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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2937-21

IN THE MATTER OF
REGISTRANT R.K.
_____

APPROVED FOR PUBLICATION
May 30, 2023
APPELLATE DIVISION

Argued May 11, 2023 – Decided May 30, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. ML 991-800-17.

Fletcher C. Duddy, Deputy Public Defender, argued the cause for appellant R.K. (Joseph E. Krakora, Public Defender, attorney; Fletcher C. Duddy, of counsel and on the briefs).

Lauren H. Fox, Assistant Prosecutor, argued the cause for respondent State of New Jersey (John P. McDonald, Somerset County Prosecutor, attorney; Lauren H. Fox, on the brief).

The opinion of the court was delivered by

GEIGER, J.A.D.

Registrant R.K. appeals from the portion of a Law Division order that denied his motion to terminate his sex offender registration obligations imposed by Megan's Law, N.J.S.A. 2C:7-1 to -23. We find no merit in his argument and affirm.

The controlling facts are not in dispute. Following the entry of a guilty plea, on June 9, 2000, R.K. was convicted of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a), and an amended charge of disorderly persons lewdness, N.J.S.A. 2C:14-4(a). The underlying facts of the offenses are set forth in State v. R.K., 463 N.J. Super. 386, 393 (App. Div. 2020), which we incorporate by reference. R.K. was sentenced to a three-year term of probation conditioned on 194 days in jail (which equaled credit for time served), sex offender treatment, and a substance abuse evaluation and treatment. R.K. was placed on Community Supervision for Life (CSL), N.J.S.A. 2C:43-6.4.[1] By virtue of his conviction, he is subject to sex offender registration obligations under Megan's Law.

On April 4, 2001, R.K. was convicted of engaging in prostitution as a patron, N.J.S.A. 2C:34-1(b)(1), and ordered to pay fines and penalties, arising from an incident that took place on November 27, 2000. Importantly, this offense occurred less than seven months after he was convicted and sentenced for the third-degree endangering the welfare of a child.

[1] See L. 1994, c. 130, § 2. In 2003, N.J.S.A. 2C:43-6.4 was amended. L. 2003, c. 267, § 1. The 2003 amendment "replaced all references to 'community supervision for life' with 'parole supervision for life' [(PSL)]." State v. Perez, 220 N.J. 423, 437 (2015).

On February 20, 2004, R.K.'s probation was revoked based on violations for committing the disorderly persons offense of engaging in prostitution as a patron, being discharged unsuccessfully from counseling, failing to report to probation, violating a municipal ordinance, and failing to pay fines and penalties. R.K. was resentenced to a four-year prison term. The court applied aggravating factors three (risk of reoffending), six (prior criminal record), and nine (need to deter), N.J.S.A. 2C:44-1(a)(3), (6) and (9), and no mitigating factors. The court noted "the Avenel report indicated that the [underlying] offense represented a repetitive pattern of deviant behavior." In 2005, R.K. was transferred to the Adult Diagnostic and Treatment Center (Avenel) to serve the remainder of his sentence. On April 26, 2006, R.K. was discharged from Avenel upon serving his maximum sentence.[2] R.K. has not incurred any subsequent convictions that have not been vacated.[3]

On December 14, 2021, R.K. filed a motion to terminate his CSL and sex offender registration obligations in the same proceeding. In support of his motion, he submitted proof he completed sex offender counseling in 2018, and

[2] R.K. was not released prior to serving his full sentence despite the presumption of parole after serving one-third of a sentence. See N.J.S.A. 30:4-123.51.

[3] A 2012 conviction for violating CSL was vacated by consent in 2020, following our decision in R.K., 463 N.J. Super. at 416.

a 2006 substance abuse evaluation that found he did not need treatment. R.K. also submitted a psychosexual evaluation report of licensed clinical psychologist Ingrid N. Diaz, Ph.D., that included using four risk of sexual recidivism instruments to assess R.K.'s risk of sexually reoffending.

Dr. Diaz found "no evidence of deviant sexual arousal or antisocial behaviors at the time of this assessment." She noted R.K. scored "well above average risk" on one risk assessment instrument but in the "low range" on two others, placing him at an average "risk of reoffending . . . for individuals convicted of sexual offenses." Dr. Diaz opined that R.K. "presents a low risk of engaging in future acts of sexually inappropriate behaviors. [R.K.] is not likely to pose a threat to others in the community. Therefore, his risk for sexually reoffending is not likely to increase if he is terminated from the Megan's Law registry."

The State argued that R.K. does not meet the criteria for termination of sex offender registration obligations and that CSL should not be terminated because he remains a danger to the safety of others as indicated by his criminal history and his violation of probation.

The judge denied R.K.'s application to terminate his Megan's law registration requirements. The same order granted his CSL termination request. The State has not appealed the termination of CSL.

In his written statement of reasons, the judge stated:

> The court is obligated to enforce the will of the Legislature. Because [R.K.] committed an offense within [fifteen] years following his conviction for endangering the welfare of a child, he is forever barred from release from Megan's Law. That is the plain language of the statute. There is no escape clause from this statutory requirement. See In the Matter of Registrants A.D., J.B., and C.M., 441 N.J. Super. 403 (App. Div. 2015)[, aff'd o.b., 227 N.J. 626 (2017)].
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> The fact that [R.K.] was later incarcerated for a violation of probation and suffered no offense convictions for at least [fifteen] years after his release from prison is irrelevant to the analysis of whether he was convicted of an offense after the conviction in question in 1999.

This appeal followed.

R.K. raises the following point for our consideration:

> THE PLAIN LANGUAGE OF N.J.S.A. 2C:7-2(f) MAKES R.K. ELIGIBLE TO TERMINATE HIS MEGAN'S LAW REGISTRATION OBLIGATIONS SINCE HE HAS NOT COMMITTED AN OFFENSE WITHIN 15 YEARS FOLLOWING HIS RELEASE FROM PRISON IN 2006 FOR THE SEXUAL OFFENSE THAT PLACED HIM ON MEGAN'S LAW.

We find this argument unavailing given R.K.'s conviction for engaging in prostitution after his conviction and sentencing for endangering the welfare of a child and release into the community subject to Megan's Law. We reject R.K.'s tortured reading of the clear and unambiguous language of N.J.S.A. 2C:7-2(f), which is directly contrary to the statute's interpretation by a unanimous Supreme Court in In re Registrant H.D., 241 N.J. 412 (2020).

N.J.S.A. 2C:7-2(f) allows Megan's Law registrants to petition the Law Division "to terminate the [registration requirement] obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others." In H.D., the Court "determine[d] whether subsection (f) permits the termination of sex offender registration for registrants who commit an offense during the fifteen years following conviction or release but who has then remained offense-free for fifteen years." H.D., 241 N.J. at 415.

We review an issue of statutory interpretation "de novo, unconstrained by deference to the decisions of the trial court." State v. Grate, 220 N.J. 317, 329 (2015). We "must follow the well-settled rules of statutory construction 'to determine and give effect to the Legislature's intent.'" H.D., 241 N.J. at 418

(quoting N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 20 (2013)). "Where 'a statute's plain language is clear, we apply that plain meaning and end our inquiry.'" Ibid. (quoting Garden State Check Cashing Serv., Inc. v. Dep't of Banking & Ins., 237 N.J. 482, 489 (2019)). "Additionally, we interpret statutes 'in context with related provisions,' DiProspero v. Penn, 183 N.J. 477, 492 (2005), since 'the context is [often] determinative of the meaning,' McDonald v. Bd. of Chosen Freeholders, 99 N.J.L. 170, 172 (E. & A. 1923)." Id. at 418-19 (alteration in original).

N.J.S.A. 2C:7-2(a) makes registration mandatory for certain individuals who have been convicted of "a sex offense." N.J.S.A. 2C:7-2(b) "enumerates the sex offenses that require registration." H.D., 241 N.J. at 419. R.K. does not dispute that his conviction for third-degree endangerment of a child made registration mandatory. In turn, N.J.S.A. 2C:7-2(f) sets forth "conditions under which registrants may seek to terminate their registration requirements." Id. at 420. As we have noted, a Megan's Law registrant may apply "to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others." N.J.S.A. 2C:7-2(f).

"Reading subsection(f) as part of N.J.S.A. 2C:7-2," the Court found

> its language unambiguous. It plainly refers to the conviction or release that triggers the registration requirement established in subsection (b) and detailed in subsection (c). The mechanism for registration relief set forth in subsection (f) is linked both by logic and by language to the initial mandate of registration which stems from a conviction for certain offenses. . . . In doing so, the Legislature tethered the registration relief offered in subsection (f) to the same underlying sex offense that marked the starting point of the registration requirement.
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> . . . .
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> The PSL provisions demonstrate that the Legislature knows how to tie Megan's Law requirements to non-Megan's Law offenses when it chooses; it did not choose to do so in subsection (f). Under the plain language of subsection (f), the fifteen-year period during which an eligible registrant must remain offense-free to qualify for registration relief commences upon his or her conviction or release from confinement for the sex offense that gave rise to his or her registration requirement.
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> [H.D., 241 N.J. at 421-23.]

