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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0044-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TAHEEM SINGLETARY,

Defendant-Appellant.

Submitted October 11, 2022 – Decided January 9, 2023

Before Judges Whipple, Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 14-09-0798.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Jennifer E. Kmiecik, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

After pleading guilty to two counts of felony-murder and a count of robbery, defendant Taheem Singletary was sentenced to fifty years in prison with eighty-five percent parole ineligibility in 2016. We denied defendant's sentence appeal, and in 2021 he filed a motion to reduce his sentence, arguing that the Legislature's 2020 amendment to N.J.S.A. 2C:44-1(b)¹ should have applied retroactively to defendant's sentence. The trial court denied the motion, and defendant raises the same issue on appeal. We affirm, in accordance with the Supreme Court's recent decision in State v. Lane, 251 N.J. 84 (2022).

Defendant pled guilty to two counts of first-degree felony murder and one count of first-degree armed robbery for the shooting deaths of brothers Abdul W. Hussain and Abdul N. Hussain which occurred on October 31, 2013, at a gas station in Paterson. Defendant was nineteen at the time he shot the men. On October 7, 2016, defendant was sentenced. On April 1, 2020, we affirmed defendant's sentence.

¹ N.J.S.A. 2C:44-1(b)(14), adopted by the Legislature on October 19, 2020, reads as follows, "In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances: . . . The defendant was under [twenty-six] years of age at the time of the commission of the offense."

On April 24, 2021, defendant filed a pro se motion for a reduction of sentence. Among other things, he argued that the amendment to N.J.S.A. 2C:44-1(b) adding mitigating factor fourteen should be applied retroactively. The trial court denied the motion first on May 18, 2021, and again upon reconsideration on August 17, 2021. On reconsideration, the trial court rejected defendant's argument for retroactive application of mitigating factor fourteen on the record. Defendant appeals. His sole argument on appeal is that the youth mitigating factor amendment to N.J.S.A. 2C:44-1(b) should apply retroactively to his 2016 sentence.

We review a trial court's imposition of a sentence for abuse of discretion. State v. Torres, 246 N.J. 246, 272 (2021). "Appellate courts must affirm the sentence of a trial court unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364–65 (1984)). An appellate court's review of rulings of law and issues regarding the interpretation of statutes is de novo. State v. G.E.P., 243 N.J. 362, 382 (2020).

Defendant contends N.J.S.A. 2C:44-1(b)(14) should apply retroactively because the amendment is ameliorative, that the Savings Statute does not preclude retroactivity, and that retroactivity is a question of fundamental fairness on these facts. We are not persuaded.

On June 16, 2022, after the parties filed their merits briefs, the Supreme Court decided Lane, which held that N.J.S.A. 2C:44-1(b)(14) applies only prospectively. Lane, 251 N.J. at 87–88. Lane is unequivocally dispositive of the issue. The Court held the statute as amended is not retroactive. Mindful of the clear state of our jurisprudence, we make some brief observations about Lane's applicability to this record.

In Lane, the defendant committed a home invasion robbery when he was nineteen. Id. at 88. He pled guilty and, in exchange, the State recommended sixteen years of imprisonment. Ibid. At sentencing, Lane's counsel asked the court to consider his youth and learning disabilities. Ibid. The court sentenced him to fourteen years, two less than contemplated in the plea agreement. Id. at 89.

Lane appealed his sentence. Ibid. Before oral argument, the Legislature passed the amendment to N.J.S.A. 2C:44-1(b), including mitigating factor

fourteen. Ibid. We rejected Lane's argument for pipeline retroactivity. Id. at 90.

The Supreme Court affirmed. It considered the legislative history of the amendment. Id. at 92–93. It noted that the New Jersey Criminal Sentencing and Disposition Commission (CSDC) proposed nine sentencing reforms, one of which was the addition of a mitigating factor that would allow judges to consider a defendants' youth in sentencing. Id. at 92. The Court explained that, while the CSDC specifically recommended some of the reforms be applied retroactively, it did not make such a recommendation for the addition of the mitigating factor. Id. at 92–93. Nor did the Legislature, in amending the statute, mandate retroactive application or "create[] a procedure to apply that mitigating factor to defendants sentenced prior to the date of the amendment." Id. at 93.

The Court noted that "[o]ur courts 'have long followed a general rule of statutory construction that favors prospective application of statutes.'" Id. at 94. (quoting Gibbons v. Gibbons, 86 N.J. 515, 521 (1981)). The Court further found the Legislature's intent was clear. Id. at 96–97. "The Legislature's use of the language 'take effect immediately' when it adopted N.J.S.A. 2C:44-1(b)(14) . . . connotes prospective application." Id. at 96. As a result, the Court saw no need to reach Lane's argument contending "the amendment should be retroactive

because it is an ameliorative statute" or his arguments "based on the Savings Statute." Id. at 97 (citing State v. J.V., 242 N.J. 432, 445-46 (2020)).


The record before us is quite similar to Lane. The only relevant distinctive element is procedural. In Lane, the youth mitigating factor amendment took effect while the defendant's direct appeal was pending. Here, defendant exhausted his direct appeal, and filed a motion for reduction of sentence in response to the amendment. This is not enough to warrant an outcome different from Lane.

Even if the Court had afforded pipeline retroactivity to the youth mitigating factor amendment, defendant would be precluded from relief because this proceeding is not a direct appeal of his sentence. See State v. Dock, 205 N.J. 237, 256 (2011) (quoting State v. Cummings, 184 N.J. 84, 98 (2005)) (explaining that pipeline retroactivity would render a new rule "'applicable in all future cases, the case in which the rule is announced, and any cases still on direct appeal'") (emphasis added).

The Supreme Court's decision in Lane controls. The youth mitigating factor amendment to N.J.S.A. 2C:44-1(b) is not retroactive, and the trial court did not err in denying defendant's motion.

Affirmed.

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


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