

RECORD IMPOUNDED

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3775-16**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN E. CRUZ-PENA,

Defendant-Appellant.

Argued May 6, 2019 – Decided June 21, 2019.
Remanded by the Supreme Court August 4, 2020.
Resubmitted August 4, 2020 – Decided May 27, 2022

Before Judges Haas, Sumners and Susswein.

On Appeal from the Superior Court of New Jersey, Law
Division, Passaic County, Indictment No. 14-11-0932.

Joseph E. Krakora, Public Defender, attorney for
appellant (Joshua David Sanders, Assistant Deputy
Public Defender, of counsel and on the brief).

Gurbir S. Grewal, Attorney General, attorney for
respondent (Sarah Lichter, Deputy Attorney General, of
counsel and on the brief).

PER CURIAM

This matter returns to us following a remand by the Supreme Court for consideration of defendant's contention that his sentence is excessive. State v. Cruz-Pena, 243 N.J. 342 (2020). After carefully reviewing the record in view of the governing principles of law and the arguments raised by the parties, we affirm defendant's sentence.

We assume familiarity with, and incorporate by reference, the underlying procedural history and facts contained in the Supreme Court's opinion. Id. at 347–52. Therefore, we need only recite the most salient facts from the record concerning defendant's sentence.

The Supreme Court affirmed defendant's convictions for first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1), third-degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a), and third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(2). Id. at 346. The trial court sentenced defendant on the kidnapping conviction to twenty-three years in prison, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and five-year concurrent terms on the aggravated criminal sexual contact and aggravated assault convictions. Id. at 348. In imposing this sentence, the trial court found aggravating factors one (nature and circumstances of the offense); two (gravity and seriousness of harm inflicted upon the victim); three (the risk of re-offense); six (prior criminal record); and nine (the need to

deter). N.J.S.A. 2C:44-1(a)(1), (2), (3), (6), (9). The court found no mitigating factors.

On appeal, defendant argues the sentence is excessive, emphasizing he does not have any prior indictable convictions, and that he was acquitted of the aggravated sexual assault charges lodged against him. He also notes the kidnapping sentence exceeds the mid-point of the sentencing range by six months. These arguments are unpersuasive, especially considering the horrific, dehumanizing manner in which defendant physically restrained and repeatedly abused his helpless victim over the course of several hours.

The scope of our review of the sentence is limited. As a general matter, we review sentences under an abuse of discretion standard. State v. Pierce, 188 N.J. 155, 166 (2006). Under that standard, a "reviewing court must not [simply] substitute its judgment for that of the sentencing court." State v. Fuentes, 217 N.J. 57, 70 (2014) (citing State v. O'Donnell, 117 N.J. 210, 215 (1989)). Rather,

[t]he appellate court must affirm the sentence unless (1) the sentencing guidelines were violated; (2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or (3) "the application of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience."

[Ibid. (second alteration in original) (quoting State v. Roth, 95 N.J. 334, 364–65 (1984)).]

In this instance, the sentencing judge carefully considered the aggravating and mitigating circumstances and thoroughly explained his findings. See State v. Case, 220 N.J. 49, 64–65 (2014) (requiring judges to consider any relevant aggravating and mitigating factors called to their attention and to explain how they arrived at a particular sentence). The court gave appropriate weight to aggravating factors one and two concerning the heinous nature of the offense conduct and the harm inflicted on the victim. The sentencing judge, who presided over the trial and thus was intimately familiar with the circumstances of the offense, found that "defendant went far beyond what was necessary, [and] treated . . . the victim . . . as an object, as a ragdoll. . . . He dehumanized her. He showed her no mercy." The court also found "[she] suffered permanent disfigurement in . . . the form of loss of bodily function, with regard to her . . . head injury, [she] split her head open," as well as "facial deformity" and ongoing "pain and psychological trauma."

The judge also placed appropriate emphasis on aggravating factor nine, the need to deter defendant and others. The judge specifically noted that,

throughout the . . . proceedings . . . the [] nonchalance that [defendant] had when describing his encounter with [the victim], the way he dismissed it and her. He

had nary a care that he was going to be charged, perhaps initially because of who [she] was and what her status was or is in society.

The court carefully considered, and rejected, the mitigating factors proposed by defendant at the sentencing proceeding. The court acknowledged that defendant had not previously been convicted of an indictable crime but noted that circumstance was offset by defendant's participation in diversionary programs on three separate occasions. The judge noted those programs failed to prevent defendant from committing the present offense. Although the judge found aggravating factor six based on this analysis, he explained that mitigating factor seven and aggravating factor six neutralize each other so that those factors had very little bearing on the sentencing determination.

The judge also explained in detail his reasons for rejecting mitigating factors ten (likelihood that defendant will respond affirmatively to a probationary sentence) and eleven (defendant's imprisonment would create excessive hardship for his children). N.J.S.A. 2C:44-1(b)(10), (11).

The court concluded the aggravating factors far outweighed any mitigating circumstances and imposed a sentence on the kidnapping conviction just slightly above the mid-point in the fifteen-to-thirty-year sentencing range for that first-degree crime. The judge's detailed findings were based on

competent and credible evidence in the record and are in accordance with the sentencing guidelines in the New Jersey Code of Criminal Justice. The sentence imposed is neither shocking nor manifestly excessive. Accordingly, we discern no basis to second-guess the sentence.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION