SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LINDSEY KRAKOWIAK
(AKA LINDSEY M. KRAKOWIAK),

Defendant-Appellant.

DOCKET NUMBER A-003997-23

ON APPEAL FROM FINAL JUDGMENT
SUPERIOR COURT OF NEW JERSEY
SUSSEX COUNTY

QUASI-CRIMINAL ACTION

SAT BELOW
HON. MICHAEL C. GAUS, J.S.C. and
HON. PARIS P. ELIADES, J.M.C.

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# BRIEF AND APPENDIX SUBMITTED ON BEHALF OF DEFENDANT-APPELLANT LINDSEY KRAKOWIAK (AKA LINDSEY M. KRAKOWIAK)

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On the Brief

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## APPENDIX



## LIST OF PARTIES

| **Party Name** | **Appellate Party Designation** | **Trial Court Party Role** | **Trial Court Party Status** |
|---|---|---|---|
| Lindsay Krakowiak (AKA Lindsay M. Krakowiak) | Appellant | Defendant | Participated Below |
| State of New Jersey | Respondent | Plaintiff | Participated Below |

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## STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

On December 1, 2013, Ms. Krakowiak was charged under Sparta Ticket B-074703 with a violation of N.J.S.A. 39:4-50. DA1. The date of her conviction was January 23, 2014. Ms. Krakowiak was sentenced to the following: 2 year loss of New Jersey driving privileges, and 48 hours with the Intoxicated Driver Resource Center, along with applicable fines and assessments. No appeal was filed. No prior post-conviction relief proceedings have been brought in this matter. Petitioner was represented by Daniel A. Colfax, Esquire, as retained counsel, during her plea.

On February 9, 2024, Ms. Krakowiak filed a petition for Post-Conviction Relief (PCR) in the Sparta Municipal Court asserting she was not advised of the enhanced penalties for a subsequent DWI.[2] DA 2-8. The matter was heard before the Honorable Paris P. Eliades, J.M.C. on April 8, 2024. On May 1, 2024 Judge Eliades issued a decision denying the Petition. DA 9-11.

On May 7, 2024, Ms. Krakowiak filed an appeal with the Sussex County Law Division, again asserting she was not advised of the enhanced penalties for a future DWI conviction. DA 12-16. The appeal was heard before the Honorable

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[1]Statement of Facts and Procedural History have been combined under one heading for purposes of brevity

[2]*See* "T1" Transcript of Plea and Sentencing dated 1/23/2014

Michael C. Gaus, J.S.C. on August 16, 2024, at which time Judge Gaus issued a decision on the record denying the appeal. An amended Order Denying the Municipal Appeal was issued on August 23, 2024. DA 17-18.

This appeal to the New Jersey Appellate Division follows. DA19-22.

## STANDARD OF REVIEW

In order to set aside the factual findings made by the trial court, this Court must be:

> [T]horoughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction, ... then, and only then, [the appellate court] should appraise the record as if it were deciding the matter at inception and make its own findings and conclusions. While this feeling of "wrongness" is difficult to define, because it involves the reaction of trained judges in the light of their judicial and human experience, it can well be said that that which must exist in the reviewing mind is a definite conviction that the judge went so wide of the mark, a mistake must have been made. This sense of "wrongness" can arise in numerous ways-from manifest lack of inherently credible evidence to support the finding, obvious overlooking or undervaluation of crucial evidence, a clearly unjust result, and many others.

State v. Locurto, 157 N.J. 463, 471 (1999).

## LEGAL ARGUMENT

### I. THE HOLDING IN STATE V. PETRELLO MUST BE OVERTURNED AS IT CLEARLY CONFLICTS WITH THE STATUTORY LANGUAGE OF N.J.S.A. 39:4-50(C)

N.J.S.A. 39:4-50(C) states in relevant part:

> Upon conviction of a violation of this section, the court ***shall*** notify the person convicted, ***orally*** and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(Emphasis added).

In State v. Bunch, 180 N.J. 534, 543 (2004), the Court stated, "[e]mbedded in that canon of construction is the recognition that the terms used in a statute, if unambiguous in meaning, are the clearest indicators of legislative intent. McCann v. Clerk of City of Jersey City, 167 N.J. 311, 320 (2001)." Courts must construe ambiguities in penal statutes in favor of defendant. State v. Livingston, 172 N.J. 209, 218 (2002); State v. Valentin, 105 N.J. 14, 18(1987).

The Legislature chose to mention that failure to provide written notice would not provide a defense to a subsequent violation. Therefore, not mentioning failure to give oral notice means that such a failure is a defense to a subsequent violation.

In State v. Petrello, the issue on appeal to the Appellate Division was, "whether or not the mandatary enhanced penalty provisions for a subsequent

conviction of driving while intoxicated in violation N.J.S.A. 39:4-50 should be imposed at sentencing where the second violation occurs prior to sentencing for the first conviction." State v. Petrello, 251 N.J. Super. 476 (App. Div. 1991). The facts which gave rise to the appeal in Petrello were not in dispute.

> On April 22, 1989, defendant Paul Petrello was charged with operating a motor vehicle while under the influence of alcohol, N.J.S.A. 39:4-50, in the Borough of Metuchen. Thereafter, on May 21, 1989, defendant was again charged with the same offense in the Township of Holmdel.
>
> On September 25, 1989, defendant appeared in the Holmdel Township Municipal Court, pleaded guilty to the drunk-driving charge originating there and was sentenced as a first offender. On March 30, 1990, defendant appeared in the Borough of Metuchen Municipal Court, pleaded guilty to the earlier charge pending there and was sentenced to the enhanced penalties resulting from a second conviction of the drunk-driving statute.

*Id*.

The Petrello Court held,

> It is abundantly clear here that the enhanced penalties of N.J.S.A. 39:4-50 must be imposed at sentencing on entry of a second drunk-driving conviction, regardless of the order in which the violations occurred and whether or not defendant had previously been advised orally or in writing of the penalties for a subsequent violation.

*Id* at 479.

It was obvious from the facts and issue on appeal that the Defendant in Petrello intentionally staggered his guilty pleas, pleading guilty to the second charged offense in Holmdel before pleading guilty to the original offense in Metuchen, in an attempt to frustrate the sentencing guidelines and avoid enhancement. The Court saw through this however, and sentenced him accordingly despite the Defendant not being advised of the subsequent enhanced penalties as required under the statute.

The present matter is distinguishable from Petrello as Ms. Krakowiak is not intentionally trying to avoid enhanced penalties for a subsequent guilty plea. Following her guilty plea to DWI on January 23, 2014, Ms. Krakowiak was not advised orally of the enhanced penalties for a subsequent DWI conviction as required by statutory authority. T1 10:14-25; 11:1-25; 12:1-10. This fact is not in dispute and was stipulated to by the State. T3 13:21-22; 21:9-16. The State argues however, that despite Ms. Krakowiak not being advised orally of the enhanced penalties, the holding in State v. Petrello controls, effectually negating what is required by the Court under N.J.S.A. 39:4-50(C). The holding in Petrello clearly contradicts the Legislatures intent that a Defendant shall be advised both orally and in writing of the enhanced penalties for a subsequent DWI conviction. It is fair to conclude the Legislative intent, in requiring both methods of advisement, is to

unequivocally ensure the Defendant understands and acknowledges they have been advised of consequences for a future conviction. The Legislature was clear in the language of the statute that both methods of advisement shall be required, leaving no room for any ambiguity in the interpretation of what shall be required from the Court. Therefore, it is incumbent upon the Court to ensure the Defendant is advised of the enhanced penalties orally in open Court. Allowing the Court the ability to willfully omit crucial steps in the judicial process effectively places the burden on the lay Defendant to understand and ascertain what their rights and obligations are under the law, which must be viewed as a violation of the Defendant's Constitutional rights and Due Process.

The New Jersey Supreme Court has afforded Defendant's who have had their rights violated relief in similar fashion relief enhanced custodial terms in previous decisions. The Court in State v. Laurick held,

> We hold that with the exception that a prior DWI conviction that was uncounseled in violation of court policy may not be used to increase a defendant's loss of liberty, there is no constitutional impediment to the use of the prior uncounseled DWI conviction to establish repeat-offender status under DWI laws. With respect to collateral consequences of an uncounseled conviction other than a loss of liberty, any relief to be afforded should follow our usual principles for affording post-conviction relief from criminal judgments, namely, a showing of a denial of fundamental justice or other

miscarriage of justice.

State v. Laurick, 120 N.J. 1 (1990). When a Defendant can show the Court has not fulfilled their obligations under the law, they shall be afforded relief from an enhanced custodial term. The present matter should be treated no differently. Analogous to Laurick, a Defendant, who is not advised of information required by the Court under the statutory authority, should be given relief from an enhanced custodial term.

## CONCLUSION

For the reasons set forth herein, it is respectfully requested that this Court afford Ms. Krakowiak relief from an enhanced custodial sentence on a future DWI conviction.

Respectfully submitted,

KEITH G. NAPOLITANO JR., ESQUIRE

Attorney's for the Defendant-Appellant

DATED: November 20, 2024

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# LETTER IN LIEU OF REPLY BRIEF ON BEHALF OF THE RESPONDENT, STATE OF NEW JERSEY

Honorable Judges of the Superior Court
Appellate Division
Richard J. Hughes Justice Complex
CN006
Trenton, New Jersey 08625

Re: State v. Lindsey M. Krakowiak (AKA Lindsey M. Krakowiak)
Superior Court of New Jersey
Appellate Division
Docket No. A-003997-23

Criminal Action: On Appeal from an Order in the Superior Court, Law Division, Sussex County

Sat Below: Honorable Michael C. Gaus, J.S.C.

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Dear Honorable Judges:

Pursuant to R. 2:6-2(b ), please accept this Letter Brief in lieu of a more formal brief in opposition to the Appellant's appeal.

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## PRELIMINARY STATEMENT

The sole issue in this appeal is whether the Municipal Court's failure to advise the Defendant, Lindsey M. Krakowiak ("Defendant"), orally of the enhanced penalties for a subsequent Driving While Intoxicated ("DWI") conviction serves as a basis to grant the Defendant Post-Conviction Relief ("PCR"). Defendant submits that the lower court erred in denying her PCR Petition and argues that her 2014 conviction cannot be used for the purpose of imposing enhanced penalties on future DWI convictions. The State contends that the Municipal Court properly denied the Petition and the Law Division properly rejected the Defendant's claims on de novo review. For the reasons set forth below, it is the State's position that Municipal Court's failure to orally advise the Defendant of the enhanced penalties for a second or subsequent DWI is not basis to grant the relief requested.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

The State hereby adopts the Statement of Facts and Procedural History as set forth on pages 1 to 2 of the Defendant's brief.

## LEGAL ARGUMENT

The standard of review of a de novo verdict after a municipal court trial is "[t]o determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record." State v. Johnson, 42 N.J. 146, 162 (1964). On review, it is "[t]he action of the [Law Division] and not that of the

municipal court" that is to be questioned. State v. Joas, 34 N.J. 179, 184 (1961). In doing so, the Appellate Court should defer to the prior credibility findings, which are "[o]ften influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999); Johnson, 42 N.J. at 161.

Should the Appellate Court be "[t]horoughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction," it can "[a]ppraise the record as if it were deciding the matter at inception" and "[m]ake its own findings and conclusions." Johnson, 42 N.J. at 162 (citations omitted); State v. Segars, 172 N.J. 481, 500-501 (2002) (internal citations omitted). Put another way, the Court should have "[a] definite conviction that the [lower court] went so wide of the mark" and a mistake was made based on a "[m]anifest lack of inherently credible evidence to support the finding, obvious overlooking or under evaluation of crucial evidence." Id.

In the instant case, there are no facts in dispute. The State contends that the finding of the lower court is not clearly a mistaken one and as such, that the interests of justice do not demand intervention and correction. Thus, the State submits that the lower court did not err in its ruling and respectfully requests that this Court affirm.

## POINT I

## THE LAW DIVISION PROPERLY DENIED THE DEFENDANT'S MOTION FOR POST CONVICTION RELIEF BASED ON THE APPELLATE DECISION OF STATE V. PETRELLO.

The State submits that the Defendant's arguments are meritless as the Appellate Division's holding in State v.Petrello, 251 N.J. Super. 476 (App. Div. 1991) is controlling in this case.

It is first important to note that Defendant is procedurally barred from post-conviction relief ("PCR"). In the municipal court, petitions for post-conviction relief are governed by R. 7:10-2. This Rule, in pertinent part, provides as follows: "A petition . . . shall not be accepted for filing more than five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect." R. 7:10-2(b)(2).

The municipal court post-conviction rule was adopted in response to State v. Laurick, 120 N.J. 1, cert. den. 498 U.S. 967 (1990), which required post-conviction proceedings to determine whether an uncounseled conviction may be used to enhance a multiple offender's penalty to include incarceration. See also State v. Weil, 421 N.J. Super. 121, 128-129 (App. Div. 2011). Subparagraph (g) of the Rule expressly sets forth the criteria for relief from enhanced custodial terms based on

prior convictions and adopts the same time limitations for filing petitions for post-conviction relief as set forth in R. 7:10-2(b)(2). See R. 7:10-2(g); c.f. State v. Bringhurst, 401 N.J. Super. 421, 433 (App. Div. 2008) (holding that, in the Laurick situation of a prior uncounseled conviction, the time limitations of the rule should be liberally relaxed).

The Defendant filed her application for PCR with the Sparta Municipal Court on February 8, 2024. (DA3). Although the municipal court denied this application for reasons set for in its decision (DA9-DA11), the application was made more than five (5) years from the Defendant's prior DWI conviction on January 23, 2014. As such, it should have been time barred as a matter of law. See R. 7:10-2(b)(2). Moreover, there were no exemptions set forth to toll this time frame including the imposition of an illegal sentence or excusable neglect. As such, this PCR application should have been denied as a matter of law.

