

## RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court."  
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-2200-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

W.D., JR.,

Defendant-Appellant.

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Submitted February 28, 2017 – Decided March 17, 2017

Before Judges Yannotti and Fasciale.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Indictment No.  
11-02-0201.

Robert Baer, attorney for appellant.

Gurbir S. Grewal, Bergen County Prosecutor,  
attorney for respondent (Suzanne E. Cevasco,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant appeals from an amended judgment of conviction  
(JOC) entered by the Law Division on December 3, 2014, which

granted in part, and denied in part, defendant's motion to amend the JOC. We affirm in part, reverse in part, and remand for entry of an amended JOC.

Here, defendant was charged with second-degree attempt to lure a minor into a motor vehicle, N.J.S.A. 2C:13-6, N.J.S.A. 2C:5-1 (count one); third-degree attempt to endanger the welfare of a child, N.J.S.A. 2C:24-4(a), N.J.S.A. 2C:5-1 (count two); second-degree distribution of child pornography, N.J.S.A. 2C:24-4(b)(5)(A) (counts three, four, and five); and fourth-degree possession of child pornography, N.J.S.A. 2C:24-4(b)(5)(b) (count six). On May 27, 2011, defendant pled guilty to all charges.

On October 28, 2011, the trial court sentenced defendant to an aggregate term of six years of imprisonment, to be served at the Adult Diagnostic Treatment Center (ADTC). The court also imposed appropriate fines and penalties. The court ordered that defendant must comply with Megan's Law, N.J.S.A. 2C:7-1 to -23, and sentenced defendant to parole supervision for life (PSL).

In addition, the court entered a JOC which stated that defendant was a repetitive and compulsive sex offender, and had possessed child pornography, which depicted violent sexual acts against children. The JOC also stated that defendant was to have no contact with children; could not access any internet social websites; could not leave the State while on PSL; and must continue

with his medications and psychiatric counseling after completion of his prison sentence. Defendant did not file a direct appeal from the JOC.

On March 20, 2014, defendant filed a petition for post-conviction relief (PCR), alleging ineffective assistance of counsel. The court entered an order dated December 3, 2014, denying PCR. The following day, defendant filed a motion seeking to correct what defendant said was a clerical error in the JOC. He argued that the conditions in the JOC had not been imposed by the court at sentencing, and that the court did not have authority to impose those conditions.

On January 14, 2015, defendant filed a notice of appeal from the denial of his petition for PCR. Thereafter, this court granted defendant's motion to stay the briefing on the appeal until after the trial court ruled on defendant's pending motion to correct the alleged error in the JOC. Our order stated that defendant could file an amended notice of appeal following the trial court's decision on the motion to correct the JOC.

On June 12, 2015, the court heard oral argument on the motion. On July 20, 2015, the court filed an amended JOC. The court did not delete the conditions set forth in the JOC, but added the statement that the conditions would apply after the completion of defendant's custodial sentence.

In the accompanying written statement of reasons, the judge noted that defendant had objected to the inclusion of the following conditions in the JOC: (1) no contact with children; (2) no access to internet social websites; (3) defendant cannot leave New Jersey while he is on PSL and is subject to Megan's Law; (4) defendant is a repetitive and compulsive sex offender and possessed child pornography that depicts violent sexual acts against children; and (5) defendant must continue with medication and psychiatric counseling upon completion of his prison sentence.

The judge noted that under N.J.S.A. 2C:43-6.4, PSL commences when the defendant is released from incarceration for the offense. The statute also provides that a defendant sentenced to PSL shall remain in the legal custody of the New Jersey Commissioner of Corrections, and shall be supervised by the Division of Parole of the State Parole Board. Ibid.

The judge also noted that N.J.A.C. 10A:71-6.12 provides that a person sentenced to PSL shall be subject to provisions and conditions established pursuant to N.J.A.C. 10A:71-6.12(d), any special conditions imposed by a panel of the Parole Board, and "conditions imposed by the sentencing court." The judge stated that the conditions at issue were imposed by the trial court at sentencing, and were conditions of PSL under N.J.A.C. 10A:71-6.12(d). The judge concluded that the conditions were properly

included in the JOC, but the judgment should be modified to state that conditions (1), (2), (3), and (5) "take effect only after defendant's custodial sentence is completed, and they should only be applicable while the defendant is placed on PSL."

Thereafter, defendant filed an amended notice of appeal, which stated that he was appealing from the amended JOC entered by the trial court on July 20, 2015. The amended notice of appeal stated that the appeal was limited to the judge's decision on the conditions imposed in the JOC.

On appeal, defendant raises the following single argument:

THE [JUDGMENT] OF CONVICTION CONTAINS CLERICAL ERRORS UNDER RULE 1:13-1 WHICH ARE INCONSISTENT WITH THE COURT'S ACTUAL SENTENCE. THE [JUDGMENT] OF CONVICTION SHOULD, THEREFORE, BE AMENDED BY REMOVING THOSE STATEMENTS WHICH DO NOT REFLECT THE SENTENCE IMPOSED.

We reject defendant's contention that the judge erred by denying his motion to remove all of the aforementioned conditions from the JOC. The record reflects that, at sentencing, the judge had imposed two conditions as part of the sentence. Those conditions were that defendant could not access any social-networking sites, and defendant could not leave the State while on PSL and subject to Megan's Law registration.

As the judge noted in her written statement of reasons, the PSL regulations expressly recognize the court's authority to

impose these conditions as part of the sentence. N.J.A.C. 10A:71-6.12(c). The motion judge correctly found that these conditions were properly included in the JOC. The judge aptly noted that any such conditions take effect after defendant completes his custodial sentence, and amended the JOC accordingly.

In addition, the judge correctly determined that the statement in the JOC that defendant was a repetitive and compulsive sex offender, who had possessed child pornography, should not be removed from the JOC. At sentencing, the judge made that finding based upon the report provided by the ADTC. It was, moreover, a finding of fact, not a "condition" imposed as part of PSL. Thus, the finding was properly included in the JOC.

However, at sentencing, the judge stated that defendant could not have any "supervision whatsoever of any children." The judge did not state that defendant could not have any "contact" with children, a condition that is broader than contacts involving "supervision." Furthermore, the sentencing judge stated that a parole officer could require that defendant continue his medications and counseling, but the judge did not specifically impose that as a condition of the sentence.

We therefore conclude that the judge should have amended the JOC to state that defendant could not have "supervision" of any children, rather than barring defendant from having any "contact"

with children. That was the condition imposed at sentencing. As part of PSL, the parole officer could preclude defendant from having any "contact" with children, but that was not the condition imposed when defendant was sentenced.

The judge also should have amended the JOC to remove the requirement that defendant continue his counseling and medications. As the State concedes, the judge did not impose that condition as part of the sentence. At sentencing, the judge merely stated that such a condition could be imposed by a parole officer as part of PSL. Thus, the condition should not have been included in the JOC.

Accordingly, we affirm in part, reverse in part, and remand the matter to the trial court for entry of an amended JOC in conformity with this opinion. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION