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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-1460-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARK L. SEAGRAVES, a/k/a,
NASIR J. MUSLIM,

Defendant-Appellant.

Argued March 7, 2017 – Decided March 23, 2017

Before Judges Yannotti, Fasciale and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Salem County, Indictment No. 15-
02-0093.

Stefan Van Jura, Deputy Public Defender,
argued the cause for appellant (Joseph E.
Krakora, Public Defender, attorney; Al Glimis,
Assistant Deputy Public Defender, of counsel
and on the briefs).

Jennifer E. Kmiecik, Deputy Attorney General,
argued the cause for respondent (Christopher
S. Porrino, Attorney General, attorney;
Jeffrey P. Mongiello, Deputy Attorney General,
of counsel and on the brief).

PER CURIAM

Defendant pled guilty to third-degree violating a condition of his special sentence of Community Supervision for Life (CSL), in violation of N.J.S.A. 2C:43-6.4(d), and he was sentenced to four years of incarceration, with a two-year period of parole ineligibility. Defendant was also sentenced to parole supervision for life (PSL), under a 2014 amendment to N.J.S.A. 2C:43-6.4(a). He appeals from the judgment of conviction (JOC) entered on November 9, 2015. We reverse.

On April 15, 2003, defendant pled guilty to third-degree aggravated criminal sexual contact in violation of N.J.S.A. 2C:14-3(a), for crimes he committed in 2002. On August 25, 2003, the trial court sentenced defendant to a term of three years of probation, conditioned on serving 364 days in the county jail, compliance with Megan's Law, and to a special sentence of CSL under N.J.S.A. 2C:43-6.4 (prior to amendment).

Violation of a condition of CSL was then a crime of the fourth degree. L. 1994, c. 130. However, effective July 1, 2014, N.J.S.A. 2C:43-6.4 (a) and (d) were amended to upgrade a violation of a condition of CSL to a third-degree offense, 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.

On February 18, 2015, a grand jury charged defendant with one count of third-degree violation of the conditions of his CSL, contrary to N.J.S.A. 2C:43-6.4, for conduct he engaged in on September 27, 2014, in allegedly cutting off the electronic transmitter that was affixed to his ankle and failing to report to his parole officer.

Defendant filed a motion to dismiss the indictment, arguing that application of the amended version of N.J.S.A. 2C:43-6.4 violates the constitutional prohibition against ex post facto laws. On June 12, 2015, the trial court heard oral argument and denied the motion. The court found that the violation of the conditions of CSL was "a new offense" and the sentence imposed did not relate back to defendant's "original sentence."

On September 8, 2015, defendant pled guilty to the indictment. He reserved the ability to appeal the denial of his motion to dismiss the indictment. On October 30, 2015, the trial court sentenced defendant in accordance with the negotiated plea agreement, to a term of four years, with a two-year period of parole ineligibility. The court also imposed a mandatory special sentence of PSL under N.J.S.A. 2C:43-6.4(a). The judge entered a JOC dated November 9, 2015.

Defendant appeals and raises the following argument:

POINT I


PURSUANT TO THE RECENT [EX POST FACTO] DECISIONS IN STATE V. PEREZ AND STATE V. F.W., DEFENDANT'S CONVICTION SHOULD BE REVERSED. DEFENDANT WAS ONLY ELIGIBLE TO BE CONVICTED OF THE FOURTH-DEGREE VERSION OF N.J.S.A. 2C:43-6.4D AND SHOULD NOT HAVE HAD HIS COMMUNITY SUPERVISION FOR LIFE CONVERTED TO PAROLE SUPERVISION FOR LIFE.

In response, the State argues that because defendant was indicted and convicted for engaging in new criminal conduct after the effective date of the amended statute, the statute does not apply retroactively and therefore does not violate the constitutional bar on ex post facto legislation.

We have carefully considered defendant's arguments and the State's response. We reverse defendant's conviction for the reasons stated in State v. Hester, ___ N.J. Super. ___ (App. Div. 2017). We conclude that, as applied to defendant, the amendments to N.J.S.A. 2C:43-6.4(a) and (d), which upgrades a violation of a condition of CSL to a third-degree offense and mandates 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