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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-3433-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT L. ROBINSON, JR. a/k/a  
ROBERT C. ROBINSON, and  
ROBERT R. ROBINSON,

Defendant-Appellant.

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Submitted September 27, 2017 – Decided January 19, 2018

Before Judges Fuentes and Suter.

On appeal from Superior Court of New Jersey,  
Law Division, Union County, Indictment No. 13-  
11-0959.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Jaime B. Herrera, 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

Following a jury trial, defendant Robert L. Robinson, Jr. appeals his convictions for third-degree terroristic threats, N.J.S.A. 2C:12-3(a), and second-degree unlawful possession of a firearm (handgun), N.J.S.A. 2C:39-5(b). We affirm defendant's convictions. The amnesty law, L. 2013, c. 117, does not apply in this context, State v. Harper, 229 N.J. 228 (2017), nor did the trial court err by denying defendant's motion for a Graves Act waiver.<sup>1</sup>

## I

Defendant dated Tammy<sup>2</sup> for five or six years and proposed marriage, but she broke off the relationship in April 2013. Defendant "wasn't pleased" with her decision and "kept calling a lot trying to get [her] to come back, trying to explain what happened." At one point, he threatened to harm himself. They continued to see each other periodically for several months, as Tammy said, "to make things easier" for defendant.

On September 29, 2013, Tammy was awakened at 3:00 a.m. by defendant banging on her door. He was upset because she had not

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<sup>1</sup> See N.J.S.A. 2C:43-6.2.

<sup>2</sup> This fictitious name has been used throughout the opinion to maintain her privacy.

responded to his texts and calls from the night before. He was "yelling and threatening" her but calmed down after an hour or so.

Defendant continued calling her during the day. Tammy agreed to meet defendant that night at a bar where they talked over drinks, and he apologized for the earlier incident. As they were leaving, he asked her to come to his apartment but she said no and he slammed her car door in anger.

As Tammy was driving to the City of Summit, defendant began calling her "begging [her] to turn around," and claiming that she "didn't love him anymore," and that she

"didn't care." She testified at trial that he said "that he had his gun [a]nd a bottle of Jack, [a]nd when he finished he was going to come up to Summit [a]nd he was going to destroy whatever was in his way. He didn't care who got hurt. He was going to start there [a]nd work his way down."

When Tammy asked if he was going to shoot her, defendant did not respond.

Tammy knew defendant owned a gun. She called the police, asked what she should do, and an officer met her at home. Shortly after, defendant pulled into Tammy's driveway and was arrested. Defendant's "eyes were bloodshot red, [and] his speech was slurred [a]nd rambling."

Because Tammy informed the police that defendant owned a Glock handgun, he was transported to his apartment to retrieve it. Defendant had a permit for the gun but not to carry it. At first, defendant told the officers he sold the gun to a gun shop when only the case, but not the gun, was found in the apartment. Later, he admitted to the police that he discarded both weapons by laying them on the ground somewhere in Summit after he saw a police car and surmised the police could be looking for him.

A person out for a walk in a residential area of Summit discovered what "looked like a handgun [a]nd a black case," about three feet from the sidewalk and reported them to the police. The police found a loaded Glock with one round in the chamber, a gun case with a .22 caliber rifle, .22 caliber rifle shells and in the gun case, a certificate of sale identifying defendant as the owner.

Defendant provided a statement to the police. He denied threatening Tammy and claimed he "was coming to have a conversation with her," which could have resulted in a permanent end to their relationship.

A grand jury returned a four-count indictment against defendant. Following a jury trial in June 2015, defendant was convicted of third-degree terroristic threats, N.J.S.A. 2C:12-13(a) (Count One), and second-degree unlawful possession of a

weapon, N.J.S.A. 2C:39-5(b) (Count Two). He was acquitted of possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count Four). The Third Count, unlawful possession of a loaded rifle without a firearms purchaser identification card, N.J.S.A. 2C:39-5(c)(2), was dismissed with the consent of the prosecutor.

Before sentencing, the trial court denied defendant's motion for a judgment of acquittal. See R. 3:18-1. The court found the amnesty law, L. 2013, c. 117, was not applicable because it applied only to individuals who were turning in their weapons to the police and "had nothing to do with dropping your guns in front of a school in Summit." The court rejected defendant's interpretation of the Act as contrary to the legislature's intent because it would simply give a "free pass" to persons in illegal possession of weapons. Further, the Act did not apply to those who legally owned a weapon but, like defendant, were carrying it unlawfully.

