

# RECORD IMPOUNDED

## NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION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-1942-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

A.U.B.,

Defendant-Appellant.

---

Argued November 9, 2022 – Decided February 6, 2023

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 20-03-0636.

Saul S. Steinberg argued the cause for appellant (Zucker Steinberg & Wixted, PA, attorneys; Saul J. Steinberg, on the briefs).

Deborah Bartolomey, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Deborah Bartolomey, of counsel and on the brief).

PER CURIAM

Defendant, A.B.,<sup>1</sup> appeals from the denial of his motion to vacate his guilty plea to criminal coercion arising from a domestic violence incident. He also appeals from the denial of his motion for reconsideration. He contends the factual basis for his guilty plea was inadequate because he did not explicitly state that he acted purposely when he admitted that he made threats to his wife in order to restrict her ability to either engage or disengage in sexual intercourse.<sup>2</sup> In the alternative, he contends the trial court erred in applying the Slater<sup>3</sup> factors for withdrawing a guilty plea. After carefully reviewing the record in light of the governing legal principles and arguments of the parties, we affirm substantially for the reasons explained in Judge David M. Ragonese's comprehensive written opinions.

## I.

We discern the following facts and procedural history from the record. On February 3, 2020, defendant's wife reported domestic violence and sexual abuse to the Collingswood Police Department. She also filed a domestic

---

<sup>1</sup> We use initials to protect the victim's identity. See R. 1:38-3(12).

<sup>2</sup> Defendant also argues that his plea colloquy did not establish the existence of a threat. That argument is clearly belied by the record and does not warrant further discussion. See R. 2:11-3(e)(2).

<sup>3</sup> State v. Slater, 198 N.J. 145 (2009).

violence complaint seeking a restraining order. Later that day, defendant was arrested and charged with first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(6), and third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(12).

In March 2020, a grand jury charged defendant with first-degree aggravated sexual assault in a single-count indictment. On April 15, 2020, the charge was amended to fourth-degree criminal coercion, N.J.S.A. 2C:13-5(a)(1), pursuant to a plea agreement. On April 17, 2020, defendant pled guilty to the reduced charge. On July 10, 2020, the trial court sentenced defendant to a three-year term of probation in accordance with the terms of the plea agreement.

On September 24, 2020, defendant filed a motion to vacate the guilty plea and conviction. Judge Ragonese heard oral argument and, on December 18, 2020, issued a twenty-page opinion denying the motion. Defendant, thereafter, filed a motion for reconsideration. On February 12, 2021, Judge Ragonese issued an eleven-page opinion denying that motion.

Defendant raises the following contentions for our consideration on appeal:

#### POINT ONE

THE COURT MUST VACATE THE DEFENDANT'S  
CONVICTION AND GUILTY PLEA AS THE  
FACTUAL BASIS SET FORTH AT THE RETRAXIT

HEARING DO NOT ESTABLISH ALL OF THE ELEMENTS OF CRIMINAL COERCION.

POINT TWO

IN THE ALTERNATIVE, DEFENDANT HAS ASSERTED A COLORABLE DEFENSE UNDER THE FACTORS ENUNCIATED IN STATE V. SLATER.

II.

We first address defendant's contention that the factual basis for his guilty plea was inadequate. "When a defendant pleads guilty, he or she waives important constitutional rights, 'including the right to avoid self-incrimination, to confront his or her accusers, . . . to secure a jury trial' . . . [and] to require that the State prove to the jury every element of the offense beyond a reasonable doubt." State v. Gregory, 220 N.J. 413, 418 (2015) (first quoting State v. Barboza, 115 N.J. 415, 420 (1989); and then citing State v. Medina, 147 N.J. 43, 48–49 (1996)). "[A] plea hearing is intended to 'ensur[e] that innocent people are not punished for crimes they did not commit.'" State v. Tate, 220 N.J. 393, 405 (2015) (second alteration in original) (quoting State v. Taccetta, 200 N.J. 183, 198 (2009)). The factual basis requirement "serves as a fail-safe mechanism that filters out those defendants whose factual accounts do not equate to a declaration of guilt." Id. at 406.

"Because of the constitutional values at stake, 'we [are] very sensitive to the requirement that there be an adequate factual basis for a plea of criminal guilt.'" State ex rel. T.M., 166 N.J. 319, 326–27 (2001). "It [is] incumbent upon the trial court to make sure that a comprehensive factual basis, addressing each element of the offense in substantial detail, [is] given when defendant ple[ads] guilty." Gregory, 220 N.J. at 422. The trial court must be "satisfied from the lips of the defendant that he committed the acts which constitute the crime." T.M., 166 N.J. at 327 (quoting Barboza, 115 N.J. at 422); see also Gregory, 220 N.J. at 418. This "can be established by a defendant's explicit admission of guilt or by a defendant's acknowledgment of the underlying facts constituting essential elements of the crime." Gregory, 220 N.J. at 419 (citing State v. Campfield, 213 N.J. 218, 231 (2013)). "[A] court is not permitted to presume facts required to establish the essential elements of [a] crime." Id. at 421 (internal quotation marks omitted) (quoting T.M., 166 N.J. at 333).

