SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4839-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ADAM C. SPEARS,

Defendant-Appellant.

Argued December 15, 2016 - Decided February 16, 2017

Before Judges Lihotz and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 14-08-0658.

A. Harold Kokes argued the cause for appellant.

Gretchen A. Pickering, Assistant Prosecutor, argued the cause for respondent (Robert L. Taylor, Cape May County Prosecutor, attorney; Ms. Pickering, of counsel and on the brief).

PER CURIAM

This matter regards interpretation of the requirements of N.J.S.A. 2C:40-26(b), a fourth-degree offense for operating a motor vehicle during a period of license suspension if the

operator's license was suspended for a second driving while intoxicated (DWI) violation. A conviction is punishable by a mandatory 180-day jail term. Defendant Adam C. Spears, a resident of Pennsylvania, argues the trial judge erred in denying his motion to dismiss the indictment in light of facts establishing his period of suspension for a second Pennsylvania alcohol-related driving conviction had not commenced when he was stopped for driving while suspended in New Jersey.

We have considered defendant's arguments in light of the record and applicable law. We reject the strained statutory construction urged by defendant. The State's proofs evince defendant operated a motor vehicle in New Jersey, while his driving privileges were suspended, and he was twice convicted of the Pennsylvania equivalent of N.J.S.A. 39:4-50. Accordingly, we affirm.

Defendant was issued motor vehicle summonses on June 8, 2014, for driving while an unlicensed driver, N.J.S.A. 39:3-10, and for driving with a suspended license, N.J.S.A. 39:3-40. After police discovered defendant's Pennsylvania driver's license was suspended for multiple convictions of driving under the influence, defendant was indicted, under Cape May County Indictment No. 14-08-0658, for violating N.J.S.A. 2C:40-26(b).

Defendant moved to dismiss the indictment, arguing his prior Pennsylvania convictions were not statutory equivalents of N.J.S.A. 39:4-50, which he maintained he was never convicted of violating. Further, he argued the timing of the Pennsylvania suspensions failed to meet the statutory prerequisites because his period of suspension for the second Pennsylvania offense had not commenced when he was charged in New Jersey for driving while suspended. Finally, defendant argued the State presented erroneous information to the Grand Jury.

Judge Patricia M. Wild considered the facts regarding defendant's Pennsylvania convictions. Specifically, defendant's driving abstract listed eight underage alcohol offenses from October 2000 to September 2005. Each of these offenses resulted in a suspension of his driving privileges.[1]

Defendant was convicted of his first "major violation," which was considered a predicate offense required by N.J.S.A. 2C:40-26(b), on September 15, 2007. The offense was driving while impaired by controlled dangerous substances, pursuant to

[1] No argument suggests the underage alcohol offenses qualify as predicate offenses for the purpose of conviction pursuant to N.J.S.A. 2C:40-26(b).

75 Pa.C.S. § 3802(d).[2] At that time he also was convicted of a separate possession offense. The sentence imposed an aggregate license suspension of eighteen months. The second predicate offense, a conviction for driving under the influence with a blood alcohol concentration of more than .1% but less than .16%, prohibited by 75 Pa.C.S. § 3802(b), occurred on June 10, 2008.[3] Because defendant had been convicted of several underage alcohol offenses, resulting in several consecutive periods of license suspension, his license would not be suspended for the September 15, 2007 and June 10, 2008 convictions until September 21, 2014 and March 21, 2016, respectively.

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[2] 75 Pa.C.S. § 3802(d)(2) prohibits driving, operating or actual physical control of the movement of a vehicle when:

> The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

[3] 75 Pa.C.S. § 3802(b) provides:

> An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

Following arguments by counsel, the judge denied the motion. Thereafter, defendant entered a conditional guilty plea, preserving his right to appeal the denial of his motion to dismiss the indictment. Defendant was sentenced to the statute's mandatory term, in the county jail, during which he was not eligible for parole. The traffic summonses were dismissed. Pending appeal, defendant was released on his own recognizance.

On appeal, defendant admits he was driving in New Jersey while his Pennsylvania driver's license was suspended and concedes he was twice convicted of the Pennsylvania equivalent of N.J.S.A. 39:4-50. However, focusing on the effective date of his prior Pennsylvania suspensions, he asserts his "suspension for his first Commonwealth of Pennsylvania equivalent of N.J.S.A. 39:4-50[,] did not commence until . . . months after [his] operation in [New Jersey]." Seeking a strict construction of the statutory requisite "during a period of suspension," defendant maintains the indictment must be dismissed because his suspension for the DWI offenses had not yet begun and urges:

> POINT I.
> APPELLANT WAS NOT SUSPENDED FOR THE COMMONWEALTH OF PENNSYLVANIA'S EQUIVALENT OF N.J.S.A. 39:4-50 ON THE DAY HE OPERATED A MOTOR VEHICLE IN OCEAN CITY, CAPE MAY COUNTY, NEW JERSEY.

> POINT II.
> THE TRANSCRIPT OF THE GRAND JURY PROCEEDINGS REVEALS THAT THE EVIDENCE PRESENTED TO THE GRAND JURY WAS LEGALLY INSUFFICIENT AND INCORRECT.
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> POINT III.
> THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO DISMISS BASED ON A STRICT CONSTRUCTION AND PLAIN READING OF N.J.S.A. 2C:40-26(b). APPELLANT HAD NO NOTICE THAT HE WOULD BE LIABLE FOR A FOURTH (4TH) DEGREE CRIME.

These arguments are unavailing.

The interpretation of a statute is a legal question. State v. Revie, 220 N.J. 126, 132 (2014). "As such, we review the dispute de novo, unconstrained by deference to the decisions of the trial court . . . ." State v. Grate, 220 N.J. 317, 329 (2015). See also State v. Hubbard, 222 N.J. 249, 263 (2015) ("A trial court's interpretation of the law, however, and the consequences that flow from established facts are not entitled to special deference.").

When a court interprets a statute, "[t]he overriding goal is to determine as best we can the intent of the Legislature, and to give effect to that intent." State v. Robinson, 217 N.J. 594, 604 (2014) (quoting State v. Hudson, 209 N.J. 513, 529 (2012)). This review requires

> [w]e begin by "read[ing] and examin[ing] the text of the act and draw[ing] inferences concerning the meaning from its composition

> and structure." 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 47:1 (7th ed. 2007). That common sense canon of statutory construction is reflected also in the legislative directive codified at N.J.S.A. 1:1-1:
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> > In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.
>
> If a plain-language reading of the statute "leads to a clear and unambiguous result, then our interpretive process is over." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195-96 (2007).
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> [State v. Hupka, 203 N.J. 222, 231-32 (2010) (alterations in original).]

When reviewing a statute's plain language, we do not parse its provisions. Rather, we consider "not only the particular statute in question, but also the entire legislative scheme of which it is a part." State v. Olivero, 221 N.J. 632, 639 (2015) (quoting Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 129 (1987)).

If our review finds an ambiguity in the statutory language, we then turn to extrinsic evidence. Ibid. When such evidence is needed, we look to a variety of sources, "such as the statute's purpose, legislative history, and statutory context to ascertain the legislature's intent." State v. Thomas, 166 N.J. 560, 567 (2001) (quoting Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000)). See also State v. Crawley, 187 N.J. 440, 453 (resorting to legislative history and related statutes as extrinsic aids to interpret the statute), cert. denied, 549 U.S. 1078, 127 S. Ct. 740, 166 L. Ed. 2d 563 (2006)).

> Where a criminal statute defining a crime is at issue, language "susceptible of differing constructions," must be interpreted "to further" the "general purposes" stated in N.J.S.A. 2C:1-2(a) and the "special purposes" of the provision at issue. N.J.S.A. 2C:1-2(a), (c). Most important here is the Code's purpose of giving "fair warning of the nature of the conduct proscribed," N.J.S.A. 2C:1-2(a)(4). Fair notice of prohibited conduct is the fundamental principle underlying the rule of construction calling for resolution of ambiguities in criminal statutes against the State. State v. Gelman, 195 N.J. 475, 482 (2008).
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> [State v. J.B.W., 434 N.J. Super. 550, 554 (App. Div. 2014).]

Also, "[w]hen the text of a statute and extrinsic aids do not enlighten us satisfactorily concerning the Legislature's intent, our obligation is to construe the statute strictly,

against the State and in favor of the defendant." State v. Reiner, 180 N.J. 307, 318 (2004). That said, "even a penal statute should not be construed to reach a ridiculous or absurd result." State v. Wrotny, 221 N.J. Super. 226, 229 (App. Div. 1987) (citing State v. Gill, 47 N.J. 441, 444 (1966)).

The statute under review provides:

> It shall be a crime of the fourth degree to operate a motor vehicle during the period of license suspension in violation of [N.J.S.A.] 39:3-40, [driving with a suspended license], if the actor's license was suspended or revoked for a second or subsequent violation of [N.J.S.A.] 39:4-50, or section 2 of [N.J.S.A.] 39:4-50.4(a). A person convicted of an offense under this subsection shall be sentenced by the court to a term of imprisonment.
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> [N.J.S.A. 2C:40-26(b) (emphasis added).]

In adopting the statute,

> the Legislature stiffened the sanction for driving with a license suspended or revoked due to multiple prior DWI or refusal convictions. Before the enactment of N.J.S.A. 2C:40-26(b), such an offender only faced the sanctions that are set forth outside of the Criminal Code in N.J.S.A. 39:3-40(f)(2), a provision that authorizes a jail term of between ten and ninety days. By contrast, fourth-degree crimes are generally punishable by a custodial term of up to eighteen months, N.J.S.A. 2C:43-6(a)(4), and, moreover, N.J.S.A. 2C:40-26(b) expressly carries a mandatory minimum penalty of 180 days in prison.

[State v. Carrigan, 428 N.J. Super. 609, 613-14 (App. Div. 2012), certif. denied, 213 N.J. 539 (2013).]

"The significantly enhanced consequences to driving while suspended were the legislative response to 'reports of fatal or serious accidents that had been caused by recidivist offenders with multiple prior DWI violations.'" State v. Perry, 439 N.J. Super. 514, 523 (App. Div.) (quoting Carrigan, supra, 428 N.J. Super. at 614), certif. denied, 222 N.J. 306 (2015).

Although defendant agrees his license was suspended, and concedes he was twice convicted for DWI, he contends the suspension he was serving when stopped in New Jersey was not for the DWI offenses. Thus, the State's evidence did not satisfy the "plain meaning" of the statute, which requires operation of "a motor vehicle during the period of license suspension . . . for a second or subsequent violation of [N.J.S.A.] 39:4-50 . . . ." We rejected similar restricted readings of the statutory language as advanced by the State in Perry and the defendant in State v. Luzhak, 445 N.J. Super. 241, 244 (App. Div. 2016).

In Perry, this court reviewed the statutory requirements mandated by the language "during the period of license suspension" in a different context. Perry, supra, 439 N.J. Super. at 519. The defendants in Perry's consolidated cases

completed their ordered period of suspension, but failed to administratively reinstate their licenses, which remained suspended when they were stopped for a new traffic violation. Id. at 519-22. Considering the language of the statute, we stated:

> Subsection (b) provides that a driver commits the crime if he drives "during the period of license suspension" while his "license was suspended or revoked for a second or subsequent [DWI or refusal] violation." The Legislature made this section applicable solely to drivers with a license suspension for a second or subsequent DWI or refusal violation.
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> [Id. at 525.]

Our review rejected the State's arguments to more broadly apply the statute to encompass the period of administrative suspension. We concluded the statute criminalizes the operation of a motor vehicle only during the court-ordered period of suspension, not periods when driving privileges could have been restored but for the defendant's failure to complete the process for administrative restoration. Id. at 531-32.

This court also was presented with a strict construction argument when asked to interpret whether the language of N.J.S.A. 2C:40-26(b), which specifically references license suspensions "for a second or subsequent violation of [N.J.S.A.] 39:4-50" applies to license suspensions imposed by a foreign

jurisdiction. Luzhak, supra, 445 N.J. Super. at 244. We noted the interstate Driver License Compact (the Compact), N.J.S.A. 39:5D-1 to -14, enacted "to encourage the reciprocal recognition of motor vehicle violations that occurred in other jurisdictions, thereby increasing the probability that safety on highways would improve overall[,]" included reciprocity for DWI convictions. Id. at 246 (quoting State v. Colley, 397 N.J. Super. 214, 219 (App. Div. 2007)). Support was found in State v. Cromwell, 194 N.J. Super. 519, 520-22 (App. Div. 1984), which held the Compact requires New Jersey to "'give the same effect to the conduct reported . . . as it would if such conduct had occurred in [New Jersey]' when considering enhanced penalties under N.J.S.A. 39:3-40 due to previous DWI convictions in foreign states." Id. at 247. Accordingly, we concluded "consistent with the clear intent of the Legislature . . . [the] defendant's conviction in Maryland qualified as a DWI in New Jersey," id. at 247-48, making him "subject to indictment pursuant to N.J.S.A. 2C:40-26(b) based upon two prior DWI convictions, notwithstanding that one conviction was in Maryland." Ibid.

Although there is no direct authority resolving the statutory interpretation question presented on appeal, we confidently conclude defendant's interpretation of the statute

is incompatible with the Legislature's goal in enacting N.J.S.A. 2C:40-26, which is designed to curb and punish recidivist drunk drivers. For the purposes of N.J.S.A. 2C:40-26(b) we hold operation "during the period of license suspension" includes an imposed suspension of driving privileges for DWI, which had not yet commenced because the driver must complete prior imposed suspensions. A contrary result would allow the fortuitousness of timing to defeat the legislative objective, a result we will not abide.

The effective dates of defendant's DWI equivalent suspensions were delayed solely because defendant continued to serve prior consecutively imposed accumulated suspensions for underage alcohol offenses. At the time he was convicted of his first major violation under 75 Pa. C.S. § 3802(d), the imposed one-year suspension, although issued on January 8, 2008, was not effective until September 21, 2014. Similarly, defendant's second predicate conviction, which imposed a one-year suspension on October 3, 2008, was effective March 21, 2016.

When applying DWI penalties, this court previously determined a defendant is "'under suspension' from the time that the suspension is imposed even though the period of suspension may not begin until later." State v. Cuccurullo, 228 N.J. Super. 517, 520 (App. Div. 1988). We stated:

> Were defendant's argument accepted, the more unserved suspension time a driver has accumulated before his DWI suspension is imposed, the longer thereafter he could continue to drive before being subject to the DWS statute's enhanced penalties. We may not attribute to the Legislature an intent to produce such an absurd result.
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> [Ibid. (citation omitted).]

This principle equally applies here. We must interpret the statute guided by the Legislature's intent to prevent "fatal or serious accidents that had been caused by recidivist offenders with multiple prior DWI violations, who nevertheless were driving with a suspended license[,]" Carrigan, supra, 428 N.J. Super. at 614 (citing Assemb. Comm. Report to A.4303 (Jan. 11, 2010)), but also to avoid an anomalous and absurd result. See State v. Haliski, 140 N.J. 1, 9 (1995) ("[W]hatever be the rule of [statutory] construction, it is subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment read in full light of its history, purpose, and context." (quoting Lloyd v. Vermeulen, 22 N.J. 200, 204 (1956)).

We reject defendant's proposed narrow interpretation of the phrase ["during the period of license suspension . . . for a second or subsequent [DWI]"], which would reward offenders who had not yet commenced a DWI suspension solely because he or she repeatedly violated traffic laws and had to complete previously

imposed suspensions for other offenses. A defendant completing a license suspension for a prior traffic offense, which precluded the commencement of imposed license suspensions following multiple convictions for DWI, will not avoid N.J.S.A. 2C:40-26 and the criminal penalty intended to punish such conduct.

In light of our opinion, we reject as lacking merit defendant's additional claims challenging the indictment presentment as erroneous, by invoking similar statutory construction arguments. R. 2:11-3(e)(2). Further, we reject the suggestion he was not afforded notice his Pennsylvania convictions of DWI equivalents would trigger indictment under N.J.S.A. 2C:40-26(b). Longstanding authority applies the Compact to DWI offenses and the Compact is expressly mentioned in N.J.S.A. 39:4-50(a). See Luzhak, supra, 445 N.J. Super. at 246 (discussing Compact's application); State v. Zeikel, 423 N.J. Super. 34 (App. Div. 2011) (applying this standard to a case involving the New York DWI statute)). Pennsylvania became party to the Compact in 1996, when it adopted 75 Pa.C.S. § 1581. Scott v. DOT, 567 Pa. 631, 633 (2002). The Commonwealth's courts have concluded Pennsylvania's driving under the influence statute "is substantially similar to Article IV(a)(2) of the Compact, which proscribes driving under the influence of alcohol

or drugs to a degree that renders the driver 'incapable of safely driving a motor vehicle.'" Id. at 637-38.

Judge Wild properly denied defendant's motion to dismiss the indictment. See State v. Hogan, 144 N.J. 216, 228-29 (1996) (recognizing the grand jury's independence and a reluctance to intervene in the indictment process).

Affirmed.