The prosecutor denied defendant's request for a Graves Act waiver under N.J.S.A. 2C:43-6.2.<sup>3</sup> The prosecutor's denial letter stated that "[t]he fact that the defendant threatened to use the weapon he unlawfully possessed in the commission of a crime of

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<sup>3</sup> We do not discuss any other pre-trial or post-trial orders because they are not part of the appeal.

violence renders a Graves waiver wholly inappropriate." Further, defendant discarded his guns when "he realized the police were looking for him" and then put the loaded weapon "on the ground for anyone- including a child- to find," creating a danger to the public. The prosecutor noted defendant turned down the State's plea offer that would have included a one year period of parole ineligibility.

The trial court denied defendant's motion for a Graves Act waiver, finding the State's denial was not arbitrary or capricious. Defendant was sentenced on the weapons offense to five years in prison with a forty-two month period of parole ineligibility and to a concurrent three-year term on the terroristic threat offense.

Defendant raises the following issues on appeal:

POINT I

ROBINSON'S CONVICTION OF UNLAWFUL POSSESSION OF A HANDGUN, IN VIOLATION OF N.J.S.A. 2C:39-5b, IS ILLEGAL BECAUSE HIS CONDUCT DID NOT CONSTITUTE A CRIME ON SEPTEMBER 30, 2013. (9T5-4 to 9-8).

POINT II

THE TRIAL COURT ERRED IN DENYING ROBINSON A GRAVES ACT WAIVER WHEN THE OFFENSE WAS PURELY POSSESSORY AND HE HAD NO PRIOR CONVICTIONS. (10T17-14 to 18-1).

## II

Defendant's contention that the amnesty law provided a defense to the possession charge is without merit. The issue was resolved by the Supreme Court's decision in State v. Harper, 229 N.J. 228 (2017). In rejecting arguments similar to defendant's, the Court held that:

the amnesty law did not afford defendants blanket immunity for the entire amnesty period. Reading the law in that way would lead to absurd results that the Legislature did not intend. It would permit violent criminals to carry weapons in public with impunity, for almost 180 days, and remain free from prosecution so long as they transferred or voluntarily surrendered their firearms just before the end of the amnesty period.

[Id. at 232.]

Further, the Court held that "[a] defendant charged under N.J.S.A. 2C:39-5(b) for possession during the amnesty period may raise the amnesty law as an affirmative defense," provided he possessed the gun after August 8, 2013, and during the 180-day period thereafter, and took steps to transfer the firearm or voluntarily surrender it under the terms of the statute. Id. at 241 (citing N.J.S.A. 2C:39-12). A defendant also must give pretrial notice of his intention to rely on the amnesty law. Ibid. (citing R. 3:12-1). "As with other affirmative defenses, a

defendant must timely assert the defense or it is waived." Harper, 229 N.J. at 242.

Here, defendant waived any ability to raise this affirmative defense because he failed to assert it prior to trial. Even if he had timely asserted the defense, defendant did not present any evidence showing that he took any steps to transfer the guns or voluntarily surrender them before he was charged under N.J.S.A. 2C:39-5(b). Therefore, defendant failed to establish any of the criteria under Harper for the amnesty defense.

We find no merit in defendant's contention that he should have been sentenced consistent with the Graves Act waiver statute, N.J.S.A. 2C:43-6.2. Our review is limited to determining whether defendant showed that the prosecutor "arbitrarily or unconstitutionally discriminated against [him] in determining whether the 'interests of justice' warrant reference to the '[a]ssignment [j]udge' for sentencing under the 'escape valve.'" State v. Benjamin, 442 N.J. Super. 258, 266 (App. Div. 2015) (quoting State v. Mastapeter, 290 N.J. Super. 56, 65 (App. Div. 1996)).

The Graves Act requires a mandatory term of imprisonment for defendants convicted of various firearm-related crimes, including unlawful possession of a weapon. N.J.S.A. 2C:43-6(c). Under



N.J.S.A. 2C:43-6.2, a prosecutor can make a motion to the assignment judge if the "interest of justice" require a probationary term or the reduction of parole ineligibility to one year. The trial judge also can refer the waiver issue to the assignment judge with the prosecutor's consent. Ibid.


Here, defendant contends he should have had the benefit of the waiver provision because he was a first-time offender, and although convicted of unlawful possession of a firearm, was acquitted of the charge that he possessed a firearm for an unlawful purpose.

We find no error in the trial court's order not to grant the requested Graves Act waiver based on the finding "that the State did not act in an arbitrary and capricious fashion . . . ." Despite defendant's contention that his crime was only a "possessory offense" there was support in the record that defendant threatened the use of his weapon against his girlfriend and was illegally in possession of it at the time. Further, he discarded a loaded gun only three feet from a sidewalk in a residential area showing no regard for the public's safety. Defendant did not discard the firearms until he realized the police were looking for him. Based on the record, the trial court did not err in determining the

prosecutor's denial of the Graves Act waiver was not arbitrary or  
unconstitutionally discriminatory.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION