is made knowingly.” Id. at ___ (slip op. at 2) (quoting State v. Lipa, 219 N.J. 323, 331 (2014)). The dissent noted that “each element of the offense [must] be addressed in the plea colloquy,” id. at ___ (slip op. at 2) (quoting State v. Campfield, 213 N.J. 218, 231 (2013)), and that “[t]he Court has made it clear the defendant must be the source for establishing the factual foundation,” id. at ___ (slip op. at 2).

The dissent discussed State v. Gregory, 220 N.J. 413 (2015), in which the Court found no adequate factual basis for a guilty plea for possession with intent to distribute because the defendant did not indicate in his plea allocution that he intended to distribute the heroin he possessed. Id. at ___ (slip op. at 3-5). Had the Court looked to the evidence, not solely to defendant’s allocution, the dissent observed, “the factual basis given . . . would appear to be adequate”; the Court did not look beyond the allocution, however. Id. at ___ (slip op. at 4). The dissent also relied on State v. Perez, in which the Court specified that “[a] defendant must do more than accede to a version of events presented by the prosecutor. Rather, a defendant must admit that he engaged in the charged offense and provide a factual statement or acknowledge all of the facts that comprise the essential elements of the offense to which the defendant pleads guilty.” See id. at ___ (slip op. at 4) (quoting Perez, 220 N.J. 423, 433-34 (2015)).

Noting that “[t]he essential elements of an offence under N.J.S.A. 2C:39-5(d) are (1) there was a weapon, (2) defendant possessed the weapon knowingly, and (3) the defendant’s possession of the weapon was under circumstances not manifestly appropriate for a lawful use,” the dissent opined that defendant’s allocution did not contain admissions as to each of those three elements as required by Gregory and Perez. Id. at ___ (slip op. at 6-8). According to the dissent, “it was necessary for defendant to admit to circumstances that were manifestly inappropriate to provide an adequate factual basis for his guilty plea.” Id. at ___ (slip op. at 7). The dissent underscored that “the majority . . . cited circumstances derived from statements made by witnesses who have since recanted” but that “none of [those] circumstances were acknowledged by defendant.” Id. at ___ (slip op. at 8).

Finally, the dissent “address[ed] the appropriate standard of review” and observed that the Court has distinguished “between the review of cases in which the plea is supported by an adequate factual basis and those in which it is not.” Id. at ___ (slip op. at 8-9) (discussing State v. Tate, 220 N.J. 393, 403-04 (2015)). In the latter case, an appellate court exercises a de novo review and, “if a factual basis has not been given to support a guilty plea, the analysis ends and the plea must be vacated.” Id. at ___ (slip op. at 9) (quoting Tate, 220

N.J. at 404). “[W]here the plea is supported by an adequate factual basis but the defendant later asserts his innocence,” by contrast, the factors set forth in State v. Slater, 198 N.J. 145 (2009), and the abuse-of-discretion standard apply. Id. at ___ (slip op. at 9) (quoting Tate, 220 N.J. at 404).

HELD: The judgment of the Appellate Division is reversed substantially for the reasons expressed in Judge Espinosa’s dissenting opinion. Defendant’s guilty plea is vacated and the matter is remanded to the trial court for further proceedings.

REVERSED and REMANDED.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.

SUPREME COURT OF NEW JERSEY

A-54 September Term 2017

080426

State of New Jersey,

Plaintiff-Respondent,

v.

Rainlin Vasco,

Defendant-Appellant.

On appeal from the Superior Court,
Appellate Division, whose decision is reported at
___ N.J. Super. ___ (App. Div. 2017).

Argued
October 9, 2018

Decided
October 30, 2018

Alyssa Aiello, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Alyssa Aiello, of counsel and on the briefs).

Michele C. Buckley, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Michael A. Monahan, Acting Union County Prosecutor, attorney; Michele C. Buckley, of counsel and on the briefs).

Adam D. Klein, Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Gurbir S. Grewal, Attorney General, attorney; Adam D. Klein, of counsel and on the brief).

PER CURIAM

The judgment of the Superior Court, Appellate Division is reversed substantially for the reasons expressed in Judge Espinosa’s dissenting opinion, reported at ___ N.J. Super. ___, ___ (App. Div. 2017) (Espinosa, J.A.D., dissenting). Defendant’s guilty plea is vacated and the matter is remanded to the trial court for further proceedings.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.