

RECORD IMPOUNDED

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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-2153-15T3

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

BRANDON FREGM,

Defendant-Respondent.

Submitted September 19, 2016 – Decided October 17, 2016

Before Judges Nugent and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Indictment No. 15-05-0250.

Michael H. Robertson, Acting Somerset County Prosecutor, attorney for appellant (Lauren Martinez, Special Deputy Attorney General/ Acting Assistant Prosecutor, on the brief).

Evan F. Nappen, attorney for respondent (Jeffrey A. Skiendziul, on the brief).

PER CURIAM

Plaintiff, State of New Jersey, appeals from the January 25, 2016 order that granted the motion of defendant Brandon Fregm and

reversed the denial of his application for entry into the pre-trial intervention (PTI) program pursuant to N.J.S.A. 2C:43-12(f). Because we find the motion judge did not apply the appropriate standard in his consideration of the motion, we vacate the order and remand for the appropriate analysis.

Following a traffic stop in New Jersey, the driver of the vehicle informed police that there was a loaded handgun on the back seat. Defendant was driving a separate vehicle, following the driver; defendant was the owner of the gun and the vehicle in which the gun was found. Defendant had a license to carry the gun only in Pennsylvania.

Defendant was charged in an indictment with second-degree possession of a handgun, N.J.S.A. 2C:39-5b. Defendant submitted an application for the PTI program and was denied admittance based on his prior criminal history.

Defendant appealed the decision to the Law Division. After oral argument, the judge overturned the Director's determination, finding that "it would be unjust to deny the Defendant admission into Pre-Trial Intervention for an offense he could have easily avoided being charged with if he . . . were not honest."

On appeal, the State argues that the judge applied the wrong standard of review, and defendant should not be admitted into PTI.

Our scope of review of a prosecutor's decision to deny admission to PTI is "severely limited." State v. Negran, 178 N.J. 73, 82 (2003). We afford the prosecutor's decision great deference. State v. Wallace, 146 N.J. 576, 582 (1996). A trial judge can only overturn a prosecutor's decision to deny PTI upon finding a patent and gross abuse of discretion. State v. Kraft, 265 N.J. Super. 106, 112-13 (App. Div. 1993).

Mindful of that standard, we find the judge erred in his ruling that reversed the prosecutor's decision to deny defendant PTI admission. The judge did not make any findings of a patent and gross abuse of discretion; instead, he engaged in a de novo review of the factors set forth in N.J.S.A. 2C:43-12(e)¹ and performed his own analysis of defendant's eligibility.

It is not the place of the judge simply to disagree with the State's decision, but rather the reviewing judge must determine that the prosecutor "has gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention." Wallace, supra, 146 N.J. at 583. An abuse of discretion is shown where it can be proven "that the [PTI] denial '(a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant

¹ The statute delineates the criteria to be considered by the State in its evaluation of a defendant's eligibility for admission to PTI.

or inappropriate factors, or (c) amounted to a clear error in judgment.'" State v. Lee, 437 N.J. Super. 555, 563 (App. Div. 2014), certif. denied, 222 N.J. 18 (2015) (quoting State v. Bender, 80 N.J. 84, 93 (1979)).

The judge's failure to apply the deferential standard of review required in an appeal of a PTI denial constrains us to vacate the order and return the case to the trial court. We, therefore, remand to the trial judge for a proper review of the State's decision in light of the "patent and gross abuse of discretion" standard.

Vacated and remanded. If there is a stay imposed in this matter it should remain in place pending the remand. 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