SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1092-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KEIRA R. BARBER,

Defendant-Appellant.

Submitted September 6, 2017 – Decided September 21, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 15-01-0007.

Robin Kay Lord, attorney for appellant.

Christopher S. Porrino, Attorney General, attorney for respondent (Carol M. Henderson, Assistant Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Keira R. Barber appeals her conviction following a guilty plea for fourth-degree operating a motor vehicle during a period of a license suspension, N.J.S.A. 2C:40-26(b). She contends

the court erred by denying her motion to dismiss the indictment. We disagree and affirm.

The evidence presented to the grand jury showed defendant operated a motor vehicle and was stopped by the police, who issued her motor vehicle summonses for talking on a cellphone while operating a motor vehicle and driving while her license was suspended. It was subsequently determined that defendant's license was suspended as the result of a 2013 conviction for refusal to submit to a chemical breath test, N.J.S.A. 39:4-50.2(a). It was also discovered defendant had a 2010 conviction for driving while intoxicated, N.J.S.A. 39:4-50.

Defendant was indicted for fourth-degree operating a motor vehicle during a period of a license suspension "for a second or subsequent violation of" driving while intoxicated (DWI), N.J.S.A. 39:4-50, or refusal to submit to a chemical breath test (refusal), N.J.S.A. 39:4-50.2(a). See N.J.S.A. 2C:40-26(b). She filed a motion to dismiss the indictment claiming she did not violate N.J.S.A. 2C:40-26(b) because it applied only where an individual has two or more violations of either DWI or refusal, but not where an individual has only one conviction for each. Defendant argued the evidence did not establish that she violated N.J.S.A. 2C:40-26(b) because she had only one conviction for DWI and one for refusal.

The court rejected defendant's interpretation of N.J.S.A. 2C:40-26(b). The court found the plain language of the statute prohibited operation of a vehicle during a license suspension imposed for a second or subsequent violation of either DWI or refusal. The court determined defendant was properly charged in the indictment with violating N.J.S.A. 2C:40-26(b) because the evidence showed she had prior convictions for DWI and refusal, and therefore was operating a motor vehicle during a suspension for a second violation of DWI or refusal. The court entered an order denying the motion to dismiss the indictment.

Defendant subsequently entered a conditional plea of guilty to N.J.S.A. 2C:40-26(b).[1] The court imposed the mandatory 180-day custodial sentence under N.J.S.A. 2C:40-26(b), but stayed the sentence pending appeal. This appeal followed.

Defendant presents a single argument on appeal:

> POINT ONE
>
> THIS COURT SHOULD REVERSE THE TRIAL COURT'S DENIAL OF DEFENDANT'S MOTION TO DISMISS THE INDICTMENT BECAUSE DEFENDANT DOES NOT HAVE TWO OR MORE PRIOR CONVICTIONS FOR DRIVING WHILE INTOXICATED OR FOR REFUSING TO SUBMIT TO A BREATH [TEST].

[1] The plea was conditioned on defendant's reservation of a right to challenge the court's denial of her motion to dismiss the indictment. R. 3:9-3(f).

Defendant argues the court erred by denying her request to dismiss the indictment because the court misinterpreted the requirements of N.J.S.A. 2C:40-26(b). Thus, the sole issue before us is whether the court's interpretation of the statute is erroneous. The interpretation of a statute presents a legal question, State v. Revie, 220 N.J. 126, 132 (2014), that we review "de novo, unconstrained by deference to the decisions of the trial court," State v. Grate, 220 N.J. 317, 329 (2015).

Our primary purpose in construing a statute is to "discern the meaning and intent of the Legislature." State v. Gandhi, 201 N.J. 161, 176 (2010). "There is no more persuasive evidence of legislative intent than the words by which the Legislature undertook to express its purpose; therefore, we first look to the plain language of the statute." Perez v. Zagami, LLC, 218 N.J. 202, 209-10 (2016). "We ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citations omitted). Where "the plain language leads to a clear and unambiguous result, . . . our interpretive process is over." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007) (citation omitted). When the statutory language "clearly reveals the meaning of the statute, the court's sole

function is to enforce the statute in accordance with those terms." McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (quoting SASCO 1997 NJ, LLC v. Zudkewich, 166 N.J. 579, 586 (2001)).

Alternatively, where "there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, 'including legislative history, committee reports, and contemporaneous construction.'" DiProspero, supra, 183 N.J. at 492-93 (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)). Extrinsic evidence may also be considered "if a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language." Id. at 493.

We begin our interpretation of N.J.S.A. 2C:40-26(b), as we must, with the plain language of the statute:

> It shall be a crime of the fourth degree to operate a motor vehicle during the period of license suspension . . . if the actor's license was suspended or revoked for a second or subsequent violation of [DWI] or [refusal]. A person convicted of an offense under this subsection shall be sentenced by the court to a term of imprisonment.

By its express terms, N.J.S.A. 2C:40-26(b) prohibits the operation of a motor vehicle during a period of license suspension imposed "for a second or subsequent violation of [DWI] or [refusal]." (emphasis added). The phrase "[DWI] or [refusal]"

modifies the term "second or subsequent violation," and is plainly in the disjunctive. Thus, under the plain language of the statute, where a defendant has a second violation for either DWI or refusal, and operates a vehicle during a license suspension resulting from the violation, the defendant commits a violation of N.J.S.A. 2C:40-26(b). There is nothing in the plain language of the statute supporting a different interpretation or result.

Defendant's interpretation of the statute is founded on language the Legislature did not to include in N.J.S.A. 2C:40-26(b). Defendant imports into the statute the requirement that a defendant operate a vehicle during a license suspension imposed as the result of "a second or subsequent DWI conviction or a second or subsequent conviction for refusal." However, this language is not contained in the statute, and, as noted, the Legislature instead chose to prohibit operation of a vehicle during a period of suspension for a second or subsequent violation of either DWI or refusal.

We reject defendant's interpretation of N.J.S.A. 2C:40-26(b) because it is not our function "to 'rewrite a plainly-written enactment of the Legislature [] or presume that the Legislature intended something other than that expressed by way of the plain language.'" DiProspero, supra, 183 N.J. at 492 (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)). We also will not "'write in

an additional qualification which the Legislature pointedly omitted in drafting its own enactment,' or 'engage in conjecture or surmise which will circumvent the plain meaning of the act.'" Ibid. (first quoting Craster v. Bd. of Comm'rs of Newark, 9 N.J. 225, 230 (1952); then quoting In re Closing of Jamesburg High School, 83 N.J. 540, 548 (1980)).

Although the plain language of N.J.S.A. 2C:40-26(b) requires rejection of defendant's contentions, our interpretation of the statute is consistent with its legislative history. "When N.J.S.A. 2C:40-26 was enacted in 2009, L. 2009, c. 333, § 1, the Senate intended to lodge 'criminal penalties for persons whose [drivers'] licenses are suspended for certain drunk driving offenses and who, while under suspension for those offenses, unlawfully operate a motor vehicle.'" State v. Luzhak, 445 N.J. Super. 241, 245-46 (App. Div. 2016) (quoting Senate Law and Public Safety and Veterans' Affairs Comm., Statement to S. 2939 (November 23, 2009)); see also Senate Law and Public Safety and Veterans' Affairs Comm., Statement to S. 2939 (June 15, 2009) (as introduced) (stating the statute made it a fourth-degree crime for "a person who is convicted of a second or subsequent driving while intoxicated or refusal offense" to operate a motor vehicle during a period of license suspension "for that second offense").

In these pronouncements, there is no suggestion that a

defendant charged with violating N.J.S.A. 2C:40-26(b) must have been driving while suspended for either a second or subsequent DWI offense or a second or subsequent refusal offense. To the contrary, the committee stated that a person operating a vehicle while suspended for a second or subsequent of "certain drunk driving offenses" — DWI or refusal — is guilty of the fourth-degree crime. The plain language of the statute is consistent with these statements of legislative intent.

In sum, we are satisfied the court correctly denied defendant's motion to dismiss the indictment. The evidence showed that she operated a motor vehicle during a license suspension for her refusal conviction, and that she also had a prior DWI conviction. Therefore, the evidence was sufficient to support the charge that she violated N.J.S.A. 2C:40-26(b) as alleged in the indictment. See State v. Sasvedra, 222 N.J. 39, 57 (2015) (finding an indictment will not be disturbed as long as the State presents some evidence supporting each element of the crime charged).

Affirmed. The stay of sentence is vacated. We do not retain jurisdiction.