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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1021-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DEMETRIUS J. HARRISON,

Defendant-Appellant.

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Submitted March 7, 2017 — Decided March 23, 2017

Before Judges Yannotti, Fasciale, and Gilson.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Indictment Nos.  
14-12-2923 and 15-07-1587.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Alyssa A. Aiello, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Jeffrey P. Mongiello,  
Deputy Attorney General, of counsel and on the  
brief).

PER CURIAM

Defendant Demetrius J. Harrison pled guilty to a third-degree  
violation of a condition of his special sentence to community

supervision for life (CSL), N.J.S.A. 2C:43-6.4(d). He had previously pled guilty to an amended fourth-degree violation of CSL. He was sentenced on both convictions on September 28, 2015. On both the third-degree and fourth-degree convictions, defendant was sentenced to concurrent terms of 364 days in county jail. On the third-degree conviction, defendant was also sentenced to parole supervision for life (PSL). Defendant appeals from the judgment of conviction (JOC) for his third-degree conviction of N.J.S.A. 2C:43-6.4(d) and the imposition of PSL. We reverse.

In 1999, defendant pled guilty to first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1) and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a), for crimes he committed in August 1997. In 2000, defendant was sentenced to a term of ten years in prison and to a special sentence of CSL under N.J.S.A. 2C:43-6.4 (prior to amendment).

On February 20, 2013, defendant signed a three-page form, acknowledging that he was subject to CSL and that he was required to comply with "general conditions" as established by the State Parole Board. At the time of defendant's sentence, and when he signed the "general conditions" form, a violation of a condition of CSL was a crime of the fourth-degree. L. 1994, c. 130.

The conditions, contained in the version of N.J.A.C. 10A:71-6.11 in effect in 2013, included refraining from purchasing, using,

or possessing controlled dangerous substances. Defendant acknowledged that he was also subject to two "special conditions" requiring him to: 1) enroll and participate in a mental health program for the treatment of sex offenders; and 2) refrain from the purchase, possession, or use of alcohol.

Effective July 1, 2014, the Legislature amended N.J.S.A. 2C:43-6.4(a) and (d) (the 2014 amendment), to upgrade a violation of a condition of CSL to a third-degree crime and to add convictions for a violation of CSL to the list of predicate crimes that mandate the imposition of PSL. L. 2013, c. 214.

In August 2014 and May 2015 (after the effective date of the 2014 amendment), defendant tested positive for use of illegal drugs and failed to attend drug treatment in violation of the general conditions of his CSL. See N.J.A.C. 10A:71-6.11(b)(12). In 2014, defendant was indicted, under indictment 14-12-2923, for two counts of third-degree violation of the conditions of his CSL, N.J.S.A. 2C:43-6.4(d), for conduct alleged to have occurred in August 2014. In 2015, a grand jury indicted defendant, under indictment 15-07-1587, for two counts of third-degree violations of the conditions of his CSL, N.J.S.A. 2C:43-6.4(d), for conduct alleged to have occurred in May 2015.

On March 9, 2015, defendant pled guilty to an amended fourth-degree violation of the conditions of CSL under indictment 14-12-

2923. On August 17, 2015, under indictment 15-07-1587, defendant pled guilty to third-degree violation of the conditions of CSL. Although defendant had not filed a motion, in pleading guilty to the third-degree violation, defendant expressly reserved his right to challenge the "constitutionality" of imposing PSL on him.

On September 28, 2015, defendant was sentenced on both convictions to concurrent terms of 364 days in county jail. On the third-degree conviction, defendant was also sentenced to PSL.

Thereafter, defendant filed a timely notice of appeal from his third-degree conviction of violating CSL. Thus, this appeal is limited to defendant's conviction under indictment 15-07-1587.

On this appeal, defendant raises the following arguments:

THE COURT VIOLATED THE EX POST FACTO CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS BY APPLYING N.J.S.A. 2C:43-6.4, AS AMENDED IN 2014 — INCREASING THE PENALTIES FOR VIOLATING CSL FROM A FOURTH-DEGREE TO A THIRD-DEGREE OFFENSE, AND SUBSTITUTING PSL FOR CSL — TO A DEFENDANT SENTENCED TO CSL IN 2000.

THE 2014 AMENDMENT TO N.J.S.A. 2C:43-6.4(a), REQUIRING THE TRANSFER OF DEFENDANTS WHO VIOLATE A CONDITION OF COMMUNITY SUPERVISION FOR LIFE TO PAROLE SUPERVISION FOR LIFE, IS A FACIAL VIOLATION OF THE EX POST FACTO CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

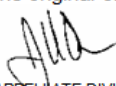
Initially, we note that the State does not challenge defendant's right to raise an ex post facto argument on appeal even though defendant did not file a motion before the trial court. Instead, the State argues that because defendant was indicted and

convicted for engaging in new criminal conduct after the effective date of the 2014 amendment to N.J.S.A. 2C:43-6.4(a) and (d), the 2014 amendment does not apply retroactively and, therefore, does not violate the constitutional bar on ex post facto laws.

Having carefully considered defendant's arguments and the State's response, we reverse defendant's third-degree conviction for violating CSL for the reasons stated in State v. Hester, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2017). We reject defendant's facial constitutional challenge to the 2014 amendments to N.J.S.A. 2C:43-6.4(a) and (d). We conclude, however, that, as applied to defendant, the amendments to N.J.S.A. 2C:43-6.4(a) and (d), which upgraded a violation of a condition of CSL to a third-degree crime and mandated imposition of a special sentence of PSL, violate the constitutional prohibition against ex post facto laws.

Reversed.

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

  
CLERK OF THE APPELLATE DIVISION