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Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

Re: A-37-25 *State of New Jersey v. Corey J. Otte* (091685)

Honorable Chief Justice and Associate Justices:

Pursuant to *Rule 2:6-2(b)*, kindly accept this letter brief in the above-captioned case on behalf of amicus curiae the American Civil Liberties Union of New Jersey (“ACLU-NJ”) in support of Defendant-Petitioner.

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PRELIMINARY STATEMENT

The primary issue in this case is whether post-plea applications for admission into a New Jersey Pretrial Intervention program (“PTI”) are absolutely barred as a matter of law. For the reasons set forth below, such applications are not and, indeed, should not be so barred. To the contrary, permitting such applications is consonant with the fundamental purposes of PTI and when implemented in accordance with appropriate procedures outweighs any legitimate interests that the State might possess.

From its inception, the overarching goal of PTI has been to ensure the enrollment of as many defendants as possible who would benefit from participating in a pretrial diversion program. To this end, the hallmark of PTI has been flexibility. Over five decades, this Court has recognized the need for flexibility in every aspect of this state’s PTI program, particularly as to eligibility for enrollment. The point of time in the life of the case when application may or may not be made falls squarely within this rubric.

Reflecting this focus on flexibility and despite numerous opportunities to do so, this Court has never issued an opinion or fashioned a rule or guideline that barred post-plea PTI applications. Nor has the Legislature ever passed a statute to that effect. Indeed, governing court rules, guidelines, and statutes have consistently implied that post-plea applications are permissible.

This is not meant to suggest in any way that a guilty plea should be *required* in order for a defendant to apply for PTI. This Court has identified legitimate and substantive reasons – predominantly inuring to a *defendant's* benefit – why a guilty plea not be required before any defendant may apply for PTI. However, as programs such as PTI have evolved from their experimental status around the country, more states have included post-plea admissions in their diversion repertoires for limited purposes. New Jersey is among these, with its legislature having amended the PTI statute so as to require a plea before admission into PTI of defendants who have committed certain serious offenses. Indeed, county prosecutors have consented to post-plea PTI applications even if not statutorily required. This evinces that a guilty plea followed by a PTI application is not always, let alone inherently, at odds with the purposes of PTI if it means that a deserving candidate can be enrolled.

It is also important to differentiate between post-*plea* PTI applications and post-*trial* PTI applications. A driving force behind the absolute prohibition against post-*trial* applications and one of the reasons for the creation of PTI was to conserve resources of courts, prosecutors, and public defenders. That interest is scarcely implicated, if at all, in the case of post-plea PTI applications, assuming that the application is made sufficiently early in the life

of the case so as to save unnecessary expenditure of resources – as was the case with Mr. Otte’s application.

Prohibiting *all* post-plea PTI applications except those consented to in the sole discretion of the prosecutor is antithetical to the overarching goal of admitting all worthy defendants into a PTI program and contrary to this Court’s steadfast view of PTI as the exercise of quasi-judicial power. If a post-plea application is made within the time provided by rule or if good cause is shown for an out-of-time application, the application should be considered. Contrary to the litany of horrors which the State predicts will occur should this Court confirm that post-plea applications are allowed, it will be the rare defendant who will intentionally delay a PTI application until after plea without good cause.

For these reasons, more fully developed below, amicus ACLU-NJ asks this Court to reverse the decision of the Appellate Division, and remand to the Appellate Division for consideration of Mr. Otte’s appeal that the prosecutor’s decision not to admit him into PTI constituted a patent and gross abuse of discretion. In addition, amicus suggests that the Court consider adopting specific guidelines governing post-plea PTI applications.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus ACLU-NJ relies on and adopts the recitation of the facts and

procedural history as set forth by the Defendant at Dsb3.¹

ARGUMENT

I. Post-Plea PTI Applications Are Not Barred as a Matter of Law.

New Jersey's Pretrial Intervention program was so named for a reason. A major purpose of PTI, inherent in its name and repeatedly recognized by this Court, was to conserve resources by establishing a mechanism to avoid trials. While avoiding unnecessary convictions was also part of the supportive rationale, that factor was viewed primarily as a benefit to the defendant, not to the prosecutorial system.

The landmark President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967), cited by this Court as the "initial impetus" for PTI programs, *State v. Leonardis* (*Leonardis I*), 71 N.J. 85, 93 (1976), did not explicitly discuss the role of a guilty plea in the diversionary process, but spoke broadly of "[e]arly identification and diversion to other community resources of those offenders in need of treatment, for whom full criminal disposition does not appear required." 71 N.J. at 93. Subsequently, several states adopted their own pretrial diversionary programs, each different from the other and from New Jersey's,

¹ "Dsb" refers to Defendant's Supplemental Brief filed May 20, 2026; "Psb" refers to the State's Supplemental Brief filed June 22, 2026; "1T" refers to the transcript of the Aug. 28, 2023 plea.

but each furthering the “general purposes” of “early identification and referral of defendants who are in need of treatment” and the “quick[] and inexpensive[]” diversion of cases which are “more effectively handled without full criminal disposition.” *Id.* at 96 (quoting John P. Bellassai & Phyllis N. Segal, Note, *Addict Diversion: An Alternative Approach for the Criminal System*, 60 Geo. L.J. 667, 673 (1972)).

A. Flexibility for eligibility is the hallmark of PTI in New Jersey.

From its outset, New Jersey’s PTI program was geared to fostering flexibility in its implementation. This Court recognized that the early diversion of offenders both provided a “means of addressing the problems of congestion and backlog of cases” confronting courts, prosecutors, and public defenders alike, 71 N.J. at 97, and gave prosecutors alternatives to prosecution, increasing “their flexibility to respond to individual cases.” *Id.* However, the Court placed “the rehabilitative function of PTI” above all else, including the “subordinate” “goal of expeditious disposition,” 71 N.J. at 98. Indeed, the Court observed that providing prosecutors with an additional means with which to dispose of cases was but an “incidental[]” benefit of achieving the “rehabilitative purpose” of PTI and “ameliorat[ing] the stigma which is imposed on criminal defendants.” *Id.*

To that end, the Court viewed requiring a guilty plea for PTI admission as inimical to PTI's goals, noting that "few, if any, PTI programs require entry of a guilty plea as a prerequisite to admission in a program." 71 N.J. at 99. Viewing this purely as a benefit to the defendant, the Court applauded the absence of a plea requirement as removing a "counterproductive stigma of conviction" and "provid[ing] defendants with a real incentive for enrollment and participation." *Id.* Indeed, the Court regarded "defendant's interest in achieving diversion without plea or trial to be so important," that it rose to a level sufficiently strong so as to support the Court's requiring the State to provide reasons for its denial. 71 N.J. at 116-17.

Despite the Court's disinclination to mandate a plea before PTI admission, nowhere in *Leonardis I* did it indicate that *allowing* a post-plea application was or even should be prohibited. To the contrary, the Court in no uncertain terms stressed the need for flexibility in PTI admission criteria:

On the one hand, the eligibility criteria must be sufficiently broad to divert as many cases as could possibly benefit from the program consistent with public security. On the other hand, the criteria must be sufficiently discriminatory to assure selection of those applicants who have the best prospects for rehabilitation. To harmonize these interests, the eligibility criteria must be both comprehensive and flexible. Narrow and inflexible criteria, which unduly restrict admissions to the program would be self-defeating and would undermine the efficacy of PTI. The net result of such criteria would be readily measurable

in terms of denied opportunities for rehabilitation and fewer cases diverted from the congested dockets of our courts.

[71 N.J. at 100.]

B. This Court’s rules and applicable statutes do not bar post-plea PTI applications, and are sufficiently flexible to *allow* post-plea PTI applications.

At the time *Leonardis I* was decided, R. 3:28, the rule governing PTI programs, had been in place since 1970, and twice amended. *See Leonardis I*, 71 N.J. at 103 n.10; *Pressler & Verniero, Current N.J. Court Rules*, cmt. 1 on R. 3:28 (2026). Throughout that time, the Rule never contained a prohibition against a post-plea PTI application. None of the guidelines laid down by the Court in *Leonardis I* for the uniform implementation of PTI programs throughout the state suggested such a prohibition.²

In 1979, the Legislature enacted N.J.S.A. 2C:43-12, establishing PTI statewide. The statute contained no prohibition against post-plea PTI applications, but did include a provision that PTI was “available to a defendant irrespective of whether the defendant contests his guilt of the charge or charges against him,” N.J.S.A. 2C:43-12(g)(2). This Court subsequently amended R.

² The guidelines were (1) defendants accused of any crime were eligible; (2) admission was to be measured according to the defendant’s “amenability to correction, responsiveness to rehabilitation and nature of the offense with which he is charged;” (3) defendant was entitled to a hearing on his admission to PTI after decision on his application. 71 N.J. at 121-22.

3:28 and adopted expanded guidelines largely mirroring the statute. *State v. Nwobu*, 139 N.J. 236, 245 (1995); *see generally Pressler & Verniero, Current N.J. Court Rules*, cmt. 1 on R. 3:28-1 (2026).

For the next four decades, PTI was subject to the terms of the statute, the Court rules, and related guidelines. R. 3:28-1(c), (d), and (e), dealing with “Persons Ineligible to Apply for Pretrial Intervention,” “Persons Ineligible for Pretrial Intervention Without Prosecutor Consent to Consideration of the Application,” and “Cases Where There is a Presumption Against Admission in Pretrial Intervention,” respectively, and its predecessors never included defendants who have pled among those ineligible to apply, ineligible for admission, or presumed ineligible. In 1994, the Court added R. 3:28(h), specifying that any PTI application be made as early as possible, and in no event later than 28 days after indictment, but did not contain a prohibition against an otherwise timely application being made after a guilty plea.

To the contrary, the guidelines suggested that a plea was not in and of itself a legal bar to admission. Specifically, Guideline 4 provided that enrollment in PTI could not be “conditioned” upon a plea of guilty, and, in line with the statutory provision that PTI was available to a defendant “whether the defendant contests his guilt of the charge or charges against him,” N.J.S.A. 2C:43-12(g)(2), the comment to the guidelines implied that a defendant could

be enrolled in PTI even if the defendant has pleaded guilty, i.e., “legal guilt or innocence notwithstanding.” *Pressler & Veniero*, cmt. 1 on R. 3:28.

Similarly, the current R. 3:28-2, the successor to R. 3:28(h), provides that PTI applications “be made at the earliest possible opportunity, including before indictment, but in any event no later than the Initial Case Disposition Conference” Not only does this language fail to prohibit a post-plea application, but the rule goes on to allow an application beyond the date of the Conference upon “good cause” or prosecutor’s consent.

Since 1979, R. 3:28 has been amended another half-dozen times, most recently and most comprehensively in 2018, in response to the Legislature’s amendment of N.J.S.A. 2C:43-12. Never has the Court even hinted at a prohibition against a post-plea PTI application. Indeed, as Defendant amply demonstrates (Dsb12-15), the 2015 amendment of N.J.S.A. 2C:43-12 so as to require a guilty plea before admission into PTI of defendants charged with certain domestic violence offenses or charged with or previously convicted of a first or second degree crime, N.J.S.A. 2C:43-12(g)(3), adds substantial ballast on the side of permitting PTI applications post-plea when appropriate.

The argument is not, however, as characterized and rejected by the Appellate Division, that this amendment “worked a broader change to the PTI program” so as to allow post-plea applications for all offenses, *State v. Otte*,

No. A-2183-23 (App. Div. Jan. 9, 2026) (slip op. at 10). Rather, the argument is that the amendment reflects the Legislature’s confirmation, already inherent in the governing rules and statute, that a guilty plea may in limited circumstances be compatible with the goals of PTI. This is so whether the amendment is viewed as anticipating post-plea PTI applications as Defendant argues, or only post-plea PTI admissions, as the Attorney General argues.³

Our courts have consistently construed rules and statutes controlling PTI in New Jersey with an eye toward maximum flexibility as to the eligibility of any defendant. *State v. McKeon*, 385 N.J. Super. 559, 589 (App. Div. 2006); *State v. Mickens*, 236 N.J. Super. 272, 277 (App. Div. 1989).

The criteria must be applied with the aim of furthering the purposes of PTI, “[to] divert[] eligible defendants out of the criminal process” to the advantage of the defendant, society, and the criminal justice system, *ibid.*; to deter “future criminal behavior through the receipt of early rehabilitative services;” and to relieve “overburdened criminal calendars.”

[*McKeon*, 385 N.J. Super. at 569 (quoting *State v. DeMarco*, 107 N.J. 562, 566-68 (1987).]

³ Other states have added post-plea diversionary programs under limited circumstances. *See generally* Margaret Colgate Love, *Alternatives to Conviction: Deferred Adjudication as a Way of Avoiding Collateral Consequences*, 22 Fed. Sent’g Rep. 6, 7-8 (2009); Christine S. Scott-Hayward, *Rethinking Federal Diversion: The Rise of Specialized Criminal Courts*, 22 Berkeley J. Crim. L. 47, 54 (2017) (noting the increase in post-plea programs).

In this context, taken together, the rules, guidelines, and statute point in the same directions: (1) there has never been a prohibition against post-plea PTI applications; (2) there has always been an implication that post-plea PTI applications were permissible; and (3) under appropriate circumstances, post-plea PTI applications are compatible with the overall purposes of PTI. In short, it has always been the case that PTI “eligibility” has been guaranteed “to anyone charged with an indictable offense and a full and fair consideration of the application,” *State v. Motley*, 369 N.J. Super. 314, 320 (App. Div. 2004), including those who have already pled and admitted their “legal guilt.”

C. The focus in *State v. Bell* was entirely on the PTI application’s having been made post-trial.

State v. Bell, 217 N.J. 336 (2014), contrary to the Appellate Division’s characterization, does not suggest otherwise. There, four years after having been initially charged, the defendant sought admission to PTI, after having been found guilty following trial by jury. In holding that PTI is not available in such circumstances, this Court repeatedly emphasized that it was the fact of a *verdict* of guilty after a full *trial* that made the difference:

- “We hold that PTI is a pretrial diversionary program that is not available to a defendant once the charges have been tried before a judge or a jury and a guilty verdict has been returned.” 217 N.J. at 338.
- “The statute expressly contemplated application by an accused to a PTI program or referral by a judge to the program before trial.” 217 N.J. at 347.

- “In each case, we have recognized that PTI is a diversionary program specifically designed to avoid a trial and the stigma accompanying a verdict of guilt to any criminal offense.” *Id.*
- “In sum, the vision of PTI is to fashion, in appropriate circumstances, an alternative to the full criminal justice mechanism of a trial.” 217 N.J. at 348.
- “While *Rule* 3:28 and the Guidelines have evolved over the years . . . , one principle has remained constant: PTI is a pretrial diversionary program. Admission to PTI following a jury trial and the return of a guilty verdict is the antithesis of the very purpose of the program.” 217 N.J. at 349.

Significantly, the Court emphasized that its ruling was “*not* premised on the fact that defendant did not apply for admission to PTI within twenty-eight days of the return of the original indictment in 2007 or the superseding indictment in 2009 or that his application was not submitted and resolved before the pretrial conference,” *Id.* (emphasis added), comparing the case before it to *State v. Moraes-Pena*, 386 N.J. Super 569, 578 (App. Div. 2006). “Instead, our holding is premised on the very nature of PTI as a *pretrial* diversionary program. It is not now and never has been a sentencing alternative following a guilty *verdict*.” 217 N.J. at 349-50 (emphasis added).

This Court’s careful choice of words in *Bell* in repeatedly focusing on verdict after trial, rather than legal guilt, as the determinative factor serves to dispatch the Appellate Division’s wholesale reliance on *State v. Waters*, 439 N.J. Super. 215 (App. Div. 2015), in its opinion below. *Otte*, slip op. at 8-9. The facts in *Waters* were, to say the least, unusual. There, after indictment for

various second-degree weapons-related charges, the defendant applied for PTI and was rejected by the prosecutor. Defendant appealed to the trial court, which directed the PTI director to provide more information, resulting in the prosecutor's second rejection of the application and another unsuccessful appeal. Waters then pled guilty to one charge, and appeared for sentencing before a second judge, who issued an opinion and order stating that Waters' appeal of the PTI rejection was improperly scheduled before the first judge, and proceeded to grant Waters' motion for PTI. 439 N.J. Super. at 222-23.

In the context of this odd factual scenario, the Appellate Division first ruled that "nothing suggests that a PTI appeal decided by one judge can be decided anew by a second judge," *id.* at 224, and then, relying heavily on the post-plea case of *State v. Moraes-Pena* – expressly disclaimed by this Court as not forming the basis of the decision in *State v. Bell* – ruled that "the granting of the PTI appeal by a second judge after a valid guilty plea was inappropriate." 439 N.J. Super. at 224-25.

Whether the holding of *Waters* prohibiting post-plea PTI applications is no longer good law in light of the 2015-2018 amendments, as suggested by Defendant (Dsb5, 37-38), or whether *Waters* was wrongly decided in the first place, as suggested by the history of PTI recited above, *Waters* has never been cited in a reported opinion by any court in this state.

D. Any legitimate interest of the State in a prohibition against post-plea PTI applications pales next to the overarching purpose of PTI.

Scattered throughout the State's supplemental brief is an army of hobgoblins, which it asserts, argue against ever allowing a defendant to apply post-plea for admission to PTI, unless the prosecutor consents. None are sufficient to counteract the overarching rehabilitative function of PTI.

First, contrary to the State's unsubstantiated belief (Psb9), the "distinction" between a post-trial and a post-plea PTI application is very much one with a "difference." The *Waters* Court itself acknowledged that this Court's concerns articulated in *Bell* "are most serious when a trial court grants a PTI appeal after trial," 439 N.J. Super. at 224, although it also noted without fuller explanation that "such concerns are also raised when a trial court grants a PTI appeal after a valid guilty plea." *Id.* at 224-25. As discussed above, conserving resources consumed in trials was a driving force behind the creation of PTI in the first place. The same interests are not implicated in allowing post-plea applications so long as such applications are made relatively early in the life of the case as was the situation here.

As the Court in *Bell* observed, "[w]e know of no authority that permits a court to nullify a valid verdict through the device of a belated application to a diversionary program." 217 N.J. at 348. Not so as to a guilty plea, as the

Legislature has created a process for those defendants who are required to plead before admission to PTI, which is easily transferable to permissive post-plea PTI admissions: the holding of the plea on “inactive” status pending termination of supervisory treatment in a PTI program. N.J.S.A. 2C:43-12(g)(3). In the words of the Attorney General, the guilty plea “is neither a judgment of conviction nor an adjudication.” AG Directive 2016-2, *Uniform Guidelines on the Pretrial Intervention Program* 7 (Mar. 1, 2016).⁴

Indeed, apparently, prosecutors around the state have been comfortably living with post-plea PTI applications for years, sometimes as part of a plea agreement and other times, perhaps not. *See, e.g., State v. Gordon*, No. A-4141-14 (App. Div. Oct. 6, 2016) (Plea to third-degree theft charge with State agreement to allow PTI application out-of-time); *State v. I.S.P.*, No. A-1499-20 (App. Div. May 24, 2022) (slip op. at 3) (“At the time of her plea [to third-degree conspiracy], defendant indicated she intended to apply for PTI. The State acknowledged her intention but stated it could not take a position on any application until defendant formally applied”);⁵ *State v. Aburoumi*, 464

⁴ www.nj.gov/lps/dcj/agguide/directives/ag-directive-2016-2-Uniform-Guidelines-on-the-Pretrial-Intervention-Program.pdf.

⁵ The unpublished opinions of *Gordon* and *I.S.P.* are not cited for any proposition of law, but simply to show that there have been post-plea applications made, and therefore amicus does not believe that they come under the rule requiring the identification of cases standing for contrary propositions. Amicus is sure that there are hundreds of cases where PTI applications were

N.J. Super. 326, 330-31 (App. Div. 2020) (plea agreement required defendant to plead guilty as condition of PTI admission). Mr. Otte’s request for an out-of-time PTI application in this case was based on his attorney’s representation that “what has happened in the past is that . . . the [Pre-Sentence Interview] becomes a PTI interview.” (1T13-5 to 7). The prosecutor did not voice any objection to Mr. Otte’s request for the out-of-time PTI application, even though it was obviously post-plea.

Nor is there any basis to give credence to the parade of horrors trotted out by the State should the Court reaffirm that post-plea PTI applications are not barred as a matter of law: that PTI will become an “alternative sentencing option,” (Psb8); that defendants will see that “so long as [they] bargain to avoid trial,” they would have a shot at PTI (Psb10); that this will undercut the “mutuality of advantage” principle behind plea bargains, creating some sort of new “intermediate status for a plea;” (Pbs11-12); or that such a ruling “transforms a prosecutorial tool into a defense sword,” (Psb22), “burden[ing]” the prosecutor “with a defense motion to be admitted into PTI once she has negotiated the case to an end, except for sentencing.” (Psb22).

not made post-plea. Pursuant to *R.* 1:36-3, amicus includes these unpublished opinions in its appendix.

Taking the last plea first, there did not appear to be an undue burden for the prosecutor to respond to the defense request for an out-of-time application in this case. More to the point, common sense dictates that, if this Court simply rules that post-plea PTI applications are not barred as a matter of law, such applications will be few and far between.

First, any application would almost always have to meet the “good cause” standard or obtain prosecutorial consent for out-of-time applications, as per *R. 3:28-2*. Second, it is difficult to see what benefit a bona fide PTI candidate would have to delay their PTI application as a plan “to bargain to avoid trial,” when they would risk admission, because the longer the delay, the greater the unlikelihood that they would be able to prove “good cause.” Third, if the Court confirms that such applications are not barred per se, prosecutors will undoubtedly ask during plea negotiations whether the defendant intends to seek leave to apply for PTI after the plea, thus vitiating any “mutuality of advantage” concerns. What the prosecutor cannot do is insist on the plea as a condition of the PTI application. *Aburoumi*, 464 N.J. Super. at 337.

On the other hand, ruling that post-plea applications are per se invalid means that the prosecutor is the sole gatekeeper for post-plea PTI applications and that courts lack the power to even entertain such applications for “good cause.” In *State v. Leonardis (Leonardis II)*, 73 N.J. 360 (1977), this Court

forcefully and elegantly laid down the principle that PTI, as “a remedial aspect of a criminal proceeding,” 73 N.J. at 370, “presents precisely the type of cooperative action” that calls for a nuanced application of separation of powers doctrine. *Id.* at 372. In this context, the Court ruled that the judiciary has the power to order a defendant admitted into PTI where the prosecutor arbitrarily refuses to consent. *Id.* at 377. Amicus submits that giving the prosecutor unilateral control over whether a defendant has the right to make a timely post-plea PTI application and not even permitting the defendant to attempt to convince the Court that there is “good cause” for such application to be made out-of-time is at odds with the essence of *Leonardis II*.

Even with the ruling amicus seeks, the prosecutor will still have ample opportunity to attempt to impose its will in such proceedings, first, in opposition to whether there is “good cause” for out-of-time post-plea applications, and second, as to whether to oppose a recommendation that the defendant be admitted to PTI – the latter subject to the “patent and gross abuse of discretion” standard established in *Leonardis II*. Given the realities of the situation, there is little if any risk that post-plea PTIs will become “sentencing alternative options” except in cases where “good cause” has been shown for what normally will be an out-of-time application. And if good cause is shown, it presents the opportunity for PTI to fulfill its “primary purpose”: to “assist in

the rehabilitation of worthy defendants.” *State v. Watkins*, 193 N.J. 507, 513 (2008).

II. This Court Should Adopt Rules to Govern Non-Statutorily Mandated Post-Plea PTI Applications.

By no means is amicus arguing that post-plea PTI applications become the norm in New Jersey. The incompatibility between a plea requirement and the benefits of PTI, as set forth by this Court in *Leonardis I*, is substantial. Rather, so long as the application is made pre-trial and reasonably early in the history of the case, and “good cause” shown for any out-of-time application, there should be no per se rule that stands in the way of consideration of a post-plea application on the merits. This is consistent with the overarching goal of PTI: to admit all worthy candidates, and the subordinate consideration of conserving judicial, prosecutorial, and defense resources.

To that end, amicus suggests that the Court consider adopting rules to facilitate the processing of post-plea applications along the following lines, (borrowing from the Attorney General’s *Uniform Guidelines on the Pretrial Intervention Program* cited above):

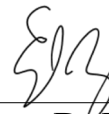
1. A defendant may apply for PTI post-plea any time before the Initial Case Disposition Conference or thereafter for good cause shown or with the consent of the prosecutor.
2. While the defendant’s post-plea application is pending, the guilty plea shall be placed on “inactive” status.

3. If the defendant's application for PTI is denied, or if the defendant's application for PTI is granted but the defendant fails to successfully complete the program, the guilty plea will be removed from "inactive" status and the case will be listed for sentencing.
4. If the defendant's application for PTI is granted and the defendant successfully completes PTI, the case will be dismissed and the guilty plea will not be considered a conviction or an adjudication of guilt.

CONCLUSION

For the reasons set forth above and in Defendant's brief, this Court should hold that there is no absolute prohibition against post-plea PTI applications, reverse the decision of the Appellate Division, and remand the matter for consideration of whether the State's denial of Mr. Otte's admission into PTI constituted a patent and gross abuse of discretion, independent of the fact that the application was made post-plea.

Respectfully submitted,



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