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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-5418-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYRONE STRODE, a/k/a TYRONE DAVIS,  
TYRONE DAVISSTRODE, TYRONE S.  
DAVIS-STRODE, TURPME S. DAVIS  
and ERIC S. PETTERSSON,

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, Monmouth County, Accusation No.  
14-12-2166.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Brian P. Keenan, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Jennifer E. Kmiecik,  
Deputy Attorney General, of counsel and on the  
brief).

PER CURIAM

Defendant Tyrone Strode 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), and he was sentenced to time already served and parole supervision for life (PSL). He now appeals from the judgment of conviction (JOC). We reverse.

On August 23, 2004, defendant pled guilty to one count of third-degree endangering the welfare of a child in violation of N.J.S.A. 2C:24-4(a) for crimes he committed in 2003. On March 4, 2005, defendant was sentenced to five years of probation, Megan's Law requirements, and a special sentence of CSL under N.J.S.A. 2C:43-6.4 (prior to amendment).

At the time of defendant's sentence, a violation of a condition of CSL was a crime of the fourth-degree. L. 1994, c. 130. 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.

On December 22, 2014, defendant waived his right to an indictment and pled guilty to a third-degree violation of the conditions of his CSL, contrary to N.J.S.A. 2C:43-6.4(d). Specifically, defendant admitted to using a computer or other

device from July 1, 2014, to September 17, 2014, which was a violation of the conditions of his CSL. See N.J.A.C. 10A:71-6.11(b)(23). Defendant acknowledged that PSL applied, and he did not reserve the right to appeal any issues.

On April 21, 2015, defendant filed a "notice of motion to sentence prior to the 2014 amendment to N.J.S.A. 2C:43-6.4[(d)]," and argued that, as applied to him, the 2014 amendment was an unconstitutional ex post facto law.

On June 30, 2015, the trial court conducted oral argument and denied the motion. In a written opinion, issued on July 1, 2015, the court held that the "2014 amendments to N.J.S.A. 2C:43-6.4 are not an ex post facto law as applied to defendant because they do not make more onerous the punishment for defendant's 2005 conviction and because the crime charged in the indictment occurred after the effective date of the amendments."

The court sentenced defendant on June 30, 2015. In accordance with the plea agreement, defendant was sentenced to time served (thirty-one days) and PSL. Defendant filed a timely notice of appeal.

On appeal, defendant makes the following arguments:

POINT I: THE MOTION JUDGE'S APPLICATION OF THE 2014 AMENDMENT TO N.J.S.A. 2C:43-6.4, INCREASING THE PENALTIES FOR A VIOLATION OF SPECIAL CONDITIONS OF COMMUNITY SUPERVISION FOR LIFE, FROM A FOURTH-DEGREE TO A THIRD-

DEGREE OFFENSE, AND REQUIRING THE IMPOSITION OF PAROLE SUPERVISION FOR LIFE, TO A DEFENDANT ON CSL STEMMING FROM A 2005 CONVICTION, VIOLATED THE EX POST FACTO CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

POINT [II]: 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, the State argues that defendant's appeal should be dismissed because he entered an unconditional plea and he did not reserve a right to appeal under Rule 3:9-3(f). Given that defendant filed a motion challenging the constitutionality of the 2014 amendment to N.J.S.A. 2C:43-6.4 prior to his sentence, we choose not to apply Rule 3:9-3(f) because "[s]trict adherence to [its] requirements . . . 'would result in an injustice.'" State v. Gonzalez, 254 N.J. Super. 300, 304 (App. Div. 1992) (quoting R. 1:1-2) (considering the defendant's unreserved arguments challenging the constitutionality of N.J.S.A. 2C:35-12).


Accordingly, we have considered defendant's arguments and the State's response. We reverse defendant's conviction for a third-degree violation of 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 2014 amendment to N.J.S.A. 2C:43-6.4(a) and (d), which upgraded a violation of conditions of CSL to a third-degree crime and mandated imposition of a special sentence of PSL, violates the constitutional prohibitions 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