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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2664-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WALTER TOWNSEND,

Defendant-Appellant.

Submitted May 30, 2024 – Decided June 20, 2024

Before Judges Susswein and Vanek.

On appeal from the Superior Court of New Jersey,
Law Division, Mercer County, Indictment No. 02-01-
0137.

Walter Townsend, appellant pro se.

Angelo J. Onofri, Mercer County Prosecutor, attorney
for respondent (Laura C. Sunyak, Assistant Prosecutor,
of counsel and on the brief).

PER CURIAM

Defendant Walter Townsend is serving a life sentence in prison, with twenty-five years of parole ineligibility, for murdering his girlfriend Norma Williams in 1981. We consider defendant's appeal of a March 31, 2023 order denying his motion to correct an illegal sentence. After careful review of defendant's arguments, we affirm substantially for the reasons set forth in Judge J. Adam Hughes's well-reasoned written statement of reasons accompanying the March 31, 2023 order.

I.

The procedural history and facts of this case have been recounted numerous times in both our prior opinions and that of the Court. Therefore, we will not repeat them in detail here.¹ Instead, we set forth only those facts necessary for our disposition of the pending appeal.

On January 30, 2002, a Mercer County grand jury indicted defendant for the first-degree knowing or purposeful murder of Williams under N.J.S.A. 2C:11-3(a)(2). During a nine-day trial in October 2002, the State presented

¹ The chronology is set forth in a series of cases from this court and our Supreme Court, including: State v. Townsend (Townsend I), 374 N.J. Super. 25 (App. Div. 2005); State v. Townsend (Townsend II), 186 N.J. 473 (2006); State v. Townsend (Townsend III), No. A-4830-11 (App. Div. July 16, 2015); and State v. Townsend (Townsend IV), No. A-2272-17 (App. Div. Nov. 26, 2018). We incorporate, by reference, the facts stated in these prior opinions.

evidence to establish on December 11, 1981, defendant entered the home he shared with Williams and beat her with a wooden two-by-four with exposed nails while her two sons, seven-year-old Jason and three-year-old Brian,² watched. Williams died from her injuries. Defendant threatened to kill the small boys if they told the police what they actually saw and demanded they relay a different story to the authorities regarding their mother's injuries.

An autopsy identified Williams's cause of death as shock and massive hemorrhage from multiple traumatic injuries. Her manner of death was recorded as "undetermined." Law enforcement closed the investigation into her death without filing charges against defendant or anyone else.

The Mercer County Prosecutor's Office reopened the investigation in August 2001 at the children's request. Law enforcement interviewed additional witnesses, including Brian. After reevaluating the autopsy report, the medical examiner concluded that Williams's injuries were consistent with having been beaten. Charges were ultimately filed against defendant for Williams's death.

After a nine-day trial in October 2002, the jury found defendant guilty of murder. Defendant was given an extended sentence of thirty years to life imprisonment with five years of parole supervision.

² Brian is the son of Williams and defendant; Jason has a different father.

On direct appeal, we reversed defendant's conviction, determining the trial court erred in permitting expert testimony on battered woman's syndrome (BWS) and by failing to provide a jury instruction on the limited purpose of expert testimony. The Court affirmed in part and reversed in part, finding the trial court properly admitted the expert testimony and any related error was harmless. The Court remanded the case to the trial court to reinstate the judgment of conviction and resentence defendant.³

At the resentencing hearing in 2006, the court noted that defendant's criminal history "includes a number of very serious offenses, carrying weapons, aggravated manslaughter, a robbery back in 1967, [and] another weapons offense in [19]79." The court sentenced defendant in accordance with the laws that governed at the time of the murder in 1981 and determined defendant qualified as a "persistent offender." Defendant was sentenced to the term of life in prison with a twenty-five-year period of parole ineligibility that he is currently serving.

Defendant appealed and filed for post-conviction relief (PCR). The PCR

³ On direct appeal to the Court, the State conceded defendant's first sentence was unlawful and resentencing was required because when the crime was committed, the relevant sentencing statute required an extended-term sentence for murder be for a specific number of years between thirty and life.

petition was dismissed without prejudice due to the pending appeal. We remanded defendant's sentence for a recalculation of jail-time credit and fines.

