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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-1679-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KEVIN D. WATERS,

Defendant-Appellant.

Submitted January 17, 2023 – Decided February 27, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment Nos. 20-01-0015 and 20-01-0049.

Weinstock Levin, attorney for appellant (Oded M. Weinstock, on the brief).

William Reynolds, Atlantic County Prosecutor, attorney for respondent (Katrina M. Koerner, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Kevin D. Waters appeals from an October 13, 2021 trial court order affirming the denial of his application for admission into a pre-trial intervention (PTI) program. Due to our Supreme Court's recent decision in State v. Gomes, ___ N.J. ___ (2023), we remand to the trial court for proceedings consistent with that opinion.

In 2007, defendant was charged with possession of less than fifty grams of marijuana. He began a conditional discharge diversionary program in 2009 and, after a year of participating in the program, the charge was dismissed.

Ten years later, in August and September of 2019, defendant was charged with third-degree burglary, N.J.S.A. 2C:18-2(a)(1); third-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a); fourth-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1); third-degree terroristic threats, N.J.S.A. 2C:12-3(b); and fourth-degree violation of a domestic violence court order, N.J.S.A. 2C:29-9(b)(1).

In April 2021, after the Legislature adopted the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 24:61-31 to -56, decriminalizing possession of marijuana in New Jersey, defendant applied for admission into a PTI program. He received a letter from the program director on June 9, 2021, denying his application. According to the letter, he was disqualified because of his prior conditional discharge. Five

days later, defendant appealed the denial, and the trial court affirmed the program director's decision to reject defendant's application.

Defendant then signed a plea deal, pleading guilty to third-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a), and petty disorderly persons harassment, N.J.S.A. 2C:33-4(a). He was given a three-year suspended sentence and ordered to pay restitution for any damage or injury to the victim of the theft. He was also concurrently sentenced to pay fines and fees for the harassment conviction. All remaining counts or charges were dismissed. This appeal followed.

In Gomes, the Supreme Court held that people who received conditional discharges for marijuana offenses before the Legislature adopted CREAMMA "are no longer categorically precluded from future admission into PTI." ____ N.J. at ____ (slip op. at 5). "Instead," the Court explained, "prosecutors and reviewing courts must consider the merits of their PTI applications, without regard to the existence or circumstances of the earlier marijuana-related conditional discharges." Ibid.

Because defendant's conditional discharge was for possession of marijuana, we remand this matter to the trial court for further proceedings consistent with Gomes.

Remanded. 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