

STATEMENT OF THE CASE

The matter before the court involves two separate incidents of criminal conduct on the part of the defendant Raheem Means.

In August 2001, defendant, then 23 years old, engaged in sexual relations with the 13 year old female victim I.P. He was indicted on April 30, 2002 under a three count Essex County Indictment No. 02-04-1671 for (1) second degree kidnapping, (2) second degree sexual assault and (3) third degree endangering the welfare of a child.

On May 10, 2002 the defendant was again indicted in Essex County under a 12 count indictment, No. 02-05-1814 on charges of robbery, aggravated assault, possession of a weapon and possession of hollow point bullets.¹

On August 16 2002, the Essex County Prosecutor offered a plea to the defendant to dispose of both indictments under a 13 year prison term pursuant to the terms of NERA. Trial judge, Honorable Paul J. Vichness, J.S.C., agreed on a supplemental plea form to sentence the defendant to 10

¹ Copies of both indictments are attached to defendant's supplemental brief.

years subject to the terms of NERA. The court was not told that the victims had not been consulted about the plea.

[A-1].

On November 16, 2002 the prosecutor's office advised Judge Vichness that the sexual assault victim under the first indictment had not been consulted prior to the plea offer, and requested of the court that the plea be vacated. Judge Vichness determined:

"Since the plea offer had been made without consulting the victims, and since Mr. Means had not yet been sentenced, I signed an order vacating the pleas and re-instating the not guilty pleas." [A-1].

As part of the rotation of public defenders, the case was transferred to Judge Giles. [A-2]. On May 2, 2003 the defendant entered guilty pleas with a promised sentence of 15 years subject to NERA. On February 5, 2004 Judge Giles sentenced the defendant to 15 years in prison subject to NERA.

The Appellate Division affirmed defendant's sentence in an April 6, 2006 order. Defendant petitioned this court for certification of that judgment, and his petition was granted on July 19, 2006.

The motion of the New Jersey Crime Victims' Center for leave to appear in this matter as *amicus curiae* was granted by the New Jersey Supreme Court.

SUMMARY OF THE ARGUMENT

- I. Crime victims are an integral part of the criminal justice process, and their constitutional and statutory rights must be given full accord by the courts in assessing any claims made by the defendant.

- II. The lower court properly applied the "interests of justice" standard of R 3:9-3(e) by taking into consideration the interests of the crime victim in its decision to vacate the initial plea.

ARGUMENT

- I. CRIME VICTIMS ARE AN INTEGRAL PART OF THE CRIMINAL JUSTICE PROCESS, AND THEIR CONSTITUTIONAL AND STATUTORY RIGHTS MUST BE GIVEN FULL ACCORD BY THE COURT IN ASSESSING ANY CLAIMS MADE BY THE DEFENDANT.

The thrust of defendant's argument is that "the victim was accorded veto power over a plea agreement" and that the

lower court's ruling to vacate the initial plea "was not necessary in order to effectuate the legitimate rights of victims" ² This argument may have had some merit forty years ago when crime victims had little significance in the criminal justice system. However, with the beginning of crime victims legislation in the early 1970's and continued presence of the victims' rights movement since the 1980's, both nationally and statewide, such an argument demonstrates an unenlightened refusal to accept the strong social policy of the legislature, the courts, and the will of the people to place the crime victim on "equal footing" ³ by requiring that victims' be accorded full recognition by the justice system. See, e.g., State v. Muhammad, 145 N.J. 23 (1996), where Justice Garibaldi, speaking for the majority, stated:

Unlike most interpretations of constitutional provisions, we need not surmise what the founders intended when they drafted the Victim's Rights Amendment. We know exactly what the founders of this constitutional amendment intended--fair treatment for victims. To hold the victim impact statute unconstitutional would require us to ignore the Victim's Rights Amendment and the will of the electorate that overwhelmingly approved the constitutional amendment. Over 1,200,000 citizens voted for the Victim's Rights Amendment while only 223,248 people voted against it. Manual of New Jersey, Two Hundred and Fourth Legislature (First Session) 1992, at 903.

² Supplemental brief of defendant, p. 1.

³ N.J. Const. art. I, ¶ 22 Interpretive Statement

Beginning with the passage of the Criminal Injuries Compensation Act of 1971 (N.J.S.A. 52:4B-1 to -33), the people of New Jersey, speaking through the Legislature, have repeatedly expressed a very strong "public attitude" that victims should be provided with more rights. *Id.* at 42-43.

Over the past quarter century more than thirty states have written victims' rights into their respective constitutions⁴ and all states have written victims' rights into their statutes. The rights created by these laws are civil rights that exist independent of the other participants in the criminal justice process. See *generally*, Douglas E. Beloof, Constitutional Implications of Crime Victims as Participants, 88 CORNELL L. REV. 282, 286 (Jan. 2003).

New Jersey has been a leader among these states. The laws of New Jersey recognize the unique and vital interests of crime victims in the criminal justice system and give to crime victims procedural and substantive rights in that

⁴ See, e.g., Ala. Const. Amend. No. 557; Alaska Const. art. I § 24; Ariz. Const. art. II §2.1; Cal. Const. art. I §28; Colo. Const. art. II, § 16a; Conn. Const. Art. 1, § 8; Fla. Const. art. I, § 16(b); Ill. Const. art. I, § 8.1; Idaho Const. Art. I, § 22; Ind. Const. Art. 1, § 13(b); Kan. Const. art. 15, § 15; La. Const. Art. I, § 13; Md. Const. Declaration of Rights, art. 47; Mich. Const. art. I, § 24; Miss. art. 3, § 26A; Mo. Const. art. I, § 32; Neb. Const. art. I, § 28; Nev. Const. art 1, § 8; N.J. Const. art. I, ¶ 22; N.M. Const. art. II, § 24; Ohio Const. art. I, § 10A; Okla. Const. art. II, § 34; Or. Const. art. I, § 42; R.I. Const. art. 1, § 23; S.C. Const. art. I, § 24(B); Tenn. Const. Art. 1, § 35; Tex. Const. art. I, § 30; Utah Const. art. I, § 28; Va. Const. art. I, § 8-A; Wash. Const. art. 1, § 25; Wis. Const. art. I, § 9m. See also, State v. Casey, 44 P.3d 756, 443 Utah Adv. Rep. 3 (2002) where the court reopened the plea to hear from the minor victim based on the victim's constitutional and statutory rights.

system. State in the Interest of K.P., 311 N.J. Super. 123, 135-136 (Ch. Div. 1997).

The rights given are status rights that are automatically afforded to persons when they step into the legal role of "victim," and are independent of the facts of the alleged crime, any defense asserted, or the conviction of defendant. See N.J. Const. art. I, ¶ 22 [Victim's Rights Amendment] and N.J.S.A. 52:4B-36, *et seq.* [Crime Victims Bill of Rights].

Crime victims' rights are participatory, procedural rights afforded to independent participants in the criminal justice system immediately upon their entry into that system. As such, these rights arise simply because of an individual's status in the criminal justice system. All of these rights are about the criminal justice process; they are rights to participate in the process, to receive information about the process, to have interests adjudicated within the process, and to be safe and free from intimidation, and to be treated with fairness, compassion, respect and dignity throughout the process.

The rights of crime victims in the criminal justice system in New Jersey were first established in the "Crime Victim's Bill of Rights", N.J.S.A. 52:4B-36. This legislation that calls for victims of crime to be

"informed" and treated with "dignity and compassion by the criminal justice system" became law in 1985. The "legislative findings and declarations" to the Crime Victims Bill of Rights provide a definitive statement about the importance of the crime victim in the justice process:

The Legislature finds and declares that without the participation and cooperation of crime victims and witnesses, the criminal justice system would cease to function. The rights of these individuals should be given full recognition and protection. The Legislature has the responsibility to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process. In furtherance of this, the improved treatment of these persons should be assured through the establishment of specific rights. These rights are among the most fundamental and important in assuring public confidence in the criminal justice system. See N.J.S.A. 52:4B-35.

