

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3543-20
DOCKET NO. A-0203-22

IN THE MATTER OF
REGISTRANT R.H.

APPROVED FOR PUBLICATION

May 3, 2023

APPELLATE DIVISION

IN THE MATTER OF
REGISTRANT T.L.

Argued March 29, 2023 – Decided May 3, 2023

Before Judges Mayer, Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. ML-19-08-0084, and Camden County, Docket No. ML-08-04-0076.

Jesse M. DeBrosse, Assistant Deputy Public Defender, argued the cause for appellant R.H. in Docket No. A-3543-20 (Joseph E. Krakora, Public Defender, attorney; Stephanie A. Lutz, Assistant Deputy Public Defender, of counsel and on the briefs).

Jonathan Edward Ingram, Assistant Deputy Public Defender, argued the cause for appellant T.L. in Docket No. A-0203-22 (Joseph E. Krakora, Public Defender, attorney; Jonathan Edward Ingram, of counsel and on the brief).

Sarah A. Spanarkel, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent State of New Jersey in Docket No. A-

3543-20 (Christine A. Hoffman, Acting Gloucester County Prosecutor, attorney; Sarah A. Spanarkel, on the brief).

Matthew T. Spence, Assistant Prosecutor, argued the cause for respondent State of New Jersey in Docket No. A-0203-22 (Grace C. MacAulay, Camden County Prosecutor, attorney; Matthew T. Spence, on the brief).

The opinion of the court was delivered by

MAYER, J.A.D.

In these appeals, calendared back-to-back and consolidated for purposes of issuing a single opinion, registrants R.H. and T.L. raise the same legal issues under different factual circumstances. Both appeal from orders denying motions to terminate their Megan's Law¹ registration requirement under N.J.S.A. 2C:7-2(f). On appeal, R.H. and T.L. assert N.J.S.A. 2C:7-2(f) does not impose a fifteen-year offense-free requirement on juveniles adjudicated delinquent of qualifying Megan's Law offenses who seek termination of their registration obligation. We disagree and affirm the July 6, 2021 order as to R.H. and the September 16, 2022 order as to T.L.

I.

R.H.'s Appeal

¹ N.J.S.A. 2C:7-1 to -23.

On October 14, 2009, R.H. was adjudicated delinquent for committing aggravated sexual assault when he was fifteen years old. He was placed on probation for three years and ordered to attend sex offender treatment programs, which he successfully completed in 2012. R.H. has remained offense-free since 2009. In November 2020, R.H. was designated at a Tier II (moderate) level of risk for re-offense. However, based on an October 2020 tier designation evaluation, the trial court determined R.H. need only comply with the lower Tier I level notification requirements.

In 2021, R.H. applied to be removed from the Megan's Law registry and released from his registration requirements. The State filed opposition.

The parties agreed to bifurcate the hearing for the judge to first determine whether N.J.S.A. 2C:7-2(f) applied to juveniles. In a June 30, 2021 oral opinion, the judge found R.H. was subject to the fifteen-year waiting period under N.J.S.A. 2C:7-2(f).

In denying R.H.'s motion, the judge relied on In re Registrant J.G., 169 N.J. 304 (2001). He noted that the J.G. Court "harmonized Megan's Law and the Juvenile [C]ode in a manner that [the Court] felt best reflected the legislative objectives underlying both statutes." The judge found J.G. declined to apply N.J.S.A. 2C:7-2(f) to "juveniles adjudicated delinquent for sexual offenses committed whe[n] they are under the age of [fourteen]," while

"mak[ing] it clear that juveniles above the age of [fourteen] when a sexual offense was committed are subject to that [fifteen]-year offense-free requirement." The judge explained he was bound by the precedent established in J.G. Under a plain reading of the statutory language, the judge concluded that N.J.S.A. 2C:7-2(f) applied to R.H. because he was fifteen years old when he committed the sexual offense.

T.L.'s Appeal

At age fifteen or sixteen, T.L. was adjudicated delinquent for engaging in sexual acts as part of a game of "truth or consequences" played with his younger sisters, ages eleven and twelve or thirteen at the time, and a younger cousin, age nine at the time. His August 2005 adjudication on one count of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1), as to all three victims, required him to register under Megan's Law. T.L. was ordered to attend therapy and placed on probation for thirty-six months, which he successfully completed.

In 2015, T.L. was convicted of a petty disorderly persons offense for using offensive language under N.J.S.A. 2C:33-2(b). Since the 2015 conviction, T.L. has been offense-free.

In March 2022, T.L. underwent an evaluation to assess his risk of sexual offense recidivism. Based on that psychosexual evaluation, the evaluator

determined T.L presented "a low risk of engaging in future acts of sexually inappropriate behaviors" and was "not likely to pose a threat to others in the community."

In May 2022, T.L. filed a motion to terminate his Megan's Law obligations, arguing N.J.S.A. 2C:7-2(f) did not impose a fifteen-year offense-free bar on persons adjudicated delinquent of a qualifying sex offense. He asserted subsection (f) only required proof that he was unlikely to pose a threat to the safety of others.

The State filed opposition, arguing T.L.'s application was barred as a result of his 2015 petty disorderly persons conviction. The State contended that the fifteen-year offense-free requirement under N.J.S.A. 2C:7-2(f) applied to juvenile registrants.

The judge heard argument on September 16, 2022, and issued an order the same day, denying T.L.'s motion to terminate his Megan's Law registration requirement. In her decision, the judge explained T.L. "provided no case law to support [his] argument" that he need only prove he was unlikely to pose a threat to the safety of others.

The judge determined that T.L. was between fifteen and sixteen years old when he committed aggravated sexual assault. She found "a literal reading of N.J.S.A. 2C:7-2(f) states that any person who is required to register under

Megan's Law may terminate their obligation within [fifteen] years following conviction or release from a correctional facility" and this section of the statute "applied to juveniles adjudicated delinquent" as determined by the New Jersey Supreme Court in State in the Interest of C.K., 233 N.J. 44, 51-52 (2018), and J.G. In denying T.L.'s motion, the judge explained that she was "bound by the rulings of the Supreme Court."

II.

R.H. and T.L. argue that Megan's Law sexual offenders who were adjudicated delinquent as juveniles, as opposed to convicted as an adult, need not wait fifteen years before applying for termination of their Megan's Law obligations. R.H. and T.L. claim they need only demonstrate that they are unlikely to pose a threat to the safety of others to support termination of their Megan's Law requirements.

R.H. and T.L. further argue that to the extent J.G. or C.K. may be read to impose a fifteen-year offense-free requirement on juveniles adjudicated delinquent, such language should be disregarded as non-binding dicta. They also contend that applying N.J.S.A. 2C:7-2(f) to juveniles could result in an unconstitutional lifetime application of Megan's Law obligations to certain juveniles, contrary to J.G. We reject these arguments.

We review issues of statutory interpretation de novo. McGovern v. Rutgers, 211 N.J. 94, 108 (2012). "When a court construes a statute, its 'paramount goal' is to discern the Legislature's intent." In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 18 (2020) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "[T]he best indicator of [the Legislature's] intent is the statutory language, thus it is the first place we look." Ibid. (internal quotation marks omitted) (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)). We are required to read words and phrases in a statute "in context, along 'with related provisions . . . to give sense to the legislation as a whole.'" State v. A.M., 252 N.J. 432, 451 (2023) (quoting DiProspero, 183 N.J. at 492). "If the plain language leads to a clear and unambiguous result, then our interpretive process is over." In re Ridgefield Park Bd. of Educ., 244 N.J. at 18 (quoting Richardson, 192 N.J. at 195).

N.J.S.A. 2C:7-2(f) provides:

a person required to register under [Megan's Law] may make application to the Superior Court of [the] State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility . . . , and is not likely to pose a threat to the safety of others.

Persons required to register under Megan's Law include sex offenders who are "convicted, adjudicated delinquent or found not guilty by reason of insanity." N.J.S.A. 2C:7-2(a).

R.H. and T.L. acknowledge their status as sex offenders required them to register under Megan's Law. However, because they were adjudicated delinquent for their sex offenses rather than convicted, R.H. and T.L. argue the fifteen-year offense-free requirement under N.J.S.A. 2C:7-2(f) is inapplicable. They contend that termination of their Megan's Law requirement focuses solely on whether they are likely to pose a threat to the safety of others.

The trial judges, relying on C.K. and J.G., found N.J.S.A. 2C:7-2(f) applied to juveniles adjudicated delinquent who were age fifteen or older at the time of their sexual offense. C.K., 233 N.J. at 44; J.G., 169 N.J. at 304. However, R.H. and T.L. assert that the Supreme Court's statements in both cases are dicta and therefore not binding.

"The rule on dicta of our Supreme Court is clear and not open to debate. Simply stated, 'matters in the opinion of a higher court which are not decisive of the primary issue presented but which are germane to that issue . . . are not dicta, but binding decisions of the [C]ourt.'" Marconi v. United Airlines, 460 N.J. Super. 330, 339 (App. Div. 2019) (quoting State v. Rose, 206 N.J. 141, 183 (2011) (internal citation omitted)). In reviewing dictum from our Supreme

Court, "[m]uch depends upon the character of the dictum. Mere obiter may be entitled to little weight, while a carefully considered statement . . . though technically dictum, must carry great weight" Ibid. (quoting In re A.D., 441 N.J. Super. 403, 422-23 (App. Div. 2015)). If the Supreme Court's dictum is "deemed carefully considered, necessary to the decision reached, or directly involved with the central issue in the case, we are bound by it." Loigman v. Twp. Comm. of Twp. of Middletown, 409 N.J. Super. 13, 22 (App. Div. 2009) (citing State v. Breitweiser, 373 N.J. Super. 271, 282-83 (App. Div. 2004) and Barreiro v. Morais, 318 N.J. Super. 461, 468-69 (App. Div. 1999)). See also Willams v. Raymours Furniture Co., Inc., 449 N.J. Super. 559, 563 n.2 (App. Div. 2017) (quoting Breitweiser, 373 N.J. Super. at 282-83) ("[A]s an intermediate appellate court, we consider ourselves bound by carefully considered dictum from the Supreme Court.").

After reviewing the Court's analysis of Megan's Law as it relates to juveniles in J.G. and C.K., we are satisfied that we are bound by the dictum in those cases. The Court's disposition of the issues in J.G. and C.K. provided a careful, considered, and comprehensive review of the Megan's Law registration requirements in the context of juveniles adjudicated delinquent for sex offenses. Thus, we rely on J.G. and C.K. in analyzing whether N.J.S.A. 2C:7-2(f) applies to R.H. and T.L.

In J.G., the Court addressed the application of Megan's Law to juveniles. 169 N.J. at 319. The registrant, who was ten years old at the time of his offense, challenged his registration and notification requirements under Megan's Law based on his age. Ibid.

The Court determined N.J.S.A. 2C:7-2(f) was inconsistent with New Jersey's Code of Juvenile Justice with respect to individuals who were age fourteen or younger at the time of the offense. Id. at 337 (citing N.J.S.A. 2A:4A-47(a)). In reaching its decision, the Court engaged in a lengthy examination of judicial precedents involving juveniles. Ibid. The Court cited the long-established tradition of distinguishing between individuals age fourteen and younger and individuals age fifteen and older under this State's statutes, court rules, and case law. Id. at 319-28 (citing State v. R.G.D., 108 N.J. 1, 9-10 (1987) (juveniles fourteen or younger cannot be waived into adult court) and State v. Monahan, 15 N.J. 34, 48 (1954) ("Children over the age of 14 are presumed to be . . . responsible, . . . with the burden on the accused to satisfy the jury that he did not have sufficient intelligence to understand the nature and consequences of his act, and to know that he was doing wrong.") (Heher, J. concurring)).

Based on its thorough and considered analysis, the Court found:

with respect to juveniles adjudicated delinquent for sexual offenses committed when they were under age

fourteen[,] Megan's Law registration and community notification orders shall terminate at age eighteen if the Law Division, after a hearing held on motion of the adjudicated delinquent, determines on the basis of clear and convincing evidence that the delinquent is not likely to pose a threat to the safety of others.

[J.G., 169 N.J. at 337.]

However, the Court stated: "Eligible delinquents unable to satisfy that high standard of proof will continue to be subject to the registration and notification provisions of Megan's Law." Ibid.

Seventeen years later, in C.K., the Court found N.J.S.A. 2C:7-2(g) "violate[d] the substantive due process rights of juvenile sex offenders" because subsection (g) impermissibly created an "irrebuttable presumption" that juvenile sex offenders were permanently subject to Megan's Law registration requirements. 233 N.J. at 73-74.

C.K., who was fifteen at the time of his offense, challenged "the constitutionality of imposing the Megan's Law lifetime registration and notification requirements on juveniles adjudicated of committing certain sex offenses" Id. at 58. The Court agreed with the registrant and struck down the application of subsection (g) to juvenile sex offenders, holding that subsection (g) "violate[d] the substantive due process rights of juvenile sex offenders" under Article 1, Paragraph 1 of the New Jersey State Constitution. Id. at 73-77.

