

STATE OF NEW JERSEY,
Appellant,

v.

BELLIK LINTON,
Defendant-Respondent.

A-99-6851-T3

Superior Court, Appellate Division

Submitted April 28, 1999 -- Decided June 30, 1999

Before Judges GRIM, REAPER and MERCY.

ELISE A. BETHDOLE, Mercer County Prosecutor, attorney for the appellant.
(ALPHONSE GORED, Assistant Prosecutor, of counsel and on the brief).

GEORGE DOUBLEBUSH, attorney for the defendant-respondent (Mr. Doublebush, of
counsel and on the brief).

REAPER, J.A.D., joined by GRIM, J.A.D.

This case arises from the January 4, 1999 order of the Superior Court, Law Division (Dan Yule Quail, J.), granting defendant's application for admission into the Pretrial Intervention Program (PTI) over the objection of the Mercer County Prosecutor. The trial court concluded that it was a patent and gross abuse of discretion for the prosecutor to reject defendant's application, a rejection based in part on the prosecutor's view that "systematic welfare fraud by persons with ample means of available support must be deterred and those who commit the offense are therefore ineligible for PTI." The court found that defendant had established "compelling reasons" to overcome the prosecutor's objections.

We disagree. We hold that there is adequate support for the prosecutor's conclusion that this defendant made a conscious decision to take the public's money to finance his personal life while pursuing his private goals. Accordingly, we reverse the order directing defendant's admission into PTI, and the case is remanded for trial.

The Facts

The facts as established before Law Division Judge Quail are as follows:

Defendant Bellik Linton is a resident of the City of Trenton and a May 1999 graduate of Rutgers Law School, Newark. He has deferred efforts to sit for the New Jersey bar exam pending resolution of this matter. From January of 1996 through April of 1998, while in his final year at Rutgers College and while a student at Rutgers Law School, defendant received welfare payments, food stamps and Medicaid after filing a series of applications for benefits. Defendant did not disclose in those applications that he was receiving a substantial amount of money from a private disability policy and from Rutgers Law School for his living expenses, which amounted to \$28,230 over the 28-month period. This was in addition to funds he received that covered his tuition. After a "tipster" alerted the welfare department to this omission, an investigation led to defendant's indictment on September 9, 1998 for third degree theft, in violation of N.J.S.A. 2C:20-4, and six counts of fourth degree unsworn falsification to authorities, in violation of N.J.S.A. 2C:28-3a.

According to the State, defendant failed to disclose to his case worker grants, scholarships, and other forms of financial resources when he completed the standard form PA 1J, a 16-page "Application & Affidavit for Public Assistance," a document he completed six separate times during the period from 1996 to 1998.

Among the key (and charged) false statements were:

1. When defendant applied for public assistance on January 13, 1996, he stated that he had been receiving a disability check for personal injury in the amount of \$436.67 per month, but no longer received the money as it had run out on January 8, 1996. In fact, the payments under the policy were in full force, and defendant continued to be paid the monthly benefit through the end of 1996 for a total undisclosed amount of \$5240.00. That disability policy, if revealed, would have disqualified defendant from benefits during 1996.

2. Subpoenaed bank records for defendant's account reveal that he deposited \$5,548.53 into checking on September 12, 1996. That amount -- which proved to be from a living-expense grant from Rutgers Law School -- would further have precluded defendant from receiving public assistance during 1996. The grant was not reported to his caseworker.

3. Subpoenaed bank records for defendant's account reveal that he deposited \$5,401.87 into checking on January 15, 1997. That amount -- a scholarship from Rutgers Law School -- would have precluded defendant from receiving public assistance during the first half of 1997. The scholarship was not reported to his caseworker.

4. Subpoenaed bank records for defendant's account reveal that he deposited \$5,997.98 into checking on September 10, 1997. That amount -- another law school living-expense grant -- would further have precluded defendant from receiving public assistance during the fall semester 1997. The grant was not reported to his caseworker.

5. Subpoenaed bank records for defendant's account reveal that he deposited two checks, each in the amount of \$3,020.81 into checking on January 6, 1998 and March 16, 1998. Those amounts -- again from grants from Rutgers Law School for living expenses

-- would have rendered defendant ineligible for public assistance during the first semester of 1998. These grants were not reported to his caseworker.

In sum, according to the State's allegations, defendant received \$29,824 from various public assistance programs to which he was not entitled.

Defendant sought admission into the Mercer County PTI program on September 25, 1998. On November 16, 1998, the Mercer County Prosecutor rejected the application. Defendant filed his application with the Superior Court, Law Division, for admission to PTI over the prosecutor's objections on November 24, 1998, and the trial court heard argument on December 22, 1998.

In support of his claim of "compelling reasons" for admission to PTI, defendant offered the fact that he is a single parent of two children, who live with him. Although he dropped out of high school at age 16 in 1980, he completed high school through a program in the United States Army, served with honor in that service, and became a policeman in New Brunswick upon his discharge in 1984. He was disabled in an automobile accident in 1989. A spinal fusion and many operations were followed by a long rehabilitation.¹ His injury left him unable to return to work as a police officer.

In 1992, defendant enrolled as a full-time student in Rutgers College. Of thirty-six grades received between 1992 and 1996, defendant received thirty-four A's and two B's. He enrolled at Rutgers Law School in 1996 and graduated in May 1999. Defense counsel presented to the prosecutor, and thereafter to the trial court, a letter from John Dean, a former Chair of the State Of New Jersey Committee on Character stating: "A conviction of a crime of moral turpitude would cause Bellik very significant difficulties in admission to the Bar. It would require an individual hearing before the Committee on Character and one could not be sure of what decision would emerge from such a hearing. The Committee may very well refuse to grant admission."

In his application for admission to PTI, defendant described his financial condition while he attended law school:

I had nothing. I had no money and my kids needed medical insurance and necessities. I reported the disability to welfare but told them that the money was gone. I showed them the title to my house. During that time I also received grant and scholarship monies. I was under the impression that all the welfare officers I dealt with were aware that I had numerous student loans to finance both my undergraduate and graduate education. I had been borrowing from my credit cards throughout that time to the amount of \$35,000. I had debts related to my family's living expenses. I used student loans to pay my credit cards.

¹ We note that defendant received a substantial cash settlement as the result of a lawsuit stemming from this injury and used the proceeds in part to pay cash for a home and a car and to pay other expenses.

I did not use any of the money received for anything other than the support of my family. I made very bad choices but I felt they were the only choices at those times. I am very sorry and truly remorseful for what I did. I have worked very hard to try to make something for myself and my family and wish to become an asset to society rather than an expense.

Defendant's relatives have raised \$29,824 for the improperly received welfare benefits and placed it in a trust account with defense counsel, available for full restitution.

Discussion

Before ordering a defendant to be admitted into PTI over the prosecutor's objection, a trial court must find that defendant "clearly and convincingly established that the prosecutor's refusal to sanction admission into the program was based on a patent and gross abuse of ... discretion." *State v. Wallace*, 146 N.J. 576, 582 (1996) (quoting *State v. Leonardis*, 73 N.J. 360, (1977)). The Supreme Court has characterized this as a "highly deferential standard of review." *State v. Wallace, supra*, at 589. Under this standard, we are unable to conclude that the prosecutor's rejection of defendant's PTI application constituted a patent and gross abuse of discretion.

The prosecutor correctly concluded that the pending charges against defendant fall under PTI Guideline 3(i)(2). This Guideline states that if a defendant is charged with a crime which is "part of a continuing criminal business or enterprise ..., [his PTI application] should generally be rejected." If the charges against defendant can be proven at a trial, there would be no doubt he engaged in a long-term, calculated scheme to defraud the State of welfare funds by repeatedly lying about his financial circumstances. Our courts have previously recognized that such fraudulent conduct constitutes a "continuing criminal business or enterprise" within the intent of PTI Guideline 3(i)(2). *State v. Sutton*, 80 N.J. 110, 117-18 (1979); *State v. Burger*, 222 N.J. Super. 336, 341 (App. Div. 1988).

Because defendant is charged with offenses which fall within PTI Guideline 3(i)(2) and thus is presumptively ineligible for admission into PTI, he was required to present facts or materials "demonstrating [his] amenability to the rehabilitative process" and "showing compelling reasons justifying [his] admission and establishing that a decision against enrollment would be arbitrary and unreasonable." PTI Guidelines 2, 3(i); see *State v. Caliguiri*, 158 N.J. 28, 36 (1999). Under these criteria, the interests of society may justify the denial of an application for admission into PTI even though a defendant has led an exemplary life except for the conduct which forms the basis of the pending criminal charges.

We are firmly convinced that, despite the impressiveness of defendant's educational achievements, the charge that he engaged in a long-term scheme of welfare fraud while attending school warrants denial of his admission into PTI. Indeed, we are convinced that this charge warrants careful scrutiny by the Committee on Character to determine whether he is morally fit to practice law.

When defendant committed welfare fraud, he was not in exceedingly dire financial straits. He owned a home outright. Beyond his welfare profits, he was receiving more than \$1,000 a month in the form of grants, scholarships, and loans from the law school, government and various private sources solely for living expenses; he had a full scholarship for tuition and related costs.

This defendant could have chosen to forego law school until he had earned enough money to pay for it. Given the willingness of relatives to now loan him the money to make restitution, it may well be that this defendant could have chosen to ask for such a loan to help finance his law school training.

The need for strong specific and general deterrence warrants criminal prosecution. Defendant was not driven to commit welfare fraud by extreme economic circumstances. He was a college graduate with a substantial employment history who undoubtedly could have obtained employment to support himself and his family but instead elected to attend law school. Additionally, as a law student and as a former police officer, defendant had to have been aware of the seriousness of his fraudulent conduct and the consequences he would face if he were caught. Therefore, we conclude that the prosecutor's determination that defendant should be excluded from the PTI program in order to deter systematic welfare fraud by persons with ample means of available support did not constitute a patent and gross abuse of discretion.

Accordingly, the order directing defendant's admission into PTI is reversed, and the case is remanded for trial.²

REVERSED.

MERCY, J.A.D., dissenting

I respectfully disagree with my colleagues and would affirm the decision of the court below to direct defendant's admission into pretrial intervention. Alternatively, I would remand the matter to the trial court with directions to reopen the issue and permit defendant to present testimony to establish the existence of "compelling reasons" for his admission into PTI.

² Defendant alternatively argues that he is entitled to a full evidentiary hearing upon remand because he chose not to present witnesses at the trial court's hearing on his application. Essentially, defendant argues that he should be protected from the unforeseen result of his own strategy when he chose to rest on his papers. Defendant was undoubtedly aware that the decision of the court was appealable and that it was incumbent upon him to create a record that would have the best chance of withstanding such an appeal. We will not speculate upon the motivation for defendant's failure to do so. We hold that whatever entitlement to a hearing that defendant had pursuant to the PTI Guidelines was waived when defendant elected to rest on his papers. Any error in this regard originated with the defendant and cannot serve as a vehicle for reversal on appeal. See *State v. Pontery*, 19 N.J. 457, 471 (1955).

In its opinion, the majority skims rather lightly over the facts of this case. Those facts, however, are extraordinary. Defendant's accomplishments were described by the trial court as a "phenomenal series of feats" that it regarded as "compelling reasons" for defendant's admission into PTI in a comprehensive, well-reasoned opinion which I find sound and which I adopt.

From his status as a high-school dropout with little prospect for betterment, defendant has raised himself to the point where he may fulfill his dream of practicing law. His record in the United States Army was exemplary, with numerous commendations and accolades. He completed high school, married, fathered two children and took a job as a policeman. Shortly thereafter, he was involved in a serious automobile accident, suffering back injuries which required a spinal fusion, a number of operations, and a long rehabilitation. His wife died of cancer shortly after the accident, and defendant is the sole parent and sole support for his children.

Upon his recovery from these terrible injuries, defendant enrolled as a full-time student at Rutgers College, New Brunswick, where he received a Bachelor of Science degree in Psychology with high honors and a 3.9 cumulative GPA. He was listed in Who's Who Among Students in American Universities and Colleges. He received a letter of commendation from the Dean of Psychology, Rutgers College in June of 1996. Defendant graduated this year from Rutgers School of Law, Newark with honors.

Defendant worked throughout his law school career in legal aid offices serving the minority community in Trenton. He has a job offer from Legal Aid in Trenton for September, which is being held in abeyance pending resolution of this case. He must be admitted to the bar in order to practice law in New Jersey. Mr. John Dean, former Chair of the Committee on Character expressed his opinion on what was likely to happen if defendant were not admitted to the PTI program: "He will have a significant chance of not being admitted in the state. If he is admitted, his license will not be pristine but in fact will be marked. That will make it extremely difficult for him to find or retain legal employment."

Defendant's finances throughout his education have been marginal at best. He used student loans in order to finance much of his undergraduate and graduate educations. While an undergraduate he received a settlement of approximately \$130,000 from his automobile accident. He used this money to meet obligations to his family in a perfectly responsible fashion: he paid off high-interest credit card debts, bought a used car and bought a home that can best be described as a "fixer upper."

Defendant dealt with a number of welfare intake officers, and he was under the impression that all of them were aware that he had numerous student loans to finance both his undergraduate and graduate education. They were also aware that he had received an award from the auto accident, and that he had used virtually all of the proceeds to purchase the home and fix it up for his two children. Frankly, virtually every welfare officer that defendant dealt with was exceptionally impressed with his dedication to his children, his education, and his desire to achieve professional success despite life's setbacks. On more than one occasion, he was told he was a "model recipient" because of

his industriousness in his desire to further himself.

Defendant sought admission to PTI on September 25, 1998. The Mercer County PTI manager recommended defendant's admission to the PTI program, conditioned on restitution and the performance of 100 hours of community service. The prosecutor rejected the recommendation and denied admission to PTI on November 16, 1998.

The prosecutor, supported by the majority here, appears to have three grounds for rejecting defendant's application. First the prosecutor argued and the majority agrees that under PTI Guideline 3(i)(2), the defendant's conduct was "part of a continuing criminal ... enterprise" and thus there was a presumption that his application should be rejected. However, defendants in routine welfare fraud cases in Mercer County are often put into PTI. Thus singling out this defendant is an abuse of discretion.

Second, the prosecutor and the majority here actually seem to have treated the representation that defendant's family would loan him enough money to make restitution as a negative factor, to be weighed against defendant. Such a view of the Guidelines is erroneous and an abuse of discretion.

Finally, the prosecutor argued, and the majority appears to accept, that defendant was living an "upper middle-class" lifestyle, "living a rather good lifestyle," and committed welfare fraud merely to "make life easier" for himself. It is inconceivable that anyone in New Jersey is living a "good lifestyle" on less than \$25,000 a year in grants, scholarships and welfare benefits combined while raising two children and attending school full time.

In its decision, the trial court acknowledged that it should not overrule the judgment of the prosecutor unless there was a "patent and gross abuse of discretion." However, the court concluded that:

This case begs, calls out for entry into the Pretrial Intervention Program. I can't conceive of why PTI should not be granted to this young man. To me, [the prosecutor's] ... refusal is Draconian in this case. I can't believe that this is not the case, the kind of case that cries out for PTI. If this young man is not accepted into the program, I am convinced that his legal career is going to be in jeopardy. There is no question about it.

There are further mitigating factors to be considered in this case: the defendant has agreed to pay full restitution upon acceptance into PTI; the offense defendant is charged with is non-violent in nature; according to the Program Director, defendant appears to maintain a close family relationship; and defendant is currently doing pro-bono work at an urban law clinic. The defendant has no prior criminal record of any kind, no history of substance abuse or psychological problem and, as noted by the Program Director, is sincerely sorry for what he has done. He is the sole support of his dependent children.

This defendant meets the standards of amenability to the rehabilitative process so overwhelmingly and there exist so many compelling reasons justifying his

admission to the PTI program that the denial cannot be viewed as other than a patent and gross abuse of discretion. I will order that he be admitted.

Like the trial judge, I am convinced that denial of admission into PTI is a decision which “arises from a clear error of judgment” and thus the appropriate remedy is an order directing defendant's admission into the program. *State v. DeMarco*, 107 N.J. 562, 567 (1987). I recognize, of course, the “enhanced deference” or “extra deference” to be extended to a prosecutor in determining whether to admit or reject a candidate for PTI. *State v. Wallace*, 146 N.J. 576, 589 (1996). Nevertheless, the prosecutor's discretion is not “unbridled” and the judiciary retains a role in the PTI process. The similarities between this case and *State v. Mickens*, 236 N.J. Super. 272 (App. Div. 1989) are striking, and the result should be the same.

Moreover, I disagree with the cavalier dismissal by the majority of defendant's argument to this court that he was not given an opportunity to make a full record with respect to the existence of “compelling reasons” why he should be admitted into PTI. The majority relegates the entire matter to a footnote, and holds that defendant waived whatever rights he had. Both factually and legally, the ruling misses the mark.

In moving for admission to PTI, defendant specifically made a demand for an evidentiary hearing. See PTI Guideline 8 (“A defendant shall be entitled to a hearing...”). In the scheduling letter from Judge Quail to defense counsel and the prosecutor, the trial court fixed December 22, 1998 as the date on which “both sides may make their presentations on this application.” Defense counsel reasonably interpreted this language as permitting the presentation of witnesses, and thus had witnesses subpoenaed to the courtroom on December 22, 1998. When the matter was called, defense counsel made a brief preliminary statement and then stated he had witnesses he wanted to call, including the Mercer County PTI Manager. The trial judge interrupted to say that he was “persuaded by the application and the state's written response that this is a case where ‘compelling reasons’ have been shown for admission of this defendant into PTI.” He then called on the prosecutor to “try to show me that I'm wrong.”

At the close of the prosecutor's argument, Judge Quail said there was “nothing new in the argument” and his original position had “not been swayed one bit.” He then asked defense counsel if he had “anything else to say.” Counsel repeated that he had witnesses in the courtroom to support defendant's application, and the trial court stated again: “The application is enough for me.” It was at that point that defense counsel said, “In that case, your Honor, we will rest on the papers.”

This is clearly not a case of “invited error,” where defendant affirmatively asks a court to take a course of action and, when the course proves to have been strategically unwise, then complains of error in the court's agreement with the course the defendant urged. *Cf. State v. Buonadonna*, 122 N.J. 22 (1991). Defense counsel here attempted twice to present the testimony of witnesses who stood by ready and willing to testify and twice was foreclosed by the trial court. At best, defendant acquiesced in the court's already-chosen course of action; he did not request it; he ought not to be bound by it. *See State v. Simon*,

79 N.J. 191, 206 (1979).

Further, it is the obligation of the court under R. 3:29 to “place on the record the reasons supporting its decision . . . on an application for diversion, . . . or other disposition of a criminal matter.” See *State v. Kirchoerffer*, 156 N.J. Super. 172, 176 (App. Div. 1978). Here, we have no basis upon which to review the impact of the testimony that defendant was innocently discouraged from presenting by the trial judge. Justice and fair play demand that the defendant receive a full evidentiary hearing upon remand. Only through this means can it be assured that the court has properly considered and evaluated defendant's contentions under the appropriate standards governing judicial review of PTI matters as originally announced in *State v. Leonardis*, 73 N.J. 360, 381-383 (1977).

For the foregoing reasons, I would affirm the trial court's order granting the defendant's application for admission to PTI. Alternatively, and at a minimum, I would remand the issue to the Law Division with directions to hold an evidentiary hearing at which defendant would have an opportunity to develop a full record in support of his claim of “compelling reasons” for admission into PTI.

**IN THE SUPREME COURT
OF THE STATE OF NEW JERSEY**

A-99-522

STATE OF NEW JERSEY,

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ORDER

The appeal of this matter by the defendant-appellant is, on this 31st day of August, 1999, hereby docketed as to all appropriate issues. Simultaneous briefing is directed and both parties are to file briefs with this Court on or before December 1, 1999.

STEPHEN W. TOWNSEND, Clerk
For the Court