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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION, CRIMINAL PART
INDICTMENT NOS. 00-09-1483
01-02-0229

STATE OF NEW JERSEY,

Plaintiff,

v.

A.R.,

Defendant.

APPROVED FOR PUBLICATION

May 15, 2020

COMMITTEE ON OPINIONS

Decided: November 12, 2019

Michael Costanzo, Assistant Prosecutor, for plaintiff (Christopher J. Gramiccioni, Monmouth County Prosecutor, attorney).

Katherine O'Brien, attorney for defendant.

O'MALLEY, J.S.C.

I. INTRODUCTION

Defendant, A.R. (hereinafter "petitioner"), is moving to expunge criminal records relating to Indictment Nos. 00-09-1483 and 01-02-0229 notwithstanding objection from the State.

II. FACTS

On May 15, 2001, petitioner was sentenced to five years of probation on two counts of fourth degree distribution of marijuana, contrary to the provisions of N.J.S.A. 2C:35-5b(12); one count of third degree distribution of marijuana within 500 feet of a public park, contrary to the provisions of N.J.S.A. 2C:35-7.1; and one count of third degree distribution of methylenedioxy-methamphetamine (MDMA, otherwise known as “ecstasy”), contrary to the provisions of N.J.S.A. 2C:35-5b(1) and 2C:35-5b(3). These convictions were the result of an investigation conducted by multiple municipal police departments and the Bayshore Narcotics Task Force. According to the presentence report (“PSR”), petitioner sold the aforementioned narcotics to a friend, who was accompanied by an undercover officer, in various locations and on various dates between February 24, 2000, and April 14, 2000.

During the plea allocution, the court queried petitioner on his motive as follows:

Court: When you were selling these drugs ...were you doing it solely for money or for your use yourself?

Petitioner: I was using. And main reason, I needed money to use it and pay rent. I wasn't really doing anything at the time. At first, when I left the school, I wanted to go back to school and stuff but that didn't work out. And then, I just felt hopeless. I started using. I used regular. Got very heavy into my addiction.

Petitioner's PSR also records a significant substance abuse history. Petitioner notes that he began smoking marijuana at age twelve and continued to abuse that substance daily until the date of his plea. Additionally, petitioner reported "occasional" use of cocaine and alcohol, and daily use of ecstasy beginning at age nineteen.

Prior to his arrest for the offenses in question, petitioner attempted to address his substance abuse problems. In fact, at age fourteen, petitioner first sought treatment at White Deer Run in Old Bridge, New Jersey. Despite treatment, petitioner continued to struggle with mental health issues and turned to drugs to "fit in with his peers." Recognizing the need for help prior to the within offenses, petitioner sought treatment at Colonial Hospital in Virginia for five months and then at DeSisto School in Stockbridge, Massachusetts beginning in February of 1998. As the PSR noted, petitioner "admits to having a problem with substance abuse and addressed his problem by receiving inpatient and outpatient substance abuse and mental health treatment since age fourteen."

At sentencing, the court imposed a five-year probationary sentence and required petitioner to "continue attending the DeSisto School until you successfully complete the academic and therapeutic components." The court also ordered random urine monitoring. According to documents submitted,

petitioner complied with all terms of probation, including successfully completing DeSisto School.

After probation, petitioner committed to a life of recovery by disassociating with “the people, places and behaviors” that led to his criminal behavior. He continued to participate in therapy and sought to better himself through education. Petitioner indicates that in 2006 he received a Bachelor’s of Science in Psychology from Colorado State University. He submitted additional documents showing that during his time at university he received numerous awards, including a 2002 Student Government Award. In August of 2010, petitioner received a Master’s of Science in Finance from Florida International University. Throughout his schooling, petitioner worked various jobs; however, he complains that, as a result of his felony convictions from almost twenty years ago, he is not able to find a job in his field of expertise. At thirty-eight years old, petitioner lives with his parents, as securing housing with prior convictions is also an issue. As evidence of these impediments, petitioner provided emails sent from former employer, UBER. These emails demonstrate that UBER refused to rehire petitioner based on his prior convictions.

Because of these impediments, petitioner files this application seeking to expunge his criminal record relating to the convictions entered on April 2, 2001.

III. LEGAL ANALYSIS

Specifically, petitioner seeks expungement pursuant to the “crime-spree” exception contained within N.J.S.A. 2C:52-2(a), which allows a person to present an expungement application to the Superior Court if:

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction.

[(emphasis added).]

In the present case, the granting or denying of petitioner’s request turns on the phrase: “crimes [which are] interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time.” Ibid. While both the State and petitioner concede that this term is undefined in the statute, they advance competing interpretations. The State proposes a strict interpretation of the aforementioned language. Indeed, the State argues that petitioner’s convictions

represent two separate crimes, six weeks apart, and therefore, are not eligible for expungement.

Petitioner, on the other hand, argues that “as remedial legislation, the expungement statute should be interpreted more liberally.” Maglies v. Estate of Guy, 193 N.J. 108, 123 (2007). In advancing this argument, petitioner draws on the history of expungement legislation and cases surrounding its interpretation.

“To resolve questions of statutory interpretation like the ones raised here, we must discern and give effect to the Legislature’s intent.” State v. S.B., 230 N.J. 62, 67 (2017). Courts must first look to the statute’s plain language, viewing the statute as a whole, with a focus on its general intent. Ibid. “[W]here a statutory provision is clear and not unreasonable or illogical in its operation, a court may not go outside the statute to give it a different meaning.” In re Expungement Petition of J.S., 223 N.J. 54, 72 (2015) (citing Norman J. Singer & J.D. Shambie Singer, 1A Sutherland on Statutory Construction § 46:1 at 137-41 (7th ed. 2007)). If the statute remains ambiguous after this initial analysis, the court must consult extrinsic evidence like legislative history. In re J.S., 223 N.J. at 72-73.

Here, the language in question is as follows: “crimes [which are] interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of

time.” N.J.S.A. 2C:52-2(a). Undefined in the statute are the words “closely related” and “comparatively short,” which are ambiguous and subject to interpretation. Indeed, “closely” and “comparatively” are subjective adverbs used to modify other words; however, the extent to which these terms modify, is left up to the reader. What may appear “closely related” to one person, may signify a more remote connection to others. Similarly, the word “comparatively” requires an assessment of degrees – either in quality, quantity or relation. Necessarily, that assessment is individualized and will require a fact sensitive analysis.

With such ambiguity in the statute, the court must look to extrinsic evidence to discern the intent behind N.J.S.A. 2C:52-2(a). First, the court will note that prior to its codification in October 2018, the “crime spree” exception was not contemplated under N.J.S.A. 2C:52-2(a). Rather, in 1976, the Appellate Division carved out a “crime spree” exception in In re Fontana, 146 N.J. Super. 264 (App. Div. 1976). In that case, the defendant pled guilty to ten offenses which spanned nine days. Id. at 266. The Appellate Division noted that these offenses “all involved the same participants and were committed within a comparatively short period of time.” Id. at 267. As such, it was akin to a “one night spree” and should therefore be expunged. Ibid.

Three years after Fontana, the Legislature undertook a comprehensive reform of the Criminal Code, combining previous expungement provisions from different criminal statutes into Chapter 52 of the Code of Criminal Justice. Pursuant to this reform, the New Jersey Supreme Court addressed “the crime spree” exception to the expungement statute in J.S. In that consolidated matter from 2015,¹ the Supreme Court – applying the pre-October 2018 expungement statute – held that the plain language of N.J.S.A. 2C:52-2(a) precluded the expungement of multiple crimes that occurred over a short period of time.² J.S., 223 N.J. at 77. In its ruling, the Court placed heavy emphasis on the language of the statute as it existed at the time, and the intent of the Legislature in enacting that statute. Id. at 76-77. Specifically, the Court found that “the plain language of N.J.S.A. 2C:52-2(a) expresses the Legislature’s intent to permit expungement of a single conviction arising from multiple offenses only if those offenses occurred as part of a single uninterrupted criminal event.” Id. at 73. By “[u]sing the singular rather than the plural form” of the word “crime,” the Court found the “import” of the 2015 statute to be “clear: no matter how many offenses are

¹ This matter consolidated the appeals of J.S. and G.P.B..

² In that case, J.S. sought to expunge two convictions for selling marijuana to an undercover police officer. The underlying offenses occurred over a five-day period. G.P.B. sought to expunge records for offenses that occurred over the course of two days in a scheme to offer illegal gifts to local officials. He pled guilty to four counts in a single proceeding.

resolved by one conviction, expungement is only available for a single ‘crime’” Ibid. In conclusion, the Supreme Court noted that “[i]f the Legislature determines that expungement should be available to offenders . . . convicted of multiple crimes that occurred in close succession but not concurrently, it has the authority to amend N.J.S.A. 2C:52-2 to effect that intent.” Id. at 78. Effective October 1, 2018, the Legislature did just that.

Amendments made in 2018 specifically address the expungement of “multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses” if they are “interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction” N.J.S.A. 2C:52-2(a). According to the Legislative statement submitted to accompany the bill, the purpose of the 2018 amendments was to revise procedures to increase the number of convictions which may be expunged. Legislative Statement to S. 3307 (Jun. 15, 2017). The Legislature made this amendment recognizing that, “[u]nder the current law, a person is generally limited to expunging one criminal conviction . . . and there is no ability to expunge a potentially higher number of convictions based on crimes or offenses that were closely related in circumstances or in time.” Ibid. The Legislature sought to remedy that problem.

The Legislature’s expressed intent to increase the number of convictions eligible for expungement is consistent with the general purpose of the expungement statute to “eliminate the collateral consequences imposed upon otherwise law-abiding citizens who had a minor brush with the criminal justice system.” In re Kollman, 210 N.J. 557, 568 (2012). Indeed, it is designed to provide relief to the “reformed offender who has led a life of rectitude and disassociated himself with unlawful activity” N.J.S.A. 2C:52-32. Moreover, the use of descriptive, rather than definitive words, in N.J.S.A. 2C:52-2 indicates a willingness by the Legislature to permit some flexibility in the granting of these motions. If the Legislature intended a narrow interpretation of the expungement statute, it would not have sought to amend the restrictions imposed by J.S.

In the present case, petitioner engaged in the unlawful sale of narcotics to a “friend” and undercover officer for a period of six weeks when he was nineteen years old.³ He admits, and the State does not dispute, that he engaged in this

³ The October 2018 amendments to N.J.S.A. 2C:52-2 also expanded the expungement eligibility for prior convictions for the sale, distribution or possession with intent to sell marijuana. The bill was amended to establish general expungement eligibility for low-level offenders of these offenses. Additionally, those individuals who are under the age of twenty-one at the time of the offense are granted a special eligibility to make an application after one year from the date of convictions or termination of probation or parole, whichever is later. In so doing, the Legislature sought to distinguish low level marijuana offenses, and young offenders, in the expungement process. Here,

activity as a result of his own addiction to narcotics which began at the age of twelve. Therefore, the court finds that petitioner's convictions are "interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time." N.J.S.A. 2C:52-2(a). More specifically, although these events took place over the span of six weeks, they all involve the sale of narcotics to which petitioner was addicted. As noted in the colloquy above, petitioner sold these particular narcotics, not for financial gain, but rather to support his own habit. This is further substantiated by the fact that petitioner sold these narcotics to an individual who he believed to be a "friend."⁴ Unbeknownst to petitioner, the "friend" was accompanied by an undercover officer; however, the record does not suggest that petitioner was a wholesale distributor of narcotics or in fact, did distribute to parties outside of his friends. The documents submitted do not indicate that police sought or executed a search warrant on petitioner or that any narcotics were recovered outside of the small amounts purchased by the "friend" and undercover officer. As a result, the manner in which the distribution was

petitioner was convicted of distribution of less than one ounce of marijuana, which falls within the amended statute, and was under twenty one years old at the time of the offense; however, he was also convicted of distribution of ecstasy which makes him ineligible under this particular subsection, N.J.S.A. 2C:52-2(c)(1).

⁴ The friend was a confidential informant for the police.

accomplished suggests that the events were interdependent or closely related as the police relied on the “friend” to make the introduction and purchase.

Additionally, the time frame here is “comparatively short” when one considers the length of petitioner’s criminal behavior (six weeks) versus the time period that he has been law-abiding since his conviction (almost twenty years). Moreover, although this term is undefined in the statute, case law suggests that term “comparatively short” applies to a wide range of situations. For example, harkening back to In re Fontana, the court used the term “comparatively short time” in reference to a series of crimes committed between February 27, 1962 and March 8, 1962. 146 N.J. Super. at 266. In contrast, the Appellate Division had previously used the term “comparatively short” period of time to reference one year when discussing custody arrangements in a divorce matter. Sheehan v. Sheehan, 51 N.J. Super. 276, 294 (App. Div. 1958). Although there is a wide-range acknowledged by the courts, petitioner’s case clearly falls within the permissible perimeters.

Moreover, petitioner has demonstrated to the satisfaction of this court that he is a “reformed offender.” After pleading guilty to four offenses, petitioner successfully completed probation, obtained substance abuse⁵ and mental health

⁵ As a side note, effective October 1, 2018, the Legislature also passed a comprehensive Drug Court Expungement. These amendments to N.J.S.A. 2C:35-14 permit automatic relief to those individuals who successfully complete

therapy, and achieved a Master's degree. He has led a law-abiding life for almost twenty years. Petitioner has demonstrated a willingness and ability to be a productive member of society but is hindered by his convictions. For these reasons, the court finds that expungement is in the public's best interest and is consistent with legislative intent. Petitioner's motion for expungement is GRANTED.

the drug court program. The purpose behind this statute aligns with that of the general expungement statute but provides a further benefit to those individuals whose substance abuse problems underlie their criminal behavior. Unfortunately, Drug Court was not available in Monmouth County in 2000 when petitioner was charged with the within offenses. Therefore, despite a well-documented history of substance abuse dating back to a very young age, petitioner was not afforded the opportunity of special probation and a subsequent automatic expungement under N.J.S.A. 2C:35-14. Independently, petitioner addressed his substance abuse and mental health problems and committed to a life of recovery. Based on the proofs he submitted to the court, it is likely that he would have been eligible for the drug court expungement had it been available to him. He should not be penalized since the program did not exist at the time he needed substance abuse treatment.