

**NOT FOR PUBLICATION WITHOUT THE  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-2135-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD ROCHE,

Defendant-Appellant.

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Argued December 21, 2022 – Decided January 18, 2023

Before Judges Mayer, Enright and Puglisi.

On appeal from the Superior Court of New Jersey, Law  
Division, Camden County, Indictment No. 96-02-0526.

Richard Roche, appellant, argued the cause pro se.

Kevin J. Hein, Assistant Prosecutor, argued the cause  
for respondent (Grace C. MacAulay, Camden County  
Prosecutor, attorney; Kevin J. Hein, of counsel and on  
the brief).

PER CURIAM

Defendant appeals from the trial court's January 20, 2021 order denying his motion for a change of sentence. We affirm.

On February 15, 1996, a Camden County Grand Jury indicted defendant for conspiracy to commit first-degree murder, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:11-3(a) (count one); first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count two); capital murder, N.J.S.A. 2C:11-3(c) (count three); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count four); and third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count five). The indictment was based on the State's proffer that defendant was hired for \$5,000 to kill Eric Coleman, a police informant.

On March 24, 1998, defendant entered into a plea agreement. Defendant admitted that on December 29, 1994, he shot Coleman five or six times with the purpose to kill him, and Coleman died of the gunshot wounds. At the time of the offense, defendant was twenty years old.

In exchange for defendant's guilty plea to first-degree murder, the State agreed to dismiss the remainder of the indictment and to recommend a life sentence with a thirty-year parole ineligibility period. The State stipulated defendant's sentence would be served concurrently with a 600-month federal

sentence for RICO<sup>1</sup> offenses which was imposed on March 17, 1997. The plea agreement also included the following provision: "State has no objection to sentence being served in Federal Bureau of Prison[s] and shall not make any affirmative application for the sentence to be served in the State prison system."

The trial court imposed the recommended sentence as set forth in the plea agreement. Defendant filed a petition for post-conviction relief (PCR) in 2001 but withdrew it to file a direct appeal alleging an excessive sentence. We affirmed the sentence. See State v. Richard Roche, No. A-0095-05 (App. Div. June 19, 2007) (slip op. at 3).

In the interim, the Federal Bureau of Prisons sent letters advising defendant that he was ineligible to be transferred to federal prison until the completion of his New Jersey sentence.

In 2002, defendant filed a PCR petition challenging the sufficiency of the factual basis for his guilty plea and claiming ineffective assistance of counsel, which was denied. We affirmed. Roche, slip op. at 1, 9.

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<sup>1</sup> Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1969.

Defendant filed a subsequent PCR petition in 2018, which was dismissed as untimely pursuant to Rule 3:22-4 because it was filed more than one year after the prior petition.

On November 5, 2020, defendant filed a motion for a change of sentence alleging prosecutorial error, seeking to withdraw his plea and resentencing him to time served. Defendant also challenged the sentence imposed, asserting the mitigating factors outweighed the aggravating factors because he was under twenty-six years old at the time of the offense and therefore entitled to an additional mitigating factor under N.J.S.A. 2C:44-1(b)(14). He further sought an order transferring him to the Federal Bureau of Prisons.

On January 20, 2021, the judge denied defendant's motion as time-barred under Rule 3:21-10, which provides:

(a) Time. Except as provided in paragraph (b) hereof, a motion to reduce or change a sentence shall be filed not later than [sixty] days after the date of the judgment of conviction. The court may reduce or change a sentence, either on motion or on its own initiative, by order entered within [seventy-five] days from the date of the judgment of conviction and not thereafter.

The judge found defendant's motion for a change of sentence was filed well past the sixty-day deadline following the entry of his judgment of conviction and this deadline is not enlargeable. R. 1:3-4(c).

The motion judge noted defendant sought relief under Rule 3:21-10(b)(4), which permits the filing of a motion at any time to change a sentence "as authorized by the Code of Criminal Justice." This exception permits "a defendant serving a sentence greater than the Code authorized maximum for an equivalent pre-Code offense, to move for re-sentencing under the Code." State v. James, 343 N.J. Super. 143, 147 (App. Div. 2001) (internal citations omitted).

The judge found this exception did not apply here because defendant is not serving a pre-Code sentence; defendant committed the crime, pleaded guilty and was sentenced almost twenty years after the current Code became effective. As defendant was time-barred from seeking a change of his sentence under Rule 3:21-10(a) and none of the exceptions noted in subsection (b) applied, the judge denied defendant's belated motion. This appeal follows.

Defendant raises the following issues for our consideration, which we cite verbatim:

#### POINT I

INSTANT CASE INVOLVES SUBSTANTIAL QUESTIONS UNDER THE UNITED STATES AND NEW JERSEY CONSTITUTIONS[,] WHICH RETURNED DEFENDANT[']S WRONGFUL[] CONVICTION . . . "NEW-FOUND ASSERTION OF PROSECUTORIAL MISCONDUCT," . . . . ESTABLISHES THE RATIONALE TO VACATE THE PLEA . . . AS DEFENDANT IS PREJUDICED

BY ENFORCEMENT OF THE AGREEMENT. SINCE IT HAS CAUSED [TWENTY-SIX] YEARS OF CRUEL AND UNUSUAL PUNISHMENT INFLICTED UPON HIM[,] REQUIRING CHANGE OF SENTENCE BE GRANTED TO PROCEED TO RESENTENCING HEARING TOWARDS ACCORD AND SATISFACTION OF THE CONVICTION SO THAT DEFENDANT IS TRANSFERRED TO THE FEDERAL BUREAU OF PRISONS CUSTODY (PARTIALLY RAISED BELOW)

A. [The motion judge] did not follow the Court Rule and arbitrarily denied the [m]otion to [g]rant [o]rder for [c]hange of [s]entence. Remand is necessary for an in-camera hearing be held on the record on all issues pr[e]sented on this [a]ppeal (Not raised below)

B. No [f]actual [b]asis [e]xist[s] [f]or [t]he [p]lea, as a result [the sentencing judge], did not state the factual and legal basis supporting his imposition of sentence, on the Statement of Reason . . . , meaning that there is no mandatory minimum imposed, requiring this court to vacate the conviction and transfer appellant to the Federal Bureau of Prisons on his remaining term (Not raised below)

C. Defendant moves to withdraw his plea agreement . . . having duly appealed . . . as nexus towards "if you do appeal, the Prosecutor can withdraw [its] offer," . . . to correct a manifest injustice . . . , and provide a "Nunc Pro Tun[c]" designation . . . allowing the Federal Bureau of Prison[s], to credit defendant's state jail

credits and time spent in state prison, combined as 'prior custody credits' towards the federal sentence imposed in Case No. 96-114 (MTB), since his State conviction did stipulate to be running concurrent with federal sentence . . . , consistent with the intent of the initial sentencing court . . . and the goals of the criminal justice system, to satisfy the conviction, to transfer him to the Federal Bureau of Prison[s] (Partially raised below)

D. Mitigating [f]actors [o]utweigh [a]ggravating [f]actors [r]equiring to [d]rop by one degree the [first]-degree [m]urder conviction . . . (Raised below)

E. By [l]egislative passing of Senate Bill 2592 which has amended a statute to now provide that pursuant to N.J.S.A. 2C:44-1.b[(14)] The defendant was under [twenty-six] years of age at the time of the commission of the offen[s]e. The sentencing court is authorized to change the sentence to a term of [twenty] years for aggravated manslaughter to satisfy the conviction. And the fact that the sentencing courts in accordance with Rule 3:21-4(f) did not specify why a prison term rather than an indetermi[n]ate sentence; nor specify any reasons . . . for sentencing in accordance with N.J.S.A. 2C:11-3b[(1)] the "[thirty] years" and "Life" stipulations must be vacated (Raised below)

Having considered his arguments in light of the facts and applicable law, we affirm substantially for the reasons set forth in the motion judge's opinion. We add only the following comments.

Defendant raises the same issues regarding his plea agreement and inability to be transferred to federal prison as he previously argued in his PCR petition. The PCR judge considered and rejected these contentions and we affirmed. Roche, slip op. at 4-5, 7-8. Because we addressed these issues, defendant's attempt to relitigate them in this appeal is precluded under the law-of-the-case doctrine. See Slowinski v. Valley Nat'l Bank, 264 N.J. Super. 172, 179 (App. Div. 1993) (finding the law-of-the-case doctrine applies where a different appellate panel is asked to reconsider the same issue in a subsequent appeal). Defendant offers no reason why we should not follow our prior opinion.

Defendant also argues we should remand for resentencing because he was under the age of twenty-six when he committed the offense and is therefore entitled to an additional mitigating factor under N.J.S.A. 2C:44-1(b)(14). While this appeal was pending, our Supreme Court decided State v. Lane, 251 N.J. 84, 87-88 (2022), which held mitigating factor fourteen only applies prospectively. Given the Court's clear pronouncement on the legislative intent to give



prospective application to the statute, we discern no basis for the relief defendant seeks.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION