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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2296-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PATRICK D. VERMILYEA,

Defendant-Appellant.

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Argued April 29, 2024 – Decided May 31, 2024

Before Judges Mawla, Marczyk, and Vinci.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 18-08-0487.

Thomas P. Belsky, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Thomas P. Belsky, of counsel and on the briefs).

Michele C. Buckley, Assistant Prosecutor, argued the cause for respondent (William A. Daniel, Union County Prosecutor, attorney; Michele C. Buckley, of counsel and on the brief).

PER CURIAM

Defendant Patrick Vermilyea appeals from the trial court's March 14, 2019 order denying his motion to suppress evidence and a March 18, 2022 order granting the State's motion to sentence defendant to life in prison without parole pursuant to N.J.S.A. 2C:43-7.1. Based on our review of the record and the applicable legal principles, we affirm in part and remand in part.

## I.

In August 2018, a Union County Grand Jury returned an indictment charging defendant with first-degree robbery, N.J.S.A. 2C:15-1(a)(2) (count one); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count two); and fourth-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a) (count three). Thereafter, defendant moved to suppress. We derive the following facts from the record developed at the suppression hearing.

On June 5, 2018, around 12:50 a.m., a masked male in a motor vehicle approached a Shell gas station in Summit. The individual emerged from his vehicle, brandished a knife, and forced entry into the gas attendant booth where the cash register and cigarettes were stored. The gas attendant on duty unsuccessfully attempted to hold the booth door shut, but the individual forced the attendant out of the booth and took cash and cigarettes. The individual then fled the scene in his vehicle.

The attendant promptly reported to police that the gas station had just been robbed. Officer Donald Royce of the Millburn Police Department was on patrol in a marked police vehicle. At approximately 1:00 a.m., Officer Royce heard a transmission over his police radio advising officers to "be on the lookout" ("BOLO") for an armed robbery suspect who had robbed the Shell gas station in Summit. He testified the BOLO indicated that the suspect was a light-skinned male who brandished a knife, was wearing a black mask, and was driving a grey vehicle.<sup>1</sup>

Officer Royce responded by positioning his marked police cruiser near the Shell station at the junction of Route 24 and Interstate 78 in order to view traffic coming from the direction of the Shell station. Officer Royce utilized his overhead light bar and spotlight, illuminating oncoming traffic.

Shortly thereafter, Officer Royce observed "a grey, smaller vehicle, operated by a light[-]skinned male." Officer Royce believed the vehicle was

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<sup>1</sup> Although cigarettes were stolen, it is not entirely clear from the record whether the BOLO included this information. While Officer Royce did not mention in his direct testimony that dispatch advised cigarettes were stolen from the gas station, on cross-examination, he indicated that the cigarettes were significant because that was one of the items stolen from the gas station. However, dispatch did not say the type of cigarettes. Officer Royce also testified, "I would need to listen to the exact recording. I don't recall the exact word-for-word message they broadcasted."

being operated at a high rate of speed and noticed that it did not have a front license plate. Additionally, the car caught his attention because the vehicle "matched the description" of the vehicle and driver in the BOLO. Officer Royce testified he could see the driver because the driver's side window "was down" and his spotlights were activated.

At approximately 1:04 a.m., Officer Royce began to follow the grey vehicle, communicated with dispatch while looking up information pertaining to the vehicle, and eventually effectuated a motor vehicle stop. He stated he stopped the vehicle because it "matched the description" in the BOLO and had been operating at a high rate of speed with "no front license plate."

The vehicle stopped on the side of the highway, and Officer Royce approached the vehicle from the passenger side. He asked the driver, later identified as defendant, for his "driver's license, registration[,] and proof of insurance." Officer Royce testified that while doing this, he saw "a fresh pack of Marlboro red cigarettes on the passenger's seat, as well as a black knit cap or mask of some sort on his lap on his right leg." Defendant could not produce his credentials. Officer Royce also testified that defendant refused to hand over the item on his lap and started moving around. Due to defendant's erratic movements, Officer Royce drew his service weapon, retrieved the black

hat/mask by reaching in through the passenger window, and moved around the front of the vehicle to the driver side window while ordering defendant out of the car. He ordered defendant to the back of the car, placed the black hat/mask on the trunk, patted defendant down for weapons with negative results, and ordered him to sit on the ground by the side of the road.

Officer Royce and other Millburn police officers detained defendant until Summit police arrived less than thirty minutes later and brought the gas station attendant to the scene. The attendant identified defendant as the perpetrator and the vehicle as the one used by defendant to commit the robbery. He recognized the vehicle because the automobile's hood was tied down with a black piece of cloth.

Defendant was then placed under arrest and his vehicle was towed<sup>2</sup> to the Summit police station. Officers obtained a warrant to search the car. The search of the vehicle yielded the proceeds from the robbery, including Marlboro cigarettes, a knife identified as the one used to commit the robbery, and \$221 in cash. Based on the evidence obtained from the search warrant, defendant was charged with armed robbery.

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<sup>2</sup> Officer Royce initially issued several tickets to defendant for: no front license plate; careless driving; and failure to exhibit driver's license, registration, and proof of insurance.

Defendant moved to suppress the evidence police discovered as a consequence of his extended warrantless seizure during the traffic stop. Following a testimonial hearing, the trial court, as discussed more fully below, denied the motion.

In June 2021, defendant was tried before a jury and convicted of all counts in the indictment. In July 2021, the State moved for mandatory life imprisonment without parole pursuant to the "Three Strikes Law," N.J.S.A. 2C:43-7.1(a). On March 17, 2022, the trial court granted the State's motion to sentence defendant to life without parole pursuant to the Three Strikes Law. The court merged counts two and three of the indictment with count one and imposed a sentence of life imprisonment without parole. This appeal followed.

## II.

Plaintiff raises the following points on appeal:

### POINT I

THE TRIAL COURT ERRED IN DENYING [DEFENDANT'S] MOTION TO SUPPRESS THE EVIDENCE FOUND FOLLOWING THE EXTENDED TRAFFIC STOP BECAUSE THE RECORD FAILED TO SHOW THAT REASONABLE SUSPICION EXISTED TO EXTEND THE STOP BEYOND THE TIME NECESSARY TO ADDRESS [DEFENDANT'S] TRAFFIC VIOLATIONS.

## POINT II

THE TRIAL COURT ERRED IN SENTENCING [DEFENDANT] TO LIFE IN PRISON WITHOUT PAROLE, PURSUANT TO N.J.S.A. 2C:43-7.1[(a)], BECAUSE THE STATE FAILED TO CARRY ITS BURDEN OF SHOWING THAT THE STATUTE APPLIED TO [DEFENDANT'S] CASE.

### A.

More particularly, defendant argues Officer Royce impermissibly extended defendant's warrantless roadside detention, during which time Officer Royce and the other officers improperly obtained evidence and information that ultimately led to the seizure of evidence used to convict defendant at trial. Defendant concedes the initial traffic stop did not violate his Fourth Amendment rights. However, the mere color of the car gleaned from the BOLO, seeing a vague black item on defendant's lap, combined with Officer Royce's uncertainty concerning the information relayed in the BOLO, was insufficient to generate the reasonable suspicion necessary to extend an otherwise garden-variety traffic stop for a moving violation into an extended roadside investigation that included a show-up identification and culminated in impounding defendant's car. Therefore, defendant argues the stop was longer than constitutionally permissible, and any evidence or information discovered during that unconstitutional detention is subject to the exclusionary rule.

Our scope of review of a trial court's suppression ruling is well-established. We must "defer[] to the trial court's factual findings" and uphold them so long as they are supported by "sufficient credible evidence in the record." State v. Nelson, 237 N.J. 540, 551 (2019) (quoting In re J.A., 233 N.J. 432, 445 (2018)). "Those findings warrant particular deference when they are 'substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Rockford, 213 N.J. 424, 440 (2013) (alteration in original) (quoting State v. Robinson, 200 N.J. 1, 15 (2009)). "The governing principle, then, is that '[a] trial court's findings should be disturbed only if they are so clearly mistaken that the interests of justice demand intervention and correction.'" Robinson, 200 N.J. at 15 (alteration in original) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). In contrast, we review de novo the trial court's interpretation of the law and the legal "consequences that flow from established facts" because they "are not entitled to any special deference." State v. Gamble, 218 N.J. 412, 425 (2014).

Turning to the substantive legal principles governing the suppression motion, "[t]he Fourth Amendment of the Federal Constitution and Article I, Paragraph 7 of the New Jersey Constitution guarantee the right to be free from



unreasonable searches and seizures." Nelson, 237 N.J. at 552 (citing U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7). "Under both Constitutions, 'searches and seizures conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid.'" State v. Nyema, 249 N.J. 509, 527 (2022) (quoting Elders, 192 N.J. at 246). As such, "the State bears the burden of proving by a preponderance of the evidence that [the] warrantless search or seizure" falls within an exception. Ibid. (alteration in original) (quoting Elders, 192 N.J. at 246).

"A lawful roadside stop by a police officer constitutes a seizure under both the Federal and New Jersey Constitutions." State v. Dunbar, 229 N.J. 521, 532 (2017). "To be lawful, an automobile stop 'must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.'" State v. Bacome, 228 N.J. 94, 103 (2017) (quoting State v. Carty, 170 N.J. 632, 639-40 (2002)); see also State v. Bernokeits, 423 N.J. Super. 365, 370 (App. Div. 2011) ("A motor vehic[le] violation, no matter how minor, justifies a stop without any reasonable suspicion that the motorist has committed a crime or other unlawful act.").

The reasonable suspicion standard requires "some minimal level of objective justification for making the stop." State v. Nishina, 175 N.J. 502, 511

(2003) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). "[R]aw, inchoate suspicion grounded in speculation cannot be the basis for a valid stop." State v. Scriven, 226 N.J. 20, 34 (2016). "Although reasonable suspicion is a less demanding standard than probable cause, '[n]either "inarticulate hunches" nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights.'" Nyema, 249 N.J. at 527 (alteration in original) (quoting State v. Stovall, 170 N.J. 346, 372 (2002) (Coleman, J., concurring in part and dissenting in part)).

"Determining whether reasonable and articulable suspicion exists . . . is a highly fact-intensive inquiry that demands evaluation of 'the totality of circumstances surrounding the police-citizen encounter, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions.'" Id. at 528 (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)). "[P]roximity in terms of time and place can certainly be factors in determining whether reasonable suspicion existed." Id. at 534. Additionally, "[i]t is fundamental to a totality of the circumstances analysis of whether reasonable suspicion exists that courts may consider the experience and knowledge of law enforcement officers." Stovall, 170 N.J. at 363.

Here, defendant acknowledges that Officer Royce had a sufficient basis to establish a reasonable suspicion to stop the motor vehicle because he had witnessed motor vehicle violations, namely no license plate and speeding. However, defendant argues the motor vehicle infractions were the only basis to stop the car, and extending the warrantless stop longer than the time necessary to address the traffic violations was unconstitutional because the officers lacked reasonable suspicion independent of the traffic violations. Accordingly, we turn to whether the investigatory detention following the motor vehicle stop was proper.

An investigatory detention or "Terry<sup>[3]</sup> stop" occurs when an objectively reasonable person feels that his or her right to move has been restricted. Nishina, 175 N.J. at 510 (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)). This kind of stop and subsequent restriction is a "seizure" of "persons" within the meaning of the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809-10 (1996). During a motor vehicle stop due to a traffic violation, "[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." Rodriguez v. United States, 575 U.S. 348, 354 (2015). To prolong the stop "beyond the time required to

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<sup>3</sup> Terry v. Ohio, 392 U.S. 1 (1968).

complete the stop's mission," an officer must possess an "articulable reasonable suspicion independent from the reason for the traffic stop." Dunbar, 229 N.J. at 540.

Specifically, reasonable suspicion that justifies a brief, investigatory stop exists if "the person being stopped is engaged, or is about to engage, in criminal activity." Gamble, 218 N.J. at 428. A stop is only permissible if the officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion" and an officer's "inarticulate hunch[]" is insufficient to justify a stop. State v. Pineiro, 181 N.J. 13, 21 (2004) (first alteration in original) (quoting State v. Arthur, 149 N.J. 1, 7-8 (1997)).

Although there is no rigid time limitation on investigatory stops, "an investigatory detention may become too long if it involves a 'delay unnecessary to the legitimate investigation of the law enforcement officers.'" State v. Chisum, 236 N.J. 530, 546 (2019) (quoting United States v. Sharpe, 470 U.S. 675, 687 (1985)). Our Supreme Court has embraced a two-prong inquiry for determining the reasonableness of a detention. "First, the detention must have been reasonable at its inception. Second, the scope of the continued detention must be reasonably related to the justification for the initial interference. Thus,

the detention must be reasonable both at its inception and throughout its entire execution." Id. at 546-47 (quoting State v. Coles, 218 N.J. 322, 344 (2014)). "[T]here is [no] litmus-paper test for . . . determining when a seizure exceeds the bounds of an investigative stop." Id. at 547 (second alteration in original) (quoting State v. Dickey, 152 N.J. 468, 476 (1998)). Thus, "[i]n assessing whether a detention is too long in duration to be justified as an investigative stop, [courts] . . . examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." Ibid. (first alteration in original) (quoting Dickey, 152 N.J. at 477).

Here, the trial court initially determined Officer Royce's testimony was credible, specifically regarding his ability to observe there was no front license plate. It then found that Officer Royce "had a sufficient basis to follow . . . defendant's vehicle and subsequently initiate a traffic stop." The court determined "that Officer Royce had a reasonable and articulable suspicion for initiating the motor vehicle stop." It further observed that the State

provided three bas[e]s the officer[] had in stopping . . . defendant's vehicle—that the automobile was missing a front license plate; that the vehicle was travelling at a high rate of speed; and that the vehicle matched the description of the automobile used in connection with the Shell station robbery which occurred in close

physical and temporal proximity to the automobile stop.

The court also found that Officer Royce's reasonable suspicion was "bolstered," warranting an investigative stop and ordering defendant out of his vehicle when he saw in plain view the pack of cigarettes in the car and "the mask on . . . defendant's lap," because the BOLO stated that the suspect "had worn a black mask and had stolen cigarettes and cash." The court noted Officer Royce had reasonable suspicion to "justify the detention of . . . defendant in furtherance of the police investigation."

The court further concluded, "the stop lasted no longer than necessary and was minimally intrusive to . . . defendant" because the gas station attendant was "brought to the scene right away to determine whether he could make an identification of . . . defendant or the vehicle." Moreover, "Officer Royce and the other responding officers did not then initiate a search of [defendant's] vehicle, but instead had it towed and obtained a search warrant later that day." Therefore, "the investigatory stop and seizure of . . . defendant was justified under the circumstances and was no more intrusive th[a]n necessary."

Despite Officer Royce's testimony on cross-examination, which indicated he was aware of the cigarettes from "dispatch," defendant argues there is no clear indication Officer Royce knew at the time he conducted the stop the

robbery involved cigarettes. Even if the record is unclear as to when Officer Royce learned about the cigarettes, it does not impact our decision because there was sufficient other evidence in the record beyond the cigarettes to support the trial court's conclusion that Officer Royce had reasonable articulable suspicion to justify extending defendant's detention while the Summit police transported the victim of the robbery to the scene of the motor vehicle stop.

Specifically, Officer Royce knew from the BOLO the suspect was driving a grey car, was a light-skinned male, and wore a mask during the robbery. Officer Royce was actively looking for the car immediately after receiving the BOLO. Shortly thereafter, he observed a vehicle that matched the description of the automobile coming from the direction of the Summit robbery at a high rate of speed. Moreover, the driver matched the description of the suspect in the BOLO, and the officer observed the black garment that resembled a mask on defendant's leg during the stop.<sup>4</sup> This evidence, in addition to the geographic and temporal proximity of the robbery in the nearby municipality, further

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<sup>4</sup> Whether Officer Royce had knowledge of cigarettes from the BOLO at that juncture would only bolster his reasonable suspicion, but his alleged lack of knowledge of the cigarettes does not mean he lacked reasonable suspicion in light of the other specific and articulable facts.

supported Officer Royce's reasonable suspicion and provided a basis to extend the detention. Officer Royce was not merely acting on an inarticulate hunch.

Furthermore, defendant's continued investigatory detention was reasonably related to the justification for the initial detention. The motion court properly found the duration of the investigation was no longer than necessary and was minimally intrusive to defendant. The gas station attendant was immediately brought to the scene to determine whether he could identify defendant and the vehicle. Neither Officer Royce nor the other officers at the scene searched the vehicle. Rather, they waited for a positive identification of defendant and his vehicle and then impounded the vehicle and obtained a search warrant. In short, law enforcement "diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." Chisum, 236 N.J. at 547 (quoting Dickey, 152 N.J. at 477). Based on the totality of these circumstances, the trial court did not err in denying defendant's motion to suppress.

## B.

Defendant, for the first time on appeal, argues the trial court erred in sentencing him to life without parole because the State failed to establish by a



preponderance of the evidence that the predicate offenses occurred within the ten-year window enumerated by N.J.S.A. 2C:43-7.1(c).

Our review of a sentencing court's imposition of sentence is guided by an abuse of discretion standard. State v. Torres, 246 N.J. 246, 272 (2021); State v. Jones, 232 N.J. 308, 318 (2018). We review a sentence "in accordance with a deferential standard." State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Fuentes, 217 N.J. 57, 70 (2014)). Also, we defer to the sentencing court's factual findings and should not "second-guess" them. State v. Case, 220 N.J. 49, 65 (2014). However, "[w]e consider legal and constitutional questions de novo." State v. Galicia, 210 N.J. 364, 381 (2012); see also State v. Hudson, 209 N.J. 513, 529 (2012) (noting that questions of law in sentencing are reviewed de novo).

The deferential standard of review applies, however, "only if the trial judge follows the Code and the basic precepts that channel sentencing discretion." Trinidad, 241 N.J. at 453 (quoting Case, 220 N.J. at 65). If the sentencing court "follow[ed] the Code and the basic precepts that channel sentencing discretion," we should affirm the sentence, so long as the sentence does not "shock the judicial conscience." Case, 220 N.J. at 65 (quoting State v. Roth, 95 N.J. 334, 365 (1984)).

The Three Strikes Law states, in relevant part, that the lifetime imprisonment sanction applies only to

[a] person convicted of a crime under any of the following: N.J.S.[A.] 2C:11-3; subsection a. of N.J.S.[A.] 2C:11-4; a crime of the first degree under N.J.S.[A.] 2C:13-1, paragraphs (3) through (6) of subsection a. of N.J.S.[A.] 2C:14-2; N.J.S.[A.] 2C:15-1; or . . . [N.J.S.A. 2C:15-2], who has been convicted of two or more crimes that were committed on prior and separate occasions, regardless of the dates of the convictions, under any of the foregoing sections or under any similar statute of the United States, this State, or any other state for a crime that is substantially equivalent to a crime under any of the foregoing sections . . . .

[N.J.S.A. 2C:43-7.1(a) (emphasis added).]

In 2003, sections (a) and (b) "were amended by L. 2003, c. 48, to make clear that they apply to crimes committed on separate occasions regardless of the dates of conviction." Cannel, New Jersey Criminal Code Annotated, cmt. on N.J.S.A. 2C:43-7.1 (2024). However, under the law's timing requirement, the provisions of N.J.S.A. 2C:43-7.1

shall not apply unless the prior convictions are for crimes committed on separate occasions and unless the crime for which the defendant is being sentenced was committed either within [ten] years of the date of the defendant's last release from confinement for commission of any crime or within [ten] years of the date of the commission of the most recent of the crimes for which the defendant has a prior conviction.

[N.J.S.A. 2C:43-7.1(c) (emphasis added).]

Essentially, subsection (c) "places a ten-year perimeter around the relevant events in an apparent effort to maintain a level of timeliness consistent with the purpose of removing those criminals from society who demonstrate an inability to refrain from repeated commission of the most serious crimes." State v. Galiano, 349 N.J. Super. 157, 165 (App. Div. 2002).

Pursuant to subsection (d),

The court shall not impose a sentence of imprisonment pursuant to this section, unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the ground proposed. The defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue. Prior convictions shall be defined and proven in accordance with N.J.S.[A.] 2C:44-4.

[N.J.S.A. 2C:43-7.1(d) (emphasis added).]

Under N.J.S.A. 2C:44-4(d), "[a]ny prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction or imprisonment, that reasonably satisfies the court that the defendant was convicted." (Emphasis added).

Thus, the State must establish the basis for a term under the Three Strikes Law at a hearing where the defendant has the right to challenge the evidence

against them and to offer evidence on their own behalf. N.J.S.A. 2C:43-7.1(d); R. 3:21-4(g). The standard of proving a defendant's prior conviction under the statute is by a preponderance of the evidence. State v. Oliver, 162 N.J. 580, 590-92 (2000).

Here, the State claimed, and the sentencing court found, that defendant possessed the necessary prior predicate offenses, having been convicted in Connecticut for the equivalent of first-degree robbery based on five offenses that occurred between January 26, 2008, and February 9, 2008. The commission of defendant's current crime was on June 5, 2018, which would indicate that the Connecticut convictions fall outside the ten-year limit under N.J.S.A. 2C:43-7.1(c), unless the State could prove that defendant's current crime was committed "within [ten] years of the date of [his] last release from confinement for commission of any crime," specifically his crimes committed in Connecticut. N.J.S.A. 2C:43-7.1(c).

Defendant argues the State presented no evidence establishing he met the criteria necessary for the application of N.J.S.A. 2C:43-7.1(a). The State argues that according to the pre-sentence report ("PSR"), on January 16, 2009, defendant was sentenced to twenty years in jail, ten years concurrent to five years for one of his robbery convictions. Defendant also was sentenced that date

to twenty years and 117 months, concurrent to five years of probation for two more robbery convictions. Therefore, the State argues, although the date of the instant offense—June 5, 2018—was more than ten years from the date defendant committed the Connecticut robberies, his release from confinement was well within ten years.

However, the State concedes the sentencing court did not state the precise date defendant was released for any of his Connecticut convictions. Furthermore, defendant argues there are a litany of errors in his PSR, which call into question its accuracy as to his prior convictions. Thus, defendant argues we should not rely on the State's post hoc arguments to justify his sentence.

The court only addressed defendant's Connecticut sentencing two times. Once in the context of whether the crimes were a part of one overall crime spree stating, "the nature of the sentencings of the Litchfield and Waterbury crimes and the intent to have them run concurrently does not negate the fact that defendant was convicted of a total of five separate robberies." Another time, the court noted that "the State . . . provided [it] with copies of the judgments of conviction from Connecticut." However, the court did not address whether defendant served those sentences, and more importantly, when he was released

from confinement. Furthermore, the judge did not mention N.J.S.A. 2C:43-7.1(c) in the oral ruling.

Although the State contends the record shows defendant was likely incarcerated within ten years of committing this new offense based on the dates of the offenses and the sentences imposed, the issue was not squarely addressed by the trial court. The State also points to portions of the PSR, which suggest defendant was incarcerated within ten years of the new offenses, based on a reference to him receiving drug treatment, while incarcerated during the ten-year window under N.J.S.A. 2C:43-7.1(c). However, defendant notes there are certain discrepancies in the PSR, which he contends call into question the accuracy of other portions of the PSR. Given the magnitude of the life sentence and the importance of ensuring defendant was properly sentenced, we remand to the trial court to resentence defendant and to address N.J.S.A. 2C:43-7.1(a) and N.J.S.A. 2C:43-7.1(c).

To the extent we have not addressed any remaining contentions, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed in part, remanded in part. 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