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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1881-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES S. TANG,

Defendant-Appellant.

Submitted January 17, 2023 – Decided April 28, 2023

Before Judges Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Indictment No. 21-09-0656.

Law Offices of David Jay Glassman, attorneys for appellant (David Jay Glassman, on the briefs).

Christine A. Hoffman, Acting Gloucester County Prosecutor, attorney for respondent (Jonathan I. Amira, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Charles Tang appeals from the September 9, 2020 order denying his appeal from the Gloucester County Prosecutor's Office's (GCPO) rejection of his admission to Pretrial Intervention (PTI). Having considered the arguments in light of the record and applicable legal principles, we affirm.

I.

On February 5, 2020, at 12:37 a.m., Glassboro police were dispatched to the Victoria Street Apartments¹ in response to a fire alarm. The complex housed over 400 students in 81 different units. Heavy smoke was visible coming from the trash compactor on the ground floor, and the building's occupants were evacuated. It was subsequently determined the fire had originated from an upper floor by way of a trash chute that emptied into the trash compactor on the ground floor. Video surveillance revealed defendant entering a trash room on the second floor with a lighter and papers in his hands. He was seen exiting and re-entering the trash room shortly after the fire started. Defendant later admitted entering the trash room with napkins soaked in rubbing alcohol and lighting it and other materials with a lighter because he was stressed out.² The second time

¹ The apartment complex was leased to Rowan University for student housing.

² Defendant asserts he was experiencing an emotional breakup from his girlfriend, and he decided to burn photos and mementos from the relationship.

he entered the room, he attempted, unsuccessfully, to put out the fire. When he could not extinguish the flames, he threw the papers into the trash chute and heard a "crackle," causing him to have a panic attack. The items landed in the trash compactor below and ignited other materials, starting a fire. Defendant did not pull the fire alarm or call 911.

Defendant was charged with third-degree arson, N.J.S.A. 2C:17-1(b)(2), and third-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1).³ On May 8, 2020, defendant submitted a PTI application, which was denied by the GCPO.⁴ On September 2, 2020, the GCPO considered additional information from defendant in support of his PTI application, but it was again denied. On September 9, 2020, the trial court denied defendant's motion for admission into PTI, finding defendant failed to demonstrate the GCPO abused its discretion. On January 27, 2022, defendant pled guilty to third-degree arson and was sentenced to a twenty-four-month term of probation.

II.

On appeal, defendant raises the following point for our consideration:

³ The damage caused by the fire was in excess of \$16,000.

⁴ The Director of PTI initially rejected the application.

POINT I

THE PROSECUTOR'S DENIAL OF DEFENDANT'S PTI APPLICATION AMOUNTS TO A GROSS ABUSE OF DISCRETION.

More particularly, defendant contends the GCPO failed to consider his individual characteristics and his amenability to rehabilitation. He argues the GCPO focused almost exclusively on the nature of the offense and used that as a bar to defendant's admission into PTI. Defendant further asserts the GCPO's evaluation of the seventeen criteria set forth in N.J.S.A. 2C:43-12(e) gave little consideration to the numerous factors that weighed in defendant's favor. Defendant notes he was a first-time offender going through a difficult time and contends he has no propensity for violence and that he was a good candidate for rehabilitation. Defendant's arguments are unavailing.

"[T]he decision to grant or deny PTI is a 'quintessentially prosecutorial function.'" State v. Roseman, 221 N.J. 611, 624 (2015) (quoting State v. Wallace, 146 N.J. 576, 582 (1996)). Eligibility for PTI is based primarily on "the applicant's amenability to correction, responsiveness to rehabilitation[,] and the nature of the offense." N.J.S.A. 2C:43-12(b)(1). Admission into PTI "requires a positive recommendation from the PTI director and the consent of the prosecutor." State v. Negran, 178 N.J. 73, 80 (2003). This determination is

"'primarily individualistic in nature' and a prosecutor must consider an individual defendant's features that bear on his or her amenability to rehabilitation." State v. Nwobu, 139 N.J. 236, 255 (1995) (quoting State v. Sutton, 80 N.J. 110, 119 (1979)). This determination must consider the factors set forth in N.J.S.A. 2C:43-12(e).⁵ Roseman, 221 N.J. at 621.

⁵ Under N.J.S.A. 2C:43-12(e), prosecutors are required to consider, among others, the following criteria:

- (1) The nature of the offense;
- (2) The facts of the case;
- (3) The motivation and age of the defendant;
- (4) The desire of the complainant or victim to forego prosecution;
- (5) The existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;
- (6) The likelihood that the applicant's crime is related to a condition or situation that would be conducive to change through his participation in supervisory treatment;
- (7) The needs and interests of the victim and society;
- (8) The extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior;
- (9) The applicant's record of criminal and penal violations and the extent to which he may present a substantial danger to others;

Our scope of review of PTI determinations is "severely limited." Negran, 178 N.J. at 82. The "close relationship of the PTI program to the prosecutor's

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- (10) Whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior;
 - (11) Consideration of whether or not prosecution would exacerbate the social problem that led to the applicant's criminal act;
 - (12) The history of the use of physical violence toward others;
 - (13) Any involvement of the applicant with organized crime;
 - (14) Whether or not the crime is of such a nature that the value of supervisory treatment would be outweighed by the public need for prosecution;
 - (15) Whether or not the applicant's involvement with other people in the crime charged or in other crime is such that the interest of the State would be best served by processing his case through traditional criminal justice system procedures;
 - (16) Whether or not the applicant's participation in pretrial intervention will adversely affect the prosecution of codefendants; and
 - (17) Whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment program.

The prosecutor and the court, in formulating their recommendations or decisions regarding an applicant's participation in a supervisory treatment program, shall give due consideration to the victim's position on whether the defendant should be admitted.

charging authority" that provides "prosecutors wide latitude in deciding whom to divert into the PTI program and whom to prosecute through a traditional trial" necessitates an "'enhanced' or 'extra'" deferential review of those decisions. Ibid. (quoting State v. Baynes, 148 N.J. 434, 443-44 (1997)). Our review "serves to check only the 'most egregious examples of injustice and unfairness.'" Ibid. (quoting State v. Leonardis, 73 N.J. 360, 384 (1977)).

We may overturn a denial of PTI if the defendant "establish[es] that the prosecutor's decision was a patent and gross abuse of discretion." R. 3:28-6(b)(1); State v. Johnson, 238 N.J. 119, 128-29 (2019). Such abuse of discretion may arise where the denial of PTI "(a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in [judgment]" and the denial of PTI "clearly subvert[s] the goals underlying [PTI]." Johnson, 238 N.J. at 129 (quoting Roseman, 221 N.J. at 625). At bottom, "[t]he question is not whether [the judge] agree[s] or disagree[s] with the prosecutor's decision, but whether the prosecutor's decision could not have been reasonably made upon weighing the relevant factors." Nwobu, 139 N.J. at 254. We discern no such error here.

The trial court determined the GCPO did not abuse its discretion in denying defendant admission to PTI. The court stated the GCPO appropriately considered the seventeen factors under N.J.S.A. 2C:43-12(e). The court further determined the GCPO did not consider any inappropriate factors in making its decision.

A central theme of defendant's argument is the GCPO overemphasized the nature of the offense and used that as a bar to defendant's admission into PTI.⁶ In that regard, defendant maintains the crime at issue was not of "an assaultive or violent nature" under N.J.S.A. 2C:43-12(e)(10). Defendant, however, failed to reference the entire section of the statute, which requires the State to consider "[w]hether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior[.]" Ibid. (emphasis added). Contrary to defendant's arguments, the act of arson in this matter had the possibility of "injurious consequences" to the residents of the apartment complex. While defendant minimizes the nature of the fire, after defendant started the fire—in a building housing 400 students—after midnight, he took no action to pull a fire alarm or notify authorities. Under the facts here,

⁶ Defendant reiterates this argument in discussing N.J.S.A. 2C:43-12(e)(1), (7), and (14).

we cannot second-guess the GCPO in its determination to give great or significant weight to factors seven, ten, and eleven.

Although defendant advances several arguments in support of his application for PTI based on his age, lack of prior criminal record, cooperation with authorities, and seeking therapy to address issues that led to his starting the fire, there is no indication the GCPO's denial of defendant's PTI application was premised on anything other than a consideration of the relevant factors pursuant to N.J.S.A. 2C:43-12(e). Moreover, there is no argument the decision was based upon a consideration of inappropriate factors. While defendant maintains the GCPO focused more on certain factors addressing the nature of the crime, its consideration of these factors was not done to the exclusion of the other relevant factors.⁷

That the State gave less weight here to defendant's arguments and the corresponding PTI criteria than defendant desired does not equate with a patent abuse of discretion pursuant to Rule 3:28-6(b)(1). Given the prosecutor's wide

⁷ Defense counsel argued before the trial court that the GCPO discounted the fact defendant entered into treatment following the incident and cooperated with authorities. Otherwise, counsel acknowledged, when asked by the trial judge if the GCPO failed to consider any of the seventeen factors under N.J.S.A. 2C:43-12(e), "I believe the other factors were either addressed or they were not applicable."

latitude in deciding whom to divert into the PTI program, and our deferential review of those decisions, we conclude defendant has not established the prosecutor engaged in a patent and gross abuse of discretion, and there is no basis to disturb the trial court's decision.

To the extent we have not addressed any of defendant's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION