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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1476-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAQUANA S. RANSELL,

Defendant-Appellant.

Submitted March 1, 2023 – Decided March 10, 2023

Before Judges Haas and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 21-03-0306.

Joseph E. Krakora, Public Defender, attorney for appellant (Stefan Van Jura, Assistant Deputy Public Defender, of counsel and on the brief).

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

PER CURIAM

On August 11, 2020, defendant was driving her Ford Focus in Newark on South Jacob Street. Her vehicle was struck by a New Jersey Transit bus when it entered South Jacob Street's intersection with Springfield Avenue. Defendant was injured as was her passenger, whose injuries later proved fatal. Defendant was charged with operating a motor vehicle that resulted in the death of another while her license was suspended, N.J.S.A. 2C:40-22, a crime of the third degree. Her license had been suspended because of unpaid parking tickets.

Defendant, a thirty-year-old single mother with no prior criminal history, sought entry into the pretrial intervention (PTI) program. The Criminal Case Manager recommended admission, but the prosecutor objected. Defendant sought relief and the trial judge, who viewed the application as posing "a very close call" and expressed he was "really troubled by this case," remanded the matter so the prosecutor could "take another hard look." The prosecutor maintained his position. The judge, in considering the matter again a few weeks later, observed that defendant had "presented a very compelling argument," but he denied the application because he could not find the prosecutor's position "amounted to a patent and gross abuse of discretion."

A few months later, the parties entered into a plea agreement by which defendant pleaded guilty to the indictment and the State recommended a non-

custodial sentence and a mandatory one-year loss of defendant's driving privilege. The judge sentenced defendant to a three-year probationary term.

Defendant appeals, arguing:

I. THE PROSECUTOR'S DENIAL OF PTI WAS A PATENT AND GROSS ABUSE OF DISCRETION; ACCORDINGLY, THE MATTER SHOULD BE REMANDED TO THE TRIAL COURT WITH INSTRUCTIONS TO ADMIT DEFENDANT INTO PTI OVER THE PROSECUTOR'S OBJECTION.

II. A THREE-YEAR PERIOD OF PROBATION IS MANIFESTLY EXCESSIVE AND NOT SUPPORTED BY THE COURT'S FINDINGS OF AGGRAVATING AND MITIGATING FACTORS.

We agree with defendant's first point and, therefore, need not reach the second.

We start by recognizing, as is well established, that PTI is a "diversionary program through which certain offenders are able to avoid criminal prosecution by receiving early rehabilitative services expected to deter future criminal behavior." State v. Nwobu, 139 N.J. 236, 240 (1995). Acceptance into PTI requires an initial recommendation by the criminal division manager and the prosecutor's consent. The prosecutor is required to make an "individualized assessment," State v. Roseman, 221 N.J. 611, 621-22 (2015), by considering the defendant's "'amenability to correction' and potential 'responsiveness to rehabilitation,'" State v. Watkins, 193 N.J. 507, 520 (2008) (quoting N.J.S.A.

2C:43-12(b)), and the many other statutory factors listed in N.J.S.A. 2C:43-12(e).

While the prosecutor is imbued with "great discretion," and a defendant's diversion into PTI constitutes "a quintessentially prosecutorial function," State v. Wallace, 146 N.J. 576, 582 (1996), we must also be mindful that the prosecutor's discretion "is not unbridled," ibid., and a prosecutor's objection may be overcome if it is "clearly and convincingly establish[ed] that the prosecutor's refusal to sanction admission into the program was based on a patent and gross abuse of [] discretion." State v. Leonardis, 73 N.J. 360, 382 (1977); see also State v. Johnson, 238 N.J. 119, 128-29 (2019); Wallace, 146 N.J. at 582-83. When the decision to keep a defendant out of PTI has gone "wide of the mark . . . fundamental fairness and justice require judicial intervention." Watkins, 193 N.J. at 520. We believe this is one such case.

The prosecutor found six factors that he believed justified barring defendant from PTI. The first was "the nature of the offense." N.J.S.A. 2C:43-12(e)(1). The prosecutor asserted that "defendant acted with total disregard for the safety of her passenger, as well as all other pedestrians and motorists, by driving with a suspended license and causing a serious motor vehicle collision" that caused her passenger's death. But, as observed earlier, her license was

suspended for unpaid parking tickets, not any conduct that evinced or suggested a disregard for safety. There is no evidence that defendant was intoxicated or under the influence of any substance, that she was distracted by using a cellphone, or any other similar conduct that would suggest she was anything but carelessly or recklessly operating her motor vehicle in bringing about the accident and the unfortunate death of her passenger.

The prosecutor's reliance on three other statutory factors adds nothing that the first factor did not take into consideration. That is, in relying on the second statutory factor – "the facts of the case," N.J.S.A. 2C:43-12(e)(2) – the State asserted that defendant acted "purposeful[ly]" and that her conduct was egregious because her license had been suspended for approximately four months. The State's position on this factor does little more than rely on the same circumstance that it urged in support of the first factor. Moreover, the purposefulness that the prosecutor relied on was the allegation that she knowingly drove while her license was suspended, not that she knowingly caused the accident.

In relying on these same factual circumstances, the State invoked the seventh statutory factor – the "needs and interests of the victim and society," N.J.S.A. 2C:43-12(e)(7) – by referring to the license suspension and that the

accident resulted in a death. In invoking the tenth factor – "whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior," N.J.S.A. 2C:43-12(e)(10) – the State argues that "defendant's behavior constituted a very real danger to the victim" and that "continuing to drive despite her license being expired for months shows an overwhelming absence of regard for the rules of society, the victim, other motorists, and pedestrians." Again, in suggesting this factor in support of its position, the prosecution has done nothing more than reworded what it said in support of each of the other factors mentioned above.

In alleging the fourteenth factor – "whether or not the crime is of such a nature that the value of supervisory treatment would be outweighed by the public need for prosecution," N.J.S.A. 2C:43-12(e)(14) – supports the opposition to PTI, the prosecution claims there is a "significant need" to deter defendant because she "attempted to downplay her role." The fact is, however, that defendant claimed "no recollection of the accident" and "no knowledge of her license being suspended." The trial judge rejected the prosecutor's position, observing that defendant had no obligation to speak with the police and that her claim of not remembering the accident was credible because she too was severely injured in the crash. Similarly, the prosecution relied on the seventeenth

statutory factor – "whether or not the harm done to society by abandoning prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment," N.J.S.A. 2C:43-12(e)(17) – through the assertion that the victim's "family and friends deserve justice," that defendant must "be held accountable for her actions," and that forgoing prosecution here "may have the opposite effect of deterring this type of offense." The record, however, shows that while it is true the victim's mother was opposed to defendant's entry into PTI, the victim's father and brothers favored PTI because they recognized that defendant and the victim were "best friends" and that the death was accidental.

The argument that defendant should be held "accountable" for her actions, as the prosecutor argued, would likely be true in any criminal prosecution. But there is nothing more here than the suspended license and a motor vehicle accident, which tragically caused a death; neither circumstance, individually or collectively, would suggest this defendant is not amenable to "the deterrence of future criminal behavior through the receipt of early rehabilitative services." State v. DeMarco, 107 N.J. 562, 567 (1987). Sadly, human error is such that auto accidents will occur, so it is difficult to imagine how prosecuting this defendant would deter future auto accidents.

In short, we cannot help but return to the essence of this matter: that the prosecutor was desirous of prosecuting this defendant for a fatal car accident only because her license was suspended for unpaid parking tickets. Considering the defendant's age and circumstances, and the lack of any prior criminal history, it is difficult to conceive of a case more amenable to PTI. To be sure, our courts are required to give prosecutors considerable leeway in such matters, but that doesn't mean the prosecutor's position may never be overcome.

An appropriate example for overriding a prosecutor's objection can be found in Roseman, where the Court found the prosecutor grossly and patently abused his discretion when the two defendants – Roseman, who was the mayor of Carlstadt, and Lewin, his ex-wife – sought entry into PTI. 221 N.J. at 629-30. These defendants were charged with second-degree official misconduct, third-degree conspiracy, and third-degree theft charges, id. at 617, because for seven years following their divorce, id. at 616, Lewin wrongfully continued to receive benefits through the health coverage to which Roseman was entitled through his employment with the municipality, id. at 616-17. The trial judge overrode the prosecutor's objection and ordered that the defendants be enrolled in PTI. Id. at 619. As to Roseman, we reversed, finding no patent or gross abuse of the prosecutor's discretion particularly because the defendants had been charged

with a second-degree offense; as to Lewin, we remanded for an individualized assessment of her circumstances. Id. at 619-20. The Supreme Court reversed and reinstated the trial court order that allowed the defendants into PTI. Id. at 630.

There is, of course, at least one difference between the Roseman matter and this case. Here, someone died. But the Roseman defendants were charged with a second-degree offense as well as other third-degree offenses, while defendant here was charged only with one third-degree offense. The wrongdoing in question in the Roseman matter occurred over the course of seven years, during which the defendants received numerous statements from Roseman's health insurer revealing that Lewin had received benefits to which she was not entitled, while defendant's wrongdoing – the suspension of her license – had only occurred four months earlier, and, unlike the Roseman defendants who should have been aware of their wrongdoing, defendant denied knowledge of her suspension. The Roseman defendants arguably had a motive for the crimes for which they were charged – pecuniary gain – while defendant here had no motive in operating her vehicle in such a way as to severely injure herself and in causing fatal injuries to her passenger and friend. Moreover, while, as we have already observed, the Roseman defendants' conduct occurred over the

course of many years, the act that brought about the tragic death of defendant's passenger started and ended in the blink of an eye.

Other differences would include the fact that Roseman was the mayor of a small but affluent suburban community, while defendant here was a single, thirty-year-old, unemployed mother, living in Newark. Even though one of the factors the prosecutor should consider is the defendant's standing in the community, Watkins, 193 N.J. at 520, we cannot imagine this means that suburbanites of means or political stature are entitled to PTI while unemployed city dwellers are not. Considering all these circumstances, we cannot understand why – if Roseman and Lewin were, as the Supreme Court held, entitled to entry into PTI – defendant should not be.

In the final analysis, the prosecutor's objection to defendant's entry into PTI – despite his invocation of numerous factors – is based almost entirely on the fact that defendant's license was suspended for unpaid parking tickets when the unfortunate and tragic motor vehicle accident occurred. Considering all other factors, including defendant's lack of a prior criminal history, we are satisfied – as the Court was in Roseman – that the prosecutor's objection constituted a gross and patent abuse of discretion and "subvert[ed] the goals underlying" PTI. 221 N.J. at 630 (quoting State v. Bender, 80 N.J. 84, 93 (1979)).

The order under review is reversed and the matter remanded for entry of an order vacating the judgment of conviction and permitting defendant's entry into PTI. 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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