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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-0999-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FORREST M. BAKER, SR.,

Defendant-Appellant.

Submitted December 18, 2017 – Decided January 17, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Indictment
No. 03-06-0809.

Forrest M. Baker, Sr., appellant pro se.

Scott A. Coffina, Burlington County
Prosecutor, attorney for respondent (Alexis R.
Agre, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

In 2006, defendant Forrest M. Baker, Sr., was convicted of the June 2002 first-degree robbery of a drug store, N.J.S.A. 2C:15-1, and using a juvenile, his son, to commit the robbery, N.J.S.A.

2C:24-9a. The judge sentenced defendant to a mandatory term of life imprisonment without parole pursuant to the "Three Strikes Law," N.J.S.A. 2C:43-7.1a (the Law), on the robbery conviction, a concurrent term on the second offense, with the sentences to run consecutively to the federal sentence defendant was already serving. We affirmed defendant's conviction on appeal, State v. Baker, 400 N.J. Super. 28, 33 (App. Div. 2008), and the Supreme Court affirmed. 198 N.J. 189, 191 (2009). We subsequently affirmed the Law Division's denial of defendant's petition for post-conviction relief, State v. Baker, No. A-5489-10 (App. Div. Jan. 16, 2013), and the Court denied defendant's petition for certification. 220 N.J. 268 (2015).

On July 1, 2016, defendant filed a pro se motion to correct an illegal sentence pursuant to Rule 3:21-10(b)(5). He argued that his life sentence violated the Ex Post Facto Clauses of the United States Constitution and New Jersey's Constitution. U.S. Const. art. I, § 10, cl. 1; N.J. Const. art. IV, § 7, ¶ 3.¹ The judge denied the motion, reasoning the Law was enacted in 1995; defendant was convicted in 2002 of five federal bank robbery charges and arrested for the robbery at issue here in 2003. Quoting State v. Oliver, 162 N.J. 580, 587 (2000), for the

¹ For simplicity, we use the singular, "Ex Post Facto Clause," throughout the balance of this opinion.

proposition that "recidivist statutes do not violate the Ex Post Facto Clause if they were on the books at the time the triggering offense was committed," the judge concluded defendant's sentence did not violate the Ex Post Facto Clause.

Defendant appeals. He contends the Law Division judge misconstrued his argument, which we understand to be as follows. Defendant committed five bank robberies between April and October 2002 that led to his federal arrest in December 2002. He was sentenced for all five robberies in a single proceeding in federal court in November 2003. The robbery which is the subject of this case occurred in June 2002. Defendant contends, therefore, that since all his arrests preceded an April 2003 amendment to the Law, the earlier version of the Law should apply and any application of the post-2003 amended version of the Law violates the Ex Post Facto Clause. We agree and remand for resentencing.

Prior to the April 2003 amendment to the Law, an offender was eligible for a mandatory life sentence without parole when convicted of certain enumerated crimes, including robbery, after having "on two or more prior and separate occasions been convicted" of the enumerated crimes or similar federal crimes. Oliver, 162 N.J. at 585 (quoting N.J.S.A. 2C:43-7.1a) (emphasis added). In State v. Livingston, 172 N.J. 209, 213 (2002), the Court held that "a person is not eligible for sentencing under the 'Three Strikes'

law unless the predicate convictions have been imposed in two or more separate and distinct proceedings held on different dates, rather than one single continuous proceeding."

The 2003 amendment was in direct response to the Court's opinion in Livingston. State v. Parks, 192 N.J. 483, 486-87 (2007). The Law now provides that an offender who commits certain crimes, and who "has been convicted of two or more crimes that were committed on prior and separate occasions, regardless of the dates of the convictions," is eligible for a mandatory life sentence without parole. N.J.S.A. 2C:43-7.1a (emphasis added).

Defendant's guilty pleas to five counts of bank robbery in federal court were entered on the same day and resulted in a single judgment of conviction. Thus, under Livingston and the pre-2003 version of the Law, when convicted of this robbery, defendant was not a person "who ha[d] on two or more prior and separate occasions been convicted of a crime."

However, three of defendant's federal bank robberies occurred prior to the June 29, 2002 robbery in this case. If the post-2003 version of the Law applies, defendant would be eligible for a mandatory, life sentence without parole because at sentencing in 2006, he was a person "convicted of two or more crimes that were committed on prior and separate occasions."

As the Court has explained, "for a criminal law to be ex post facto, it must satisfy two essential requirements: First, 'it must be retrospective, that is, it must apply to events occurring before its enactment,' and second, 'it must disadvantage the offender affected by it.'" State v. Fortin, 198 N.J. 619, 627 (2009) (quoting State v. Natale, 184 N.J. 458, 491 (2005)). As the Court held in Oliver, 162 N.J. at 587, there is no violation of the Ex Post Facto Clause if the penalty-enhancing statute was "on the books at the time the triggering offense was committed."

Here, the June 2002 drug store robbery was the triggering offense that determined which version of the Law applied to defendant's sentence. Applying the harsher version of the Law to defendant's conduct that preceded the 2003 amendment violated the Ex Post Facto Clause.

Reversed and remanded for re-sentencing. 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