

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0752-12T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDWARD E. LAWRENCE,

Defendant-Appellant.

Submitted August 7, 2013 - Decided August 27, 2013

Before Judges Koblitz and Accurso.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Municipal Appeal
No. 2012-018.

Pascarella & Associates, P.C., attorneys for
appellant (Stephen M. Pascarella, of
counsel; Laura M. Majewski, of counsel and
on the brief).

Carolyn A. Murray, Acting Essex County
Prosecutor, attorney for respondent (Stephen
A. Pogany, Special Deputy Attorney
General/Acting Assistant Prosecutor, on the
brief).

PER CURIAM

Defendant Edward E. Lawrence appeals from the August 30,
2012 order of the Law Division denying his application to
withdraw his guilty plea to driving while intoxicated (DWI),

N.J.S.A. 39:4-50, and sentencing defendant as a second offender.¹

We affirm except insofar as defendant should not have been sentenced as a second offender pursuant to N.J.S.A. 39:4-50(a)(3). We remand only for resentencing as a first offender.

Defendant was stopped for speeding and failed the field sobriety tests performed by the officer. After not submitting sufficient air for a valid breath sample, defendant was charged with DWI and refusal, N.J.S.A. 39:4-50.2.² He pled guilty to DWI, admitting that he had consumed "two alcoholic beverages and two beers" prior to driving. The municipal judge suggested that the refusal charge be dismissed, and the State agreed. The judge then sentenced defendant as a second offender, although this was his third conviction, because his last conviction occurred more than ten years earlier. N.J.S.A. 39:4-50(a)(3).

Defendant sought a trial de novo before the Law Division, seeking to withdraw his guilty plea because his lawyer had not pursued a defense based on his diagnosis of Parkinson's disease, which he claimed could have caused the police officer to misconstrue his inability to perform the field sobriety tests.

¹ The judge indicated that he sentenced defendant as a first offender only with regard to consideration of a jail sentence.

² He was also charged with speeding, N.J.S.A. 39:4-98, by traveling 80 m.p.h. in a 55 m.p.h. zone. The record does not reveal what happened to this charge.

Defendant also maintained that he should have been sentenced as a first offender.

The Law Division denied both requests and re-imposed the sentence of the Municipal Court: a two-year loss of license, \$706 in fines, \$33 court costs, \$50 VCCB, \$100 DWI surcharge, \$100 DDE Fund, \$75 SNSF, Forty-eight hours at the Intoxicated Driver Resource Center (IDRC), thirty days community service and one year of an ignition interlock device.³

Defendant makes the following arguments on appeal:

POINT I: THE LAW DIVISION PROPERLY HAD JURISDICTION OF DEFENDANT'S MOTION TO WITHDRAW HIS PLEA.

POINT II: DEFENDANT IS ENTITLED TO WITHDRAW HIS PLEA OF GUILTY.

POINT III: DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.

POINT IV: DEFENDANT IS NOT SUBJECT TO AN ENHANCED SENTENCE.

The record contains only defendant's certification provided to the Law Division in support of his contention that his municipal trial counsel was aware that he suffered from Parkinson's disease. On the record, municipal counsel noted

³ The municipal "order and certification" reflects that defendant was sentenced on the record to forty-eight hours at the IDRC as well as two days in jail to be served at the IDRC. The Law Division re-imposed the same sentence. Both parties, however, have interpreted this portion of the sentence as one forty-eight-hour period at the IDRC and no jail time.

only that defendant was on heart medication. Counsel's statement that defendant was "shaking like a leaf" since being arrested does not in itself support defendant's claim. Nowhere is Parkinson's disease mentioned on the record in municipal court, nor was any expert evidence presented to the Law Division or the municipal court.

Defendant argues that the Law Division should have taken judicial notice of defendant's symptoms of Parkinson's disease because he discussed the disease's list of symptoms noted in the "U.S. National Library of Medicine"⁴ in his brief submitted to the Law Division. Judicial notice of defendant's symptoms of Parkinson's disease is not appropriate as the symptoms of this disease are not generally known and may vary from one afflicted individual to another. N.J.R.E. 201(b); Biunno, Current N.J. Rules of Evidence, comment 1 on N.J.R.E. 201 (2013) ("Judicial notice has been defined 'as the cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them.'" (citation omitted)).

Defendant argues that his municipal counsel was ineffective and that he should have been permitted to withdraw his plea pursuant to State v. Slater, 198 N.J. 145 (2009). We reject this argument substantially for the reasons expressed by the Law

⁴ Defendant gives no citation to this source.

Division in its written opinion accompanying the August 30 order.

We do agree with defendant's sentencing argument. At the time of defendant's second conviction, in 1994, he was treated as a first offender, apparently because his first offense in 1990 was uncounseled. See State v. Laurick, 120 N.J. 1, 16 (1990) (holding that the period of incarceration for a DWI conviction cannot be enhanced based on a prior uncounseled DWI conviction that occurred without the waiver of counsel), cert. denied, 498 U.S. 967, 111 S. Ct. 429, 112 L. Ed. 2d 413 (1990). Laurick does anticipate circumstances where a defendant could show "fundamental injustice" and therefore be entitled to have his prior conviction completely disregarded. Defendant argues that such must have been the case here because in 1994 he was sentenced as a first offender with regard to all administrative penalties. The State is unable to dispute that claim as the earlier records are unavailable. Thus, we assume that the prior court followed the guidance in Laurick and sentenced defendant as a first offender in all respects because the court determined that defendant suffered a "fundamental injustice" in his first conviction.

We have previously held that both Laurick relief and the N.J.S.A. 39:4-50(a)(3) step-down provision must be afforded defendants. State v. Conroy, 397 N.J. Super. 324, 330 (App.

Div.), cert. denied, 195 N.J. 420 (2008). Thus, we agree with defendant that he should have been sentenced as a first offender for the third time.

Affirmed in part and reversed and remanded for resentencing as a first offender.

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



CLERK OF THE APPELLATE DIVISION