Similarly, the Defendant does not benefit from a relaxation of the five (5) year time limitation based Laurick due to the fact that her conviction in 2014 was not uncounseled. As such, Laurick has no applicability in this case.

Even if the Court were to ignore the procedural flaws in the Defendant's case, the State argues that the Defendant's appeal still must be denied as a matter of law.

N.J.S.A. 39:4-50(c), in relevant part, states as follows:

> Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of

> the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.
>
> [Emphasis added.]

The statute, thus, provides that upon conviction for a DWI, the court must notify the Defendant both orally and in writing of penalties for a subsequent conviction of DWI. Failure to comply with this provision of the statute, however, does not warrant relief from enhanced penalties upon subsequent conviction for DWI. See State v. Petrello, 251 N.J. Super. 476 (App. Div. 1991)(holding that enhanced penalties for subsequent DWI convictions were to be applied, despite the defendant having not received the oral notice of the second or third offense penalties of subsequent DWI convictions).

In Petrello, much like here, the defense attempted to have the enhanced penalties for a second DWI not be imposed due to the defendant having not been advised of the penalties for a second DWI orally. In rejecting this argument, the Appellate Division explained as follows:

> Defendant contends that he cannot be sentenced as a second offender because at the time of the commission of the offense leading to the second conviction, he had not then received the mandated oral advice by the court of the penalties for a second, third or subsequent violation. The basis for this position is the language in the statute providing that the failure of the court to provide defendant

> with written notice is not a defense to a subsequent charge, coupled with silence of the statute as to the effect of a failure to so notify the defendant orally. Defendant posits that this legislative silence signifies an intention to bar sentencing as a subsequent offender without, minimally, an oral advisement of the penalties for a second, third or subsequent violation. We disagree. To do so would frustrate the obvious legislative intent to provide enhanced penalties for each subsequent conviction of the statute. We would then reward the defendant who intentionally or negligently fails to appear in court and subsequently violates the statute because he could not then be sentenced as a subsequent offender.
>
> [Id. at 478][Emphasis added.]

The Appellate Division, therefore, determined that even if the lower court fails to comply with the oral requirement portion of the statute, it is not a basis to grant a Defendant relief from the required enhanced penalties and it is not a defense to a subsequent charge.

Here, it is undisputed that the Defendant received the written advisory of enhanced penalties for a subsequent DWI, but was not advised orally of these penalties. The Defendant argues, however, that this case is distinguishable from Petrello based on the facts as the defendant in that case was found to have intentionally frustrated the legislative intent of the statute by staggering his guilty pleas in a way in which he would not be subject to enhanced penalties. Here, defense argues that the Defendant was not "intentionally trying to avoid enhanced penalties" but simply was not advised properly by the court. (Db5). The State submits that this

factual discernment does not invalidate the holding or reasoning of the Appellate Division in Petrello. The Defendant received the written notice of the potential enhanced penalties for a subsequent DWI and was therefore, put on notice of same. As explained in Petrello, to not impose enhanced penalties for a subsequent DWI based on a failure to orally advise would "frustrate the obvious legislative intent to provide enhanced penalties for each subsequent conviction of the statute." Id. at 478. Moreover, the fact that the Defendant received written warnings negates any argument that the Defendant was prejudiced in some way because it is clear that she received notice of the consequences of a subsequent conviction. As such, the Defendant has no grounds for a Post-Conviction Relief application because there is no actual prejudice in this case. Wherefore, the State contends that the Law Division properly denied the Defendant's Municipal Appeal as a matter of law.

Moreover, the Defendant does not dispute that Petrello is indeed the controlling precedent in this case. Rather, Defendant argues that this Court should overrule the decision claiming that the Appellate Division improperly ignored the statutory language in N.J.S.A. 39:4-50(c). The State disagrees and submits that the Appellate Division properly considered the statutory language and legislative intent in deciding Petrello. Should this Court concur with the Defendant's argument, the State contends that the result of that decision would be contrary to Bozza v. United States, 330 U.S. 160, 166-67 (1947) where the court stated as follows:

"The Constitution does not require us to treat sentencing as a game in which a misplay by a judge means immunity for an offender." This is exactly the result this Defendant is seeking - immunity from an enhanced penalty due to a "misplay" by a Municipal Court Judge in 2014. If the court were to permit relief based upon the lower court failing to orally advise a defendant of enhanced penalties, it would create a new rule to support a PCR application that potentially would flood the municipal courts throughout the state. The State, therefore, respectfully requests that the court uphold its ruling in Petrello.

## CONCLUSION

Based upon the foregoing, the Respondent submits that the Law Division properly denied the Defendant's PCR Motion and asks this Court deny the relief that the Defendant is seeking.

Very truly yours,
*Jonathan E. McMeen, Esq.*
Special DAG/Acting Assistant Prosecutor

Cc: Keith Napolitano, Jr. Esq.