

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." 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-1142-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES WILLIAMS,
a/k/a CARL WILSON,

Defendant-Appellant.

Submitted May 5, 2022 – Decided May 13, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Indictment No. 19-12-0771.

Joseph E. Krakora, Public Defender, attorney for
appellant (Alison Gifford, Assistant Deputy Public
Defender, of counsel and on the brief).

James O. Tansey, First Assistant Prosecutor of Union
County, Designated Prosecutor for the purpose of this
appeal, attorney for respondent (Meredith L. Balo,
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Charles Williams appeals from a November 17, 2020 judgment of conviction entered after the trial court denied his motion to dismiss the indictment against him and granted the State's motion to amend. We affirm.

In 2005, defendant pled guilty to second-degree sexual assault, N.J.S.A. 2C:14-2(b). As part of his sentence, defendant was subject to Megan's Law, N.J.S.A. 2C:7-1 to -23, and parole supervision for life (PSL).

Defendant moved to a motel in Elizabeth and the Department of Social Services paid for his room from February 5 to 8, 2018. On February 5, pursuant to his Megan's Law obligations, he completed his annual verification and registration requirement by registering the address of the motel with the Elizabeth Police Department. He signed an acknowledgment the same day, stating:

I understand that if I move, I must notify the local police department where I am registered, and the police department where I intend to live, at least [ten] days before I move. I must then re-register in my new town. Verification of that address is due the year after the re-registration date.

On March 12, 2018,¹ a Union County Prosecutor's Office detective responded to defendant's registered address and found he no longer lived there.

¹ The pre-sentencing report incorrectly notes this date as March 12, 2019. It also incorrectly states defendant notified Elizabeth Police on March 16, 2019.

On March 15, 2018, the detective spoke to defendant's parole officer and learned defendant moved to a shelter in Newark. The parole officer indicated he would tell defendant to keep up with his registration obligations by notifying Elizabeth Police of any move and tell him to register with the Newark Police Department as soon as possible. The next day, defendant went to the Elizabeth Police Department and advised of his move to the Newark address.

On July 26, 2018, defendant was incarcerated on a PSL violation. On March 6, 2019, Elizabeth Police learned he did not keep up with his February 5, 2019 annual address registration and verification and issued a complaint charging him with third-degree failure to register as a sex offender – notify of change of address within ten days, N.J.S.A. 2C:7-2(d)(1).

On December 4, 2019, a grand jury indicted defendant on the same offense. The indictment read that on February 5, 2019, defendant "knowingly fail[ed] to register as a sex offender by moving from his registered address without re-registering his new address with the Elizabeth Police Department; contrary to the provisions of N.J.S.A. 2C:7-2[(d)](1)"

Defendant moved to dismiss the indictment and the State requested an amendment to fix the alleged offense date to be "February 5, 2018 through February 5, 2019[,]" or "February 5, 2018 through July 25, 2018." It argued the

amendment would "simply correct the lack of clarity" found in the original indictment.

Defendant argued an amendment was inappropriate and would cause the indictment to fail as a matter of law because it was unclear whether he was charged under N.J.S.A. 2C:7-2(d)(1) or (e). He claimed the indictment was defective because it failed to establish a time frame for the offense, and the State failed to make out a prima facie case because defendant was incarcerated in February 2019 and unable to notify police of his change of address.

The motion judge granted the State's request to amend the date in the indictment from "February 5, 2019" to "on or about February 5, 2018 through July 25, 2018." The judge concluded the amendment would give defendant adequate notice of the offense because the change was not substantive, and the elements of the offense remained the same. He found the "indictment provides [defendant] with adequate notice of the sole offense he is charged with committing, namely [N.J.S.A.] 2C:7-2(d)(1). Perhaps there was a basis for charging him with a separate and distinct offense of [N.J.S.A.] 2C:7-2(e). . . . [B]ut that is not the charge here." Furthermore, defendant would not be prejudiced and would have an opportunity to defend the amended indictment.

In September 2020, preserving his right to appeal, defendant pled guilty to violating N.J.S.A. 2C:7-2(d)(1), admitting he did not notify his parole officer in advance of his change of address although he was aware of the obligation to do so for several years. The court sentenced defendant in accordance with the plea agreement to time served, no probation, and statutory fines.

Defendant raised the following arguments on appeal:

I: THE TRIAL COURT ERRED IN AMENDING THE INDICTMENT INSTEAD OF GRANTING DEFENDANT'S MOTION TO DISMISS. ALTERNATIVELY, EVEN IF THE AMENDMENT WAS PROPER, THE AMENDED INDICTMENT MUST STILL BE DISMISSED BECAUSE IT FAILS TO MAKE OUT A PRIMA FACIE CASE OF A VIOLATION.

A. The Trial Court Erred in Amending the Indictment Instead of Granting Defendant's Motion to Dismiss.

B. Alternatively, Even if the Amendment was Proper, the Amended Indictment Must Still be Dismissed Because it Fails to Make out a Prima Facie Case of a Violation.

We review a decision to amend an indictment for an abuse of discretion standard. State v. Reid, 148 N.J. Super. 263, 266 (App. Div. 1997). We apply the same standard of review where a defendant moves to dismiss an indictment. State v. Tringali, 451 N.J. Super. 18, 27 (App. Div. 2017). "A trial court

decision will constitute abuse of discretion where 'the "decision [was] made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'"" State v. Triestman, 416 N.J. Super. 195, 202 (App. Div. 2010) (alteration in original) (quoting United States v. Scurry, 193 N.J. 492, 504 (2008)).

"It is axiomatic that an indictment 'must charge the defendant with the commission of a crime in reasonably understandable language setting forth all . . . critical facts and . . . essential elements' of the alleged offenses so as to enable defendant to prepare a defense." State v. Salter, 425 N.J. Super. 504, 514 (App. Div. 2012) (quoting State v. Wein, 80 N.J. 491, 497 (1979)). Rule 3:7-4 permits an amendment of an indictment to "correct an error in form or the description of the crime intended to be charged . . . provided that the amendment does not charge another or different offense from that alleged and the defendant will not be prejudiced thereby in his or her defense on the merits." "Courts may generally grant leave to amend a date in an indictment, but the court may not do so where such an amendment goes to the core of the offense or where it would prejudice a defendant in presenting his or her defense." State v. Dorn, 233 N.J. 81, 94 (2018). "The fundamental inquiry is whether the indictment substantially misleads or misinforms the accused as to the crime charged. The key is

intelligibility." Wein, 80 N.J. at 497. The indictment must "preclude the substitution . . . of an offense which the grand jury did not in fact consider or charge." State v. LeFurge, 101 N.J. 404, 415 (1986) (quoting State v. Boratto, 80 N.J. 506, 519 (1979)).

Pursuant to these principles, we are convinced the date amendment did not alter the nature of the offense charged in the indictment, namely violating N.J.S.A. 2C:7-2(d)(1). Under the statute, defendant had to notify Elizabeth Police of his move or register with Newark Police ten days before his move. Defendant failed to timely notify Elizabeth Police of his move to Newark in March 2018. Contrary to defendant's arguments, his case is unlike Dorn and State v. Catlow, 206 N.J. Super. 186, 194-95 (App. Div. 1985), because the amendment did not alter the facts or change the degree of the offense charged.

Further, the indictment did not conflate N.J.S.A. 2C:7-2(d)(1) and (e). As the motion judge found, aside from the date, the indictment "charged [defendant] with knowingly failing to register as a sex offender by moving from his registered address without reregistering his new address . . . [a]nd there's a statutory citation to [N.J.S.A. 2C:7-2](d)(1)" This is markedly different than the distinct language of N.J.S.A. 2C:7-2(d)(e), which requires an offender

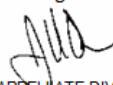
to verify their address annually and does not reference a move. The motion judge did not abuse his discretion.

For these reasons, we likewise conclude the judge did not err by denying defendant's motion to dismiss the indictment. A judge should not dismiss an indictment except on the clearest and plainest ground, where it is manifestly deficient or palpably defective. State v. Hogan, 144 N.J. 227, 228-29 (1996). "As long as an indictment alleges all of the essential facts of the crime, the charge is deemed sufficiently stated." State v. Schenkolewski, 301 N.J. Super. 115, 137 (App. Div. 1997). "The quantum of this evidence . . . need not be great." Ibid.

The indictment met the elements of N.J.S.A. 2C:7-2(d)(1). Under either iteration it clearly established a prima facie case of a violation of the statute because defendant moved from Elizabeth to Newark without notifying Elizabeth Police.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION