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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY  
OCEAN COUNTY  
LAW DIVISION, CRIMINAL PART  
INDICTMENT NO. 24-12-1941

STATE OF NEW JERSEY,

Plaintiff,

v.

EDWARD LYNCH, JR.,

Defendant.

APPROVED FOR PUBLICATION

February 12, 2026

COMMITTEE ON OPINIONS

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Decided: October 10, 2025

Shannon Chant-Berry, Assistant Prosecutor, attorney for plaintiff (Bradley D. Billhimer, Ocean County Prosecutor, attorney).

Clifford Yannone, attorney for defendant (Starkey, Kelly, Kenneally, Cunningham, Turnbach & Yannone, attorneys).

FRITCH, J.S.C.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

THIS MATTER comes before the court on a motion to challenge an evaluation of the defendant provided by the New Jersey Department of Corrections (DOC) pursuant to N.J.S.A. 2C:47-1 on August 8, 2025, which concluded that the defendant was not eligible for sentencing under the purview

of the New Jersey Sex Offender Act (NJSOA), N.J.S.A. 2C:47-1 to -10. The defendant's motion relies upon the recognized due process rights afforded to a defendant in challenging a classification by DOC that they are a persistent and compulsive sexual offender requiring sentencing under the NJSOA. The defendant seeks to apply these rights to challenge a DOC determination declining to make such a classification. The defendant asks this court to sentence him to a term of incarceration to be served at the Adult Diagnostic and Treatment Center (ADTC) for sex offender treatment in the absence of a DOC recommendation that the defendant meets the statutory requirements for such a sentence.

On May 19, 2025, the defendant pled guilty to count one of Indictment 24-12-1941, charging him with Distribution of Child Pornography, first degree, in violation of N.J.S.A. 2C:24-4B(5)(A)(1). In exchange for the defendant's plea, the State agreed to seek a sentence of ten years New Jersey State Prison, with mandatory ten years parole ineligibility, parole supervision for life, and Megan's Law registration, pursuant to N.J.S.A. 2C:7-1 to -23. Following the entry of this plea, the court referred the defendant to the DOC for a complete psychological evaluation on May 23, 2025, pursuant to N.J.S.A. 2C:47-1. On August 8, 2025, the DOC submitted the results of this evaluation (the Evaluation). The Evaluation, prepared by Andrew Greenberg, Psy.D., a forensic

mental health clinician with the ADTC at Avenel, concluded that:

Based on a review of the available record as well as information solicited from [the defendant] during this examination, there is evidence of repetition for statutory purposes as [the defendant] was viewing numerous items of CSEM [(child sexual exploitation material)] over an extended period of time. The element of compulsion is less clear. [The defendant's] offense behavior appears influenced b[y] a chemically intoxicated state caused by crack cocaine, which he noted smoking habitually for a period of approximately five years, during the period in his life he was engaging in the instant offense behavior. [The defendant] denied any interest in CSEM, sexual or otherwise, prior to his using crack cocaine. When all relevant factors related to this case are considered, there is insufficient evidence to conclude [the defendant's] offense behavior was in response to a compulsion independent of the influence of crack cocaine or other factors. Therefore, he is not eligible for sentencing under the purview of the [NJSOA].

The defendant, through counsel, filed the present motion on October 2, 2025, contending that, despite Dr. Greenberg's assessment in the Evaluation, there "is proof by a preponderance of the evidence that the defendant's conduct is characterized by a pattern of repetitive and compulsive behavior" and that they "must be sentenced to the [ADTC] pursuant to N.J.S.A. 2C:47-3(b)." The State declined to file a response and took no position with respect to the defendant's motion. On October 10, 2025, the court heard oral argument from the defendant.

### LEGAL ANALYSIS

Pursuant to N.J.S.A. 2C:47-1, the court must order the DOC to complete

a psychological examination of the offender for all persons convicted of enumerated sexual offenses, including violations of N.J.S.A. 2C:24-4B(5)(A)(1), except where the offender is to be sentenced to a term of life imprisonment without parole. The defendant pled guilty to a violation of N.J.S.A. 2C:24-4B(5)(A)(1) on May 19, 2025, and the court ordered the appropriate evaluation by the DOC pursuant to N.J.S.A. 2C:47-1 on May 23, 2025. The purpose of this evaluation was to determine if the offender's conduct was characterized by a pattern of repetitive, compulsive behavior and, if it was, a determination of the offender's amenability to sex offender treatment and willingness to participate in such treatment.

Where the DOC's evaluation reveals an offender's conduct is characterized by a pattern of repetitive compulsive behavior and that the offender is amenable to sex offender treatment and willing to participate in such treatment, the relevant statute requires the court to make an independent determination "whether the offender's conduct was so characterized and whether the offender is amenable to sex offender treatment" and record its findings on the judgment of conviction. N.J.S.A. 2C:47-3(a). Upon making such a finding, the court shall, "upon the recommendation of the Department of Corrections" sentence the defendant to a term of incarceration to be served in the custody of the Commissioner of Corrections at the ADTC for sex offender

treatment or place the offender in probation with the requirement that they receive outpatient treatment as prescribed. N.J.S.A. 2C:47-3(b). Where, as here, the DOC's evaluation concludes that the offender's conduct is not characterized by a pattern of repetitive, compulsive behavior or that the offender is not amenable to sex offender treatment, the court "shall impose sentence in accordance with chapters 43, 44, and 45 and not as provided in [N.J.S.A. 2C:47-3]b." N.J.S.A. 2C:47-3(d).

The finding that an offender is "characterized by a pattern of repetitive and compulsive behavior" is "an essential prerequisite to sentencing an offender to [ADTC] for a program of specialized treatment." State v. Logan, 244 N.J. Super. 137, 140 (Law Div. 1990) (quoting Sentencing Manual for Judges (1988)). Because an offender's classification as a "repetitive" and "compulsive" sex offender under N.J.S.A. 2C:47-3(a) requires the offender to be sent to ADTC for a "program of specialized treatment for his mental condition," this classification has been found to "inflict a greater stigma" than that resulting from the conviction for a sexual offense. State v. Howard, 110 N.J. 113, 129 (1988). Ordinarily, the Due Process Clause does not give prisoners a recognized liberty interest in being assigned to a particular custody level or to have access to rehabilitative programs. Smith v. N.J. Dep't of Corr., 346 N.J. Super. 24, 29 (App. Div. 2001) (citing Jenkins v. Fauver, 108 N.J. 239, 249 (1987)). See also

Hluchan v. Fauver, 480 F. Supp. 103, 108 (D.N.J. 1979) (noting that “state prisoners have no right to be assigned to any particular custody level or to have access to rehabilitative programs”). Because of the greater stigma attached to a finding that one is a repetitive and compulsive sex offender, however, the New Jersey Supreme Court has determined that a positive finding and classification as a repetitive and compulsive sex offender implicates the offender’s liberty interest, and the making of such a finding requires some level of due process be afforded. Howard, 110 N.J. at 129 (citing N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 208 (1983)). See also State v. Horne, 56 N.J. 372, 375 (1970) (noting defendant has the right to challenge factors relied upon by sentencing court at sentencing). The “attenuated liberty interest implicated by an [ADTC] sentence” requires due process and a finding by the court by a preponderance of the evidence that a defendant is a “repetitive and compulsive sex offender.” Howard, 110 N.J. at 131. These constitutional safeguards “enure to the benefit of [a] defendant, due to the parole or liberty ramifications and stigma effect” of a positive finding that they are a repetitive and compulsive offender. Logan, 244 N.J. Super. at 142 (citing Howard, 110 N.J. at 127-30).

To preserve a defendant’s due process rights with respect to a possible ADTC sentence pursuant to N.J.S.A. 2C:47-3(a), the court rules require the court to provide a defendant with a copy of this evaluation, advise the defendant

of their opportunity to be heard on it, and afford the defendant an opportunity for a hearing prior to sentencing based on the evaluation. R. 3:21-3. Where the State intends to rely upon the results of this evaluation for a finding that a defendant is a “compulsive” and “repetitive” offender, and the court is sentencing the defendant pursuant to the provisions of N.J.S.A. 2C:47-3(b), the State bears the burden to support the finding that an offender is compulsive and repetitive and the defendant has the right to challenge the DOC’s findings before they are relied upon by the court to support an ADTC sentence. Horne, 56 N.J. at 376. These additional due process protections are required because, even if an ADTC sentence under N.J.S.A. 2C:47-3(b) is not more burdensome, it still differs in various ways from an ordinary criminal sentence for an offense. Id. at 377 (citing State v. Blanford, 105 N.J. Super. 56, 59-60 (App. Div. 1969)). As a result, a defendant is “entitled to a hearing to contest a positive finding” that they are a repetitive and compulsive offender and “may present evidence to the contrary and may convince the court that a sentence to [ADTC] is not warranted even if [the evaluation] finds him to be repetitive and compulsive.” Logan, 244 N.J. Super. at 142.

The statutory requirements for an ADTC sentence support this due process requirement by requiring the court to take the extra step following a finding by the DOC that an offender is a repetitive and compulsive offender, requiring the

court to make its own finding confirming that assessment on the record prior to imposing an ADTC sentence. N.J.S.A. 2C:47-3(a). A defendant is entitled to a hearing to challenge this determination that the statutory standards have been met to qualify them for ADTC sentencing under the NJSOA. Horne, 56 N.J. at 377.

In the present case, however, the defendant is not seeking to challenge a finding that he is a repetitive and compulsive offender but rather is seeking to challenge the opposite finding. Despite the findings in the Evaluation that he is not a repetitive and compulsive offender eligible for ADTC sentencing, the defendant avers that he is a repetitive and compulsive offender and seeks to be sentenced to ADTC. Defendant submitted a supporting evaluation by Howard Silverman, Ph.D., to support this claim. Although the court is not bound by the findings of the Evaluation and may be convinced that a sentence to ADTC is not warranted even if the Evaluation found that the defendant's behavior was compulsive and repetitive, the defendant's rights are limited to entitlement to a hearing to challenge a positive finding of the Evaluation that his conduct was compulsive and repetitive. Logan, 244 N.J. Super. at 142 (noting that due to the "parole or liberty ramifications and stigma effect" of a positive finding that an offender is repetitive and compulsive, offenders are "entitled to a hearing to contest a positive finding" of these evaluations and may present "evidence to

the contrary and may convince the court that a sentence to [ADTC] is not warranted even if [the evaluation] finds him to be repetitive and compulsive”).

Sentencing pursuant to the NJSOA permits the confinement of offenders to ADTC provided that specific criteria are satisfied: (1) the offender must be convicted of one of the Act’s enumerated offenses; (2) there must be a finding, following a psychological examination, that “the offender’s conduct was characterized by a pattern of repetitive, compulsive behavior”; (3) the offender must be both amenable to sex offender treatment and willing to participate in such treatment; and (4) following review, a judge must confirm the requisite findings. Williams v. N.J. Dep’t of Corr., 423 N.J. Super. 176, 181 (App. Div. 2011) (citing N.J.S.A. 2C:47-1; N.J.S.A. 2C:47-3(a)). While the court must confirm those findings of the DOC’s evaluation, it may not supplant those findings with its own contrary findings in sentencing a defendant to ADTC.

The statutory scheme that permits the court to sentence to ADTC requires the court to make its own independent determination to confirm a positive DOC finding that an offender is appropriate for ADTC sentencing, N.J.S.A. 2C:47-3(a), and the defendant is entitled to present evidence at a hearing to challenge a positive finding in a DOC evaluation before being sentenced to ADTC. Logan, 244 N.J. Super. at 142. Where the court does not concur with the DOC’s positive findings of compulsive and repetitive behavior, the prerequisites for an ADTC

sentence are not met, and the offender is not eligible for sentencing under the NJSOA. N.J.S.A. 2C:47-3(b) (requiring the court to find repetitive compulsive behavior and that the offender is amenable to and willing to participate in sex offender treatment before sentencing to an ADTC sentence). See Logan, 244 N.J. Super. at 142 (“The court is not bound by the ADTC finding and may sentence defendant to Avenel if the requisite findings are made.”) (citing N.J.S.A. 2C:47-3) (emphasis in original).

Although a court must confirm the findings of a DOC recommendation to ADTC sentencing, the court is not authorized to make its own independent recommendation for ADTC sentencing without a DOC recommendation for same. The Commissioner of Corrections is given broad discretion and authority, pursuant to N.J.S.A. 30:4-91.2, to “designate as a place of confinement any available, suitable, and appropriate institution or facility” and “at any time [to] transfer a person from one place of confinement to another.” The statutory scheme which permits ADTC sentencing is designed to afford treatment that is “directed only at specific offenders.” In re Civil Commitment of W.X.C., 204 N.J. 179, 186 (2010). The statute, by design, provides ADTC sentencing that is “geared only toward a particularized sex offender” but offenders who do not meet the essential “repetitive and compulsive” criteria are not eligible because “the statute itself is designed to address only that population of offenders.” Id.

at 198-99. This statutory framework requires the Commissioner of Corrections to make the determination of “whether the ADTC is a ‘suitable’ and ‘appropriate’ institution for the assignment of an inmate under N.J.S.A. 30:4-91.2.” Williams, 423 N.J. Super. at 186.

Where, as here, the DOC does not make a positive finding that an offender’s behavior is repetitive and compulsive, the statutory scheme does not permit the court to supplant that finding with its own findings that an ADTC sentence is nonetheless appropriate. N.J.S.A. 2C:47-3(a) expressly requires a finding by DOC that an offender’s conduct is repetitive and compulsive as a prerequisite for the court engaging in its own determination of whether the offender meets these requirements. Even after the court finds an offender’s conduct repetitive and compulsive and that the offender is amenable and willing to engage in sex offender treatment, the statute specifically requires the recommendation of DOC for the court to sentence the defendant to an ADTC sentence, stating:

If the court finds that the offender’s conduct was characterized by a pattern of repetitive, compulsive behavior and that the offender is amenable to sex offender treatment and is willing to participate in such treatment, the court shall, upon the recommendation of the Department of Corrections, sentence the offender to a term of incarceration to be served in the custody of the Adult Diagnostic and Treatment Center for sex offender treatment as provided in subsection h. of this section, or place the offender on probation with the

requirement, as a condition of probation, that he receive outpatient psychological or psychiatric treatment as prescribed.

[N.J.S.A. 2C:47-3(b) (emphasis added).]

While the defendant contends that, based upon their contrary psychological evaluations, the court may find the defendant's conduct is characterized by repetitive and compulsive behavior, he is willing to participate in treatment at ADTC, and must be sentenced to ADTC pursuant to N.J.S.A. 2C:47-3(b), the statutory language clearly requires the recommendation of the DOC as a mandatory prerequisite to an ADTC sentence. Although the court can disregard a recommendation for ADTC sentencing with an independent finding by the court that an offender is not compulsive and repetitive and not sentence to an ADTC sentence, the statute does not provide a means for the court to sentence a defendant to ADTC without the appropriate recommendation of the DOC. In other words, the court may find, independently, that an offender is not compulsive and repetitive and ineligible for an ADTC sentence even if the DOC evaluation finds otherwise, but the court may not supplant a DOC finding that an offender is not compulsive and repetitive and ineligible for an ADTC sentence with the court's finding of eligibility for such a sentence. The court may not sentence an offender to ADTC without the DOC's recommendation for same as the statute explicitly requires the DOC's recommendation as a

requirement for such sentencing. N.J.S.A. 2C:47-3(b). Even if the court held a hearing and concurred with the defendant that his conduct was repetitive and compulsive, the applicable statutes still require the DOC recommendation for this court to sentence the defendant to ADTC and there is no such recommendation in this case to permit the court to impose the sentence the defendant is seeking. Id.

### CONCLUSION

For the reasons detailed supra, although the applicable statutes allow for the court to disregard a positive DOC finding of repetitiveness and compulsiveness and sentence a defendant pursuant to the remaining sections of the criminal code, they do not allow the court to supplant a negative finding in a DOC evaluation that does not find repetitiveness and compulsiveness in an offender's conduct and sentence an offender under the NJSOA without first having DOC's recommendation for same. Id. Accordingly, the defendant's motion to for a hearing pursuant to Horne, 56 N.J. at 372 to challenge the August 8, 2025, DOC evaluation issued pursuant to N.J.S.A. 2C:47-1 which found the defendant is not eligible for sentencing under the purview of the NJSOA is DENIED.