SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2659-21
A-2671-21
A-2672-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANRON T. MORRISEY,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARCUS O. MORRISEY,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LOUIS A. SLOAN,

Defendant-Appellant.

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Argued May 16, 2022 – Decided June 6, 2022

Before Judges Messano, Accurso and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 19-02-0280.

Laura B. Lasota, Assistant Public Defender, argued the cause for appellants (Joseph E. Krakora, Public Defender, attorney for appellant Marcus O. Morrisey; John Jay Perrone, attorney for appellant Danron T. Morrisey; and Lomurro, Munson, Comer, Brown and Schottland, LLC, attorneys for appellant Louis A. Sloan; Joshua M. Hood, Assistant Public Defender, of counsel and on the brief; John Jay Perrone and Emeka Nkwuo, join in the brief of appellant Marcus O. Morrisey brief).

Monica do Outeiro, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Lori Linskey, Acting Monmouth County Prosecutor, attorney; Monica do Outeiro, of counsel and on the brief).

PER CURIAM

More than five years after it went into effect, the basic tenets of the Criminal Justice Reform Act (the CJRA), N.J.S.A. 2A:162-15 to 26, have become well-known and integrated into the very fabric of our criminal justice

system. "The CJRA 'allows for pretrial detention of defendants who present such a serious risk of danger, flight, or obstruction that no combination of release conditions would be adequate.'" State v. Dickerson, 232 N.J. 2, 17 (2018) (quoting State v. Robinson, 229 N.J. 44, 54 (2017)). "But the Act limits the length of such detentions to ensure speedy trials, and to mitigate presumed innocent defendants' loss of liberty." State v. D.F.W., 468 N.J. Super. 422, 425–26 (App. Div. 2021) (citing N.J.S.A. 2A:162-22(a)(2)(a); R. 3:25-4).

The CJRA's speedy trial goals are implemented through N.J.S.A. 2A:162-22(a) (Section 22). N.J.S.A. 2A:162-22(a)(2)(a) provides that a defendant who has been indicted "shall not remain detained in jail for more than 180 days" following indictment. However, certain delays occasioned by the court or the parties "shall be excluded in computing the time in which a case shall be . . . tried." N.J.S.A. 2A:162-22(b)(1). In general, one such delay specifically not recognized as resulting in excludable time is the State's failure to provide discovery in a timely fashion. See N.J.S.A. 2A:162-22(b)(2) ("The failure by the prosecutor to provide timely and complete discovery shall not be considered excludable time unless the discovery only became available after the time set for discovery.").

Section 22 also provides:

> If the trial does not commence within that [180-day] period of time, the eligible defendant shall be released from jail unless, [1] on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the eligible defendant's release from custody, so that no appropriate conditions for the eligible defendant's release could reasonably address that risk, and . . . [2] the failure to commence trial in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor . . . .
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> [N.J.S.A. 2A:162-22(a)(2)(a) (emphasis added).]

If the court finds the prosecutor has met both these conditions, it "may allocate an additional period of time in which the eligible defendant's trial shall commence." Ibid. Alternatively, "[n]otwithstanding the court's previous findings for ordering the eligible defendant's pretrial detention, or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this subparagraph, the court shall order the release of the eligible defendant pursuant to [N.J.S.A. 2A:162-17 (Section 17)]." Ibid. (emphasis added).

By leave granted, defendants Danron T. Morrisey, Marcus O. Morrisey, and Louis A. Sloan, appeal from the Law Division's April 25, 2022 order granting the State's motion to extend defendants' pretrial detention for an

additional sixty days. We now consolidate the appeals to issue a single opinion. For reasons that follow, we reverse and remand the matters for further proceedings consistent with this opinion.

I.

Randolph Goodman was shot and killed near his apartment in Neptune on November 10, 2018. The joint investigation conducted by the Monmouth County Prosecutor's Office and Neptune Police Department eventually led to the arrests of Marcus Morrisey, his brother Danron, and Sloan, who the State contended drove the brothers to and from the shooting.[1]

Much of the procedural history that followed is essentially undisputed. On December 6, 2018, the court granted the State's motion to detain Marcus.[2] Although the Public Safety Assessment (PSA) forms for all defendants are not in the record, it is undisputed that Marcus scored six in both the failure to appear (FTA) and new criminal activity (NCA) categories, and the PSA included a "red flag" for new violent criminal activity (NVCA). The court's detention order indicates Marcus consented to pretrial detention.

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[1] To avoid confusion, we sometimes refer to defendants Marcus and Danron Morrisey by their first names. We intend no disrespect by this informality.

[2] We are advised that the State's detention motions were filed the day after law enforcement arrested each defendant.

On January 2, 2019, the court granted the State's motion to detain Sloan. We are advised that Sloan's PSA assigned him an FTA score of four, and a NCA score of three; Pretrial Services recommended against release, based on those scores and the statutory presumption of detention applicable to eligible defendants charged with murder, N.J.S.A. 2A:162-19(b)(1).

On January 18, 2019, the court granted the State's motion to detain Danron, whose PSA scores were FTA – six; NCA – four; and an NVCA "red flag." The court's order reflects Danron "stipulated to probable cause and consented to pretrial detention."

A Monmouth County grand jury returned an indictment on February 25, 2019, charging defendants as follows:

- First Count — first-degree murder (N.J.S.A. 2C:11-3(a)(1) and (2)) with a firearm sentencing enhancer applicable to Marcus and Danron (N.J.S.A. 2C:43-6(c));

- Second Count — first-degree armed robbery (N.J.S.A. 2C:15-1) with a firearm sentencing enhancer applicable to all defendants (N.J.S.A. 2C:43-6(c));

- Third Count — first-degree felony murder (N.J.S.A. 2C:11-3(a)(3)) with a firearm sentencing enhancer applicable to all defendants (N.J.S.A. 2C:43-6(c));

- Fourth Count — second-degree unlawful possession of a handgun (N.J.S.A. 2C:39-5(b)) (Marcus and Danron only);

- Fifth Count — second-degree possession of a handgun for an unlawful purpose (N.J.S.A. 2C:39-4(a)(1)) (Marcus and Danron only);

- Sixth Count — fourth-degree possession of a prohibited weapon (i.e., a stun gun) (N.J.S.A. 2C:39-3) (Marcus only); and

- Seventh Count — possession of a stun gun for an unlawful purpose (N.J.S.A. 2C:39-4(d)) (Marcus only).

Trial was delayed by the COVID-19 pandemic and motion practice. On December 1, 2021, the Criminal Presiding Judge entered an order setting April 25, 2022, as the trial date for all defendants.[3]

Although the State produced some discovery, it ignored other explicit discovery requests from defense counsel. When the State finally responded to those request in early 2022, it became apparent the State had utterly failed in its obligation to furnish defendants with all discovery, some of which was undisputedly in the State's possession since defendants' arraignments in 2019.

[3] The trial date was set after a conference with the Criminal Presiding Judge at a calendar call designed to address cases involving pretrial detained defendants that were pending for 700 days or more. The motion judge's March 23, 2022 oral decision indicated "that [April 25, 2022] trial date was set to allocate a trial date. The case had not been to a plea cutoff and no pretrial memorandum had been executed." As we explain, however, after calculation of all excludable time, the April 25, 2022 trial date was the endpoint of the 180-day period of detention within which the State was required to try defendants pursuant to Section 22.

The plea cutoff date of February 18, 2022, was converted to a conference to address the discovery issues; the State in the interim had begun producing thousands of pages of discovery, including discs containing records extracted via Communications Data Warrants issued for the Morrisey defendants, the victim, and others; ballistics and DNA lab reports; more than 30,000 pages of cellphone extraction reports; and copies of recorded calls defendants allegedly made from jail.

The discovery issues prompted a February 25, 2022, defense motion to amend excludable time and release defendants, and a March 11, 2022, motion by the State to extend the 180-day trial period. At a March 23, 2022, hearing on the motions, defendants argued the State's "uncontested" and "sweeping" discovery violations justified their release from pretrial detention. Because defendants needed time to review the material, retain experts and file motions, they argued trial could not begin within the 180-day period set out in Section 22. Notably, defendants emphasized they were not requesting relief under the discovery rules; they were only requesting release under the CJRA for the State's failure to try the case within 180 days of indictment.

The State conceded it failed to produce "numerous" types of discovery but claimed most of the material was either repetitive or related to information that

had already been disclosed. Further, the State claimed it was working "diligently" to remedy its shortcomings by assembling "anything associated with these defendants" and "quickly" making it available. The State acknowledged there was "no reason" for the delay in production of the discovery, but the prosecutor argued the requested delay in trial was not "unreasonable" so as to justify release under Section 22.

On March 30, 2022, the court issued an order amending excludable time due to Covid-19 and delays attributed to the parties.[4] The judge reserved decision on the State's motion to adjourn the trial date.

On April 25, 2022, the judge rendered her decision denying pretrial release and continuing defendants' pretrial detention for sixty days. The judge found that while the State "unreasonabl[y] delay[ed] in the provision of discovery," the delay of trial caused by that discovery violation was not unreasonable and did not justify release of defendants. In reaching her decision, the judge found defendants still posed a danger to the community and potential obstruction to the criminal justice process. The judge adjourned the trial date

[4] In her subsequent April 25, 2022 oral decision, the judge explained her computation of "excludable time" and confirmed that the last day of the 180-day period set forth in Section 22 was April 25, 2022.

for sixty days and entered an order extending defendants' pretrial detention for sixty days.

We granted defendants permission to file motions for leave to appeal on an emergent basis and subsequently granted leave to appeal.

II.

We consider the judge's decision extending defendants' pretrial detention for an abuse of discretion. State v. Williams, 464 N.J. Super. 260, 270 (App. Div. 2020) (citing State v. S.N., 231 N.J. 497, 515 (2018)). "An abuse of discretion exists when a decision fails to consider the relevant factors, or considers impermissible, irrelevant or inappropriate factors, or reflects a clear error of judgment." Ibid. (citing S.N., 231 N.J. at 515). However, "[i]f a court bases a decision on a misconception of the law, such a decision is not entitled to deference and will be reviewed de novo on appeal." Ibid. (citing State v. C.W., 449 N.J. Super. 231, 255 (App. Div. 2017)). Under the facts presented, we determine the judge committed legal error when she failed to conclude the State's unreasonable delay in providing discovery was an "unreasonable delay by the prosecutor" in bringing defendants to trial as required by Section 22. N.J.S.A. 2A:162-22(a)(2)(a).

In Williams, we affirmed orders releasing the two defendants from pretrial detention because the State violated the time limits contained in Section 22.[5] 464 N.J. Super. at 263. The trial court had found "the State's repeated failure to comply with the trial court's discovery orders and the State's delay in producing material discovery — which the trial court addressed in January and February 2020 — caused both defendants' speedy trial deadlines to expire as a result of unreasonable delays by the State." Id. at 268.

We rejected the State's claim "that the trial court's finding of unreasonable delay [wa]s an improper discovery sanction contrary to the holding in [Dickerson]." Id. at 272. We said, "The State's delay in producing discovery caused the delay in the start of the trial because defendants had the right to obtain and review the voluminous discovery before trial. Properly viewed, that result is not a sanction but the logical consequence of a defendant's right to a speedy trial." Ibid.

[5] We also noted the defendants had been detained for more than two years and the State was not ready for trial. See N.J.S.A. 2A:162-22(a)(2)(a) ("[A]n eligible defendant shall be released from jail . . . if, two years after the court's issuance of the pretrial detention . . . , excluding any delays attributable to the eligible defendant, the prosecutor is not ready to proceed . . . ."); see also D.F.W., 468 N.J. Super. at 426 (discussing the CJRA's "two-year clock").

The State argues, as it did before the motion judge, that our decision in Williams relied upon materially different facts, most notably that unlike in Williams, the prosecutor here moved for an extension of detention prior to expiration of the 180-day period under Section 22 and before plea cutoff. The State also contends that much of the voluminous additional discovery most recently produced was referenced, albeit never produced, in discovery already turned over to defense counsel. In other words, in the State's opinion, the late-produced discovery is not so materially significant as to justify defendants' pretrial release. The motion judge accepted these distinctions as making a difference; we do not.

The inescapable conclusion here is that the State, without advancing any explanation or excuse — much less a reasonable one — failed to turn over tens of thousands of pages of documents in discovery. The State's obligation to have provided the discovery is not subject to debate. See Dickerson, 232 N.J. at 22 (noting "Rule 3:13 . . . provides for the defendant's receipt of 'open file' discovery upon indictment or in the event the prosecutor makes a pre-indictment plea offer"). We are aware of no authority, nor has the State cited any, that excuses a failure by the State to violate its discovery obligations, in this case,

for years, because it unilaterally asserts the materiality of the delinquent discovery is not significant.

Under the circumstances presented, the judge misapplied Section 22, by concluding the State's unexplained and unreasonable discovery violations were not the cause of "an unreasonable delay by the prosecutor" in commencing trial within the 180-day period required by the CJRA. We reverse the April 25, 2022 order continuing defendants' pretrial detention for sixty days.

As we noted in D.F.W., however, "even if 180 days elapse, . . . defendant[s] do[] not get to just walk out of jail." 468 N.J. Super. at 433. Under Section 22, when there is a CJRA speedy trial violation, "the court shall order the release of the eligible defendant pursuant to [Section 17]."

Section 17 sets out parameters for a court's "pretrial release decision" and permits the judge to release a defendant "on personal recognizance or on the execution of an unsecured appearance bond," and to condition release upon the imposition of non-monetary conditions of release. N.J.S.A. 2A:162-17(a) and (b). If the court does not conclude the "release described in subsection a. or b. . . . will reasonably assure the eligible defendant's appearance in court when required," then the judge may also impose a monetary bail. N.J.S.A. 2A:162-17(c).

> The court may only impose monetary bail pursuant to this subsection to reasonably assure the eligible defendant's appearance. The court shall not impose the monetary bail to reasonably assure the protection of the safety of any other person or the community or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, or for the purpose of preventing the release of the eligible defendant.
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> [Ibid.]

Nevertheless, Section 17's very next subsection states:

> (1) If the court does not find, after consideration, that the release described in subsection a., b., or c. will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, the court may order the pretrial release of the eligible defendant using a combination of non-monetary conditions as set forth in subsection b. of this section, and monetary bail as set forth in subsection c. of this section.
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> (2) If the eligible defendant is unable to post the monetary bail imposed by the court in combination with non-monetary conditions pursuant to this subsection, and for that reason remains detained in jail, the provisions of [Section 22] shall apply to the eligible defendant.
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> [N.J.S.A. 2A:162-17(d) (emphasis added).]

As we already noted, both Marcus and Danron Morrissey consented to pretrial detention, so, as to them, a judge never engaged in the careful, reasoned

exercise of discretion necessary whenever the court is deciding whether to detain or release an eligible defendant in the first instance, and if release is justified, whether non-monetary conditions, bail or any combination of non-monetary conditions and bail would assure compliance with the CJRA's triumvirate goals. As to Sloan, the statutory presumption of detention applied, and therefore, any analysis by the court at that time began with a shifting to Sloan of the burden to rebut that presumption. See N.J.S.A. 2A:162-19(b)(1) and (e)(3). In short, a judge has not previously done what is now necessary pursuant to Section 22.

Section 22 requires the judge to now specifically analyze the various options available under Section 17 — non-monetary conditions of release, bail, or a combination thereof — in determining how best to "assure . . . [each] defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the . . . defendant will not obstruct or attempt to obstruct the criminal justice process." N.J.S.A. 2A:162-19(c). We therefore remand the matters to the trial court to conduct a release hearing in accordance with Section 17 of the CJRA. We express no opinion in advance of the court's decision as to the appropriate conditions or combination of conditions of release.

Reversed 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