

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION, CRIMINAL PART
INDICTMENT NO. 17-09-1231

STATE OF NEW JERSEY,

Plaintiff,

v.

LEONARDO MARTINEZ
GOLLES,

Defendant.

APPROVED FOR PUBLICATION

February 27, 2020

COMMITTEE ON OPINIONS

Decided: June 28, 2019

James V. Santulli, Assistant Prosecutor, for plaintiff (Mark Musella, Bergen County Prosecutor, attorney).

Michael James DeBlis, III, for defendant (DeBlis Law, attorneys).

GUIDA, J.S.C.

The court addresses the novel issue as to whether the Criminal Justice Reform Act (CJR) (N.J.S.A. 2A:162-15 to -26) vests a person with the right to remain free on pretrial release after having entered a plea of guilty, but before the imposition of sentence.

I.

On February 10, 2017, defendant, a resident of Louisiana, was charged in

Complaint Warrant 0290-2017-000084 with the crime of possession with intent to distribute marijuana in a quantity greater than twenty-five pounds.

On February 14, 2017, the court entered an order denying the State's motion to detain defendant pursuant to N.J.S.A. 2A:162-19 and he was released on home arrest with electronic monitoring (PML3+ EM), while residing in his home in the State of Louisiana.

On May 10, 2017, the court denied a second detention motion and modified the pretrial release conditions to eliminate electronic monitoring. A grand jury handed up a two-count indictment charging defendant and two co-defendants with possession of marijuana in a quantity of twenty-five pounds or more, with the intent to distribute same, a first-degree offense (count one), and possession of more than fifty grams of marijuana, a fourth-degree offense (count two). Defendant and co-defendants were arraigned on the charges stated in the indictment. On December 17, 2018, defendant entered a plea of guilty to count one of the indictment, as amended to a second-degree offense. In consideration of the guilty pleas, the State agreed to recommend a maximum sentence in the third-degree range (five years in state prison) with counsel free to ask for the minimum three-year term. Defendant requested an extended sentencing date so as to "put his life in order" before commencing the custodial term. The court set April 5, 2019, as the sentence date and, in its discretion,

continued defendant on pretrial release.

Defendant's attorney wrote to the court requesting an adjournment of the sentencing to June 2019 because "[defendant] provides financial support to his family in Cuba and to his mother with whom he resides. He would like to add to savings to continue his financial support to his family while he is incarcerated." The letter to the court made no mention of defendant's intent to retract the guilty plea entered two months earlier. The court granted the adjournment to June 7, 2019, over the objection of the State. Defendant subsequently requested another adjournment of the sentence date to June 14, 2019, which the court granted, again over the objection of the State.

On May 30, 2019, defendant's attorney wrote to the court requesting the June 14, 2019, sentencing date be "converted to a status conference" and defendant's appearance be waived since he "wishes to withdraw his guilty plea." That request was denied.

Defendant discharged his attorney and retained a new attorney who filed a motion to withdraw the guilty plea. The motion was filed without a transcript of the plea allocution and without a brief setting forth the legal basis for the withdrawal of the guilty plea. Instead, defendant's new attorney submitted a certification, signed by an attorney in the firm, alleging defendant "was pressured by . . . his [prior] attorney who threatened him to plead guilty,

otherwise he would be facing a ten-year sentence with a forty-month period of parole ineligibility." Those allegations were neither signed nor attested to by defendant.

On June 14, 2019, defendant appeared in court with his new attorney, requesting an adjournment of the sentence until the return date of the motion to vacate the guilty plea. Defendant also requested to remain free on pretrial release pending the return date of the motion. The State objected to the adjournment, but, alternatively, argued defendant be remanded pending sentence or disposition of the motion to vacate the plea.

The court exercised its discretion to remand defendant for the following reasons: (1) at the time the guilty plea was entered in December 2018, an extended sentence date was afforded to defendant at his request to put his personal affairs in order before commencing the custodial term; (2) the court granted an additional two-month adjournment of the sentence at defendant's request, and over the objection of the State; (3) defendant filed the motion to vacate the plea, albeit deficient, more than five months after entering the guilty plea; (4) despite objection from the State, the court did not impose sentence on June 14, 2019, notwithstanding the motion to vacate the plea was deficient; (5) the failure to file a motion to vacate until five months after the plea allocution constitutes a deliberate and unreasonable delay; (6) the alleged grounds to vacate

the plea, as certified to by defendant's attorney, may require testimony from his prior attorney and the date to conduct such hearing, after the briefs and opposition certifications are filed, will probably not occur until nine months after the guilty plea was entered; (7) defendant did not demonstrate a substantial likelihood the motion to vacate the plea would be granted; (8) except for the allegation made by defendant's current attorney that defendant was coerced by his prior attorney to enter a guilty plea, defendant did not address the factors set forth in State v. Slater, 198 N.J. 145 (2009); (9) the prosecutor objected to the continued release of defendant; and (10) defendant did not present clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the community.

II.

Effective January 1, 2017, the New Jersey State Constitution was amended to remove the right to bail and now provides:

All persons shall, before conviction, be eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedures, terms, and

conditions applicable to pretrial release and the denial thereof authorized under this provision.

[N.J. Const., art. I, § 11.]

The CJR authorizes the State to move for detention pending trial if a defendant is charged with certain enumerated offenses and for the pretrial release of a defendant provided the court is satisfied the conditions of release would reasonably assure the defendant's appearance, protect the community, and prevent the defendant from obstructing justice. N.J.S.A. 2A:162-19. While the statute provides criteria for setting pretrial release conditions and established the standards for detention, there is no provision in the statute for release pending sentence.

CJR was modeled after the federal pretrial release statute (18 U.S.C. § 1342) and the District of Columbia pretrial release statute (D.C. Code § 23-1322), both of which provide for release pending sentence.

18 U.S.C. § 3143 provides:

(a) Release or detention pending sentence.

. . . .

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 [18 USCS 3142] and is awaiting imposition or execution of sentence be detained unless –

(A)

(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

D.C. Code § 23-1325(b) provided as follows:

A person who has been convicted of an offense and is awaiting sentence shall be detained unless the judicial officer finds by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others. Upon such finding, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

CJR is silent with respect to the release of defendants after the entry of a guilty plea or a guilty verdict and prior to imposition of sentence as the legislature did not enact any provision addressing the issue.

When interpreting a statute, the court's duty is "to construe and apply the statute as enacted." DiProspero v. Penn., 183 N.J. 477, 492 (2005) (quoting In re Closing of Jamesburg High Sch., 83 N.J. 540 (1980)). The court therefore "should not 'resort to extrinsic interpretative aids' when 'the statutory language

is clear and unambiguous, and susceptible to only one interpretation.'" Ibid. (quoting Lozano v. Frank DeLuca Constr., 178 N.J. 513, 522 (2004)).

Likewise, courts cannot add to the statute words or provisions that are not contained therein. Instead, a court must, where a statute is clear on its face, construe the statute as enacted. Daidone v. Buterick Bulkheading, 191 N.J. 557, 565 (2007) (quoting DiProspero, 183 N.J. at 492); Anderson v. Dir., Div. of Taxation, 24 N.J. Tax 141 (Tax Ct. 2008).

The New Jersey Legislature chose not to adopt any provision for the release of a defendant pending sentencing from the federal or D.C. statutes when it enacted CJR. Therefore, absent such language in CJR, the clear legislative intent was not to establish a separate procedure for the release of a defendant pending sentence after entry of a guilty plea or conviction by a jury.

While the statute is silent on the issue, Rule 3:21-4(a) remains in full force and effect, amended by the Court on July 28, 2017, to be effective September 1, 2017. The amendment replaced the word "bail" with the words "conditions of release." Rule 3:21-4(a) directs that: "[S]entence shall be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter the conditions of release."

CJR does not vest a person with any substantive right to release pending sentence nor does it establish procedures for release after conviction but prior

to sentencing. Therefore, the Court's authority as set forth in Rule 3:21-4(a) prevails over the "silence of the statute" on this issue. Winberry v. Salisbury, 5 N.J. 240, 255 (1950); Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 161 (2003) (Zazzali, J., concurring in part and dissenting in part) (holding that if the statute in question involves procedural as opposed to substantive rights, the court rule prevails).

The State is not required to file a motion to detain nor does CJR establish a procedure for a defendant to move to continue the conditions of release pending sentence. Thus, the trial court may, in the exercise of its discretion pursuant to Rule 3:21-4(a), either remand defendant pending the imposition of sentence or continue defendant on pretrial release.