Importantly, however, our Supreme Court stressed in Gregory that "[o]ur analysis of the sufficiency of the factual basis given as to each of th[e] elements begins with the recognition that trial courts need not follow a prescribed or artificial ritual when entering a defendant's guilty plea." Id. at 420 (internal quotation marks omitted) (quoting Campfield, 213 N.J. at 231). "[T]rial courts

are permitted to look at the 'surrounding circumstances,'" including "stipulations and facts admitted or adopted by the defendant." Ibid. (quoting State v. Mitchell, 126 N.J. 565, 581 (1992)).

"The standard of review of a trial court's denial of a motion to vacate a guilty plea for lack of an adequate factual basis is de novo." Id. at 419 (quoting Tate, 220 N.J. at 403–04). On such a motion, the trial court "is limited to assuring that the criteria for a valid plea of guilty have been met." Barboza, 115 N.J. at 422. It does not make "determination[s] based on witness credibility or the feel of the case, circumstances that typically call for deference." Tate, 220 N.J. at 404. As such, the trial court is "in no better position than an appellate court to determine whether the . . . admissions during a plea colloquy satisfy the essential elements of an offense." Gregory, 220 N.J. at 420.

"A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, he threatens to . . . [i]nflct bodily injury on anyone." N.J.S.A. 2C:13-5(a)(1). Thus, criminal coercion is comprised of three elements: (1) a person made a proscribed threat, such as the threat to "inflict bodily injury"; (2) the purpose in making the threat was to "restrict another's freedom of action"; and (3) the purpose in making the threat was "unlawful[]." Ibid. An "unlawful

purpose" does not necessarily mean a "criminal purpose"; however, the purpose still must not be "benign." State v. Monti, 260 N.J. Super. 179, 185–88 (App. Div. 1992). Moreover, the term "bodily injury" in this context means "physical pain, illness or any impairment of physical condition." N.J.S.A. 2C:11-1(a).

### III.

The gravamen of defendant's argument is that his plea colloquy did not establish the "purpose" element of criminal coercion. Because we review the adequacy of the factual basis elicited at the plea hearing de novo, we reproduce the relevant portions of the extensive plea colloquy:

EXAMINATION BY MR. KING [attorney for defendant]:

. . . .

Q. Okay. And during the act of sexual intercourse, did your wife complain of being in pain?

A. Yes.

Q. Okay. And after she complained of being in pain, did you continue to have sexual intercourse with her?

A. Yes.

Q. And by continuing to engage in sexual intercourse with her, did you restrict her freedom to either engage or disengage in sexual intercourse with you?

A. Yes.

Q. And by continuing to do so, did you threaten to inflict continuing pain on your wife although you knew she had already complained about being in pain?

A. Yes.

MR. KING: Thank you, Judge.

THE COURT: Okay.

. . . .

THE COURT: All right. Was everything you just stated the truth, sir?

THE DEFENDANT: Yes.

THE COURT: In light of what you said, how do you plead to the charge of criminal coercion in the fourth degree, guilty or not guilty?

THE DEFENDANT: I plead guilty.

In his written opinion denying defendant's post-sentence motion to vacate the guilty plea, Judge Ragonese determined that although defendant did not "explicitly" admit "purpose," "as a matter of common sense" defendant's admission that he threatened his wife to restrict her freedom to engage or disengage in intercourse "implicitly acknowledged that he did so with an unlawful purpose." Judge Ragonese described defendant's unlawful purpose as the "conscious object to unlawfully restrict [his wife's] ability to choose to



continue intercourse with him." The court noted that the "surrounding circumstances" and context of the entire colloquy supported this inference. We agree.

As we have noted, the trial court must be "satisfied from the lips of the defendant that he committed the acts which constitute the crime." T.M., 166 N.J. at 327. Here, defendant explicitly admitted to the acts that constitute the crime. The question before us is whether the factual basis is inadequate because he did not explicitly admit to the purposeful culpable mental state for criminal coercion. We stress that in establishing a factual basis for a guilty plea, trial courts need not follow a prescribed ritual. See Gregory, 220 N.J. at 420.

Although the better practice would have been to have defendant explicitly acknowledge he acted with the culpable mental state required for the coercion offense, as Judge Ragonese correctly noted, "trial courts are permitted to look at the 'surrounding circumstances,'" including "stipulations and facts admitted or adopted by the defendant." Ibid. (quoting Mitchell, 126 N.J. at 581); cf. State v. Simon, 161 N.J. 416, 450 (1999) (applying "common sense," the Court held defendant's admission he shot at another person's "upper body region" established the requisite mens rea for a murder plea).

In this instance, the judge did not impermissibly presume facts required to establish the essential elements of the crime. Gregory, 220 N.J. at 421. Rather, the judge considered the facts elicited from defendant to determine that defendant had acted with the requisite culpable mental state. See id. at 419 (noting a factual basis "can be established by a defendant's explicit admission of guilt or by a defendant's acknowledgment of the underlying facts constituting essential elements of the crime" (emphasis added) (citing Campfield, 213 N.J. at 231)).

Specifically, defendant admitted that while continuing to restrict the victim's freedom to either engage or disengage in sexual intercourse, he threatened to inflict continuing pain. We are satisfied that such a threat necessarily implies purposeful conduct. We also note defendant testified, "I [a]m pleading guilty because I [a]m, in fact, guilty." We consider that to be a meaningful statement. See ibid.

#### IV.

We turn next to defendant's contention the court erred in applying the Slater factors. A guilty plea "create[s] a 'formidable barrier' the defendant must overcome in any subsequent proceeding." Slater, 198 N.J. at 156–57 (quoting Blackledge v. Allison, 431 U.S. 63, 74 (1977)). Therefore, "the burden rests on

the defendant, in the first instance, to present some plausible basis for his request." Id. at 156 (quoting State v. Smullen, 118 N.J. 408, 416 (1990)). "[T]he timing of the motion will trigger different burdens of proof." Id. at 158. "[P]re-sentence motions to withdraw a plea are governed by the 'interest of justice' standard, while post-sentence motions are subject to the 'manifest injustice' standard." Ibid. (citations omitted). Here, defendant was sentenced on July 10, 2020 and did not file his motion to withdraw until September 25, 2020. Accordingly, defendant was required to establish that sustaining his guilty plea would have left a manifest injustice uncorrected. See R. 3:21-1.

In evaluating a motion to withdraw a guilty plea, Slater requires consideration of the following factors: "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused." Slater, 198 N.J. at 150. "No factor is mandatory; if one is missing, that does not automatically disqualify or dictate relief." Id. at 162.

"In a Slater scenario, the appellate standard of review is abuse of discretion." Tate, 220 N.J. at 404 (citing State v. Lipa, 219 N.J. 323, 332 (2014)). "That is so because the trial court is making qualitative assessments

about the nature of a defendant's reasons for moving to withdraw his [or her] plea and the strength of his [or her] case and because the court is sometimes making credibility determinations about witness testimony." Ibid. Unless an abuse of discretion "renders the lower court's decision clearly erroneous," the trial court's Slater findings will not be reversed. Lipa, 219 N.J. at 332 (quoting Simon, 161 N.J. at 444).

Here, Judge Ragonese carefully analyzed each factor. As to the first factor, he found defendant had proffered a colorable claim of innocence but determined the claim of innocence was inconsistent with the plea colloquy. Judge Ragonese specifically stated that defendant's post-sentence assertion that "he never engaged in nonconsensual sex with his wife" was "in direct contradiction to his statements under oath in which he admitted he threatened his wife to restrict her ability to engage or disengage in sexual intercourse." The trial court thus gave the first Slater factor "little weight."

In relation to the second factor, Judge Ragonese found that defendant's reasons for withdrawal were not strong. The judge explained:

[D]efendant does not claim he was misinformed, or that did not understand the terms and consequences of the plea. On the contrary, during defendant's plea colloquy the court confirmed that defendant knew the maximum penalty, and that he knew about the conditions of his probation. To the extent defendant claims his pre-trial

detention coerced him into pleading guilty, he is contradicted by his own statements given under oath at the time of his plea. The court asked defendant if he had been coerced into pleading guilty. He answered in the negative. The court asked defendant if he understood that he did not need to plead guilty. Defendant said under oath that he did.

Judge Ragonese added that defendant offered no explanation "as to why his defense to the charge was missed at the time of the plea" nor an explanation "as to why he waited until after his sentence to raise his innocence." The trial court placed "significant weight" on this factor.

As to third factor, Judge Ragonese recognized that plea agreements are present in "the vast majority of criminal cases." He therefore concluded that the existence of a plea agreement was "not a significant factor" in this case.

As to the fourth factor, Judge Ragonese found that the State had not demonstrated any "unfair prejudice" that would result from a withdrawal of the plea. However, he also determined that Slater does not require the State to show prejudice if a defendant has failed to establish a sufficient reason for withdrawal. Accordingly, Judge Ragonese concluded this factor "favor[ed] neither party."

Based on the above analysis, Judge Ragonese found that "there is one factor against granting the motion and one factor in favor of granting the motion . . . . [and] two factor[s] favor[ing] neither party." He therefore concluded that

"defendant ha[d] failed to meet his burden." We see no abuse of discretion in the judge's thorough analysis, and we decline to substitute our judgment for the trial court's in weighing the factors. Even if we were to substitute our judgment for that of the trial court, we do not believe defendant demonstrated a manifest injustice resulting from his guilty plea.

To the extent we have not specifically addressed them, any remaining arguments made by defendant—including the argument regarding the existence of a threat—lack sufficient merit to warrant discussion. 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