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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0279-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TAHREF L. FOLKES,

Defendant-Appellant.

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Submitted May 11, 2022 – Decided June 6, 2022

Before Judges Hoffman, Whipple and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment Nos. 17-04-0631, 17-04-0652 and 17-09-1200.

Law Offices of Nancy E. Lucianna, PC, attorneys for appellant (Nancy E. Lucianna, of counsel and on the briefs; Paul F. Darakjian, on the brief).

Mark Musella, Bergen County Prosecutor, attorney for respondent (William P. Miller, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Tahref L. Folkes appeals for a second time from a sentence on multiple convictions that includes consecutive sentences. We remand for resentencing.

Defendant was charged in three indictments charging him with twenty-one separate criminal offenses, notably including first and second-degree possession of an assault firearm, N.J.S.A. 2C:39-5(f), (j), and second-degree certain persons not to have a handgun, N.J.S.A. 2C:39-7(b), (the firearms counts).

Under a negotiated plea agreement, defendant agreed to plead guilty in exchange for a recommended aggregate sentence of fifteen years' imprisonment with ten years' parole ineligibility. Relevant to this appeal, with respect to the firearm counts, defendant admitted that, on February 2, 2017, he was staying at his mother's house, and police executed a search warrant of the home. Police found an AM-15, an AR-type semi-automatic rifle, located in a bedroom closet, and a semi-automatic handgun, secreted in a sock near a staircase outside the bedroom. Relevant to both counts, defendant admitted that he had a prior conviction in 2009 for robbery.

On February 9, 2018, defendant appeared for the sentencing hearing. Defense counsel asked the court to deviate from one of the plea agreement's

recommendations; namely, that the terms for the firearms counts be served consecutively arguing that, since the guns were uncovered in the same search, the Yarbough<sup>1</sup> guidelines favored concurrent terms.

After finding aggravating and mitigating factors, the court issued a sentence in accordance with the plea agreement of fifteen years' imprisonment with ten years' parole ineligibility, in which the firearms counts ran consecutively.

Defendant appealed his sentence, arguing that the court failed to analyze the Yarbough guidelines before imposing consecutive terms for the firearms counts. On March 14, 2019, we determined that "the court did not provide adequate findings to support the imposition of consecutive terms" and remanded for reconsideration. State v. Folkes, No. A-3952-17 (App. Div. Mar. 14, 2019).

On June 7, 2019, defendant appeared for resentencing. Defense counsel again raised the argument that "possession of two different things at . . . one time" warrants concurrent terms. The court rejected the argument. After reciting all of the Yarbough guidelines, but not providing additional analysis, the court gave the "no free crimes" guideline the greatest weight, noting "the strong intent of the [L]egislature to specifically deter persons previously

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<sup>1</sup> State v. Yarbough, 100 N.J. 627 (1985).

convicted of certain enumerated offenses from possessing firearms." Because there were two different guns involved, the court found that the firearms counts were sufficiently separate and distinct to permit consecutive terms. Moreover, the court stressed that the plea agreement as a whole called for consecutive terms on those counts and, with that understanding, the State had agreed to concurrent terms for three other counts encompassing crimes that were unrelated to the firearms counts and to terms at the bottom of the respective sentencing ranges. Accordingly, the court re-imposed the same sentence. Defendant again appealed his sentence.

On appeal he argues:

POINT I.

THE TRIAL COURT FAILED TO MAKE THE REQUIRED FINDINGS FOR CONSECUTIVE SENTENCES RENDERING THE PROCEEDINGS DEFECTIVE.

POINT II.

THE PROPER [ANALYSIS] REQUIRES IMPOSITION OF CONCURRENT TERMS.

POINT III.

THIS COURT SHOULD EXERCISE ORIGINAL JURISDICTION, OR IN THE ALTERNATIVE, [REMAND] TO A DIFFERENT JUDGE [WITH] INSTRUCTIONS.

At the outset we note the State concedes the matter must be remanded in any event to comply with our Supreme Court's recent decision in State v. Torres, 246 N.J. 246 (2021). That case held that "an explanation for the overall fairness of a sentence by the sentencing court" is now required when consecutive sentences are imposed. Id. at 271. While a remand is necessary for that purpose, we limit our remarks herein to the narrow question of whether the trial court must address deficiencies with respect to the Yarbough factors. We conclude it must.

When defendants are subject to multiple sentences for more than one offense, the Code of Criminal Justice empowers trial court judges with the discretion to decide whether those sentences should run concurrently or consecutively. N.J.S.A. 2C:44-5(a)-(b). To promote sentencing uniformity while preserving a reasonable amount of discretion for the sentencing court, Yarbough established guidelines to assist judges in deciding whether to impose concurrent or consecutive sentences. State v. Liepe, 239 N.J. 359, 371-72 (2019) (citing State v. Carey, 168 N.J. 413, 422 (2001)).

Yarbough instructs:

- (1) there can be no free crimes in a system for which the punishment shall fit the crime;

(2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;

(3) some reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not:

(a) the crimes and their objectives were predominantly independent of each other;

(b) the crimes involved separate acts of violence or threats of violence;

(c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior;

(d) any of the crimes involved multiple victims;

(e) the convictions for which the sentences are to be imposed are numerous;

(4) there should be no double counting of aggravating factors; [and]

(5) successive terms for the same offense should not ordinarily be equal to the punishment for the first offense . . . .

[100 N.J. at 643-44.]

"The Yarbough factors are qualitative, not quantitative; applying them involves more than merely counting the factors favoring each alternative

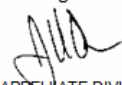
outcome." State v. Cuff, 239 N.J. 321, 348 (2019). Sentencing judges should "be mindful that aggravating and mitigating factors and Yarbough factors, as well as the stated purposes of sentencing in N.J.S.A. 2C:1-2(b), in their totality, inform the sentence's fairness." Torres, 246 N.J. at 272. The judge "must explain [his or her] decision to impose concurrent or consecutive sentences in a given case" because "[a] statement of reasons is a necessary prerequisite for adequate appellate review of sentencing decisions." Cuff, 239 N.J. at 348 (second alteration in original) (quoting State v. Miller, 108 N.J. 112, 122 (1987)).

Here, the court did not engage in the complete analysis. Instead, it relied heavily on factor one's pronouncement of "no free crimes" but did not address the required determinations under factor three, which "provides the clearest guidance to sentencing courts faced with a choice between concurrent and consecutive sentences," and sets forth the five facts relating to the crime. Carey, 168 N.J. at 423.

We remand the matter for resentencing again and direct the matter be assigned to a different judge to engage in the Yarbough and Torres analysis.

Vacated and remanded. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION