SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3481-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERTO RODRIGUEZ-OCASIO, a/k/a ROBERTO R. OCASIO, and ROBERTO RODRIGUEZ-OCASI,

Defendant-Appellant.

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Argued September 13, 2023 – Decided October 6, 2023

Before Judges Haas and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 18-12-1223.

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

Ian C. Kennedy, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County

Prosecutor, attorney; William P. Miller, Assistant Prosecutor, of counsel and on the brief; Catherine A Foddai, Legal Assistant, on the brief).

PER CURIAM

Following a jury trial, defendant Roberto Rodriguez-Ocasio was convicted of first-degree distribution of a controlled dangerous substance (CDS), methamphetamine, in a quantity of five ounces of more, N.J.S.A. 2C:35-5(b)(8). Before us, he challenges both his conviction and sentence. For the reasons detailed below, we affirm defendant's conviction but vacate his sentence and remand for a new sentencing proceeding.

I.

The circumstances surrounding defendant's arrest originated with information a confidential informant (CI) provided to the Bergen County Prosecutor's Office related to the sale of methamphetamine, including the phone number of a suspected seller. Specifically, the CI provided information regarding the potential sale of two kilograms of methamphetamine for approximately $40,000. After consulting with the CI, Detective Sergeant Jennifer Rueda, engaged in an undercover capacity, instructed the CI to call the suspected seller, inform him that he had an interested buyer, and arrange a meeting. Detective Rueda testified at trial to being present during this phone

call and that the CI told the suspected seller, using coded language commonly used in controlled CDS transactions, "he had someone who was going to purchase the two kilograms, and that we were ready with the United States currency, and if [the seller] could bring the two kilograms to us" the following day.

Detective Rueda also testified the CI confirmed, via a text exchange with the suspected seller's phone number, to meet in the parking lot of a Chili's restaurant in Paramus the next day. Detective Rueda also stated the CI received text messages from the same phone number indicating that the driver was in a green Buick and wearing a red shirt. At the time of the meeting, Detective Rueda observed defendant in the Chili's parking lot wearing a red shirt and standing next to a green Buick.

After Detective Rueda and the CI approached on foot, defendant opened the trunk of the car and revealed a black backpack, which Detective Rueda suspected contained methamphetamine. Detective Rueda then instructed the CI to retrieve the money and, after Detective Rueda took possession of the backpack, defendant was arrested without incident. It is uncontested the backpack contained 2.02 kilograms of methamphetamine.

After being read his Miranda rights, defendant consented to a search of his vehicle and agreed speak to police without an attorney present. A search of defendant and his car did not reveal any additional contraband. He gave the police his phone number and consented to a search of his phone. Defendant's phone number matched the one the CI provided to police, and the one with which the CI and Detective Rueda had been communicating about the drug transaction. A search of defendant's phone also revealed phone calls and text messages from both the CI's phone and from a phone number with a 302 area code.

At his trial, the State theorized defendant worked with the unidentified suspect from the 302 area code to sell the methamphetamine. Defendant's counsel, however, argued defendant was merely a "patsy" in a scheme orchestrated by the CI.

Defendant testified at trial and stated he moved to the United States to drive trucks, which he did professionally for twenty-eight years until he stopped due to "arthritis in [his] spinal cord." After he retired, defendant earned money by servicing vehicles for people he knew, serving as a travel companion, and by driving people on trips. Defendant never advertised these services, instead relying on word of mouth.

Defendant also testified in August 2018 a Dominican man called his cell phone and asked if he was available "to make [a] trip." Defendant agreed to make the trip using a friend's vehicle, as his car was inoperable. Defendant stated he did not know or ask what he was being hired to deliver and that when he was a truck driver, he "mostly . . . didn't know what [he] was taking."

Defendant testified he was instructed to leave his friend's car open overnight so someone could put a "package" inside the trunk. According to defendant, he was only told "there were documents that had to arrive immediately" and there were two packages in the backpack. He also maintained he did not "have any idea what was inside" the backpack," including when Detective Rueda opened it. Defendant admitted he was offered $5,000 for the job but testified he "really didn't believe it was going to be $5,000."

While defendant was testifying, his counsel requested a sidebar and informed the court and the prosecution that a public defender observing the trial "just came up and said . . . there was a juror in the back that's been . . . on his or her phone almost the entire time that my client has been testifying." The court did not take immediate corrective action, but indicated it would "watch them all."

At a subsequent break in the proceedings, the court and counsel revisited the issue. Specifically, defense counsel noted the prosecutor observed juror number thirteen using her phone, and a public defender in the gallery observed juror number thirteen and "two others in the back . . . using their cell phones at some point." Defendant's counsel expressed concern over the jurors potentially conducting outside research and being distracted during the testimony.

As to juror number thirteen specifically, the prosecutor explained "I personally saw [her] after we went [to] sidebar. I took notice of the jury box. She was – my opinion . . . dialed into the testimony, but I did see her on one or two occasions glancing down at her phone." The prosecutor further explained, "[i]t wasn't a continuous staring down at her phone, but I did notice on one or two occasions that she had her phone in her hand and she was looking at it."

With respect to juror number ten, a public defender in the courtroom informed the court he observed the juror "pulling his phone out of his pocket" and "texting." He also stated juror number ten was "[n]ot just checking the time, but actively using the keyboard." The same public defender stated as to juror number eleven, "[t]hroughout the entire course of the testimony, she was actively engaged — she'd look up for a while and then she would back down and text. . . I'm not the only one who saw."

In light of these observations, the court, with the consent of counsel, agreed to voir dire jurors ten, eleven, and thirteen regarding their cell phone use during trial. Prior to conducting the voir dire, however, the court discovered it failed to provide the jury with Model Jury Charge (Criminal), "Instructions After Jury is Sworn," which, among other preliminary instructions, prohibits jurors from taking notes and instructs them to turn their phones off while in the courtroom. Concerned with the failure to issue that charge, the court and counsel agreed the appropriate course would be for all jurors to be questioned regarding any cell phone use during trial.

The parties agreed on five questions for the court to ask the jurors: (1) "[d]id you have a cellular device with you in the jury box this morning;" (2) [d]id you look at it during testimony;" (3) [i]f so, for how long;" (4) "[i]f so, for what purpose;" and (5) [d]id you contemporaneously listen to the testimony of the witness and the questions asked of him." With respect to the final question, the court sought to distinguish between non-distracting and inherently distracting cell phone use. The court analogized non-distracting cell phone use to when a juror checks his or her watch, stating, "I can look at my watch and pay attention to what's going on. I can't start programming my watch and pay attention to every word."

The results of voir dire revealed ten of the fourteen jurors admitted using their phones in some fashion at some point during the trial proceeding. Specifically, juror number one stated she checked email during a sidebar; juror number two used his cell phone to "jot down notes" about the trial; juror number three checked the time during sidebar conversations; juror number four texted a family member, again, during a sidebar; juror number five texted during sidebars and silenced a vibrating call during testimony; juror number nine also silenced a vibrating call; juror number ten checked the time during sidebars; juror number eleven texted her supervisor during the testimony of witnesses and the testimony of defendant; juror number thirteen texted during sidebars; and juror number fourteen "check[ed] emails for work during sidebars."

Pertinent to defendant's arguments on appeal, the court's substantive voir dire of juror number ten included the following colloquy:

> Court: Did you have a cell phone with you in the jury box this morning?
>
> Juror 10: Yes.
>
> Court: Did you look at it or use it for anything during the testimony?
>
> Juror 10: Not during testimony.
>
> Court: When we had a sidebar?

Juror 10: Yes.

Court: Okay. What did you use it for?

Juror 10: Check the time.

Court: Okay. Did you use it for any other purpose today?

Juror 10: No.

Court: Did you have it the other days of the trial?

Juror 10: Yes.

Court: Did you . . . use it for any purpose during the other days of trial?

Juror 10: No.

Court: Okay. Did you get any texts during the other days of the trial?

Juror 10: Yes.

Court: Did you look at them while there was any testimony?

Juror 10: No.

The court asked juror number thirteen a similar line of questions. Juror number thirteen claimed her phone was left on vibrate during the trial, and she used it to text. She stated, however, she only texted during sidebars and expressly denied missing any testimony, but explained she was adopting a dog

and the "dog lady . . . wanted to call me, like, now." According to juror number thirteen, she texted the "dog lady" only during sidebar to tell her she could not talk.

After the individual voir dire, the court called back juror number two to elaborate on his notetaking. He explained his notes were "primarily about names; area code, like 302, belongs to the [CI]." The court also read several of juror number two's notes. Specifically, the court read aloud to counsel, outside the presence of the jury, two notes pertaining to the juror's "thoughts": (1) "2/1 package combined. It's perfect. Fully aware of contents, aware of risk"; (2) "W1 SD Jennifer Rueda, J.R., lacks some retention/full description, hard time articulating."

The prosecutor objected to the court reading the notes "in front of counsel because [they have] to do with jurors' impressions as to the testimony" and requested "the [c]ourt . . . read it . . . to itself, and then confer with counsel on the side." The court disagreed and permitted counsel for both parties to hear the notes' contents, reasoning juror number two hadn't "shown these notes to anybody else," and "[t]hese notes do not indicate where he is on a particular issue." Because he took notes during the trial, the court dismissed juror number two.

Once juror number two was excused, defendant's counsel requested a mistrial, claiming "so many jurors were distracted" by their cell phones. Counsel further explained, "every time there was an opportunity at sidebar, they're reaching into their phone and they're checking emails and they're texting and they're doing things. That, to me, is a distraction that [they are] just waiting . . . for some opportunity" to look at their phones.

In addition, defendant's counsel requested the court dismiss juror number eleven because she admitted texting her job during defendant's and other witness' testimony. In response to the court's questions, juror number eleven admitted she texted during testimony for a "few seconds," but claimed not to have missed any testimony. The State opposed defendant's application and argued a vibrating cell phone does not create a distraction warranting a mistrial. The State further maintained jurors encounter brief distractions during trial, such as "a fly buzzing around the courtroom," or "a person in the audience . . . acting strange," and such distractions do not result in mistrials.

The court denied defendant's motion for a mistrial but dismissed juror number eleven. In denying defendant's application, the court found, "in this particular instance I'm sure every[] one of the jurors who had a cell phone was embarrassed, but answered honestly."

With respect to juror number eleven, the court asked the public defender who previously placed his observations on record about jurors number ten and eleven to again place his observations on the record regarding juror number eleven. The public defender stated he saw juror number eleven texting "at least six times" during defendant's testimony for periods of up to twenty to thirty seconds. In excusing juror number eleven, the court explained:

> So, it could be . . . that juror [number eleven] was embarrassed and didn't want to admit the frequency or how long; it could be that she really doesn't know. But, either way, I'm left wondering did she really miss something. So, I think, for starters, I would excuse juror [number eleven], which brings us down to [twelve], which is perilous.

Following juror number eleven's dismissal, defendant's counsel expressed concern about jurors number ten and thirteen's response, moved for those jurors to be excused, and renewed his motion for a mistrial. Specifically, counsel argued the voir dire of those jurors, in which they stated to have not used phones during testimony, was contrary to the observations of a second public defender in the gallery and the prosecutor.

In opposing the motion, the State noted while several members of the Public Defender's Office were present throughout the day, only one placed his observations on the record prior to the dismissal of jurors number two and

eleven. The State argued another public defender came forward "only after . . . the court gave a reason[] as to why they were dismissing juror [number] eleven." Additionally, with respect to her own observations of juror number thirteen, the prosecutor stated, "[n]othing that I stated to the court was inconsistent with what the juror stated to the court." The court denied defendant's application, and explained it was, "taking the jurors at their word. I think I questioned them pretty thoroughly. . . we believed them about everything . . . else."

The court then conducted a voir dire of each juror concerning juror number two's notes. All of the jurors, except for juror number three, denied juror number two had shared his notes with them. Juror number three stated, however, that juror number two told her, and the rest of the jury, that he wrote "302" in his notes.

Defense counsel renewed her mistrial application and argued juror number two's conduct "amount[ed] to deliberating improperly." The court again denied defense counsel's application, and found juror number two's mere notation of area code "302" was insignificant, as that area code was stated repeatedly throughout the course of trial. Trial proceeded and, as noted, the jury convicted defendant of first-degree distribution of methamphetamine.

The court imposed a thirteen-year prison term with a four-year and four-month period of parole ineligibility. When balancing the mitigating and aggravating factors, see N.J.S.A. 2C:44-1(a) to (b), the court awarded numerical values to each factor to reflect the weight it ascribed to each applicable factor in its ultimate sentencing calculus. As the court explained:

> I'm going to start with the mitigating factors. And before I do this, I'm going to tell you how I weigh this on my mental scale. If I say very heavy, it's 150 points. If I say heavy, it's 100. If I say medium, it's 50. If I say light, it's 25. And if I say very light, it's 10. That's kind of how I do it. [Until] I find a better way, that's how I'm going to keep doing it.

The court found applicable the following mitigating factors: "conduct neither caused nor threatened serious harm," N.J.S.A. 2C:44-1(b)(1) (mitigating factor one); "defendant has no history of prior delinquency or criminal activity," N.J.S.A. 2C:44-1(b)(7) (mitigating factor seven); and "imprisonment of the defendant would entail excessive hardship," N.J.S.A. 2C:44-1(b)(11) (mitigating factor eleven). The court applied "very light weight" to factor one, "heavy weight" to factor seven, and "medium weight" to factor eleven and determined "they weigh about 160 points on my mental scale."

The court then found applicable the following aggravating factors: "risk that the defendant will commit another offense," N.J.S.A. 2C:44-1(a)(3)

(aggravating factor three); "substantial likelihood that the defendant is involved in organized criminal activity," N.J.S.A. 2C:44-1(a)(5) (aggravating factor five); and the "need for deterring the defendant and others from violating the law," N.J.S.A. 2C:44-1(a)(9) (aggravating factor nine). The court applied "very light weight" to factor three, "medium weight" to factor five, and "heavy weight" weight to factor nine, and therefore assessed the total value of the aggravating factors as 160. Comparing its calculations, the court found "[t]he aggravating and mitigating factors [to be] equipoise."

The court denied defense counsel's argument defendant should be sentenced to a lower sentence than that prescribed for someone convicted of a first-degree offense, because in order to do so, the court explained, "the mitigating must substantially outweigh the aggravating factors, which I would think is, like, five to one." In sentencing defendant to a thirteen-year term, as opposed to a mid-range fifteen-year sentence, the court noted defendant's "life expectancy . . . weigh[ed] heavily on me."

This appeal followed, in where defendant raises the following arguments:

I. THE CONVICTION MUST BE REVERSED BECAUSE DEFENDANT WAS DENIED HIS RIGHT TO A FAIR TRIBUNAL BY THE JURORS' PERVASIVE USE OF CELL PHONES DURING THE TRIAL. U.S. Const. amends. V and VI; N.J. Const. art. I, ¶ 10.

II. A RESENTENCING IS REQUIRED BECAUSE THE SENTENCING COURT EMPLOYED AN UNAUTHORIZED PRACTICE OF ASSIGNING NUMERICAL VALUES TO THE AGGRAVATING AND MITIGATING FACTORS PRIOR TO IMPOSING [THE] SENTENCE.

II.

In his first point, defendant contends "the jurors' pervasive use of cell phones during the trial" deprived him of his right to a fair trial. He further argues the court failed to explain substantively its decision refusing to dismiss jurors ten and thirteen after defense counsel argued their observed behavior during the trial was inconsistent with their voir dire answers. Defendant maintains "at least two jurors who actually were distracted during testimonial portions of the trial were [therefore] allowed to continue to serve because the jury had already been reduced to twelve."

Additionally, relying on Dimas-Martinez v. State, 2011 Ark. 515, 17 (2011), defendant contends "the trial court never examined the issue of whether the jurors had been exposed to extraneous influences through their cell phones." Last, defendant maintains the court erred in reading juror number two's notes in court, as doing so impermissibly "inquir[ed] into [the] juror's impressions of how the trial [was] going."

In response, the State argues the court properly denied defendant's motion for a mistrial because the court found the jurors' responses to its voir dire credible regarding their phone use and attentiveness during testimony. The State also contends the reading of juror number two's notes was not improper as it did not delve into the deliberative process.

III.

We begin by highlighting the appropriate standard of review and the relevant legal principles that guide our analysis. "The decision to grant or deny a mistrial is entrusted to the sound discretion of the trial court, which should grant a mistrial only to prevent an obvious failure of justice." State v. Harvey, 151 N.J. 117, 205 (1997) (citations omitted).

A trial court abuses its discretion "by relying on an impermissible basis, by relying upon irrelevant or inappropriate factors, by failing to consider all relevant factors, or by making a clear error in judgment." State v. S.N., 231 N.J. 497, 500 (2018); see also State v. Chavies, 247 N.J. 245, 257 (2021). We will not disturb a trial judge's ruling on a motion for a mistrial unless it presents an abuse of discretion resulting in "manifest injustice." State v. DiRienzo, 53 N.J. 360, 383 (1969). This same standard applies in reviewing a trial court's decision to remove and replace a juror. State v. Musa, 222 N.J. 554, 565 (2015).

"Under the United States Constitution, defendants have a due process right to an 'impartial and mentally competent' tribunal." State v. Mohammed, 226 N.J. 71, 83 (2016) (quoting Jordan v. Massachusetts, 225 U.S. 167, 176 (1912)). We have previously noted that jury irregularity, such as sleeping, "may violate a defendant's federal and state constitutional rights to a fair tribunal if it results in prejudice." Mohammed, 226 N.J. at 83; see also State v. Scherzer, 301 N.J. Super. 363, 486-87 (App. Div. 1997). Importantly, parties are certainly entitled to a fair trial, but not to a perfect one. State v. Lane, 288 N.J. Super. 1, 12 (App. Div. 1995).

When a court discovers juror inattention, "the next step is to determine whether the juror's inattention was prejudicial to the defendant." Mohammed, 226 N.J. at 85. In Mohammed, the court affirmed defendant's conviction and found no abuse of discretion in the trial court determining, based on the court's own observations, that a juror whose "eyes closed on and off throughout the trial . . . but [who] seems to be paying attention" was able to competently serve on the jury. Id. at 77, 89.

The court outlined the following procedure to address juror inattention occurring during trial:

> Where the trial judge notices that a juror is inattentive, the judge will have broad discretion to determine the

> appropriate level of investigation and corrective action that must be taken. However, when a party alleges that a juror is inattentive, the trial judge should explain adequately on the record the judge's personal observations, if any, regarding the juror's attentiveness. A finding based on the trial court's personal observations that the juror was alert and attentive generally ends the inquiry and will be reviewed to determine whether the finding is adequately supported in the record. If the judge did not personally observe the juror, the judge should conduct an individual voir dire to determine if the juror was inattentive, and make appropriate findings.
>
> [Id. at 89.]

Additionally, when faced with juror irregularity, the court "must make a probing inquiry into the possible prejudice caused" by the irregularity. Scherzer, 301 N.J. Super. at 487-88.

If, after voir dire, the court determines that the juror was only inattentive during "an inconsequential part of the trial, the trial court will have broad discretion to determine the corrective action that must be taken." Mohammed, 226 N.J. at 89. Finally, if the court determines that corrective action is necessary, the court may, among other remedies, replay a tape or video recording, reread a jury charge, or excuse the juror. Id. at 89-90. Further, "trial courts are 'vested with broad discretionary powers in determining the qualifications of jurors and [a judge's] exercise of discretion will ordinarily not

be disturbed on appeal.'" State v. Singletary, 80 N.J. 55, 62 (1979) (alteration in original) (quoting State v. Jackson, 43 N.J. 148, 160 (1964)).

Applying the aforementioned legal principles to the record before us, we are satisfied the court did not abuse its discretion in denying defendant's applications for a mistrial because, in doing so, the court's decision was consistent with Mohammed and Scherzer. Indeed, the court properly conducted a voir dire of all jurors and based its corrective action on its findings after voir dire, and upon consideration of the extent and effect of the jurors' cell phone use. Stated differently, once we properly afford the court's findings their appropriate deference, it is evident the court did not abuse its discretion because its ruling neither stemmed from a clear error in judgment nor resulted in a manifest injustice. See Mohammed, 226 N.J. at 88 (noting "[a] reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record,'" (quoting State v. Gamble, 218 N.J. 412, 424 (2014))).

Finding the jurors' voir dire responses credible, the court concluded cell phone use by remaining jurors was limited to sidebars, consisted only of benign use, and thus did not prejudice defendant. The court therefore had broad discretion to determine what corrective action, if any, was needed. See

Mohammed, 226 N.J. at 89. In denying defendant's applications for a mistrial, the court perceived no manifest injustice warranting a mistrial, nor do we.

We disagree with defendant's assertion "the jurors' pervasive" cell phone use deprived him of a fair trial, and the court failed to consider if jurors were exposed to outside influences. The court's voir dire revealed that juror cell phone use was not pervasive, but rather limited in both time and scope. All jurors who remained on the jury who admitted to using a cell phone testified they used cell phones to silence a vibrating phone call during testimony, or to briefly text, email, or check the time only during sidebars.

We also find defendant's reliance on Dimas-Martinez misplaced as that case considered a juror's ability to research aspects of a case and the dangers of social media during a legal proceeding. Indeed, in Dimas-Martinez, a juror admitted to posting on Twitter about the case and jury deliberations. Here, the court asked the jurors the nature of any phone use and no juror stated to have been on social media, to have researched the case, or to have discussed the case via text or email. Defendant's suggestion that jurors may have been engaged in such activity is pure speculation with no support in the record.

Additionally, we reject defendant's argument the court failed to explain its reasoning in retaining jurors number ten and thirteen. In denying defense

counsel's application to remove those jurors, the court expressly stated "I'm taking the jurors at their word. I think I questioned them pretty thoroughly. . . we believed them about everything [] else." Contrariwise, the court dismissed juror number eleven because it was "left wondering [if] she really [did] miss something" due to that juror's admitted cell phone use during testimony. In finding jurors number ten and thirteen's voir dire responses credible, however, the court clearly did not have the same concern those jurors missed any critical part of the trial proceeding. The court's findings following the voir dire of each juror are amply supported by the record and warrant our deference. In sum, we are satisfied the court acted within its discretion in determining jurors number ten and thirteen were able to continue to serve on the jury and denying defendant's motion for a mistrial.

Finally, we disagree with defendant's contention the court's reading juror number two's notes constituted grounds for a mistrial or reversal. The Supreme Court noted in Musa, when questioning a juror "on the subject of 'inability to continue,' the questions must be carefully crafted to elicit answers that only bear on reasons personal to the juror and that in no way elicit the drift of the deliberations or voting inclinations of any juror." Musa, 222 N.J. at 569. While the Musa court directed courts not to "delv[e] into the thoughts and views of

jurors," the court also noted, "[w]e do not suggest that there is an inflexible rule that applies to the myriad [of] scenarios that may call for judicial inquiry of a jury." Id.

The court inquired into juror number two's notetaking to determine if the juror could continue to serve. The court read the notes in the presence of counsel after concluding counsel, "have to know what's on this." After reading the notes, the court dismissed juror number two, a remedy to which defendant did not object in the court or before us, for taking notes about trial during testimony, not for any thoughts and impressions recorded in those notes.

We are satisfied the court's decision to read juror number two's notes in the presence of counsel was not a clear error in judgment and did not result in manifest injustice. Indeed, the court read aloud two notes pertaining to the juror's "thoughts," but the court stated, after reading the notes, "[t]hese notes do not indicate where he is on a particular issue." Further, the court conducted a second voir dire of each juror to address defense counsel's concern that juror number two discussed his notes with other jurors. The only fact potentially shared with another juror consisted of a mere mention of area code 302, which, as the court noted, was insignificant because it was mentioned repeatedly during trial.

IV.

In his second point, defendant argues "resentencing is required because the sentencing court employed an unauthorized practice of assigning numerical values to the aggravating and mitigating factors prior to imposing [his] sentence." Defendant contends the court's unique numerical weighing system was contrary to the uniformity goal of our Code of Criminal Justice (the Code).

Alternatively, defendant asserts the court's sentence is "substantively flawed" because, given his age, a thirteen-year custodial term is akin to a life sentence. Finally, defendant maintains we should remand for resentencing because the court erroneously imposed a mandatory one-third period of parole ineligibility contrary to the discretionary parole disqualifier of N.J.S.A. 2C:43-6(b). On this point, defendant notes a "mandatory minimum period of incarceration is required for first-degree cocaine or heroin distribution, but not methamphetamine." See N.J.S.A. 2C:35-5(b)(1), (8). The State argues the sentence is "manifestly appropriate," but agrees defendant's parole disqualifier finding should be vacated.

Our review of a sentencing court's imposition of a sentence is guided by an abuse of discretion standard. State v. Torres, 246 N.J. 246, 272 (2021); State

v. Jones, 232 N.J. 308, 318 (2018). We must affirm a sentence unless: (1) the trial court failed to follow the sentencing guidelines; (2) the court's findings of aggravating and mitigating factors were not based on competent and credible evidence in the record; or (3) "the [court's] application of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience." State v. Fuentes, 217 N.J. 57, 70 (2014) (second alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)). This deferential standard of review, however, applies "only if the trial judge follows the Code and the basic precepts that channel sentencing discretion." State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Case, 220 N.J. 49, 65 (2014)).

"The dominant, if not paramount, goal of the Code is uniformity in sentencing." State v. Kromphold, 162 N.J. 345, 352 (2000). "That goal 'is realized through a structured scheme of presumptive sentences applicable to defined classes of crime, and through limitations on judicial discretion, primarily in terms of statutorily-prescribed aggravating or mitigating factors.'" Id. at 353 (quoting State v. Pilot, 115 N.J. 558, 571 (1989)). The Code established a framework that ensures "similarly situated defendants receive comparable sentences," by "eliminat[ing] arbitrary and idiosyncratic sentencing." Case, 220 N.J. at 63.

"[T]he goal of uniformity is 'achieved through the careful application of statutory aggravating and mitigating factors.'" State v. Blackmon, 202 N.J. 283, 296 (2010) (quoting State v. Cassady, 198 N.J. 165, 179-80 (2009)). In applying the factors, "[t]he sentencing court does more than quantitatively compare the number of pertinent aggravating factors with the number of applicable mitigating factors; the relevant factors are qualitatively assessed and assigned appropriate weight in a case-specific balancing process." Fuentes, 217 N.J. at 72-73.

Guided by these standards, we are convinced the court abused its discretion by assigning numerical values to the aggravating and mitigating factors, a seemingly idiosyncratic process without support in the Code or applicable law, and which, in our view, undermines the Code's goal of uniformity goal in sentencing. See Case, 220 N.J. at 63. As noted, the court assigned one of five arbitrarily selected numbers to the applicable aggravating and mitigating factors and relied upon additive principles when determining the ultimate weight to give those critical sentencing considerations. Among other issues with such an approach, the court's selected values lacked any reference point to a unit of measurement and without proper meaning and context runs the risk of arbitrary sentencing decisions. Stated differently, although we

acknowledge the court's attempt at transparency and clarity when detailing its reasons for imposing defendant's sentence, numbers, particularly when used to explain or compare legal principles, represent relatively meaningless data points, unless understood in a broader context of measurement.

In reaching our conclusion, we again recognize at certain points in the court's sentencing analysis, it appears to have engaged in a qualitative analysis of the aggravating and mitigating factors. But, for the reasons noted, we remain concerned the court's sentencing analysis was improperly influenced by its employment of an unsanctioned numerical formula, particularly where, as here, the court used that formula to support its conclusion that the aggravating and mitigating factors were in "equipoise".

Finally, we agree with the parties the court incorrectly imposed a period of parole ineligibility. N.J.S.A. 2C:35-5(b)(1) mandates a parole ineligibility period of one-third to one-half a sentence when the defendant's crime involved the manufacturing, distributing, or dispensing of heroin or cocaine in excess of five ounces, but does not refer to crimes involving methamphetamine. Instead, N.J.S.A. 2C:35-5(b)(8) states manufacturing, distributing, or dispensing methamphetamine "in a quantity of five ounces or more" constitutes "a crime of the first degree," and "[n]otwithstanding the provisions of subsection [(a)] of

N.J.S.[A.] 2C:43-3, a fine of up to $300,000 may be imposed." Courts, however, may impose a period of parole ineligibility when it is "clearly convinced that the aggravating factors substantially outweigh the mitigating factors." N.J.S.A. 2C:43-6(b).

Here, the court abused its discretion in imposing a period of parole ineligibility because such a period is not statutorily mandated for distributing methamphetamine and therefore can only be imposed by finding the aggravating factors substantially outweigh the mitigating factors. As noted, the court found the aggravating and mitigating factors to be equipoise, and therefore incorrectly determined the parole ineligibility issue. In light of our decision, in which we direct the court to sentence defendant anew, we need not address defendant's argument that a thirteen-year sentence is extreme under the circumstances.

To the extent we have not specifically addressed any of defendant's arguments, it is because we have concluded they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed in part, reversed in part, and remanded for resentencing.