
Supreme Court of New Jersey

DOCKET NO. 089188

STATE OF NEW JERSEY,	:	<u>Criminal Action</u>
Plaintiff-Respondent,	:	On Certification Granted to the Superior Court of New Jersey, Appellate Division.
v.	:	Sat Below:
ZAIRE J. CROMEDY,	:	Hon. Jack M. Sabatino, P.J.A.D.
Defendant-Appellant.	:	Hon. Hany Mawla, P.J.A.D.
	:	Hon. Joseph L. Marczyk, J.A.D.

STATE'S BRIEF IN RESPONSE TO
THE ACDL-NJ'S AMICUS CURIAE BRIEF

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT
RICHARD J. HUGHES JUSTICE COMPLEX
TRENTON, NEW JERSEY 08625

JENNIFER E. KMIECIAK
ATTORNEY ID NO. 037062010
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
APPELLATE BUREAU
P.O. BOX 086
TRENTON, NEW JERSEY 08625
(609) 376-2400
kmieciakj@njdcj.org

OF COUNSEL AND ON THE BRIEF

MARCH 5, 2025

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PRELIMINARY STATEMENT

This Court granted certification to consider whether Graves Act mandatory-minimum sentencing applies to first-degree unlawful possession of a weapon under subsection (j) of N.J.S.A. 2C:39-5. For all the reasons set forth in the State's supplemental brief to this Court, the answer to that question is yes. As amicus curiae, the Association of Criminal Defense Lawyers of New Jersey (ACDL-NJ) now attempts to raise a constitutional challenge to the statute, alleging it is facially void for vagueness. This Court should decline to consider this new argument as it was not raised by defendant in his Petition for Certification. In any event, the statutory scheme provides fair notice to prior NERA offenders that if they continue to flout the law by unlawfully possessing a weapon, Graves Act mandatory-minimum sentencing will apply.

COUNTERSTATEMENT OF PROCEDURAL HISTORY AND FACTS

The State relies on the counterstatement of procedural history and facts set forth in its supplemental brief to this Court, dated February 13, 2025, adding the following.

On February 18, 2025, the ACDL-NJ filed a motion to appear as amicus curiae in this matter, a proposed amicus curiae brief, and a motion for leave to file as within time. On February 26, 2025, this Court entered a sua sponte order that the motions remain pending but allowing the parties to submit response briefs on or before March 10, 2025.¹

¹ Ab refers to the ACDL-NJ's amicus curiae brief.

LEGAL ARGUMENT

POINT I

GRAVES ACT MANDATORY-MINIMUM SENTENCING APPLIES TO FIRST-DEGREE UNLAWFUL POSSESSION OF A WEAPON.

In response to the arguments set forth by the ACDL-NJ, the State relies primarily on its February 13, 2025, supplemental brief to this Court, adding the following two responses.

First, to the extent the ACDL-NJ raises a constitutional challenge to subsection (j) of N.J.S.A. 2C:39-5, that issue is not properly before this Court. Defendant’s amended petition for certification raised the following question presented: “Is N.J.S.A. 2C:39-5(j) a substantive first-degree crime not subject to the Graves Act, or is it a grading statute?” The ACDL-NJ now contends that subsection (j) is “unconstitutionally vague.” (Ab5). As defendant did not raise a constitutional challenge in his Petition for Certification, that issue is not properly before this Court. See State v. Lazo, 209 N.J. 9, 25 (2012) (“[A]s a general rule, an amicus curiae must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties.”) (citation omitted).

Defendant relies on the rule of lenity, but that is not the same as a constitutional attack on a statute. In United States v. Lanier, 520 U.S. 259, 266 (1997), the United States Supreme Court explained that there are three “related

manifestations” of the requirement that criminal statutes give “fair warning” of their application: the vagueness doctrine, the rule of lenity, and due process. The Court described the rule of lenity as “a sort of ‘junior version’ of the vagueness doctrine[.]” Ibid. (citation omitted). In other words, while the vagueness doctrine and the rule of lenity are “related,” they are distinct concepts. As defendant did not squarely present a constitutional vagueness challenge in his Petition for Certification, amicus curiae cannot raise this new issue.

Second, to the extent the Court is inclined to consider this new issue, it fails substantively. It is well-established that statutes are presumed constitutional. See State v. A.T.C., 239 N.J. 450, 466 (2019). “[A]ny act of the Legislature will not be ruled void unless its repugnancy to the Constitution is clear beyond a reasonable doubt.” State v. Lenihan, 219 N.J. 251, 266 (2014). “Even where a statute’s constitutionality is ‘fairly debatable, courts will uphold’ the law.” Ibid. (quoting Newark Superior Officers Ass’n v. City of Newark, 98 N.J. 212, 227 (1985)).

Against this background, the ACDL-NJ attempts to mount a facial vagueness challenge to subsection (j). “A theoretical ambiguity or lack of clarity in a criminal statute is not enough . . . to render that law void for vagueness.” State v. Borjas, 436 N.J. Super. 375, 395 (App. Div.), certif. denied, 220 N.J. 208 (2014). A statute is not impermissibly vague “so long as a person of

ordinary intelligence may reasonably determine what conduct is prohibited so that he or she may act in conformity with the law.” Id. at 395-96 (citation omitted). “Analysis of constitutional vagueness is not ‘a linguistic analysis conducted in a vacuum’ but requires consideration of the questioned provision itself, related provisions, and the reality in which the provision is to be applied.” State v. Saunders, 302 N.J. Super. 509, 521 (App. Div.), certif. denied, 151 N.J. 470 (1997) (quoting In re DeMarco, 83 N.J. 25, 37 (1980)) (emphasis added).

Here, the ACDL-NJ’s argument is based on “linguistic analysis conducted in a vacuum” rather than consideration of the statutory scheme as a whole. When subsection (j) and the Graves Act are read together—as they must be—a person of ordinary intelligence is on notice that mandatory-minimum sentencing applies to subsection (j). The plain text of subsection (j) requires a “violation of subsection a., b., c. or f. of [N.J.S.A. 2C:39-5.]” And the plain text of the Graves Act, N.J.S.A. 2C:43-6(c), provides that “[a] person who has been convicted under . . . subsection a., b., c., or f. of N.J.S. 2C:39-5” is subject to mandatory-minimum sentencing. In other words, a defendant who qualifies for enhanced sentencing under subsection (j) is, by definition, convicted of an enumerated Graves Act offense. This statutory scheme thus provides fair warning that the Graves Act applies to anyone with a prior NERA crime who continues to flout the law by unlawfully possessing a firearm.

This case is distinguishable from State v. Fair Lawn Serv. Ctr., 20 N.J. 468 (1956), on which the ACDL-NJ relies. In Fair Lawn, the defendant was convicted of violating the Sunday observance law of New Jersey. Id. at 469-70. On appeal, he argued his conviction was void because the statute contained no penalty whatsoever. Id. at 471. This Court agreed, holding that “a criminal statute without any penalty clause is of no force and effect.” Id. at 472-73. As the Court explained, “[t]he penalty is an essential to such a statute, and if none is specified a court has no warrant to supply the penalty if the Legislature has failed to clearly manifest such intent to impose one.” Id. at 473.

Unlike Fair Lawn, here, there is clearly a penalty for first-degree unlawful possession of a firearm under subsection (j), of ten to twenty years in prison. See N.J.S.A. 2C:43-7(a)(2). And since subsection (j) necessarily requires an underlying violation for an enumerated Graves Act offense, the Graves Act sets the minimum term of imprisonment at “one-half of the sentence imposed by the court or 42 months, whichever is greater[.]” N.J.S.A. 2C:43-6(c). Once the judge sets the base term of the sentence, the mandatory period of parole ineligibility follows per the Graves Act. In this case, for example, given the ten-year base term, the mandatory period of parole ineligibility is five years. The statutory scheme thus provides fair notice and is constitutional.

CONCLUSION

This Court should not consider the ACDL-NJ's newly raised constitutional challenge. And for the reasons in the State's supplemental brief, this Court should hold that Graves Act mandatory-minimum sentencing applies to first-degree unlawful possession of a weapon under subsection (j) of N.J.S.A. 2C:39-5. As a result, this Court should affirm defendant's ten-year sentence with a five-year parole disqualifier. Alternatively, this Court should hold that, at a minimum, the mandatory period of parole ineligibility applicable to the underlying weapons offense must survive and remain in effect.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT

BY: /s/ Jennifer E. Kmiecik

Jennifer E. Kmiecik
Deputy Attorney General
kmiecikj@njdcj.org

JENNIFER E. KMIECIAK
ATTORNEY NO. 037062010
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
APPELLATE BUREAU

OF COUNSEL AND ON THE BRIEF

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