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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1403-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALKHABIR Q. BASS-
COCHRAN, a/k/a AL
KHABIR BASS-COCHRAN,

Defendant-Appellant.

Submitted January 22, 2024 – Decided June 24, 2024

Before Judges Gilson and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 21-02-0179.

Joseph E. Krakora, Public Defender, attorney for
appellant (Austin J. Howard, Assistant Deputy Public
Defender, of counsel and on the briefs).

Theodore N. Stephens, II, Acting Essex County
Prosecutor, attorney for respondent (Braden Couch,
Special Deputy Attorney General/Acting Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Alkhabir Bass-Cochran appeals from the Law Division's May 31, 2022 order denying his motion for admission into the pre-trial intervention (PTI) program following his rejection by the Essex County Prosecutor's Office (Prosecutor's Office). We affirm.

I.

The facts surrounding defendant's arrest and application for PTI are generally not in dispute. On December 17, 2019, the defendant called 9-1-1 for emergency assistance because his mother felt faint and struggled to breathe. Two emergency medical technicians (EMTs) responded to her apartment, which she shared with defendant, his sister, and her two children. A dispute ensued between defendant and the EMTs as defendant's mother was being strapped to the stretcher for transport to East Orange General Hospital for evaluation and treatment.

Despite the EMTs' repeated requests for defendant to stop interfering, defendant began removing the straps because he wanted his mother transported to Clara Maass, where her personal physician had privileges. Defendant became "aggressive" and punched and shoved the male EMT, resulting in an injury that required hospitalization and several surgeries. The police were called; however,

defendant fled the apartment before they arrived. During the police's investigation, defendant's sister reported that he had been drinking and "acted out of emotion" because he was protective of his mother. Defendant ultimately returned to the apartment and was arrested.

In February 2021, a grand jury indicted defendant on third-degree aggravated assault of an emergency service personnel, N.J.S.A. 2C:12-1(b)(5)(c). Defendant was granted pre-trial release and subsequently applied for PTI.

In an October 8, 2021 comprehensive letter from the Prosecutor's Office, defendant was notified that the prosecutor would not consent to his enrollment in the PTI program. The prosecutor considered the guidelines relevant to PTI, Rule 3:28, and the factors listed in N.J.S.A. 2C:43-12(e) and found the following factors relevant in making her decision: the violent nature of the offense, the victim's opposition to defendant's entry into PTI, and the victim's desire to proceed with prosecution of the case. Ultimately, the prosecutor determined that defendant was not a suitable candidate even though it acknowledged that he had "limited positive factors in his favor." The prosecutor also relied on State v. Nwobu, 139 N.J. 236, 252 (1995) in determining there was nothing in

defendant's background that was "so extraordinary or unusual, or something idiosyncratic" that made him an appropriate candidate.

Defendant appealed the prosecutor's denial of his request for admission. On appeal to the trial court, defendant proffered the misapplication of factor two to the facts of the case as why his application should be granted. He argued that he had been drinking on his day off when his mother went into distress. The prosecutor reiterated the facts and maintained her position.

After hearing oral argument on May 10, 2022, in an oral opinion, the trial court denied defendant's motion, finding the absence of a clear or convincing "patent and gross abuse of discretion" by the prosecutor. The court explained the prosecutor did not consider inappropriate factors and the dispute between defendant and the prosecutor amounted to the weight the factors should have been given.

Thereafter, on June 12, 2022, defendant pled guilty to third-degree aggravated assault. During the plea colloquy, defendant admitted to the assault, conceding that he punched the EMT on "purpose" and knew it was illegal to do so. On November 28, 2022, defendant was sentenced to one year of probation.

II.

Defendant appeals the denial of entry into PTI, arguing:

POINT ONE

THE STATE'S DENIAL OF [PTI] WAS A PATENT AND GROSS ABUSE OF DISCRETION.

A. The State Improperly Failed to Consider that Defendant Feared that His Mother's Life Was in Danger Without Treatment by Her Own Doctors, Notwithstanding the Relevance of His State of Mind to PTI Factors One, Two, and Three.

B. The State Failed to Credit Defendant's Law-Abiding History and Lack of Dangerousness, and It Improperly Considered Dismissed Juvenile Charges.

C. The State Failed to Consider Several PTI Factors Relating to Defendant's Amenability to Treatment Despite Compelling Evidence that the Incident Was Triggered by Treatable Stress and Alcohol Abuse.

Our review of a PTI rejection "is severely limited," and "serves to check only the 'most egregious examples of injustice and unfairness.'" State v. Negran, 178 N.J. 73, 82 (2003) (quoting State v. Leonardis, 73 N.J. 360, 384 (1997)); see also State v. Denman, 449 N.J. Super. 369, 376 (App. Div. 2017). We apply the same standard of review as the trial court and review its decision de novo. State v. Waters, 439 N.J. Super. 215, 226 (App. Div. 2015).

"PTI is essentially an extension of the charging decision, . . . the decision to grant or deny PTI is a "quintessentially prosecutorial function."" State v. Johnson, 238 N.J. 119, 128 (2019) (quoting State v. Roseman, 221 N.J. 611, 624 (2015)). "As a result, the prosecutor's decision to accept or reject a defendant's

PTI application is entitled to a great deal of deference.'" Ibid. (quoting Roseman, 221 N.J. at 624). Thus, "[a] court reviewing a prosecutor's decision to deny PTI may overturn that decision only if the defendant 'clearly and convincingly' establishes the decision was a 'patent and gross abuse of discretion.'" Id. at 128-29 (quoting State v. Wallace, 146 N.J. 576, 583 (1996)).

A PTI application that requires prosecutor consent pursuant to Rule 3:28-1(d)(1) must "include a statement of the extraordinary and compelling circumstances that justify consideration of the application notwithstanding the presumption of ineligibility based on the nature of the crime charged and any prior convictions." R. 3:28-3(b)(1). In establishing compelling reasons for admission into PTI, "there must be a showing greater than that the accused is a first-time offender and has admitted or accepted responsibility for the crime." Nwobu, 139 N.J. at 252.

To establish an abuse of discretion, a defendant must show the prosecutor's denial of his or her PTI application "'(a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in judgment.'" Roseman, 221 N.J. at 625 (quoting State v. Bender, 80 N.J. 84, 93 (1979)). An abuse of discretion rises to the level of patent and gross when the defendant

shows the prosecutor's denial "'clearly subvert[s] the goals of [PTI].'" Ibid. (quoting Bender, 80 N.J. at 93).

In defendant's appellate brief, he asserts that he applied for the PTI program. In its reply brief, the State adopts defendant's procedural history as written. Defendant, however, did not submit a copy of his PTI application in his appendix. It is appellant's obligation to include the application. See R. 2:6-1(a)(1)(I) (stating the appendix must contain "such other parts of the record, excluding the stenographic transcript, as are essential to the proper consideration of the issues").

Nonetheless, we have reviewed the record before us and conclude defendant's arguments lack merit. We are satisfied that the prosecutor's denial of defendant's PTI application was based on an appropriate review of the relevant factors and was not a "patent and gross" abuse of discretion. We also agree with the trial judge that the parties disagreed regarding the proper weight of the factors is not a basis for reversing the prosecutor's decision. The record shows defendant failed to establish compelling circumstances. Given our deferential review of prosecutorial decisions concerning admission into PTI programs, we see no reason to disturb the trial court's denial of defendant's admission into the PTI program.

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JLD', written over the printed name.

CLERK OF THE APPELLATE DIVISION