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STATE OF NEW JERSEY, Plaintiff, v. KARL T. STAHL, Defendant.	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO.: A-001165-23 TEAM 01 QUASI CRIMINAL ACTION ON APPEAL FROM ORDERS FILED: November 2, 2023 IN THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CRIMINAL PART, OCEAN COUNTY DOCKET NO.: MA-23-03 SAT BELOW: HON. PAMELA M. SNYDER, J.S.C. SAT BELOW AT MUNICIPAL LEVEL: Hon. Anthony Mautone, J.M.C. Hon. Daniel F. Sahin, J.M.C.

APPELLANT/DEFENDANT'S BRIEF

On the brief:	Kevin T. Flood, Esq.
Of counsel on the brief	Lon C. Taylor, Esq.

TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS AND RULING UNDER APPEAL

TABLE OF AUTHORITIES

A. CASELAW

B. STATUTES & REGULATIONS

C. RULES

D. Other Authorities

PRELIMINARY STATEMENT.

Defendant/Appellant Karl Stahl was misled by his attorney, the prosecutor, and the Court into pleading guilty to a third DWI[1] by believing he would receive a 10-year loss of license that would start from the day he was sentenced on February 8, 2013, meaning he would get his license back on February 8, 2023. Instead, Stahl later found out he was given a 20-year loss of license and would not be getting his license back until February of 2033, which is essentially a death sentence to his driver's license.

The serious penal consequence of receiving a 20-year loss of license, instead of a 10 year loss of license, was material to his sentence, and Stahl did not contemplate he would be receiving a sentence that resulted in a 20 year loss of license. Because "…the responsible arms of the judicial and law enforcement establishment, together with defendant's own counsel, have misinformed [the defendant] as to a material element of a plea negotiation, which the defendant has relied thereon in entering his plea, . . . it would be manifestly unjust to hold defendant to his plea."[2] Here, not only was Stahl misinformed, but he was also misled. Accordingly, this matter must be remanded to the trial court and defendant must be given the option to (1) renegotiate the plea agreement, or (2) withdraw his guilty plea and proceed to trial Sheil v. N.J. State Parole Bd., 244 N.J. Super. 521, 529 (App. Div. 1990).

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[1] Driving While Intoxicated (DWI).
[2] State v. Kiett, 121 N.J. 483, 488 (1990) citing State v. Nichols, 71 N.J. 358, 361, 365 A.2d 467 (1976) (citation omitted).

STATEMENT OF FACTS AND PROCEDURAL HISTORY.[3]

a. Stahl Is Charged With His "Third Or Subsequent" DWI.

On or about June 4, 2011, defendant was charged with DWI (and other related traffic offenses) in Ship Bottom Borough. 22a. This charge represented a "third or subsequent" DWI potentially subjecting defendant to a 10-year loss of driving privileges as well as other onerous penalties. Id. Defendant was represented by Stuart Snyder, Esq. at the time of his guilty plea.[4] 11a; 20a.

b. Stahl Pleads Guilty To A DWI And Judge Antony Mautone, Jr. J.M.C. Sentences Stahl To A Concurrent 10-Year Loss Of License To Run From The Date Of His Guilty Plea And Sentence, February 8, 2013. Nothing In The Record Indicates That The Sentence Was To Run Consecutively Amounting To A 20-Year Loss Of License.

Prior to agreeing to any plea of guilty, Mr. Snyder informed defendant that he worked out a plea deal where the judge would run the 10-year loss of license concurrent to any loss of license sentence he was currently serving, and that the 10-year loss of license would begin to run from that day forward, February 8, 2013. 20a. Relying upon the representations of his attorney that the 10-year loss of license would run

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[3] "1T" denotes the transcript of trial court's original sentence dated February 8, 2013.
"2T" denotes the transcript of oral argument which occurred on January 19, 2023.
"3T" denotes the transcript of the Law Division Decision on November 2, 2023.

[4] Michael Cennimo, Esq., initially worked on this file as co-counsel, and made attempts to contact Mr. Snyder to determine whether he had any records or recollection about the case but was informed that Mr. Snyder unfortunately passed away.

concurrent to any other loss of license sentence he was currently serving, and that the sentence for the 10-year loss of license would run from the date he entered his plea on February 8, 2013, he agreed to plead guilty to the DWI. 20a; 1T.

On the same date of February 8, 2013, defendant entered a plea of guilty to the DWI, (his third), before the Honorable Antony Mautone, Jr. J.M.C. 26a;1T. Consistent with the representations made to him by his attorney, Judge Mautone sentenced defendant in accordance with what he was told in exchange for his plea of guilty.[5] 20a; 1T.

At the time of sentencing, Judge Mautone was aware that defendant's driver's license was already suspended. 1T:14:6-12. Nonetheless, Judge Mautone clearly ran the sentence concurrent to the suspension period he was already serving at the time of his conviction. In particular, Judge Mautone stated,

> THE COURT: Well as a result of your plea of guilty here today, sir, it's suspended for 10 more years *from today's date*, you understand that?
> MR. STAHL: Yes, sir.

1T:14:13-15, emphasis added.

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[5] Judge Mautone also imposed a sentence of fines and penalties including jail time (which was reduced by defendant having earned jail credit) with the stipulation that the defendant be able to serve part of the sentence in an inpatient treatment program, should a bed become available. Defendant's other charges were merged into the DWI and dismissed. 1T 8:3-8; 1T 20:16-18.

As such, Judge Mautone imposed a sentence of a 10-year license suspension concurrent with the sentence that the Court knew he was already serving. Id. *There is nothing in the record that indicates, whatsoever, that the sentence was to run consecutively, or that his sentence would result in a 20-year loss of license*.

Neither the plea, nor the transcript of the plea proceeding contain any evidence indicating defendant was informed by the court, the prosecutor or his attorney, that if the court accepted his plea, that he would be receiving a 20-year loss of license, or even that any loss of license would run consecutively. 1T. Rather, he was told by the court his 10-year loss of license would start to run from the day he was sentenced, February 8, 2013. 1T14:13-15. Nowhere in the plea transcript does it contain any evidence indicating defendant was informed by the court, the prosecutor or his attorney, that the 10-year loss of license was to run consecutive. 1T.

The tickets signed by the sentencing judge do not contain any evidence indicating the 10-year loss of license is to run consecutive or that Stahl would be receiving a 20 year loss of license. 26a. The "Order And Certification, Intoxicated Driving and Related Offenses" signed by Stahl and the sentencing judge do not contain any evidence indicating the sentence is to be consecutive, or that Stahl would be receiving a 20 year loss of license. 29a.

The "Notification of Penalties for Subsequent DWI or Driving on the Revoked List Convictions" form signed by Stahl and the sentencing judge do not contain any

evidence indicating the 10-year loss of license is to run consecutive, or that Stahl would be receiving a 20-year loss of license. 30a. The "COMMITMENT/RELEASE" form sign by the sentencing judge does not contain any evidence indicating the 10-year loss of license is to run consecutive, or that Stahl would be receiving a 20-year loss of license. 31a.

Thus, there is nothing in the record that states Stahl's 10-year loss of license was to run consecutive, or that Stahl would be receiving a 20-year loss of license.

c. Believing He Would Be Getting His License Back In February Of 2013, Stahl Checked With The DMV In Late 2022 And Learned He Would Not Be Getting His License Back Until February Of 2033.

Believing that he would be getting his license back, defendant checked with the DMV on the eve of the 10-year anniversary of having his license suspended on February 8, 2013. 20a. When Stahl contacted DMV in 2022, he learned that the 10-year loss of license by Judge Mautone was being run consecutive rather than concurrently, and that he would not be getting his license back until February of 2033, resulting in a 20-year loss of license, contrary to the plea agreement and sentencing. 20a.

d. Stahl Filed A Motion In The Ship Bottom Municipal Court Seeking 2 Forms Of Relief: 1) Correct The Sentence To Run Concurrently, In The Alternative, 2) Stahl Should Be Permitted To Have His Plea Back.

On or about December 12, 2022, defendant submitted a motion with the Ship Bottom Municipal Court seeking two forms of relief, 1) correction of sentence by

Judge Mautone which should have run concurrently, not consecutively,[6] and in the alternative, 2) *defendant should be permitted to have his plea back*. Defense counsel further stated in his original certification in support of that original motion that, "In the event the Court is not inclined to correct the sentence in accordance with the terms of the original plea agreement and sentence, then defendant should be permitted to have his plea back." 9a; 13a,¶24.

e. Hon. Daniel F. Shahin, JMC, Of The Ship Bottom Municipal Court, Denied Stahl's Motion Seeking To Correct His Sentence To Run Concurrently, And Refused To Render A Decision On Whether Stahl Should Be Permitted To Have His Plea Back.

On January 9, 2023, oral argument was held on the motion in Ship Bottom Municipal Court. 1a. On or about January 19, 2023, Hon. Daniel F. Shahin, JMC, the current judge presiding in Ship Bottom Municipal Court, denied defendant's motion to correct the sentence, essentially ruling that 'defendant's argument runs contrary to the plain language of the DWI statute,' NJSA 39:4-50, in that the "revocation or suspension imposed shall commence as of the date of the termination of the existing revocation or suspension period." 1a. Judge Shahin further ruled that,

> It has been said that "[w]hen the legislature imposes minimum penalties for certain offenses, the judiciary must enforce that mandate." *State v. Nicolai*, 287 NJ. Super. 528, 531, 671 A.2d 611 (App.Div.1996). "No

[6] Pursuant to R. 7:10-2(b)(1), "A petition to correct an illegal sentence may be filed at any time."

> defendant can claim a legitimate expectation of ... a sentence below the statutorily mandated minimum." *Id*. at 532, 671 A.2d 611. "The court [][i]s not at liberty to ignore the legislative command that a [certain] sentence be imposed and [is] without power to [shorten] its imposition or execution." *State v. Fearick*, 132 N.J Super. 165, 170, 333 A.2d 29 (App.Div.1975) (citing *State v. Johnson*, 42 N.J. 146, 174, 199 A.2d 809 (1964)), aff'd 69 N.J. 32, 350 A.2d 227 (1976).

1a. However, Judge Shahin did not render a decision on vacating defendant's plea. 1a-3a.

In Judge Shahin's January 19, 2023 decision, he incorrectly stated that, "The **sole** issue advanced by defendant is that the driver's license suspension imposed by Judge Mautone should have run concurrent as opposed to consecutively." 1a. Again, the January 19, 2023, decision did not address the second issue defendant raised that since defendant did not receive the benefit of the bargain that was promised him, he should be given his plea back. 1a.

On February 8, 2023, defendant filed another motion with the Ship Bottom Municipal Court seeking the following relief: Motion For Findings Of Facts and Conclusions Of Law and Reconsideration. 17a. On February 17, 2023, defendant received an order denying the motion filed on February 8, 2023. 3a. The Court, again, never addressed the second issue, nor did it cite to any case law or rule for its denial of defendant's motion for findings of facts and conclusions of law and reconsideration. 3a. Therefore, the Municipal Court, Judge Shahin, seemed to refuse to rule on the 2nd issue of whether defendant should be given his plea back. 1a-3a.

f. Motion For Municipal Appeal And The Law Division's Decision.

On February 20, 2023, defendant filed a Notice of R. 3:24 Municipal Appeal. 36a. That appeal sought the following relief:

> Defendant, Karl Stahl, hereby appeals to the Superior Court of Ocean County from the Order of the Ship Bottom Municipal Court Municipal Court, denying defendant's post-conviction relief to correct his 10 year loss of license sentence to the sentence he bargained for on February 8, 2013, to run concurrently, or in the alternative, vacating his plea of guilty. Defendant seeks to appeal these convictions and seek either correction of the sentence or in the alternative vacating defendant's plea.

36a. Stahl's brief in support of his municipal appeal raised 3 points: 1) The Interest Of Justice Demands That Defendant's Sentence Run Concurrently; 2) In The Alternative, Defendant Must Be Given The Option To Withdraw His Guilty Plea; 3) In The Alternative, Defendant Is entitled To An Evidentiary Hearing on Ineffective Assistance Of Counsel. 36a. *The State offered no opposition to the second point relative to defendant withdrawing his plea.* 3T12:25-14:16.

On November 2, 2023, the Law Division held oral argument, Judge Pamela M. Snyder, JSC presiding. 3T. On November 2, 2023, Judge Snyder read her decision into the record after oral argument, and subsequently entered an order, and followed by an amended order, denying all the relief requested in Stahl's municipal appeal. 4a; 6a. The following are the relevant parts to the Law Division's decision.

i. The Court, In Assessing the Record *De Novo*, Denied Stahl's Entire Prayer For Relief Including Allowing Him To Renegotiate Or Rescind The Misleading Plea In Accordance With Black-Letter Law.

Judge Snyder denied Stahl's prayer for relief in Point I essentially ruling that the relaxation rule does not apply to statutes, only court rules, and that Rule 1:1-2 does not allow the Court to re-write legislation to allow the sentence to run concurrently as it would result in an illegal sentence. 3T40:8-45:25.

As noted above, defendant twice motioned Judge Shahin at the Municipal Court level to rule on the second issue of whether defendant should be given his plea back. 9a. Defendant even filed second motion specifically requesting findings of facts and conclusion of law as to that sole issue. 17a. However, Judge Shahin refused to rule on it.

Defendant again raised the issue of vacating defendant's plea in the Law Division and confirmed Judge Shahin did not make any findings of fact or conclusion of law as to defendant getting his plea back. Defendant also noted that the state never opposed the issue of defendant getting his plea back. 3T9:25-11:12; 3T15:24-17:24.

At oral argument, the State argued, in sum, that there did not appear to be any argument below, and that there were no findings of facts or conclusions of law by the municipal judge with respect to this issue, and therefore, the State could not respond when there wasn't really anything to respond to. 3T12:20-14:8. The State

further argued that this issue might be something that would be appropriate to remand. 3T12:20-14:8.

The Court agreed the issue was not addressed below and posed the following question to both parties, "[d]o I have enough before me to address the issue regarding whether the defendant should be able to take his plea back?" 3T20:23-25

Judge Snyder rejecting the State's position for a remand, then ruled she would decide the issue of whether defendant's plea should be vacated and stated,

> Regarding the standard of review and Point 2 raised in defendants brief, this Court is satisfied that there – it was raised to the Municipal Court, that the document submitted to the court did acc—both the Municipal court and this court – accurately briefed that issue, the court is satisfied that this court can make a ruling on that point for purposes of this appeal. 3T37:16-23.

Judge Snyder denied Stahl's prayer for relief in Point II ruling,

> As to the second point raised in the defendant's briefing, the withdrawal of the guilty plea, for a Court to accept a plea of guilty to a criminal or quasi-criminal charge, the Court must make reasonable efforts to make the defendant aware of the ramifications of such a plea and a plea of guilty must be entered knowingly, intelligently and voluntarily. That is in State vs. Johnson at 182 NJ 232, a 2005 New Jersey Supreme Court case.
>
> In the matter before this Court, the defendant entered his guilty plea. The criminal -- Municipal Court engaged in a lengthy colloquy with defendant and advised him of the penalties of a sentence on a third or subsequent DUI conviction, and the Court previously iterated the exact words stated during the colloquy in its findings of fact.
>
> At no point during the Municipal Court's advisement of the consequences and penalties associated with the guilty plea did the Court ever mention that the license suspension for 10 years was to run concurrently with any existing license suspension.

At no point before defendant entered his guilty plea did either attorney represent on the record that the plea was negotiated or predicated on the understanding the defendant's license suspension would run concurrently with his existing suspension.

Arguably, the attorneys could not make that representation because to do so would be to advocate for an illegal sentence. Rather, both the prosecutor and defense counsel highlighted other aspects of the plea agreement, including that the other four charges would be dismissed upon the entry of the guilty plea to the DUI offense, credit for time served and satisfaction of part of the sentence in an alternate facility, and that is in the February, 2013 transcript at Page 5, Line 7 through Line 15 and Lines 21 through 24, as well as at Page 6, Line 5 through Line 23.

The only representation by an attorney was from the prosecutor who informed the Municipal Court that this was defendant's third DUI. It was actually his fourth. The prosecutor stated, "It is his third offense, subsequent offense, Judge, so there is a 10-year loss of license," and that is at the February, 2013 transcript at Page 5, Lines 9 through 11.

It was only after the Court accepted the guilty plea that the Court engaged in the following discussion: "The Court: Okay. Do you have a driver's license?

"Mr. Stahl: No.

"The Court: Suspended already?

"Mr. Stahl: Yeah.

"The Court: Yes?

"Mr. Stahl: Yes, sir.

"The Court: Well, as a result of your plea of guilty here today, it's suspended for 10 more years from today's date. Do you understand that?"

And Mr. Stahl responded, "Yes, sir."

The language in the sentencing colloquy that the defendant contends is misleading is the part of "from today's date." However, this Court views the operative word as "more" given the context of the plea discussion, and that is at Page 14, Lines 13 through 15.

When the Municipal Court Judge stated that his license would be suspended for 10 more years from today's date, this was in the broader context of the discussion on defendant's license already having been suspended. The con -- in this context, "more" implies

> that the suspension is in addition to the earlier suspension and it's not simply to run concurrently.
>
> Further, at no time did anyone ask that the suspension run concurrently or seek clarification regarding the suspension of the license.
>
> Upon a de novo review of the trial Court's record, this Court is satisfied that the defendant's plea was made knowingly, intelligently and voluntarily and that the defendant was fully apprised of the potential consequences of a guilty plea.
>
> Therefore, the defendant's request to withdraw his guilty plea is denied…
>
> 3T46:1- 49:6.
>
> …
>
> For the foregoing reasons, the appendant's [sic] -- I'm sorry -- the defendant's appeal is denied.
>
> The defendant's request to run the license suspensions concurrently is denied; the defendant's request to remand the matter to permit the parties to renegotiate the plea agreement is denied; the defendant's request to withdraw his guilty plea is denied; and defendant's request for an evidentiary hearing on the ineffective assistance of counsel claim is denied.
>
> 3T55:15-23.

Judge Snyder also denied Stahl's prayer for relief in point III ruling Stahl was not entitled to an evidentiary hearing. 3T49:7-55:23.

On December 17, 2023, Stahl filed his Notice Of Appeal of the Law Division's decision. 51a. There have been several requests for extensions to file appellant's brief which were granted. 76a-90a. This appeal follows.

STANDARD OF REVIEW

R. 3:23-8(a) provides for a de novo review on the record when a municipal court conviction is appealed to the Law Division.

However, because the arguments addressed also appear to involve questions of law, the standard of review is plenary. Accordingly, the Court gives no "special deference" to the Municipal Court's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. ManalapanTwp. Comm., 140 N.J. 366, 378 (1995).

Also, if the record shows that the judge either failed altogether to ask the required questions, or that the answers elicited failed to show voluntariness, understanding of the charge and consequences, and factual basis, the appellate court can remand for trial or new plea. See State v. Rhein, 117 N.J. Super. 112, 121 (App. Div. 1971.

LEGAL ARGUMENT

I. Defendant Must Be Given The Option To Withdraw His Guilty Plea Based Upon His Attorney And The Trial Court's Failure To Inform Defendant Of the Fact that His License Suspension was Required, by Statute, to Run Consecutively with the Prior License Suspension, A Material Penal Consequence. Instead, Defendant's Attorney And The Trial Court Misled Defendant By Indicating that the License Suspension Would End in 2023, Rather than 2033.

"A guilty plea may be accepted as part of a plea bargain when the court is assured that the defendant enters into the plea knowingly, intelligently and voluntarily." State v. Johnson, 182 N.J. 232, 236 (2005) (citing R. 3:9-2). "For a plea to be knowing, intelligent and voluntary, the defendant must understand the nature of the charge *and the consequences of the plea*." Ibid. (Emphasis added). "Although a court is not responsible for informing a defendant of all consequences flowing from a guilty plea, at a minimum the court must ensure that the defendant is made fully aware of those consequences that are 'direct' or 'penal.'" Ibid. (quoting State v. Howard, 110 N.J. 113, 122 (1988)). "Obviously, this is best accomplished by the court satisfying itself, through specific question[s] and answer[s]," during a plea allocution. State v. Kovack, 91 N.J. 476, 484 (1982).

"The requirement that the court be satisfied in that respect serves several salutary ends. It avoids having a defendant enter into a plea hampered by being 'misinformed …as to a material element of a plea negotiation, which [he] has relied [on] in entering his plea.'" Johnson, 182 N.J. at 236-37 (quoting State v. Nichols, 71 N.J. 358, 361

(1976)). Any misunderstanding must be "a material factor in the decision to plead guilty." State v. Kiett, 121 N.J. 483, 490 (1990). "Clarity as to the direct and penal consequences of a defendant's guilty plea promotes the binding resolution of charges because it serves to ensure that a defendant's 'expectations [are] reasonably grounded in the terms of the plea bargain.'" Johnson, 182 N.J. at 237 (quoting State v. Marzolf, 79 N.J. 167, 183 (1979)).

"It is fundamental that when a defendant pleads guilty pursuant to a plea agreement, the terms of the agreement must be fulfilled." Kovack, 91 N.J. at 482. Indeed, "[t]he terms of the plea agreement[] must be meticulously adhered to, and a defendant's reasonable expectations generated by plea negotiations should be accorded deference." Ibid. (quoting State v. Brockington, 140 N.J. Super. 422, 427 (App. Div. 1976)). When the foregoing does not occur, and the terms of the agreement are not fulfilled, the appropriate remedy is for defendant to be given the option to withdraw his guilty plea. Id. at 485.

Here, Judge Snyder erroneously denied Stahl the option to withdraw his guilty plea which was contrary to long established case law set forth Kovack, and its progeny, holding that a trial court must clearly inform a defendant of the material penal consequences of his guilty plea.

In denying Stahl the option of vacating his plea, Judge Snyder erroneously made assumptions and interpretations about the municipal court's sentencing of Stahl,

rather than focusing on Stahl's reasonable understanding of the plea, and that the Court did not inform Stahl, whatsoever, that his sentence was consecutive. Instead, the trial court misled defendant Stahl by flatly informing him that the license suspension would end 10 years from the date of sentencing, that is, was being imposed concurrently with the previously imposed license suspension. Moreover, there was nothing in the record indicating that Stahl was informed of material penal consequences that Stahl's 10-year loss of license was to run consecutive, or that Stahl would be receiving a 20 year loss of license.

Instead of any mention of a consecutive sentence, the trial court informed defendant that as a result of his plea of guilty on February 8, 2013, his license would be suspended for 10 more years *from today's date*, which again, was February 8, 2013. 1T:14:13-15.

Finally, the Law Division judge, seemingly trying to defend the utter absence of any mention of consecutive sentencing exposure, claims that the suspension discussion was within the broader context of license suspension and that the single word "more" regarding the imposition of the 10-year license suspension for which he was being sentenced somehow clearly informed Stahl that he was going to get consecutive sentencing, somehow without ever using the word "consecutive." Even if the colloquy between the trial court and Stahl can be seen as confusing or unclear, it undermines any notion that the plea was entered into knowingly and voluntarily. See Sheil v. NJ

State Parole Bd., 244 N.J. Super. 521 (App. Div. 1990)(In the context of jail credits, "Hence a guilty plea based on this misunderstanding may fail to satisfy the constitutional requirement that a plea be voluntarily, intelligently, and knowingly entered, at least where the denial of the expected credits results in the imposition of a sentence longer in duration than the maximum contemplated." (citation omitted).

Moreover, it is especially important in this context for a defendant to explicitly be told about the consecutive nature of the license suspension since any misleading or even confusion regarding the plea derails a defendant's reasonable expectations until years later, at the time defendant expected his license to be reinstated, instead being told by DMV that it was suspended for 10 more years.

Here, defendant's reasonable expectations as to the material terms of the agreement should have been accorded deference, however, they were not adhered to, nor were they fulfilled. Accordingly, the appropriate remedy is for defendant to be given the option to withdraw his guilty plea.

We further submit that the penal consequences must attach to a 20-year license suspension and, accordingly, trial courts must be required to establish on the record that a pleading defendant is aware of any such loss of license for that 20-year period is part of the sentence to be imposed.[7] The colloquy that took place between the sentencing court and the defendant in this matter revealed that the defendant had no

[7] State v. Kovack, 91 N.J. 476, 483 (1982).

contemplation that there would be a 20 year loss of license to his sentence.[8] Defendant received, unbeknownst to him, a sentence to a 20 year loss of license.[9] Because the imposition of the 20 year loss of license was "manifestly beyond" the defendant's contemplation (20 years, instead of 10 years),[10] the court failed to make certain that the defendant was made aware of the penal consequences of his plea of guilty would result in a 20 year loss of license *which was* a material component of his sentence."[11] The record is "abundantly clear" that Stahl had no such understanding and, consequently, the sentence must be vacated.[12]

Accordingly, this matter must be remanded to the trial court and defendant must be given the option to (1) renegotiate the plea agreement, or (2) withdraw his guilty plea and proceed to trial.[13]

[8] Id. at 480-81.
[9] Id. at 480.
[10] Id. at 483.
[11] Ibid
[12] Id. at 484.
[13] Sheil v. N.J. State Parole Bd., 244 N.J. Super. 521, 529 (App. Div. 1990).

PRAYER FOR RELIEF:

1. Remand the matter and allow the parties to renegotiate the plea agreement in its entirety after all evidence is provided to defendant and his current counsel.[14]
2. If the parties are unwilling to reach a new plea agreement, then allow defendant to withdraw his guilty plea and proceed to trial.

Respectfully Submitted,
/s/ Kevin T. Flood
KEVIN T. FLOOD, ESQ.

Date: June 2, 2024.

[14] See also, attached unpublished decision State v. Rosevelt, 2014 N.J. Super. Unpub. LEXIS 296, 2014 WL 563649, setting forth a similar remedy under similar circumstances. 45a.

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July 2, 2024

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex, P.O. Box 006
Trenton, New Jersey 08625

RE: State of New Jersey (Plaintiff-Respondent) v.
Karl T. Stahl (Defendant-Appellant)
Docket No. A-001165-23

Criminal Action: On appeal from a final order of conviction in the Superior Court of New Jersey, Law Division, Ocean County

Sat Below: Hon. Pamela M. Snyder, J.S.C.

Appellant is not confined.

Honorable Judges:

Pursuant to R. 2:6-2(b) and R. 2:6-4(a), this letter in lieu of a formal brief is submitted on behalf of the State of New Jersey.

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TABLE OF CONTENTS

TABLE OF APPENDIX

PROCEDURAL HISTORY[1]

On August 11, 2011, Defendant was issued 5 summonses: Summons No. 1528-A-031249 charged him with reckless driving contrary to N.J.S.A. 39:4-96; Summons No. 1528-A-031250 charged him with DWI contrary to N.J.S.A. 39:4-50; Summons No. 1528-A-032016 charged him with failure to maintain lane contrary to N.J.S.A. 39:4-88b; Summons No. 1528-A-032017 charged him with driving while suspended contrary to N.J.S.A. 39:3-40; and Summons No. 1528-A-032018 charged him with failure to produce a valid drivers' license contrary to N.J.S.A. 39:3-29. (Da23-Da27) This was Defendant's fourth DWI[2].

On February 8, 2013, Defendant appeared with counsel at the Borough of Ship Bottom Municipal Court and entered a negotiated plea of guilty. (1T5-6 to 7-2) The Hon. Anthony Mautone, Jr., J.M.C., accepted Defendant's plea and sentenced him to 10 years' loss of driving privileges; 180 days in Ocean County Jail, 90 days of which would be served at an inpatient rehab program; $1006.00 fine; $33.00 costs; $200.00 DWI surcharge; $50.00 VCCB; $75.00

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[1] The State adopts Appellant's appendix designations noted at Dbiii-Dbvi;
"1T" refers to transcript of proceedings dated February 8, 2013;
"2T" refers to transcript of proceedings dated January 9, 2023;
"3T" refers to transcript of proceedings dated November 2, 2023;
"Ra" refers to State's appendix.

[2] Defendant's first DWI occurred on February 9, 2004 in Hillsborough, N.J. His second occurred on February 26, 2009 in Readington, N.J., and his third occurred on September 27, 2011 in Lavallette, N.J. (Ra1-Ra12)

SNSF; and 2 years' ignition interlock (subsequent to the 10-year revocation period). (1T13-20 to 14-4; 14-17 to 15-24) The Judge then dismissed all remaining charges. (1T20-16 to 20-18)

On December 12, 2022, Defendant filed a notice of motion to modify his sentence. (Da9-Da15)

On January 9, 2023, a hearing on Defendant's motion was held at the Borough of Ship Bottom Municipal Court. After hearing the arguments of counsel, the Hon. Daniel F. Sahin, J.M.C., reserved decision. (2T6-24 to 6-25)

On January 11, 2023, Judge Sahin issued a written opinion/order denying Defendant's motion to modify his sentence. (Da1-Da2)

On February 8, 2023, Defendant filed a notice of motion for reconsideration. (Da17-Da21)

On February 16, 2023, Judge Sahin issued a written opinion/order denying Defendant's motion for reconsideration. (Da3)

On February 20, 2023, Defendant filed a notice of appeal with the Law Division, Ocean County. (Da36-Da41)

Trial de novo was held on November 2, 2023. At its conclusion, the Hon. Pamela M. Snyder, J.S.C., denied Defendant's request for relief. (3T55-15 to 55-23)

This appeal follows.

STATEMENT OF FACTS

On June 4, 2011, Defendant was arrested and charged with several motor vehicle violations including his fourth DWI in Ship Bottom, New Jersey. (Ra14) At the scene, Defendant presented a Pennsylvania drivers' license bearing his picture and the name, "Michael Wendroff". (Ra14-Ra21) It was subsequently discovered that this Pennsylvania license was fraudulent. (Ra17) As a result, complaints bearing Defendant's real name (Karl T. Stahl) were not issued until August 11, 2011. (Da23-Da27; Ra13-Ra15)

On February 8, 2013, Defendant appeared with Stuart Snyder, Esq., Public Defender, at the Borough of Ship Bottom Municipal Court, and pled guilty to DWI. (1T5-9 to 5-10; 8-22 to 8-23)

Judge Mautone confirmed that Defendant had ample opportunity to review his case with counsel and was satisfied with counsel's advice. The Judge also confirmed that Defendant understood he had a right to trial but was waiving his rights by entering the plea; that he was entering the plea freely and voluntarily; and that nobody was forcing him to do so. (1T7-16 to 8-2)

The Judge next confirmed that Defendant was pleading guilty to DWI with the understanding that the balance of the charges against him would be dismissed. (1T8-3 to 8-8) Judge Mautone explained the fines and penalties Defendant faced as a result of his plea specifying, "You're going to receive a

10-year loss of your driving privileges." (1T8-9 to 11-5; 9-9 to 9-10) The following colloquy then occurred:

> THE COURT: And knowing all the fines and penalties that you face upon a plea of guilt here today, sir, and the fines and penalties that you face in the future were you to plead guilty or be found guilty of a driving while intoxicated in the future, is it still your intention on entering a plea of guilty?
>
> DEFENDANT: Yes, Your Honor.
>
> * * *
>
> MR. SNYDER: Mr. Stahl, on June 4th, 2011 at or about 1:22 in the morning were you operating a motor vehicle in the Borough of Ship Bottom?
>
> DEFENDANT: Yes.
>
> MR. SNYDER: And did you, in fact, operate the vehicle erratically by swerving into the center lane of travel without a signal?
>
> DEFENDANT: Yes.
>
> MR. SNYDER: And prior to operating your vehicle had you, in fact, been imbibing alcoholic beverages?
>
> DEFENDANT: Yes.
>
> MR. SNYDER: And was your ability to operate your vehicle impaired as a result of drinking before operating the vehicle?
>
> DEFENDANT: Yes.
>
> MR. SNYDER: And you took an Alcotest result?

DEFENDANT: Yes.

MR. SNYDER: And the Alcotest result was above the .08 legal limit, is that correct?

DEFENDANT: Yes.

MR. SNYDER: And you admitted to the police you had drank beer and Jim Beam bourbon, is that correct?

DEFENDANT: Yes. (1T11-22 to 12-19)

Defendant's Alcotest result was 0.12 BAC. (1T7-1 to 7-2)

After finding there was a sufficient factual basis, Judge Mautone accepted Defendant's plea and sentenced him as a third-time DWI offender. (1T12-21 to 14-22) The following colloquy occurred:

THE COURT: Do you have a driver's license?

DEFENDANT: No.

THE COURT: Suspended already?

DEFENDANT: Yeah.

THE COURT: Yes?

DEFENDANT: Yes, sir.

THE COURT: Well as a result of your plea of guilty here today, sir, it's suspended for **10 more years** from today's date, you understand that?

DEFENDANT: Yes, sir.

(emphasis added) (1T14-6 to 14-16)

On December 12, 2022, Defendant filed a notice of motion to modify his sentence "and, in the alternative, vacating [his] plea." (Da9) In support of this motion, defense counsel provided a certification stating that his client "only learned recently that he was not sentenced in accordance with the terms of his plea agreement," and that plea counsel (Snyder) had passed away. (Da11-Da13) Defense counsel argued that the 10-year suspension of Defendant's driving privileges was supposed to run concurrent to the suspension period he was already serving at the time of his plea but the Division of Motor Vehicles [was] running it consecutively. (Da11-Da12)

Defense counsel thus argued that either Defendant's sentence needed to be "corrected" so that his license would be restored on February 8, 2023 or alternatively, that he should be permitted to have his plea back. (Da13) Defendant provided no support for his alternative argument to vacate his plea.

At the motion hearing on January 9, 2023, Judge Sahin advised he had reviewed the matter before stating that the plea judge, "did what should have been done, which was to enter a consecutive sentence." (2T5-2 to 5-5) The Judge found it's "inherent" and "the way a DWI sentence works" and that if the plea judge said otherwise he "made a mistake…because that's not the way it goes." (2T5-15 to 5-25) Judge Sahin reserved decision. (2T6-24 to 6-25)

Two days later, Judge Sahin issued an order/opinion denying

Defendant's motion to modify his sentence. (Da1-Da2) The Judge cited N.J.S.A. 39:4-50 which states, in relevant part:

> If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period.

The Judge thus found Defendant's sole argument – that suspension of his driver's license should have run concurrently as opposed to consecutively – "runs contrary to the plain language of the statute." (Da1) Judge Sahin concluded:

> Defendant takes issue with regard to a statement made by Judge Mautone during sentencing as Judge Mautone said that the 10-year license suspension he was imposing ran 'ten years from today.' It is apparent Judge Mautone misspoke. To the extent Judge Mautone may have meant what he said, his sentence would have run contrary to the statute and would have constituted an illegal sentence. An illegal sentence simply cannot stand. (Da2)

On February 8, 2023, Defendant filed a notice of motion for reconsideration. (Da17-Da21) In support of this motion Defendant provided his own personal certification together with his counsel's previously-submitted certification. (Da20-Da21) In his personal certification, Defendant stated his plea counsel "informed me he worked out a plea deal where the judge would

run the 10-year loss of license concurrent to any loss of license sentence [he] was currently serving." (Da20)

Once more Defendant provided no support for his alternative argument to vacate his plea.

In a written opinion/order dated February 16, 2023, Judge Sahin noted that in filing his motion for reconsideration, Defendant merely supplemented his original motion with his own personal certification. (Da3) The Judge found that Defendant's motion was untimely and failed to provide any new facts or circumstances such that would justify granting him relief. (Da3) Judge Sahin then denied Defendant's motion for reconsideration, finding:

> [I]f Judge Mautone's ruling is to be read in the manner you are asking this Court to read it, it would have been an illegal sentence. As our courts have made abundantly clear, an illegal sentence cannot stand. Consequently, the Court stands by its prior ruling. (Da3)

Trial de novo was held on November 2, 2023 before the Hon. Pamela M. Snyder, J.S.C. Again Defendant's primary argument was that his sentence should be "corrected" to run the 10-year suspension of his driving privileges concurrent with the suspension period he was already serving at the time of his plea. (3T12-6 to 12-8) Alternatively, Defendant again argued that he should be permitted to vacate his plea, yet still provided no support for this argument. (3T12-10 to 12-18)

As to the argument that Defendant's sentence should be corrected, the De Novo Court found the plain language of N.J.S.A. 39:4-50(a)(3) "clear and unambiguous." (3T41-13 to 41-14) The Court found that even if it "were to accept Defendant's argument…it cannot do so because having the suspensions run concurrently would be tantamount to an illegal sentence which this Court cannot endorse." (3T42-18 to 42-23) The Court thus denied Defendant's request to have his license suspension run concurrently. (3T45-24 to 45-25)

As to the alternative argument to vacate Defendant's plea, the De Novo Court found:

> There is no doubt in this Court's mind that the Defendant did raise to the Municipal Court that in the alternative that the Defendant be permitted to vacate his plea and …that the Judge did not address the second issue of the vacating. (3T25-7 to 25-14)

The De Novo Court then went on to find that the Trial Court engaged in a "lengthy colloquy" with Defendant and advised him of the penalties on a sentence on a third or subsequent DUI conviction. (3T46-1 to 46-14) The Court noted that "at no point…did the Court ever mention that the license suspension for 10 years was to run concurrently with any existing license suspension." (3T46-17 to 46-21) The De Novo Court concluded:

> When the Municipal Court Judge stated that his license would be suspended for 10 more years from today's date, this was in the broader context of the discussion on defendant's license already having been

> suspended. The con – in this context, "more" implies that the suspension is in addition to the earlier suspension and it's not simply to run concurrently. (emphasis supplied)
> (3T46-17 to 46-21; 48-15 to 48-21)

The De Novo Court then denied Defendant's request to vacate his plea, finding the "plea was made knowingly, intelligently and voluntarily and that Defendant was fully apprised of the potential consequences." (3T49-1 to 49-6)

LEGAL DISCUSSION

In this appeal, Defendant's sole argument is that the De Novo Court erred in denying his motion to vacate his plea. In support of that claim, Defendant reframes his argument regarding modifying his sentence to assert he was unaware he would "be receiving a 20-year loss of license." (Db at 16) Defendant's argument remains without merit.

POINT I

THE DE NOVO COURT PROPERLY DENIED DEFENDANT'S MOTION TO VACATE HIS PLEA

Rule 7:6-2(a)(1) requires that before accepting a plea, a court must determine "by inquiry of defendant" that the plea is being made voluntarily, with an understanding of the nature of the charge and the consequences of the plea.

As found by the De Novo Court, the Trial Court engaged in a "lengthy colloquy" with Defendant and advised him of the penalties on a sentence on a

third or subsequent DUI conviction. (3T46-1 to 46-14)

Indeed, upon being questioned by the Trial Court Defendant confirmed he had ample opportunity to review his case with counsel; was satisfied with counsel's advice; understood he had a right to trial and was waiving his rights; was entering the plea freely and voluntarily; and that nobody was forcing him to do so. (1T7-16 to 8-2) The Trial Court also confirmed that Defendant was pleading guilty to DWI with the understanding that the balance of the charges against him would be dismissed before explaining the fines and penalties Defendant faced as a result of his plea. (1T8-3 to 8-8; 8-9 to 11-5; 9-9 to 9-10)

Defendant argues the De Novo Court erred by "seemingly trying to defend the utter absence of any mention of consecutive sentencing exposure" by relying on the "single word 'more'." Defendant's argument ignores the obvious.

When Defendant entered his plea on February 8, 2013, his driving privileges had been suspended for multiple reasons including, but not limited to, his third DWI conviction of September 27, 2011. (Ra1-Ra12) When he entered his plea, Defendant admitted he knew that his driving privileges had already been suspended. (1T14-6 to 14-12)

As already found by both the Trial and De Novo Courts, it is inarguable that the clear and unambiguous language of N.J.S.A. 39:4-50(a)(3) delayed

commencement of the suspension imposed on February 8, 2013 until such time as the suspension Defendant was already serving had terminated.

The De Novo Court then further clarified that the Trial Court never indicated that Defendant's latest 10-year suspension would run concurrently with any existing suspension. (3T46-17 to 46-21) Rather, Judge Mautone's advisement regarding the suspension of Defendant's license for "10 more years" was "in the broader context of the discussion on defendant's license already having been suspended. The con – in this context, "more" implies that the suspension is in addition to the earlier suspension and it's not simply to run concurrently." (3T46-17 to 46-21; 48-15 to 48-21)

In State v. Slater, 198 N.J. 145 (2009), the Court established a four-prong test for examining a defendant's motion to withdraw a guilty plea. Those four prongs are: (1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused." Id. at 157-158.

Here, Defendant has failed to offer any argument as to any of the Slater prongs. Nevertheless, application of each of the four Slater prongs confirms Defendant's guilty plea should stand:

1. Defendant has not - and cannot – assert a colorable claim of innocence: his BAC was 0.12 and he admitted during his plea that he had been drinking beer and Jim Beam bourbon before operating his vehicle. (1T7-1 to 7-2; 11-22 to 12-19);

2. Defendant has failed to provide anything which demonstrates the nature and strength of his reasons for withdrawal; that failure supports an inference that Defendant actually only continues to seek modification of his sentence and not to withdraw his plea;

3. It is inarguable that there was a plea bargain from which Defendant derived a clear benefit: 4 out of 5 of his summonses were dismissed. (1T8-3 to 8-8);

4. It is also inarguable that withdrawal of Defendant's plea would result in an unfair prejudice to the State because it has been nearly 13 years since Defendant was charged in this case.

Hence the De Novo Court found that Defendant's "plea was made knowingly, intelligently and voluntarily and that Defendant was fully apprised of the potential consequences," and properly denied his request to vacate his plea. (3T49-1 to 49-6)

CONCLUSION

Based on all of the above it is respectfully submitted that the Defendant's request for relief be denied.

Respectfully submitted,
/S/ Cheryl L. Hammel, Esq.
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Date Submitted: July 2, 2024

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STATE OF NEW JERSEY, Plaintiff, v. KARL T. STAHL, Defendant.	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO.: A-001165-23 TEAM 01 QUASI CRIMINAL ACTION ON APPEAL FROM ORDERS FILED: November 2, 2023 IN THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CRIMINAL PART, OCEAN COUNTY DOCKET NO.: MA-23-03 SAT BELOW: HON. PAMELA M. SNYDER, J.S.C. SAT BELOW AT MUNICIPAL LEVEL: Hon. Anthony Mautone, J.M.C. Hon. Daniel F. Sahin, J.M.C.

APPELLANT/DEFENDANT'S REPLY

Pursuant To R. 2:6-2(b), This Letter In Lieu Of A Formal Brief Is Submitted On Behalf Of Appellant/Defendant.

On the brief:	Kevin T. Flood, Esq.
Of counsel on the brief	Lon C. Taylor, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. CASELAW

I. Appellant Objects To The Hearsay Documents Attached By Respondents In Their Appendix As They Have No Relevance To Whether Appellant's Plea Was Adequate, Which Includes Whether Appellant Had A Complete Understanding Of The Penal Consequences Of His Plea.

The driver abstract and all the arrest/investigation reports in respondent's appendix, and referenced in their opposition, are hearsay documents that have no relevance whatsoever to whether Stahl's plea was entered into knowingly, intelligently and voluntarily, which includes whether Stahl had a complete understanding of the penal consequences of his plea. Therefore, Stahl objects to their submission on appeal, and kindly requests that they be disregarded by the panel.

II. Respondent's Reliance On State v. Slater, 198 N.J. 145 (2009) Is Misplaced/Erroneous Since A Slater Analysis Is Not Reached Where The Factual Basis For The Plea Is Inadequate, Which Includes Whether A Defendant Had A Complete Understanding Of The Penal Consequences Of His Plea.

In opposing Stahl's appeal, respondents erroneously rely upon State v. Slater, 198 N.J. 145 (2009). Their reliance upon Slater is misplaced and their claim that Slater's requirement that a colorable claim of innocence be made does not figure in to the calculus here. A Slater analysis is not reached where the factual basis for the plea is inadequate. See State v. Tate, 220 N.J. 393, 404-05 (2015). Ensuring whether a plea is adequate requires that a defendant had a complete understanding

of the penal consequences, if not, the Court must allow the plea to be vacated and the matter reinstated. See State v. Nunez-Valdez, 200 N.J. 129, 143 (2009).

Accordingly, respondent's reliance on Slater must be rejected.

PRAYER FOR RELIEF:

1. Remand the matter and allow the parties to renegotiate the plea agreement in its entirety after all evidence is provided to defendant and his current counsel.
2. If the parties are unwilling to reach a new plea agreement, then allow defendant to withdraw his guilty plea and proceed to trial.

Respectfully Submitted,
/s/ Kevin T. Flood
KEVIN T. FLOOD, ESQ.

Date: July 31, 2024.