After the appeal was decided, the court reinstated defendant's PCR petition and appointed counsel. Defendant's PCR petition alleged he received ineffective assistance from his trial counsel. Defendant's petition was denied, and he appealed. We affirmed in part, but remanded for the PCR court to consider the following two issues:

(1) whether initial PCR counsel failed to investigate defendant's claim for a new trial based on newly discovered evidence, which consisted of an alleged recantation letter from a trial witness; and (2) whether trial counsel's performance was deficient by: (a) failing to call an expert witness to rebut the State's medical examiner; (b) failing to investigate the motives of the prosecution's only eyewitnesses; and (c) trial counsel's failure to request a limiting jury instruction regarding BWS, past acts testimony, and dying declaration testimony.

On remand, the PCR court denied defendant's petition without an evidentiary hearing. Defendant again appealed and was appointed counsel. We affirmed.

On June 9, 2021, defendant filed a motion to correct an illegal sentence

alleging the imposition of an extended term under N.J.S.A. 2C:44-3(a)⁴ violated his rights under both the New Jersey and United States Constitutions. On March 31, 2023, Judge Hughes denied the motion. In the statement of reasons accompanying the order, Judge Hughes set forth

[d]efendant specifically argues that his 2003 sentence for a 1981 murder is illegal because he was sentenced pursuant to N.J.S.A. 2C:44-3(a) as a persistent offender based upon predicate offenses that occurred after the murder, and the sentence was supported by two court decisions that were decided after 1981, thereby violating the Ex Post Facto [C]ause.

Judge Hughes concluded that pursuant to State v. Cook, 330 N.J. Super. 395, 421 (App. Div. 2000), and State v. Mangrella, 214 N.J. Super. 437, 444-46 (App. Div. 1986), "multiple convictions may be considered by the sentencing court in determining if a defendant is a persistent offender irrespective of their chronology so long as the other statutory criteria are met." Accordingly, Judge Hughes held that "[d]efendant failed to provide any additional basis for relief" and denied the motion.

This appeal follows.

⁴ N.J.S.A. 2C:44-3(a) sets forth that a person who is "convicted of a crime of the first, second or third degree" may be sentenced to "an extended term of imprisonment" as a "persistent offender" if certain conditions have been met.

II.

Defendant raises only one argument for our review:

POINT I

THE IMPOSITION OF AN EXTENDED TERM SENTENCE PURSUANT TO N.J.S.[A.] 2C:44-3(A), UNDER THE CIRCUMSTANCES OF DEFENDANT'S CASE, VIOLATED THE EX POST FACTO CLAUSES OF BOTH THE NEW JERSEY AND UNITED STATES CONSTITUTIONS.

Defendant also includes three subpoints for our consideration: (1) "jurisdiction"; (2) "ex post facto jurisprudence"; and (3) "the lower court erred in denying [defendant's] motion to correct an illegal sentence."

"[A]n illegal sentence is one that 'exceeds the maximum penalty . . . for a particular offense' or a sentence 'not imposed in accordance with law.'" State v. Acevedo, 205 N.J. 40, 45 (2011) (quoting State v. Murray, 162 N.J. 240, 247 (2000)). We review the disposition of a motion to correct an illegal sentence de novo. State v. Drake, 444 N.J. Super. 265, 271 (App. Div. 2016). "Whether a sentence is illegal as unconstitutional . . . is a question of law to which a reviewing court affords no deference." State v. Thomas, 470 N.J. Super. 167, 196 (App. Div. 2022) (citing State v. Zuber, 227 N.J. 422, 437 (2017)).

III.

Defendant asserts his sentence was illegally imposed because the

sentencing court's determination he was a persistent offender was improperly based on crimes that he was convicted of after Williams's murder had occurred. Therefore, defendant asserts the sentencing court violated the prohibition on ex post facto laws set forth in both the New Jersey and United States Constitutions.

"The Legislature shall not pass any . . . ex post facto law . . ." N.J. Const. art. IV, § 7, ¶ 3; see also U.S. Const. art. I, § 10, cl. 1 ("No State shall . . . pass any [b]ill of [a]ttainder, ex post facto [l]aw"). This prohibition "proscribe[s] 'any statute which . . . makes more burdensome the punishment for a crime, after its commission.'" State v. Brown, 245 N.J. 78, 88 (2021) (second alteration in original) (quoting Bezell v. Ohio, 269 U.S. 167, 169 (1925)).

The Ex Post Facto Clause furthers two primary goals. It assures that individuals can rely on laws until they are "explicitly changed," and it restricts the government from passing "potentially vindictive legislation." Carmell v. Texas, 529 U.S. 513, 566 (2000) (quoting Weaver v. Graham, 450 U.S. 24, 28-29 (1981)).

The Ex Post Facto Clause proscribes "[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798).

[Riley v. N.J. State Parole Bd., 219 N.J. 270, 284 (2014) (alteration in original).]

There are two factors we are instructed to consider in order to determine

if an ex post facto violation has occurred. First, we "must determine whether 'the law is "retrospective," meaning 'it "appl[ies] to events occurring before its enactment" or . . . "changes the legal consequences of acts completed before its effective date.'" Brown, 245 N.J. at 88 (alteration in original) (quoting Riley, 219 N.J. at 285 (first alteration in original) (quoting Miller v. Florida, 482 U.S. 423, 430 (1987))). Then, we must examine the retroactive application of the law to determine if additional punishment has been imposed for an already-completed crime. Ibid. "Ex post facto violations are not restricted to legislative enactments, but may also result from judicial actions." State v. Pierce, 188 N.J. 155, 179 (2006) (Albin, J., dissenting in part and concurring in part) (italicization omitted).

Both at defendant's original sentencing in 2003, and at his re-sentencing in 2006, the trial court determined that defendant qualified as a persistent offender. As applied to defendant, N.J.S.A. 2C:44-3 sets forth the accused may be eligible for an extended sentence when "convicted of a crime of the first, second or third degree" and

is a persistent offender. A persistent offender is a person who at the time of the commission of the crime is [twenty-one] years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least [eighteen] years of age, if the latest in time

of these crimes or the date of the defendant's last release from confinement, whichever is later, is within [ten] years of the date of the crime for which the defendant is being sentenced.

[N.J.S.A. 2C:44-3(a).]

The sentencing court determined defendant qualified as a persistent offender, in part, because of prior convictions in 1986 and 1987. Defendant concedes these two convictions were within the statutory ten-year period permitted to be considered. However, defendant argues consideration of those convictions constitutes an ex post facto violation since they both occurred after Williams's murder in 1981.

We disagree. Our case law is clear that "multiple convictions may be considered by the sentencing court in determining if a defendant is a persistent offender irrespective of their chronology so long as the other statutory criteria are met." Cook, 330 N.J. Super. at 421. "When a sentencing judge considers the issue of whether a defendant is a persistent offender . . . the judge may weigh judgments of conviction entered chronologically after the defendant committed the instant crime." Id. at 421-22 (italicization omitted).

"[T]he persistent offender criteria embodied in N.J.S.A. [2C:44-3(a)] requires neither offenses to have occurred nor judgments to have been entered prior to the offense then before the court for sentencing . . . provided that the

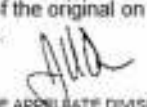
other criteria embodied in N.J.S.A. [2C:44-3(a)] are satisfied." Mangrella, 214 N.J. Super. at 445. "[T]he trial court can consider any 'judgment' entered prior to sentencing provided that there is no pending appeal or right of direct appeal." Ibid. (citing State v. Bey, 96 N.J. 625 (1984), and State v. Biegenwald, 96 N.J. 630, 635-36 (1984), opinions clarified, 97 N.J. 666 (1984)). We decline to disrupt this settled area of the law.

We are unpersuaded by defendant's argument that because Cook was decided in 2000, after the 1981 murder, we should decline to implement its guidance as to chronology considerations for persistent offenders. We decline to conclude this is a retroactive execution of the law, as prohibited by the ex post facto doctrine. Rather, this is a well-supported judicial clarification of an existing legislatively-derived standard. See State v. Natale, 184 N.J. 458, 491 (2005) (explaining that where there is "no legislative alteration of the sentencing code," but instead a "judicially adjusted" standard which "comport[s] with the constitutional standards," there is no ex post facto violation).

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