In C.K., the Court noted the significant differences between juveniles and adults, recognizing "that juveniles are not fully formed, that they are still developing and maturing, that their mistakes and wrongdoing are often the result of factors related to their youth, and therefore they are more amenable to rehabilitation and more worthy of redemption." Id. at 67. The Court relied on decisional law from the United States Supreme Court, deeming the punishment of a juvenile as an adult offender cruel and unusual and therefore contrary to the Eighth Amendment of the United States Constitution. Id. at 68 (citing Roper v. Simmons, 543 U.S. 551, 568-70 (2005) (juvenile offenders may not be subject to capital punishment); Graham v. Florida, 560 U.S. 48, 82 (2010) (juvenile offenders may not be subject to life sentences without parole for non-homicide offenses); Miller v. Alabama, 567 U.S. 460, 489 (2012) (juvenile offenders may not be subject to mandatory life sentences without parole for homicide offenses)).

In addition to determining that the "irrebuttable lifetime presumption" imposing Megan's Law registration requirements for juveniles under subsection (g) was "not supported by scientific and sociological studies or our jurisprudence," the Court found subsection (g) was "not needed given the fifteen-year look back required by subsection (f)." Id. at 74-75. The Court, citing N.J.S.A. 2C:7-2(f), noted:

fifteen years from the date of his juvenile adjudication, C.K. will be eligible to seek the lifting of his sex-offender registration requirements. At that time, he must be given the opportunity to demonstrate by clear and convincing evidence that he has not reoffended and no longer poses a threat to others and therefore has a right to be relieved of his Megan's Law obligations and his status as a sex-offender registrant.

[Id. at 77.]

In striking subsection (g) as applied to juveniles, the Court stated that "N.J.S.A. 2C:7-2(f) provides the original safeguard incorporated into Megan's Law" in matters involving juveniles who were adjudicated delinquent. Id. at 48. By this statement, the Court left subsection (f) undisturbed in the context of juvenile adjudications. Ibid.

In J.G. and C.K., the Court went beyond the narrow facts of those cases and provided guidance for trial courts reviewing applications by juveniles adjudicated delinquent seeking to terminate their Megan's Law requirements. The Court's statements were carefully considered, reflected a high level of analysis, and were germane to the primary issues in both cases—the application of Megan's Law registration requirements to juveniles. We are bound by the Court's deliberate declarations regarding the application of Megan's Law to juveniles articulated in J.G. and C.K.

Even if we agreed with R.H. and T.L. that we are not bound by dictum in J.G. and C.K., which we do not, we are satisfied that the plain and ordinary

meaning of the statutory language in N.J.S.A. 2C:7-2(f) does not render the statute inapplicable to R.H. and T.L.

Subsection (f) applies to every "person required to register under this act" N.J.S.A. 2C:7-2(a), identifying who must register under Megan's Law, reads:

A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

[N.J.S.A. 2C:7-2(a)(1).]

Subsection (b) includes "adjudication[s] of delinquency" for enumerated sex offenses triggering the requirements of subsection (a). N.J.S.A. 2C:7-2(b)(2)-(3).

The State contends that those "adjudicated delinquent" are subject to the "person required to register under this act" language in subsection (f). R.H. and T.L. argue that the term "adjudicated delinquent" was "carefully employed" by the Legislature where applicable and "should not be implied where excluded."

The statutory scheme created under Megan's Law is predicated on the definition of a person who "shall register" under subsections (a) and (b), which includes individuals who were adjudicated delinquent. To read N.J.S.A. 2C:7-

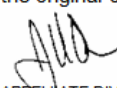
2(f) as suggested by R.H. and T.L. would lead to an illogical result in that Megan's Law registrants adjudicated delinquent as juveniles would have no opportunity to terminate their registration requirement because such relief would be limited to individuals who were convicted or released from a correctional facility. It is clear from a plain reading of Megan's Law that the Legislature sought to allow juveniles adjudicated delinquent to terminate their Megan's Law registration requirements the same as an adult under N.J.S.A. 2C:7-2(f) and did not intend to leave juveniles adjudicated delinquent without a remedy.

We also reject the constitutional arguments raised by R.H. and T.L. They contend that N.J.S.A. 2C:7-2(f) is unconstitutional because a juvenile sex offender who commits any other offense within the fifteen-year period would be precluded from terminating the registration requirement under subsection (f) and face a lifetime registration obligation, which would conflict with the Court's decision in C.K. 233 N.J. at 48.

However, R.H. and T.L. overlook that juveniles, fifteen years after another offense, may apply for release from Megan's Law requirements if they demonstrate they are unlikely to pose a threat to the safety of others.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION