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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-3147-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DEVON T. GRANT,

Defendant-Appellant.

Submitted May 9, 2023 – Decided May 31, 2023

Before Judges Fisher and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Sussex County, Indictment No. 14-12-0448.

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

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

PER CURIAM

Devon Grant, appeals from the denial of his motion to dismiss his indictment based on his stated completion of the pre-trial intervention program (PTI). Because we conclude the trial court failed to make any findings of fact or law, we reverse and remand.

Grant and two co-defendants shoplifted electronics from Walmart for three consecutive days. On the third day, they were arrested and while police were searching Grant's car, they found four bags of heroin and suboxone. Grant was indicted for those third-degree crimes and admitted into PTI. As a condition of PTI, Grant was ordered to be supervised for twenty-four months, complete one hundred hours of community service, pay \$1,739.22 in restitution (to be split jointly and severally amongst the three co-defendants), and submit to random drug urinalyses.

After enrolling in PTI, Grant was involved in a car accident and suffered serious injuries including the placement of a metal rod with screws into his leg. Consequently, PTI was extended. During that extension, Grant completed ninety-eight of the one hundred hours of community service and paid \$897 towards the total restitution of \$1,739.92.

On November 26, 2018, Grant tested positive for opiates and THC. He was then ordered to appear on December 17, 2018, for a PTI termination hearing.

Grant failed to appear and a bench warrant was issued for his arrest. Grant was then terminated from PTI on March 12, 2019.¹

On November 15, 2019, Grant moved to dismiss the indictment claiming he had substantially complied with PTI. He asserted that he had essentially completed his community service and paid most of the joint and several restitution. Additionally, Grant argued that he had a prescription for the opiates and that he completed an outpatient drug program. In the notice of motion, he requested oral argument if the matter was opposed. The State opposed Grant's motion, but no oral argument was held. Instead, the trial court denied same by order dated January 27, 2020. The order reads:

The court is sorry that the defendant could not "salvage" his PTI; however, the history of the case makes it inappropriate to vacate the prior termination.

Four days after the order was entered by the trial court, Grant pleaded guilty to third-degree shoplifting and third-degree possession of heroin. He was then sentenced to a one-year period of non-custodial probation. This appeal follows.

¹ The court order terminating Grant's PTI stated "(x) having been notified to appear before this [c]ourt for a termination hearing and having not appeared. . . it is ordered that defendant is hereby terminated from participation in the Pretrial Intervention Program". Grant does not appeal this termination from PTI.

Grant claims this matter must be remanded as the trial court failed to make required findings of fact and conclusions of law in support of the denial of his motion to dismiss the indictment for substantially complying with PTI. Alternatively, Grant contends that the trial court erred in denying the motion.

PTI is a diversionary program through which certain offenders can avoid criminal prosecution by receiving early rehabilitative services which are expected to deter future criminal behavior. State v. Nwobu, 139 N.J. 236, 240 (1995); State v. Oguta, 468 N.J. Super. 100, 107 (App. Div. 2021). A participant approved for PTI enters into written agreements, signed by the prosecutor and the participant, which sets forth the terms and duration of the supervisory treatment. N.J.S.A. 2C:43-13(a). Participants who successfully complete their PTI can have their criminal charges dismissed. R. 3:28-7(b). Conversely, a participant who violates PTI conditions can be terminated from the program. Ibid.; see also N.J.S.A. 2C:43-13(e).

Upon completion of PTI's supervisory treatment, and with the consent of the prosecutor, the indictment may be dismissed with prejudice. N.J.S.A. 2C:43-13(d). "The decision of the judge to order termination or dismissal of the charges shall be written or placed on the record pursuant to Rule 1:7-4 and accompanied by an order." R. 3:28-9(b).

Rule 1:7-4(a) provides:

The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by Rule 3:29. The court shall thereupon enter or direct entry of the appropriate judgment.

In addition, under Rule 3:29, in deciding a motion to dismiss, a court is required to place reasons supporting its decision on the record.

The State opposed Grant's motion to dismiss as it disagreed as to the reasoning behind Grant's positive opiate test, his failures to appear in court, the payment of over half the restitution, and the timing and completion of his community service.

We need not—and indeed cannot—determine whether the court correctly concluded that Grant should not have his case dismissed for successful completion of PTI. Our Supreme Court previously noted that a trial court's failure to make findings of fact and conclusions of law "constitutes a disservice to the litigants, the attorneys, and the appellate court. Naked conclusions do not satisfy the purpose of Rule 1:7-4. Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions." Curtis v. Finneran, 83 N.J. 563, 569-70, 417 A.2d 15 (1980) (citation and internal quotation marks omitted).

The parties are entitled to a properly articulated statement of reasons from the court explaining whether the complaint dismissed. Testut v. Testut, 32 N.J. Super. 95, 100 (App. Div. 1954).

We do not address the merits of Grant's contentions, nor could we, because the order denying the motion to dismiss his indictment is devoid of any factual findings, and instead includes only a conclusory statement that, because of the history of his case, it is inappropriate to readmit Grant into PTI. The judge reconsidering the motion should have the opportunity to consider Grant's specific facts and weigh them against the burden of having a criminal record.

Reversed and remanded. We do not retain jurisdiction.

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



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