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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1329-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JEFFREY PICKETT,

Defendant-Appellant.

Submitted November 10, 2022 – Decided December 15, 2022

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 93-05-1733.

Jeffrey Pickett, appellant pro se.

Theodore N. Stephens II, Acting Essex County
Prosecutor, attorney for respondent (Matthew E.
Hanley, Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jeffrey Pickett appeals from a July 28, 2020 order denying his motion to correct an illegal sentence and an October 12, 2021 order denying his application for reconsideration. Before us, he raises the following arguments:

POINT I

APPELLANT WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS WHEN THE TRIAL COURT FAILED TO CONDUCT . . . A "MARTIN HEARING." STATE V. MARTIN, 110 N.J. 10 (1988).

POINT II

THE TRIAL COURT'S DECISION TO DENY THE MOTION FOR RECONSIDERATION WAS AN ABUSE OF DISCRETION.

We reject defendant's arguments because these challenges to his sentence have already been conclusively determined adversely to him in numerous, prior appeals. See R. 3:22-5. Moreover, apart from the aforementioned procedural bar, defendant's arguments are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We include the following details regarding defendant's convictions and the related procedural history solely to provide context for our decision.

I.

A jury found defendant guilty in 1994 of three counts of first-degree attempted murder of Newark police officers Umar Abdul-Hakeem, Jevon Mintz, and Ronald Soto, N.J.S.A. 2C:5-1, N.J.S.A. 2C:11-3; three counts of third-degree aggravated assault against Abdul-Hakeem, Mintz, and Soto, N.J.S.A. 2C:12-1(b)(1); fourth-degree aggravated assault against Soto, N.J.S.A. 2C:12-1(b)(4); third-degree terroristic threats against Soto, N.J.S.A. 2C:12-3; third-degree unlawful possession of a firearm, N.J.S.A. 2C:39-5(b); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a); and third-degree possession of cocaine, N.J.S.A. 2C:35-10(a)(1). The sentencing court determined defendant was extended-term eligible, either as a persistent offender under N.J.S.A. 2C:44-3(a), or as a second Graves Act offender under N.J.S.A. 2C:44-3(d), and sentenced him to an aggregate life term with a thirty-five-year period of parole ineligibility.

Prior to his 1994 convictions, defendant had a significant criminal history which included: (1) a 1983 conviction for receiving stolen property, N.J.S.A. 2C:20-7; (2) a 1984 conviction for possession of a controlled dangerous substance, N.J.S.A. 24:21-20(a) (repealed by L. 1987, c. 106, § 25); and (3) a 1987 conviction for possession of marijuana with intent to distribute, N.J.S.A.

24:21-19 (repealed by L. 1987, c. 106, § 25); first-degree robbery, N.J.S.A. 2C:15-1; fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b); and fourth-degree resisting arrest, N.J.S.A. 2C:29-2.

Defendant filed a timely appeal of his 1994 convictions and his sentence. Among other challenges, defendant argued his sentence was illegal because he was "deprived of the right to fundamental fairness when the trial court erroneously implied [sic] the extended term in absence of a prior Graves Act conviction," in violation of his Fourteenth Amendment due process rights. State v. Pickett, Docket No. A-4277-93 (App. Div. July 19, 1996) (slip op. at 3-4). We rejected his arguments and affirmed defendant's conviction and sentence, id. at 6, and the Supreme Court denied certification, State v. Pickett, 148 N.J. 459 (1997).

Defendant's first post-conviction relief (PCR) petition challenging his sentence, filed on October 29, 2004, was denied as time-barred. No appeal was taken. On July 29, 2005, defendant filed a motion to correct an illegal sentence, which the court denied in an August 27, 2007 order, for reasons expressed in an accompanying letter opinion. Defendant appealed that order, again arguing, in part:

The sentencing court improperly sentenced petitioner to two extended terms, both as a persistent offender, as

well as a second Graves Act offender[.] Additionally, the Graves Act extended term is illegal, absent of [sic] the proof that the weapon used in the prior conviction was a firearm. Thus, the sentence imposed upon defendant is illegal and must be corrected.

[State v. Pickett, Docket No. A-4552-06 (App. Div. June 30, 2008) (slip op. at 1-2) (alterations in original).]

We affirmed and concluded "[t]he issues raised in defendant's motion to correct an illegal sentence are identical to the sentencing issues raised and rejected in our 1996 opinion. Therefore, defendant's arguments are barred as having been previously raised. R. 3:22–5." Id. at 4. Nevertheless, we proceeded to review the claims on the merits, and determined defendant was extended-term eligible both as a persistent offender and under the Graves Act. Ibid. We also found defendant had not received "two extended terms" as he claimed and that his sentence was not illegal. Id. at 5. The Supreme Court denied defendant's petition for certification, State v. Pickett, 196 N.J. 465 (2008).

On February 27, 2007, defendant filed another PCR petition before a different judge. The PCR court denied his petition in an October 23, 2008 order and concluded defendant was not eligible for an extended term pursuant to the Graves Act but was properly sentenced as a persistent offender. On appeal, defendant argued, in part, "[t]his court should remand this matter to the trial court for proper sentencing since [defendant] was unconstitutionally sentenced

as a 'persistent offender' and since he received an unreasonable sentence that was manifestly unjust." State v. Pickett, Docket No. A-2335-10 (App. Div. Jan. 13, 2014) (slip op. at 2) (second alteration in original). After reviewing the record, we concluded "defendant's arguments [were] without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(2), and clearly barred by having been already determined adversely to him, R. 3:22-5." Id. at 3.

On May 1, 2019, defendant filed a second motion to correct an illegal sentence, again contending his Graves Act conviction must be reversed and his extended sentence vacated. Specifically, he argued:

the predicate prior offense used to qualify him as a second offender with a firearm . . . was obtained in violation of the Criminal Code of Justice. And thus, that prior conviction must be vacated and set aside, and the extended term sentence that resulted as a consequence must also be vacated.

The court denied his motion in an August 13, 2019 order and concluded, in part, the "State's motion for an extended term was based on the defendant meeting the definition of a persistent offender under N.J.S.A. 2C:44-3(a), and the previous 'firearm conviction' the defendant refers to was a [fourth-]degree aggravated assault conviction, which is not a Graves offense and was not considered as such."

On September 2, 2019, defendant filed his first motion for reconsideration, which the court denied by way of a July 28, 2020 order. Defendant then filed a second reconsideration application on August 24, 2020, which the court again denied in an October 12, 2021 order.

In denying defendant's motion, the court concluded defendant's stated reasons for reconsideration failed to satisfy Rule 4:49-2, as "the arguments amount to a disagreement with [its] ruling, as well as the prior judge's ruling, and three Appellate Division rulings." The court also noted, "the arguments raised have been decided against [him] multiple times by higher courts and [it is] bound by those rulings." This appeal followed.

II.

In his first point, defendant argues the court "deprived him of [his] right to procedural due process and access to the courts[] when it denied his motion to vacate and set aside a prior conviction . . . , which was used as the predicate offense for the Graves Act extended term," without affording him a hearing pursuant to State v. Martin, 110 N.J. 10, 14 (1988). He argues this error requires his extended term be vacated because "the State's motion for extended term was multifaceted. It sought to have the defendant sentenced as a persistent offender

pursuant to N.J.S.A. 2C:44-3(a), or as a second offender with a firearm pursuant to the Graves Act[, 2C:44-3(d)."

In his second point, defendant argues the court abused its discretion in denying his motion for reconsideration because it erroneously concluded the Appellate Division had previously addressed his claims. Although he acknowledges several appeals pertaining to his sentence, he claims "the crux of this matter involves a 'Martin hearing,'" and is therefore distinct from his previous appeals.

We are unpersuaded that defendant's contentions are distinct from those argued in his previous motions. Despite defendant's repackaging of the issue as a request for a Martin hearing, he clearly continues to maintain that the sentencing court erroneously deemed him extended-term eligible by improperly treating him as a repeat offender under the Graves Act. As noted, pursuant to Rule 3:22-5, defendant is precluded from re-raising arguments that have been resolved previously against him.

In any event, we are satisfied defendant's arguments on the merits are insufficient to entitle him to his requested relief. An "illegal" sentence is one that "exceed[s] the penalties authorized by statute for a specific offense[;]" or one that "was not imposed in accordance with law." State v. Murray, 162 N.J.

240, 246-47 (2000). Pursuant to N.J.S.A. 2C:44-3(a), an extended-term eligible persistent offender:

is a person who at the time of the commission of the crime is [twenty-one] years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least [eighteen] years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within [ten] years of the date of the crime for which the defendant is being sentenced.

[N.J.S.A. 2C:44-3(a).]

In light of defendant's qualifying convictions pre-dating his 1994 convictions, defendant clearly qualified as an extended-term eligible persistent offender and, thus, his sentence was rendered in accordance with applicable law.¹ Any argument that defendant's extended term was illegal due to the court improperly considering him as a second offender under the Graves Act, even if not barred by Rule 3:22-5, is therefore moot, as the court had independent grounds to sentence defendant to an extended term as a persistent offender. See

¹ We note defendant's May 1, 2019 motion challenged only the sentencing court's determination that he was extended-term eligible as a second offender under the Graves Act, and did not dispute his status as a persistent offender. We discuss this status only to demonstrate the mootness of defendant's arguments, recognizing that any dispute as to his status as a persistent offender is similarly barred by Rule 3:22-5.

State v. Davilla, 443 N.J. Super. 577, 584 (App Div. 2016) ("We consider an issue moot when 'the decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" (quoting Greenfield v. N.J. Dept. of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006))).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION