

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1074-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SAM BEGA,

Defendant-Appellant.

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Submitted January 24, 2023 – Decided January 30, 2023

Before Judges Geiger and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Accusation No. 21-04-0148.

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

William A. Daniel, Union County Prosecutor, attorney for respondent (Milton S. Leibowitz, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Pursuant to a plea agreement, defendant entered a guilty plea, on April 18, 2021, to third-degree possession of a sawed-off shotgun, N.J.S.A. 2C:39-3(d), in exchange for the dismissal of all other charges and the State's recommendation of a prison term of no more than four years. Before sentencing, defendant became desirous of seeking relief from his guilty plea and defense counsel prepared a Slater<sup>1</sup> motion. That motion was never filed but defense counsel did move to vacate the guilty plea, claiming it lacked a factual basis. On December 1, 2021, defendant's motion to vacate due to the lack of a factual basis was denied, and the judge sentenced defendant to a four-year prison term subject to a forty-two-month parole ineligibility period in accordance with the plea agreement.

Defendant appealed, and the matter was first heard on a sentencing calendar. The panel did not rule on the merits but instead, on June 6, 2022, ordered that the matter be placed on a plenary calendar and that the parties file merits briefs. In his brief, defendant argues (1) he "is entitled to another plea withdrawal hearing as he was denied the effective assistance of counsel at a critical stage," and (2) "resentencing is required" because the trial judge "considered uncharged and unproven conduct."

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<sup>1</sup> State v. Slater, 198 N.J. 145 (2009).

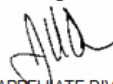
In his first point, defendant contends he was denied the effective assistance of counsel promised by the Sixth Amendment because his trial attorney failed to file a Slater motion. The record reveals uncertainty about the reason why counsel did not file that motion. Indeed, in responding to this appeal, the State correctly argues that a factual basis for defendant's ineffectiveness claim – that his attorney failed to file a Slater motion – is not apparent on the record and that the appeal should be denied on this procedural ground; in short, the State argues that defendant should be relegated to pursuing this ineffectiveness claim by filing a post-conviction relief petition.

The State is not wrong about the lack of a sufficient record for a decision on the ineffectiveness claim asserted in defendant's first point. What transpired between defendant and his trial attorney is not clearly revealed by the existing record. And the State is not wrong that a rejection of defendant's ineffectiveness argument in this manner is the way in which appellate courts ordinarily resolve such a claim. But we are concerned about the passage of time – defendant was sentenced over a year ago – as well as the further delays that likely would be engendered if we were to reject defendant's argument on procedural grounds and leave defendant to his right to file a PCR petition. The efficient administration of justice in this matter would best be served by a remand to the trial court so

defendant may file and obtain a ruling on his nascent Slater motion. In so ruling, we express no view on either defendant's ineffectiveness claim or on his second point, in which he contends the sentencing judge inappropriately considered uncharged and unproven conduct. Those issues may be pursued in a future appeal to the extent necessary following the trial judge's disposition of the anticipated Slater motion.

Remanded for further proceedings in conformity with this opinion. 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