SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5494-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GREGORY S. FLETCHER,

Defendant-Appellant.

Submitted August 8, 2017 – Decided August 16, 2017

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 13-10-0911.

Joseph E. Krakora, Public Defender, attorney for appellant (Stephen P. Hunter, Assistant Deputy Public Defender, on the brief).

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

PER CURIAM

Defendant appeals from a June 23, 2016 judgment of conviction. We affirm.

In November 1996, defendant was convicted of driving while intoxicated (DWI), in violation of N.J.S.A. 39:4-50. On June 6, 2013, defendant was again convicted of DWI but was sentenced as a first offender because it had been seventeen years since his first conviction. Defendant's license was suspended for seven months. On June 14, 2013, defendant was arrested for driving a motor vehicle with a suspended license. Defendant was indicted on October 1, 2013, in Cape May County for fourth-degree operating a motor vehicle during a period of license suspension after a second or subsequent DWI conviction. N.J.S.A. 2C:40-26(b).

On October 14, 2014, defendant moved to dismiss the indictment, which the motion judge denied. Defendant renewed his motion on May 10, 2016, which was also denied, and defendant entered a conditional guilty plea, reserving his right to appeal the trial judge's denial of his motion to dismiss the indictment. On June 23, 2016, the judge sentenced defendant to the mandatory term of 180 days in jail without parole pursuant to N.J.S.A. 2C:40-26(b). The judge imposed appropriate fines and penalties and stayed the sentence pending appeal. This appeal followed.

On appeal, defendant presents the following argument:

> DEFENDANT'S MOTION TO DISMISS THE INDICTMENT SHOULD HAVE BEEN GRANTED BECAUSE DEFENDANT CANNOT BE FOUND GUILTY OF VIOLATING N.J.S.A. 2C:40-26(b) FOR DRIVING WITH A SUSPENDED LICENSE WHERE THE UNDERLYING DWI OFFENSE WAS

TREATED AS A FIRST OFFENSE PURSUANT TO N.J.S.A. 39:4-50(a)(3).

Having considered this argument in light of the record and applicable law, we affirm.

On June 14, 2013, eight days after the imposition of the suspension of his license, defendant drove his car and was stopped by a police officer. Because defendant had two DWI convictions, he was indicted under N.J.S.A. 2C:40-26(b) for "operat[ing] a motor vehicle during the period of license suspension . . . for a second or subsequent violation of" N.J.S.A. 39:4-50.

Defendant argues because he was sentenced on his second DWI conviction as if it were his first DWI offense under the step-down provision of N.J.S.A. 39:4-50(a)(3), he had not committed "a second or subsequent" DWI and, therefore, should not have been charged under N.J.S.A. 2C:40-26(b). We disagree.

"Construction of any statute begins with a consideration of its plain language." Merin v. Maglaki, 126 N.J. 430, 434 (1992) (citing Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 128 (1987); Renz v. Penn Cent. Corp., 87 N.J. 437, 435 (1981)). "When interpreting statutes, our 'overriding goal is to give effect to the Legislature's intent.'" State v. Twiggs, 445 N.J. Super. 23, 28-29 (App. Div. 2016) (citing State v. D.A., 191 N.J. 158, 164 (2007)). The plain, statutory language is the best indicator of

the legislative intent. State v. Perry, 439 N.J. Super. 514, 523 (App. Div.) (citing State v. Gandhi, 201 N.J. 161, 176 (2010)), certif. denied, 222 N.J. 306 (2015). "We thus read the text of a statute in accordance with its ordinary meaning unless otherwise specified." Twiggs, supra, 45 N.J. Super. at 28-29. In cases where a plain reading of the statute "leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources." Ibid. (citing D.A., supra, 191 N.J. at 164).

Here, we consider two statutes, neither of which is ambiguous. N.J.S.A. 39:4-50(a) provides:

> A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him [or her] in order to render him [or her] liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

N.J.S.A. 2C:40-26(b) and (c) state the following:

> 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], if the actor's license was suspended or revoked for a second or subsequent

> violation 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.
>
> Notwithstanding the term of imprisonment provided under [N.J.S.A. 2C:43-6] and the provisions of subsection e. of [N.J.S.A. 2C:44-1], if a person is convicted of a crime under this section the sentence imposed shall include a fixed minimum sentence of not less than 180 days during which the defendant shall not be eligible for parole.

N.J.S.A. 39:4-50(a) provides the leniency in sentencing afforded a second-time DWI offender under the step-down provision is "for sentencing purposes" only, and the second offense is considered just that, a "second offense." Moreover, as used in N.J.S.A. 39:4-50(a)(3), the phrase "for sentencing purposes" means sentencing for violations of that provision of the DWI statute only. See State v. Revie, 220 N.J. 126, 139 (2014) (citing State v. Conroy, 397 N.J. Super. 324, 330 (App Div.), certif. denied, 195 N.J. 420 (2008)) (observing the step-down provision of N.J.S.A. 39:4-50(a)(3) applies to the imposition of a custodial sentence under the DWI statute).

N.J.S.A. 2C:40-26(b) punishes the crime of driving on a suspended license and prescribes a mandatory 180-day jail term for second-time DWI offenders. A second DWI offense is a prerequisite to the mandatory 180-day incarceration period, but "[d]efendant is not being punished under N.J.S.A. 2C:40-26(b) for his prior DWI

. . . offenses; he is being punished for driving without a license." State v. Carrigan, 428 N.J. Super. 609, 624 (App. Div. 2012), certif. denied, 213 N.J. 539 (2013).

The judge sentenced defendant in June 2013 as a first-time offender, but his 2013 DWI conviction constituted his second DWI conviction. During the period of license suspension following defendant's second DWI, he drove, in violation of N.J.S.A. 2C:40-26(b), and the trial judge correctly denied defendant's motion to dismiss the indictment.

Affirmed. The stay of sentence previously granted by the trial court shall dissolve within twenty days of this opinion. The trial court shall expeditiously arrange for defendant to begin his custodial term.