The Court recognized the use of "any" "acknowledges that not all sentences of imprisonment will be the same and makes it clear that the fifteen-year clock will not start until release, no matter how long or short the period of imprisonment." Id. at 421. Here, R.K. was sentenced to a term of probation conditioned upon 194 days in jail, which he had already served at the time of

sentencing. Thus, he was released from jail on June 9, 2000, the day he was sentenced. Within months, R.K. committed the new offense of engaging in prostitution as a patron, was convicted, and was sentenced. This led, in part, to R.K. being found in violation of probation, resulting in his being resentenced to a four-year prison term. The violation of probation was not a new crime–it was a violation of his terms of probation that were part of his prior sentence. Accordingly, his probation was terminated, and he was resentenced to a prison term with credit for time already served. However, the new "offense" of engaging in prostitution was committed after he was convicted and originally sentenced on the endangering the welfare of a child offense, and after he was initially released from incarceration after serving 194 days in jail.

By the plain language of N.J.S.A. 2C:7-2(f), at the moment R.K. committed the new offense of engaging in prostitution on November 27, 2000, he was permanently and categorically ineligible for termination of his sex offender registration requirements. The fact that he was subsequently found to have violated probation, in part due to his engaging in prostitution, leading to his being resentenced to a four-year prison term on the endangerment of a child conviction, which he has now served, did not somehow vacate his permanent ineligibility for termination of Megan's Law registration requirements that

occurred the moment he committed the prostitution offense. Nor did resentencing restart the fifteen-year clock for eligibility for termination of his registration requirements. Unlike relief from CSL,[4] his commission of the new offense within fifteen years of the predicate offense permanently prohibits him from termination of the registration requirements. R.K.'s reliance on the statutory phrase, "whichever is later," which he takes out of context, is misplaced. That phrase does not change our analysis.

Finally, R.K. argues that courts cannot resort to maxims of statutory interpretation if the language of the statute is clear and unambiguous. Ordinarily, that is correct. We recognize that courts must not "rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." State v. Frye, 217 N.J. 566, 575 (2014) (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)). N.J.S.A. 2C:7-2(f) is clear and unambiguous. H.D., 241 N.J. at 421. "If, however, the [c]ourt determines that 'a literal interpretation would create a manifestly absurd result, contrary to public policy, the spirit of the law should

[4] See H.D., 241 N.J. at 422 ("Under N.J.S.A. 2C:43-6.4(c), individuals may apply for PSL relief 'upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later.'").

control.'" Frye, 217 N.J. at 575 (quoting Turner v. First Union Nat'l Bank, 162 N.J. 75, 84 (1999)). In this instance, R.K.'s contention that revocation of probation and resentencing to prison somehow extinguished his permanent ineligibility for the relief he now seeks is without question an absurd result. As a matter of common sense, R.K. should not be rewarded for his conduct that violated probation, including his prostitution conviction, which warranted revocation of probation and a prison term.

Our analysis does not go beyond a literal interpretation of the statute or "rewrite" it as R.K. claims. On the contrary, it is R.K.'s argument that ignores the plain language of the statute rendering him ineligible for termination of Megan's Law registration requirements before he even set foot in prison. What happened after he committed the prostitution offense has no bearing on his permanent ineligibility for the relief he seeks. Instead, the clear and unambiguous language of N.J.S.A. 2C:7-2(f) compels the result we reach. Indeed, it is R.K.'s interpretation of the statute that would impermissibly create a manifestly absurd result that is contrary to established public policy and the spirit of Megan's Law.[5] R.K.'s argument to the contrary lacks sufficient merit

[5] See Doe v. Poritz, 142 N.J. 1, 93 (1995) ("The Legislature has determined that convicted sex offenders represent a risk to the public safety and that knowledge

to warrant further discussion. R. 2:11-3(e)(2). R.K.'s remedy, if any, is with the Legislature, not the courts. See A.D., 441 N.J. Super. at 424 (stating that "determining the conditions under which termination are appropriate is a decision for the Legislature to make").

Affirmed.

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

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of their identities and whereabouts is necessary for protection of the public."). As further noted by the Court, the Legislature concluded that some convicted sex offenders pose "a realistic risk" of reoffending, "and knowledge of their presence a realistic protection against it." Id. at 13; accord N.J.S.A. 2C:7-1. The Court explained that "[o]n the critical issue of recidivism, the Legislature presumably adopted the view" that "'[a]s a group, sex offenders are significantly more likely than other repeat offenders to reoffend with sex crimes or other violent crimes, and that tendency persists over time.'" Id. at 16-17 (citation omitted). As a result, the Legislature imposed lifetime registration and community notification requirements, which remain in place unless the registrant meets the requirements of N.J.S.A. 2C:7-2(f). Id. at 21; accord State in the Interest of C.K., 233 N.J. 44, 47-48, 76-77 (2018); In re Registrant M.H., ___ N.J. Super. ___, ___ (App. Div. 2023). The lifetime registration and notification requirements continue even if the registrant commits a non-sexual offense within the statutory fifteen-year period. A.D., 441 N.J. Super. at 415, 419.