On November 5, 1991 at the general election, the voters of the State of New Jersey adopted the Victim's Rights Amendment to the New Jersey Constitution. This amendment became law on December 5, 1991, and was the result of considerable effort on the part of legislators, prosecutors, crime victims and various individuals who sought to bring equal justice for crime victims into the criminal justice system in the State of New Jersey. It established certain rights for crime victims that are guaranteed "as a matter of State Constitutional imperative"

along with such further constitutionally recognized and protected "rights and remedies as may be provided by the Legislature. See, N.J. Const. Art. I, ¶ 22 and Interpretive Statement. The Amendment guarantees to a crime victim the right to have presence in the criminal justice system along with the right to be treated with fairness, compassion and respect by those who work in the criminal justice system. See, *Id.* Interpretive Statement.

Recognizing the impact of the amendment, the court in State in the Interest of K.P., 311 N.J. Super. 123 (Ch. Div. 1997) stated:

This provision effects a fundamental change in the criminal justice system. Instead of adopting a two-party State v. Defendant, paradigm, this provision requires that the system consider interests of third parties, specifically crime victims. Unfair practices that deny crime victims fairness, compassion and respect are unconstitutional under the amendment. *Id.* at 135-36.

The Victims' Rights Amendment in the State of New Jersey formed a part of the national victim rights movement which has continued to move with significant measure throughout the United States. The Victims' Rights Amendment was a direct response to the many reports of the lack of recognition and respect for crime victims in New Jersey that routinely included the practice of excluding the victims from the justice process.

The respect for this "public attitude" was noted by Justice (then Judge) Pashman in New Jersey Sports & Exposition Auth. v. McCrane, 119 N.J.Super. 457, 476-77, 292 A.2d 580 (Law Div.1971), aff'd as modified, 61 N.J. 1, 292 A.2d 545, appeal dismissed, 409 U.S. 943, 93 S.Ct. 270, 34 L.Ed.2d 215 (1972), where he stated:

It must be remembered that the greatest danger to people from the exercise of the judicial power is that there may be usurpation by the courts of the people's right to express in law, by overwhelming numbers of their elected legislators, their collective reasoning. *Id.* at 42.

The effect of the Victims' Right Amendment in New Jersey has been substantial in that there has been a clearly recognizable effort on the part of the executive, legislative and judicial branches of our State government to provide "fairness, compassion and respect" to crime victims and to continually reinforce the legislative intent under the Crime Victim's Bill of Rights that "these rights are among the most fundamental and important in assuring public confidence in the criminal justice process." See N.J.S.A. 52:4b-35.

New Jersey has been recognized as a national leader in respecting the rights of crime victims for well over a quarter century. It was one of the first states to provide for victim compensation under the Criminal Injuries

Compensation Act of 1971 (N.J.S.A. 52:4B-1, *et seq*), and for a Crime Victim's Bill of Rights in 1985 (N.J.S.A. 52:4B-34, *et seq.*) under which was established the State and 21 county offices of victim-witness advocacy. In addition, New Jersey was just the eighth state to adopt a victim's rights amendment to its state constitution. Since 1971 there have been no less than sixty (60) new laws passed involving the rights of crime victims.

The courts in New Jersey have also been progressive in recognizing the rights of crime victims. *See, e.g.; State in Interest of O.G.*, 274 N.J. Super. 182 (Ch. 1993)(victim of crime for which juvenile has been adjudicated delinquent may personally address court prior to sentencing of that juvenile); *State v. Muhammad*, 145 N.J. 23 (1996) (upholding constitutionality of death penalty victim impact statute); *State v. Faunce*, 244 N.J. Super. 499 (App. Div. 1990) (rights of the victim must be considered before the court can order that the defendant's plea be non-evidential in a civil proceeding); *State in the Interest of J.G., N.S., and J.T.*, 151 N.J. 565 (1996) (Supreme Court upholds victim's rights to require HIV testing of assailant); *State v. Timmendeguas*, 161 N.J. 515 (1999) (the Constitutional rights of the victim survivors under the Victim's Rights Amendment are sufficient to warrant a

change of venue in a death penalty case); State v. Smith, 310 N.J. Super. 140 (App. Div. 1998) (permitting child victim to testify over closed circuit television); Gallara v. Koskovich, 364 N.J. Super 418 (Law Div. 2003) (court upholds claim of liability of sporting goods store for guns stolen and used in the murder of two victims); State v. Hill, 155 N.J. Super. (App. Div. 1998) (restitution may be ordered against defendant to pay third parties who have reimbursed a crime victim for losses suffered as a result of criminal conduct); State v. Cusumano, 396 N.J. Super. 305 (App. Div. 2004) (trial judge's act of advising those in attendance at trial that no persons would be permitted to leave or enter the courtroom while the victim was on the witness stand, constituted a reasonable and constitutionally permissible limitation on the public's right of access - relying on the Crime Victim's Bill of Rights N.J.S.A. 52:4B-36); State in the interest of K.P., 311 N.J. Super. 123 (Chan. Div. 1997) (victim has standing to oppose petition by newspaper to open sexual assault trial of juveniles and victims have unalienable right to be present during a criminal proceeding, subject only to rules concerning sequestration.); and State v. Gilchrist, 381 N.J. Super. 138 (App. Div. 2005)(defendant can not compel

the state to take and provide a photo of the sexual assault victim to defendant as part of discovery.

The recognition of the independent civil rights of crime victims through legislation and the judicial decisions of this State mandate that the rights of crime victims must be placed on equal footing in the justice system. Each of the rights of crime victims is connected to the criminal justice process as a whole or to an individual proceeding within this process. As such, they are procedural status rights - that is, they are rights that relate to the procedural steps in the criminal justice process. Importantly, many of these procedural rights are afforded immediately upon a crime victim's entry into the criminal justice process, such as the rights to be treated with fairness, dignity and respect. Other rights accrue as the process continues because they are specific to various procedural stages of the process.

The initial charges filed against an offender, matters of bail and release, pleas, trials, sentencing, parole and all of the other various stages of the criminal justice process involve not only the defendant; they equally encompass the injured party, the crime victim, who has an important stake in the outcome of each of these stages of the process.

**II. THE LOWER COURT PROPERLY APPLIED THE
"INTERESTS OF JUSTICE" STANDARD OF R 3:9-3(e)
BY TAKING INTO CONSIDERATION THE INTERESTS OF
THE CRIME VICTIM IN ITS DECISION TO VACATE THE
INITIAL PLEA.**

In the historical development of the rights of crime victims in New Jersey, the emphasis on victim involvement and participation was evidenced in the year 1991 during the drive for the Victim's Rights Amendment. As the proposed amendment was receiving legislative clearance for placement on the election ballot in November 1991, two major pieces of legislation, giving victims recognition and participatory rights became law on March 1, 1991. They include the following additions to the Crime Victims Bill of Rights:

N.J.S.A. 52:4B-36) (m) - to submit a written statement about the impact of the crime to a representative of the county prosecutor's office which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed;

(N.J.S.A. 52:4B-36)(n)- to make, prior to sentencing, an in-person statement directly to the sentencing court

concerning the impact of the crime.

In addition, the statutory provision delineating (the Attorney General's Standards) was supplemented to provide as follows:

N.J.S.A. 52:4B-44(20) - Assistance to victims in submitting a written impact statement to a representative of the county prosecutor's office concerning the impact of the crime which shall be considered prior to the prosecutor's accepting a negotiated plea agreement containing recommendations as to sentence and assistance to victims in securing an explanation of the terms of any such agreement and the reasons for the agreement. (Emphasis supplied)

These additional rights of victims are not to be applied indiscriminately at the discretion of the prosecutor or the court. They are independent rights, derived from common law and in this State, from the Constitution. State v. Ruffin, 853 A.2D 311, 321, 371 N.J. Super. 371, 387 (App. Div. 2004)⁵

In the instant matter, the defense mischaracterizes the actions of the prosecutor and lower court in recognizing and respecting the constitutional and statutory rights of the sexual assault victim. The criminal justice system was mandated to respect the participatory rights of the victim. While the decision of

⁵ Citing N.J. Const. art. I, ¶ 22, and the Crime Victim's Bill of Rights, N.J.S.A. 52:4B-34 to -38. See, State v. Timmendequas, 161 N.J. 515, 737 A.2d 55 (1999).

the state to consult with the victim "*prior to the prosecutor's accepting a negotiated plea agreement*"⁶ may be characterized by the defense as an "internal policy"; nevertheless, it was much more. It is the appropriate implementation of the legislative policy that "[W]ithout the participation and cooperation of crime victims . . . the criminal justice system would cease to function."⁷

In New Jersey the crime victim does not have "veto approval" over a plea as the defendant contends. If the plea bargain was couched in terms that it was subject to the consent of the victim, then veto approval would exist. But that was not the case in the instant matter. At the time of the plea, the prosecutor and the court were required to respect the rights of the victim by considering the input of the victim prior to accepting the negotiated plea agreement. They did not; so they corrected the injustice to the victim by vacating the in initial plea, affording the victim her rights of input, and then entering into another plea agreement with the defendant that the defendant voluntarily and knowingly accepted.

R 3:9-3(e) provides:

⁶ N.J.S.A. 52:4B-44(20).

⁷ N.J.S.A. 52:4B-35.

If at the time of sentencing the court determines that the interests of justice would not be served by effectuating the agreement reached by the prosecutor and defense counsel or by imposing sentence in accordance with the court's previous indications of sentence, the court may vacate the plea or the defendant shall be permitted to withdraw the plea. (Emphasis supplied)

For the defendant to prevail, the court must conclude that the recognition and respect by the state and the trial court of the constitutional and statutory rights to "fairness, compassion, respect, dignity" and the right to participate in the process in order to enjoy these rights are not in the "interests of justice".

For the defendant to prevail, the court must conclude that "fair treatment for victims"⁸ is not in the interests of justice and require the court "to ignore the Victim's Rights Amendment and the will of the electorate that overwhelmingly approved the constitutional amendment."⁹

In State v. Faunce, 244 N.J.Super. 499, 582 A.2d 1268 (App. Div. 1990)¹⁰, the defendant entered a plea of guilty and requested that pursuant R. 3:9-2, the plea be deemed non-evidential in a subsequent civil proceeding. The defendant's request was made at sentencing and the state "could not contact the victim's family and determine its wishes, even though the request directly affected them."

⁸ See discussion, State v. Muhammad, 145 N.J. 23, 42,43 (1996)

⁹ *Id.*

¹⁰ Decided prior to the Victim's Rights Amendment.

Id. at 502-503. The lower court approved the conditional plea without the victim's input and the state appealed.

The Appellate Division reversed and remanded the matter in order for the court to receive the victim's input. Citing as authority several of the statutory participatory rights of crime victims at the time¹¹, the court confirmed the importance and necessity of the victim in the process:

"These statutory protections would be meaningless . . . unless due notice is given of a request to have the guilty plea made civilly non-evidential. Id. at 503.

Likewise, the provisions of N.J.S.A. 52:4B-44(20), and other victim input statutory provisions such as N.J.S.A.52:4B-36 (m) and (n) would also be "meaningless" unless notice was given to the victim so that the victim's input could be assessed and valued by the prosecutor and the court. That is the essence of victim participation.

The defendant in the instant matter seeks to take advantage of a situation where the constitutional and statutory rights of the crime victim were bypassed. While the state and trial judge corrected the error, the defendant asks this court to ignore the interests of

¹¹The "Crime Victim's Bill of Rights," N.J.S.A. 52:4B-34, *et seq.*; N.J.S.A. 2C:44-6b; and. N.J.S.A. 39:5-52a(2)

justice by giving the defendant a windfall at the expense of justice.

CONCLUSION

Based on the foregoing it is respectfully requested that the Supreme Court of New Jersey recognize the rights of the crime victims in this matter and deny to the defendant the relief he has requested.

New Jersey Crime
Victims' Law Center
Amicus Curiae

By _____
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