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# Superior Court Of New Jersey

APPELLATE DIVISION  
DOCKET NO.

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THE STATE OF NEW JERSEY,

Plaintiff-Appellant,

vs.

AHJHIR JONES,

Defendant-Respondent.

Criminal Action

On Appeal from an Interlocutory  
Order of the Superior Court,  
Law Division, Morris County

Sat Below:

Hon. Robert M. Hanna, J.S.C.  
(Motion for Recovery Court  
Admittance)

**Defendant is Not Detained**

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BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**<sup>1</sup>

On August 6, 2021, several individuals burglarized and stole eight vehicles from the GT Motors car dealership in Morristown, New Jersey. (Sa32).<sup>2</sup> When police arrived to investigate, numerous vehicle key fobs were observed strewn across the lot and a window into the building on the lot was broken. Ibid. Security cameras on the property were spray-painted over and the GT Motors' office was ransacked. (Sa34).

As the scene was processed, surveillance footage from a nearby business was located and showed a vehicle arrive in the area around 2:45AM and park at a Shell gas station across the street from GT Motors. (Sa33). Five males were observed exiting the vehicle, crossing the street, and forcing their way inside of the business. Ibid. Eight vehicles were driven off the lot between 3:30AM and 5:30AM. Ibid. Money, dealer plates, key fobs, and dealer reassignment books were also stolen. (Sa34). A latent fingerprint was lifted from the exterior side of the window the suspects had burglarized. (Sa33; Sa36 to Sa37). After a forensic examination, the fingerprint was determined to match Defendant, Ahjhir Jones. (Sa38).

Thirteen days later, on August 19, 2021, Newark police officers located one of the vehicles stolen from GT Motors, a black 2011 BMW. (Sa41). Sleeping in the

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<sup>1</sup> The Statement of Facts and Procedural History have been combined for clarity.

<sup>2</sup> References are as follows:

Sa refers to the State's Appendix to this Brief.

1T refers to Transcript of Recovery Court Appeal Hearing dated September 25, 2023.

2T refers to Transcript of Recovery Court Appeal Hearing dated December 4, 2023.

driver's seat of the BMW and in possession of one of the stolen key fobs was the defendant, who was arrested and charged with Third Degree Receiving Stolen Property on Essex County Complaint-Warrant W-2021-008604-0714. (Sa18; Sa41). Defendant was subsequently released on his own recognizance.

On January 19, 2022, the defendant was arrested in Newark on unrelated charges. (Sa42-Sa43). Members of the Morris County Prosecutor's Office responded to the Newark Police Department and transported the defendant to the Morristown Police Department to be processed and served with a Complaint-Warrant for charges stemming from the August 6, 2021, incident. (Sa43). During processing, the defendant advised he wanted to speak with law enforcement and a recorded interview was conducted. Ibid. A stem-to-stern interview was conducted with the defendant after he was advised of and waived his Miranda<sup>3</sup> rights. Ibid. During the interview, the defendant admitted to traveling to GT Motors with other masked individuals and participating in the theft and burglary, including stealing the BMW he was found in possession of thirteen days later in Newark, New Jersey.

At the conclusion of the interview, the defendant was charged on Morris County Complaint-Warrant W-2022-35-1424 for crimes arising out of Morristown, New Jersey on August 6, 2021. (Sa1-Sa2; Sa44).

On January 25, 2022, after an application was filed by the State, Judge Stephen J. Taylor, P.J.S.C., entered an order consolidating Essex County Complaint-Warrant W-2021-008604-0714 with the Morris County case. (Sa25-

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<sup>3</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

Sa26). The State was also cross-designated as a Special Deputy Attorney General to handle the charges from both counties.

On June 8, 2022, a Morris County Grand Jury returned a seven (7) count Indictment, 22-06-000343-I, charging the defendant with: one count of Second Degree Conspiracy to Commit Theft by Unlawful Taking, contrary to N.J.S.A. 2C:5-2a(1) and 2C:20-3a; one count of Third Degree Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3a; one count of Fourth Degree Unlawful Taking of a Means of Conveyance, contrary to N.J.S.A. 2C:20-10d; one count of Third Degree Receiving Stolen Property, contrary to N.J.S.A. 2C:20-7a; one count of Third Degree Conspiracy to Commit Burglary, contrary to N.J.S.A. 2C:5-2a(1) and 2C:18-2a(1); one count of Third Degree Burglary, contrary to N.J.S.A. 2C:18-2a(1); and one count of Third Degree Criminal Mischief, contrary to N.J.S.A. 2C:17-3a(1). (Sa27-Sa30).

On June 20, 2022, the defendant filed his first application for admission into Recovery Court. The next day, on June 21, 2022, the defendant was arraigned.

On July 2, 2022, the defendant was arrested and charged on Essex County Complaint-Warrant W-2022-006801-0714 for Second Degree Unlawful Possession of a Handgun, contrary to N.J.S.A. 2C:39-5b(1); Third Degree Prohibited Weapons – Firearm Without Serial Number, contrary to N.J.S.A. 2C:39-3n; Fourth Degree Possession of a Firearm by a Minor, contrary to N.J.S.A. 2C:58-6.1; Fourth Degree Resisting Arrest by Flight, contrary to N.J.S.A. 2C:29-2a(2); and Fourth Degree Obstruction of the Administration of Law, contrary to N.J.S.A. 2C:29-1a. (Sa45-

Sa46). These charges resulted from conduct which occurred on July 1, 2022. (Sa52).

On July 8, 2022, a Notice of Clinical Eligibility was issued, finding the defendant clinically ineligible for Recovery Court as he failed to appear for a TASC evaluation. (Sa55).

On January 30, 2023, the defendant pleaded guilty to Second Degree Unlawful Possession of a Firearm, Third Degree Prohibited Weapons – Firearm Without Serial Number, and Fourth Degree Resisting Arrest in Essex County. (Sa56).

On March 20, 2023, the defendant was sentenced in Essex County to three (3) years of non-custodial probation and one hundred (100) hours of community service with a Graves Act waiver. (Sa56).

On April 12, 2023, with his Essex charges resolved through conviction, the defendant renewed his application for admission into Recovery Court in Morris County. On May 10, 2023, the State filed its Notice of Legal Eligibility and objected to the defendant's legal and clinical eligibility into Recovery Court on several grounds.<sup>4</sup> (Sa59-Sa60). On June 1, 2023, the defendant was determined to be clinically eligible for Recovery Court with a recommendation of intensive outpatient treatment. (Sa61).

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<sup>4</sup> While it was not initially included in the State's Notice of Legal Eligibility, N.J.S.A. 2C:35-14a(5) was addressed at length in the State's Recovery Court opposition brief, its supplemental Recovery Court brief, and was subject to extensive oral argument during the September 25, 2023 and December 4, 2023, Recovery Court hearings.

On September 25, 2023, oral argument on the Recovery Court appeal was heard. The lower court requested additional briefing on the issue of N.J.S.A. 2C:35-14a(5)'s applicability and set another hearing date of December 4, 2023. (1T66-23 to 1T68-16).

On December 4, 2023, additional oral argument was heard, specifically addressing whether N.J.S.A. 2C:35-14a(5) barred the defendant's admission into Recovery Court.

On December 11, 2023, the lower court issued its written Order Approving Defendant's Application for Acceptance into the Recovery Court Program, Track One, finding the defendant clinically and legally eligible as a Track One candidate for sentencing into Recovery Court. (Sa62). The Order overruled the State's objections to admission into Recovery Court, to include its objection as to N.J.S.A. 2C:35-14a(5), as the lower court found "the current Morris County charges do not involve a firearm and the Essex County charges involving a firearm are no longer pending, having been disposed by guilty plea and a sentence of non-custodial probation." (Sa63).

Accompanying the Order was the Statement of Reasons where the lower court cited this Court's decision in State v. Ancrum, 449 N.J. Super. 526 (App. Div. 2017), as aligning with the defendant's interpretation of the second clause of N.J.S.A. 2C:35-14a(5), that is, the statute should be construed as meaning "a pending charge involving a firearm." (Sa81-Sa82). The lower court concluded the first clause of N.J.S.A. 2C:35-14a(5) "plainly and exclusively refers to the present

Morris County charges, and that the second clause does not, instead referring to other pending charges that somehow involve possession of a firearm.” (Sa82). Once that possession of a firearm charge is disposed of, whether by guilty plea or other manner, it is no longer pending and does not bar an applicant from Recovery Court. Ibid.

## **LEGAL ARGUMENT**

### **POINT I**

#### **LEAVE TO APPEAL SHOULD BE GRANTED.**

R. 2:3-1 dictates when the State may seek leave to appeal in a criminal action. Subsection (b)(5) under R. 2:3-1 provides: “[i]n any criminal action[,] the State may. . . seek leave to appeal pursuant to R. 2:5-6(a). . . to the appropriate appellate court from. . . an interlocutory order entered before, during, or after trial.” All such orders, except cases involving the suppression of evidence seized pursuant to a search warrant, which are appealable under R. 2:3-1(b)(2), are appealable by the State under this provision. Mandel, New Jersey Appellate Practice, § 18:5-2(b)(6) (2016).

The general key to determining whether a particular order is interlocutory or final turns on the question of whether it disposes of all of the issues in controversy and as to all parties. In re Old Colony Coal Co., 49 N.J. Super. 117, 123 (App. Div. 1958). If an order does not finally determine the entire case and there are further steps necessary before the court to fully adjudicate the matter, the order is

interlocutory. See generally, R. 2:2-4; Moon v. Warren Haven Nursing Home, 182 N.J. 507 (2005).

Here, the lower court's order is interlocutory because although the defendant was deemed clinically and legally eligible for Recovery Court, the underlying criminal case is still pending. Defendant has not entered a guilty plea, been adjudicated by a jury at trial, or otherwise been sentenced on the various theft, burglary, and criminal mischief counts in the Indictment. Pursuant to R. 2:3-1(b)(5), the State is permitted to seek leave to appeal from an interlocutory order entered before trial.

This Court may grant leave to appeal only when the interest of justice so requires. R. 2:2-4. Leave to appeal is granted only sparingly. State v. Reldan, 100 N.J. 187, 205 (1985). However, “where there is some showing of merit and justice calls for. . . interference in the cause” and “where some grave damage or injustice may be caused by the order below” the appellate court will exercise its discretion to grant leave to appeal. Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956).

This case presents a matter of first impression. The New Jersey Supreme Court in State v. Hyland, 238 N.J. 135 (2019), expressly classified certain Recovery Court eligibility criteria into two categories – discretionary and nondiscretionary determinations. Id. at 147-148. Certain factors, such as N.J.S.A. 2C:35-14a(4) and (9) were deemed “discretionary,” which require the sentencing judge to engage in fact-finding. Id. at 147. For discretionary determinations, even if the lower court abuses its discretion “by making a clear error in judgement,” it will not result in an



illegal sentence. Ibid. (quoting State v. S.N., 231 N.J. 497, 500 (2018)). The State may not appeal a Recovery Court Special Probation order based upon the finding of one or more of the discretionary factors. Hyland, 238 N.J. at 147.

However, the Court also deemed certain factors as “nondiscretionary,” which require objective, per se legal determinations. Id. at 148. These factors include N.J.S.A. 2C:35-14a(1), (6), (7) and (8). Ibid. Improper application by the Recovery Court as to one of the nondiscretionary factors constitutes a sentence that would be appealable as illegal under the Criminal Code. Ibid. In these instances, the State may appeal a Recovery Court decision only when the lower court judge “makes a plainly mistaken, nondiscretionary, non-factual finding under N.J.S.A. 2C:35-14(a).” Hyland, 238 N.J. at 139.

Notably absent from the list of discretionary and nondiscretionary factors are N.J.S.A. 2C:35-14a(2), (3), and (5). The State submits that N.J.S.A. 2C:35-14a(5) (hereinafter referred to as “factor a(5)”) should be deemed a nondiscretionary, objective factor as the defendant possessed a firearm “at the time of any pending criminal charge.” N.J.S.A. 2C:35-14a(5). As the State argues below, the plain language of the statute governs, and it is clear the phrase “any pending criminal charge” includes the Morris County charges. The Essex firearm case was both initiated and concluded within the pendency of the Morris burglary and theft case. Defendant pleaded guilty in a court of law to unlawfully possessing a firearm and was subsequently convicted for doing so. Therefore, it is evident he unlawfully possessed a firearm during the period the Morris charges were pending. Under these

facts there is no room for discretion or fact-finding, it is strictly an objective observation that requires a per se legal determination.

The Hyland Court permits an appeal by the State when the decision by a Recovery Court judge results in the imposition of an illegal sentence. An interest of justice exists for appellate review because if the lower court's ruling, that the defendant is legally eligible under factor a(5) for Recovery Court Special Probation, is implemented, it will result in a sentence that is "not imposed in accordance with law." Hyland, 238 N.J. at 148.

Furthermore, leave to appeal should be granted prior to the taking of the defendant's guilty plea. Irreparable harm can be caused due to the delay in determining the issues invoked in this case. Defendant and the State need clarification regarding the imposition of an illegal sentence before the defendant pleads guilty in this case. Otherwise, considerable judicial resources will be expended on a negotiation, plea colloquy, and sentence that cannot stand and was not knowingly and voluntarily entered into by the defendant if the expectation of the defendant is to be sentenced into Recovery Court. Leave to appeal is necessitated in this case due to fundamental fairness to all parties. As such, there is a good basis for this Court to grant leave to appeal.

**POINT II**

**THE LOWER COURT ERRED IN RULING THE DEFENDANT ELIGIBLE FOR RECOVERY COURT SPECIAL PROBATION AS HE IS BARRED FROM ENTRY UNDER N.J.S.A. 2C:35-14A(5) AND TO PERMIT ADMITTANCE WILL LEAD TO THE IMPOSITION OF AN ILLEGAL SENTENCE.**

**A. Defendant is a Track One Recovery Court Candidate.**

To be admitted into Recovery Court Special Probation, a defendant must be deemed clinically and legally eligible by a Recovery Court judge to enter the program. June 2019 New Jersey Statewide Drug Court Manual at 10. “Every candidate falls under one of two distinct and mutually exclusive tracks. To determine legal eligibility, the [Recovery Court] must first determine whether the defendant is a Track One or Track Two candidate.” State v. Harris, 466 N.J. Super. 502, 551 (App. Div. 2021). To qualify as a Track One candidate, a defendant must be charged with an offense that subjects him either to a presumption of incarceration under N.J.S.A. 2C:44-1d or a mandatory term of parole ineligibility. Ibid. Otherwise, the defendant is deemed a Track Two candidate. Ibid.

A Track One candidate can only be admitted into Recovery Court under N.J.S.A. 2C:35-14. Ibid. Defendant must meet all nine (9) eligibility factors enumerated under N.J.S.A. 2C:35-14(a). Ibid. These factors are as follows:

(1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; and

(2) the person is a drug or alcohol dependent person within the meaning of N.J.S.A. 2C:35-2 and was drug or

alcohol dependent at the time of the commission of the present offense; and

(3) the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and

(4) substance use disorders treatment and monitoring will serve to benefit the person by addressing the person's drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; and

**(5) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and**

(6) the person has not been previously convicted on two or more separate occasions of crimes of the first or second degree, other than those listed in paragraph (7); or the person has not been previously convicted on two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.A. 2C:35-10, and one of the offenses is a crime of the first or second degree; and

(7) the person has not been previously convicted or adjudicated delinquent for, and does not have a pending charge of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault, or a similar crime under the laws of any other state or the United States; and

(8) a suitable treatment facility licensed and approved by the Division of Mental Health and Addiction Services in the Department of Human Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of this section; and

(9) no danger to the community will result from the person being placed on special probation pursuant to this section.

[N.J.S.A. 2C:35-14a(1)-(9) (Emphasis added).]

Defendant is a Track One candidate for Recovery Court as he is presently charged under Morris County Indictment 22-06-000343-I with Second Degree Conspiracy to Commit Theft by Unlawful Taking, which carries a presumption of incarceration. Thus, the defendant must satisfy all nine (9) eligibility criteria under N.J.S.A. 2C:35-14(a), including factor a(5). Failure to meet any of these factors will bar the defendant's entry into the Recovery Court program.

**B. N.J.S.A. 2C:35-14a(5) Should be Construed as a Nondiscretionary Eligibility Factor.**

The New Jersey Supreme Court has the ultimate authority to fashion the criteria for admission into Recovery Court. State v. Meyer, 192 N.J. 421, 435 (2007). In State v. Hyland, 238 N.J. 135 (2019), the New Jersey Supreme Court provided guidance as to which eligibility factors under N.J.S.A. 2C:35-14a are “discretionary” and “nondiscretionary.”

Discretionary factors permit a Recovery Court judge to engage in fact-finding, including consideration of the defendant's unique characteristics and circumstances, in deciding whether a defendant is amenable to treatment and does not pose a risk to the community. Hyland, 238 N.J. at 147. The Hyland Court expressly categorized eligibility factors N.J.S.A. 2C:35-14a(4) and (9) as “discretionary.” A Recovery Court judge could abuse their discretion “by making a clear error in judgment” and their sentence would still be upheld as authorized by

law. Ibid. The State does not have appellate review recourse for an adverse, discretionary finding. Ibid.

Conversely, the Hyland Court also expressly designated certain eligibility factors as “nondiscretionary.” These factors do not necessitate fact-finding or an exercise of discretion by the Recovery Court judge. Ibid. Rather, certain factors require **objective, per se legal determinations.** Id. at 148. (Emphasis added). These factors include N.J.S.A. 2C:35-14a(1), (6), (7) and (8). Ibid. Because a Recovery Court judge must find all nine factors under N.J.S.A. 2C:35-14a when the defendant is a Track One applicant, improper application of one of the nondiscretionary factors constitutes a sentence that is “not imposed in accordance with law.” Ibid. Under these circumstances, the State retains the right to appeal an illegal sentence. Ibid.

The Hyland Court is silent as to whether N.J.S.A. 2C:35-14a(5) should be classified as “discretionary” or “nondiscretionary,” thus rendering this issue a matter of first impression. The State contends factor a(5) falls into the latter category.<sup>5</sup> Whether a defendant possessed a firearm, either in the present, underlying offense or during the pendency of any criminal charge, is a question that requires a definitive answer. There is no room for discretion as there is when determining whether a defendant poses a danger to the community or whether drug supervisory treatment will reduce the likelihood of recidivism. Discretionary factors

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<sup>5</sup> During oral argument on December 4, 2023, even the lower court agreed factor a(5) should be construed as a nondiscretionary, objective factor and the matter would be appealable if the State’s objection is overruled. (2T15-25 to 2T16-22).

such as a(4) and a(9) permit flexibility based on impressions of a defendant and his circumstances. With factor a(5), the determination is solely objective – did the defendant possess a firearm or not?

Currently, if a defendant is charged with the unlawful possession of a firearm or for a crime involving the use of a firearm, that defendant is deemed legally ineligible under factor a(5) and barred from Recovery Court, even as he retains the presumption of innocence. Further, in a scenario where a defendant is both charged with a firearm-related offense and subsequently convicted of that offense, and that firearm possession occurred while another criminal case was pending, then the defendant should also be barred under factor a(5) as it is definitively known a firearm was possessed. However, by the same token, if a defendant is later acquitted of the firearm-related offense or the charges against him are dismissed, it is clear he did not possess a firearm, and thus would satisfy factor a(5).

Therefore, factor a(5) should be classified as a nondiscretionary, objective factor in determining Recovery Court eligibility.

**C. The Lower Court’s Determination That The Defendant is Eligible, Due to His Satisfaction of Factor a(5), Would Render an Illegal Sentence.**

The State has the right to appeal a Recovery Court Special Probation sentence only if it is illegal. Hyland, 238 N.J. at 145. There are two categories of illegal sentences: those that exceed the penalties authorized for a particular offense, and those that are not authorized by law. State v. Schubert, 212 N.J. 295, 308 (2012); Hyland, 238 N.J. at 145. The State is not permitted to appeal defendant’s Recovery

Court sentence solely on the basis of the court’s application of discretionary factors. Hyland, 238 N.J. at 147. “A finding to the contrary would conflate sentence illegality with judicial abuse of discretion and undermine this Court’s consistently narrow construct of which sentences it deems illegal.” Ibid. Only when “a [Recovery Court] judge makes a plainly or clearly mistaken objective, rather than discretionary, finding under N.J.S.A. 2C:35-14(a), the State may appeal as illegal the imposition of a Drug Court sentence.” Id. at 148.

In its Order and Statement of Reasons, the lower court overruled the State’s legal eligibility objection under N.J.S.A. 35-14a(5), as well as factors a(2)-(4), (8) and (9). (Sa63; Sa86). The court found the defendant’s interpretation of “pending,” as used in the second clause of factor a(5), was the correct position as it relates to the plain language of the statute as well as in accordance with State v. Ancrum. (Sa81-Sa83).

**i. The Plain Language and Legislative Intent of Factor a(5) is Clear and the Defendant is Legally Ineligible for Recovery Court.**

To find the defendant eligible for Recovery Court Special Probation under factor a(5), the lower court must find “the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge.” (Emphasis added.). This factor presents two distinct bars to Recovery Court if either condition is met. First, if an applicant unlawfully possessed a firearm during the commission of the underlying offense to which the applicant is seeking Recovery Court, the applicant is legally barred. Second, even if



an applicant did not possess a firearm specifically during the underlying offense, the applicant is still legally ineligible for Recovery Court if he possessed a firearm while any criminal charge was pending.

The goal of statutory interpretation is to effectuate the Legislature's intent. State v. Smith, 251 N.J. 244, 258–59 (2022); DiProspero v. Penn., 183 N.J. 477, 492 (2005). The “best indicator” of that intent is to look at the statute's plain language and words, which should be read as they are commonly used and ordinarily understood. Ibid. If the plain language of a statute is clear and unambiguous, the process of statutory interpretation is over. Smith, 251 N.J. at 259; State v. Rodriguez, 238 N.J. 105, 113 (2019).

When interpreting a statute, it is not the court's function to rewrite a plainly written statute or to presume the Legislature meant something other than what it conveyed in its clearly expressed language. State v. Scriven, 226 N.J. 20, 34–35 (2016). The Legislature is presumed to be aware of judicial construction of its enactments and if the plain language chosen by the Legislature “leads to a clearly understood result” consistent with legislative objectives of the statute and its context, the law will be applied as written. State v. J.V., 242 N.J. 432, 445 (2020); State v. Robinson, 217 N.J. 594, 604 (2014). However, if statutory language is ambiguous, or if a plain reading of the statute leads to an absurd result, a court may consider extrinsic aids, including legislative history. Smith, 251 N.J. at 259.

In its decision, the lower court found no dispute as to the first clause of factor a(5), which the State agrees does not apply as the defendant did not possess a

firearm during the GT Motors incident. (Sa80-Sa81). As for the second clause, the lower court erroneously focused on the phrase “at the time of,” agreeing with the defendant’s interpretation of the statute that once a pending charge is disposed of, either by way of conviction, acquittal, or dismissal, it is no longer pending and ceases to bar admission into Recovery Court. (Sa81). The lower court further expressed concerns that if the State’s interpretation prevails, then defendants whose cases are dismissed or remanded to a non-firearm related charge will still be barred under N.J.S.A. 2C:35-14a(5). Ibid. Finally, the lower court asserted the State failed to cite any legislative history or case law to support its position. (Sa82).

First, there is no ambiguity when it comes to the language in the second clause of factor a(5). The clause is explicit in its disqualifying terminology that an applicant “did not possess a firearm at the time of **any pending** criminal charge.” Not only does the first clause of factor a(5) include Morris County (as the present offense) but the second clause also encompasses the Morris County charges, along with any other jurisdiction’s charges, as the clause specifies “any pending criminal charge.” The term “any” is defined as “some”; “one out of many”; and “an indefinite number.” Any, Black's Law Dictionary (4th ed. 1968). It is not solely limited to the Essex County firearm charges. Further, the term “pending” is defined as “remaining undecided” and “awaiting decision.” Pending, Black’s Law Dictionary (11th ed. 2019). The burglary and theft case from Morris County represents charges that are still “pending” as the defendant awaits trial and sentencing. The entirety of the defendant’s firearm case in Essex County, from

commission to conviction, occurred within the pendency of the Morris County case. Therefore, it is conclusively established the defendant unlawfully possessed a firearm while “any” criminal charge, i.e. the Morris County charges, were pending. The plain language of N.J.S.A. 2C:35-14a(5) could not be clearer and does not require this Court to go any further in the statutory interpretation process.

Even with consideration of the legislative history of the statute, a review over the various versions of N.J.S.A. 2C:35-14a as a whole does not provide additional insight as to factor a(5). First implemented in January 2000, the statutory language of factor a(5) has not been changed or amended in the last twenty-three years. This demonstrates the Legislature’s belief that its chosen textual language was clear and did not warrant further explanation or amendment.

The State requests this Court effectuate the Legislature’s clear and unambiguous intent for factor a(5), specifically, to bar as legally ineligible those who unlawfully possess a firearm, either at the time of the present offense underlying the Recovery Court appeal as well as those who unlawfully possess a firearm while any criminal charges are pending, including the charges underpinning a Recovery Court appeal. To determine otherwise would lead to an absurd and unreasonable result. By the lower court’s reasoning, a defendant is legally ineligible for admission into Recovery Court in the present jurisdiction if outstanding charges are pending in a secondary jurisdiction that involve the unlawful possession or use of a firearm. In this scenario, the defendant enjoys the presumption of innocence, and it is not definitively known whether he did, in fact, possess a firearm.

Nevertheless, he is barred. However, in the same logical vein, if a defendant is found guilty, by plea or jury trial, of unlawfully possessing or using a firearm in that secondary jurisdiction, he is deemed eligible for Recovery Court in the present jurisdiction. Under these circumstances, it is definitively known the defendant unlawfully possessed a firearm and, by the mere changing of the case status from “pending” to “closed,” the defendant is transformed into a legally eligible candidate.

Further, even by the lower court’s reasoning, which limits the second clause of factor a(5) solely applicable to the Essex County firearm case, the defendant is still legally ineligible for Recovery Court in Morris County. The second clause of factor a(5) prohibits the possession of a firearm at the time of any pending criminal charge. The lower court determined the phrase “at the time of” to mean that once the pending charges for unlawful possession of a firearm and prohibited weapons – firearm without a serial number were resolved through conviction, they are no longer “pending” and then defendant is legally eligible for Recovery Court. This line of reasoning ignores the phrase “did not possess a firearm” within the statute. The statute is not concerned with whether a “pending charge” for firearm possession is present but rather the act of physically possessing a firearm itself while the defendant has pending charges for any offense, whether it be in the present jurisdiction or elsewhere. As it is known the defendant unlawfully possessed a firearm on July 1, 2022, and that act of possession occurred while the

Morris County burglary and theft charges were pending, factor a(5) renders the defendant legally ineligible for Recovery Court.

Moreover, the lower court's concerns that the State's interpretation would bar a Track One applicant even if their firearm case is dismissed, downgraded, or otherwise disposed is allayed because if a firearm charge against an applicant is ultimately dismissed or results in acquittal, it will be definitively established the applicant did not possess a firearm during the pendency of any other criminal case. Therefore, the applicant would not be barred as legally ineligible to enter Recovery Court. This Court's designation of factor a(5) as a nondiscretionary, objective eligibility factor, as argued above in the State's Point II Section B, avers to both parties' benefit and detriment as to whether a firearm was actually possessed.

Finally, the lower court cited "practical considerations" to support its interpretation of factor a(5). (Sa83). One of these considerations includes the fact the defendant was sentenced on his Essex firearm charges to a period of non-custodial probation after the mandatory minimum period of incarceration was removed through a Graves act waiver.<sup>6</sup> Ibid.; N.J.S.A. 2C:43-6.2. Placing significance on the noncustodial probationary sentence, the lower court reasoned:

"Until a pending matter is disposed, there will be uncertainty about the outcome; once disposed, the parties and Recovery Court judge have the information needed to assess the known outcome. Here, the known result of Defendant's firearms conviction was a sentence of non-custodial probation. There is no sound reason such a non-custodial

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<sup>6</sup> The State reviewed the January 30, 2023, plea agreement from Essex County and it is devoid of any basis upon which the waiver was sought.

outcome in and of itself should disqualify a Track One candidate from a Recovery Court probationary sentence.”

[(Sa83).]

The State concurs with the notion that uncertainty is present when a case is still pending but when that case concludes, the initial uncertainty dissolves and information previously unknown becomes available. Where the State diverges from the lower court’s rationale is the significance given to the probationary outcome of the Essex firearm convictions. If the defendant had been sentenced to a period of incarceration in Essex County, there is no dispute he would be barred from entry into the Morris County Recovery Court program. The State posits, and the lower court agrees, that a defendant cannot serve a prison sentence and a term of probation simultaneously. (Sa83). However, a sentence of noncustodial probation does not detract from the known outcome of the Essex case - that the defendant did, in fact, unlawfully possess a firearm on July 1, 2022. As the defendant pleaded guilty to the firearm charges, he would have admitted to doing so during his factual basis for his plea to be accepted by the court. As that firearm possession occurred while the Morris County charges were and still are pending, factor a(5) bars entry into Recovery Court.

If the lower court’s ruling is not reversed, the defendant will remain approved for acceptance into the Recovery Court program after it was proven he possessed a firearm while the Morris County GT Motors case was still pending. Conversely, his application would have been denied if his Essex firearm charges were still pending

and the presumption of innocence remained viable. This rationale contradicts the clear, plain language of N.J.S.A. 2C:35-14a(5) and the intent of the Legislature to bar Track One applicants who possess firearms either during the underlying case or at any point while any criminal matter was active.

Therefore, as N.J.S.A. 2C:35-14a(5) is clear in its textual language and intent, and because it is definitively and objectively known the defendant possessed a firearm during the pendency of the Morris GT Motors burglary and theft case, the Order of the lower court should be reversed as it will result in the imposition of an illegal sentence.

**ii. Defendant’s Case is Distinguishable from State v. Ancrum, 449 N.J. Super. 526 (App. Div. 2017).**

In making its decision, the lower court relied upon this Court’s decision in Ancrum to lend credence to the position that the term “pending” within N.J.S.A. 2C:35-14a(5) should relate solely to the Essex County firearm charges. (Sa81-Sa82). Specifically, the lower court, referring to dicta within the Ancrum decision, highlighted the following line:

**For example, anyone who possessed a firearm at the time of the offense, or had a pending charge involving a firearm,** and anyone who had been previously convicted on two or more separate occasions for crimes of the first, second or third degree, other than possession of CDS, was ineligible for special probation. N.J.S.A. 2C:35-14(a)(5) and (6) (2000).

[Ancrum, 449 N.J. Super. at 533. (Emphasis added).]

(Sa82). As such, the lower court concluded that because the defendant's Essex firearm charges are no longer "pending," he is rendered legally eligible for admission into Recovery Court. (Sa83). The lower court's reliance on Ancrum is erroneous.

In Ancrum, this Court interpreted N.J.S.A. 2C:35-14a(7) which provides that a Recovery Court judge may sentence a defendant to Recovery Court Special Probation if, among other findings, it finds "the person has not been previously convicted or adjudicated delinquent for, and does not have a **pending charge** of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault. . ." Ancrum, 449 N.J. Super. at 528. (Emphasis added). Defendant Ancrum pleaded guilty to second degree Robbery and third degree Aggravated Assault, among other charges, the latter of which was merged into the Robbery charge. Ibid. Ancrum was admitted into Recovery Court over the State's objection after the Recovery Court judge concluded the defendant had "no pending charge for a disqualifying offense" under Factor a(7) as a result of the merger. Id. at 531.

This Court found the defendant satisfied Factor a(7) without regard to the issue of merger. Id. at 534. In its review of the legislative history of the 2012 amendment to N.J.S.A. 2C:35-14, this Court determined the Legislature's intent was clear in excluding the crime for which the defendant is facing sentence from consideration under Factor a(7). Id. at 535. Thus, the list of prohibited offenses under Factor a(7) **does not** apply to the conviction for which the offender is



currently being sentenced. Ibid. (Emphasis added). Therefore, as Ancrum had not been previously convicted of a disqualifying offense, i.e. aggravated assault, nor did he have other pending charges for such an offense, Factor a(7) was satisfied independent of the merger issue. Ibid. This Court ultimately reversed the decision to admit Ancrum into Recovery Court, vacated his guilty plea, and remanded the matter as his as his aggravated assault conviction constituted a bar to legal eligibility under N.J.S.A. 2C:35-14b(2).

It is clear from this Court's rationale that Ancrum would have needed a pending disqualifying offense, separate from the underlying offenses of robbery and aggravated assault, to have been disqualified. The same logic applies to factor a(5). The lower court found that because the Essex firearm charges are no longer "pending," the defendant is not legally ineligible for Recovery Court. However, it is not the Essex firearm charges that are the focus of the word "pending" in factor a(5). Rather, it is the underlying burglary and theft charges from GT Motors that constitute "any pending criminal charge." It does not matter whether the Essex firearm charges were still pending or whether the defendant was convicted of the offenses. It is the fact the defendant possessed a firearm while the Morris case was pending that is determinative. Additionally, as argued earlier, unlike factor a(7) which explicitly requires a "pending charge" for a disqualifying offense, factor a(5) is solely concerned with the act of possessing a firearm while any criminal case is pending.

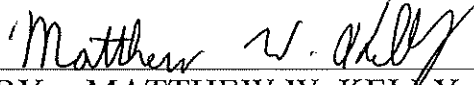
Defendant was charged with unlawfully possessing a firearm, and that possession occurred during the “pendency of any criminal charge,” namely the Morris County burglary and theft charges. It is now conclusively known the defendant possessed a firearm during the pendency of the underlying Morris case as he admitted under oath to possessing a firearm during his Essex plea allocution and was convicted of the firearm charges. Construed objectively, the lower court did not have discretion to deem the defendant legally eligible under factor a(5). Thus, the Order approving the defendant’s admission into the Recovery Court program as a Track One applicant should be reversed as it will result in an illegal sentence.

**CONCLUSION**

WHEREFORE, the State of New Jersey respectfully submits that its Motion for Leave to Appeal the Order of the Morris County Superior Court be GRANTED, and that the lower court’s Order approving the defendant’s application for acceptance into the Recovery Court as a Track One applicant program be REVERSED.

Respectfully submitted,

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On the Letter-Brief

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1648-23 (AM-227-23)

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Appellant,	:	On Appeal From An Interlocutory Order
	:	Of the Superior Court of New Jersey
v.	:	Criminal Division, Morris County
AHJHIR JONES,	:	
	:	Indictment No. 22-06-343-I
	:	
Defendant-Respondent.	:	Sat Below:
	:	Hon. Robert M. Hanna, J.S.C.
	:	
Your Honors:	:	

This letter-brief is submitted on behalf of Defendant in lieu of a formal brief pursuant to R. 2:6-2(b).

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**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Defendant relies on the State’s combined Statement of Facts and Procedural History.

**LEGAL ARGUMENT**

**POINT I**

**THE RECOVERY COURT JUDGE CORRECTLY FOUND THAT DEFENDANT WAS NOT LEGALLY BARRED FROM RECOVERY COURT UNDER N.J.S.A. 2C:35-14(A)(5) BECAUSE HE DID NOT SEEK ADMISSION TO RECOVERY COURT ON A CONVICTION FOR A FIREARMS OFFENSE AND HE DID NOT HAVE A PENDING FIREARMS CHARGE AT THE TIME HIS RECOVERY COURT APPLICATION WAS CONSIDERED.**

This case turns on the statutory interpretation of the second clause of N.J.S.A. 2C:35-14(a)(5), which disqualifies a candidate from Track One of Recovery Court if he “possess[ed] a firearm at the time of any pending criminal charge.” The State argues that because Mr. Jones possessed a firearm in Essex County while he had pending charges in Morris County, Mr. Jones is disqualified from Track One by subsection (a)(5). (Sa72; Sb8, 14-16)<sup>1</sup> Mr. Jones seeks admission into Recover Court under Morris County Indictment

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<sup>1</sup> The following abbreviations will be used:  
Sb – State’s Brief  
Sa – State’s Appendix

No. 22-06-00343-I, in which the State does not allege that he possessed a firearm. (Sa27-29, 68)

Separate from the Morris County indictment, but while the Morris County charges were pending, Mr. Jones was arrested on charges under Essex County Indictment No. 22-09-2264-I; under the Essex County indictment, Mr. Jones ultimately pleaded guilty to, inter alia, second-degree Unlawful Possession of a Handgun Without a Permit (N.J.S.A. 2C:39-5(b)(1)) and thereby admitted to possessing a firearm. (Sa69) By motion of the Essex County prosecutor, the Graves Act parole disqualifier was waived pursuant to N.J.S.A. 2C:43-6.2 and Mr. Jones was sentenced to three years of probation on Indictment No. 22-09-2264-I. (Sa56, 69-70) Subsequently, Mr. Jones was evaluated for legal eligibility for Track One Recovery Court in the present matter by Morris County Superior Court Judge Robert M. Hanna, at which time Mr. Jones no longer had any pending firearms charges. (Sa70)

The State argued below, and continues to argue on appeal, that Mr. Jones is disqualified from Track One under the second clause of subsection (a)(5) because Mr. Jones possessed a firearm in Essex County while his charges in Morris County were pending. (Sa72; Sb8, 14-16) The State interprets the second clause of (a)(5)—“possess[ed] a firearm at the time of any pending criminal charge”—to mean “possessed a firearm while defendant had a

pending criminal charge.” The State thus reads “at the time of” to refer to the time when defendant had a pending criminal charge. Because Mr. Jones had pending charges in Morris County at the time he committed the firearm offense in Essex County, the State argues that he falls under (a)(5).

The Recovery Court Judge rejected the State’s argument and interpreted “at the time of any pending charge” to mean “at the time he committed any pending charge.” (Sa82) Thus, the Court reasoned, a defendant is only barred by the second clause of (a)(5) if: (1) he committed an offense resulting in “charges that somehow involved possession of a firearm;” and (2) those charges are still pending at the time of the Recovery Court application rather than having been “disposed (whether by guilty plea or otherwise).” (Sa82) The Court found that because Mr. Jones’s had been sentenced on his firearm charges in Essex, those charges were no longer pending, and thus did not disqualify him from Track One pursuant to subsection (a)(5). (Sa82) Additionally, the Court concluded that the second clause of (a)(5) refers to charges other than the present charges on which a defendant seeks admission to Recovery Court and thus did not apply to the Morris County charges. (Sa82) The Recovery Court’s common sense reading of the plain language of subsection (a)(5) was correct and should be affirmed by this Court.

**A. The Plain Language And Structure Of N.J.S.A. 2C:35-14 Make Clear That Subsection (a)(5) Bars Only Defendants Who Seek Admission To Recovery Court On A Firearms Conviction Or Who Have A Separate Pending Firearms Charge.**

A proper interpretation of N.J.S.A. 2C:35-14(a)(5) requires an examination of both the plain language of subsection (a)(5) as well as the structure of the all the provisions in N.J.S.A. 2C:35-14 that govern Recovery Court eligibility. “The Legislature’s intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language.” DiProspero v. Penn., 183 N.J. 477, 492 (2005). A court must read words and provisions “in context with related provisions so as to give sense to the legislation as a whole.” Ibid.; see also Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) (hold that a court must consider “the specific context in which that language is used, and the broader context of the statute as a whole”). A court may also “draw inferences based on the statute’s overall structure and composition” State v. S.B., 230 N.J. 62, 68 (2017). Thus, we must read the language of subsection (a)(5) not in isolation but in context with the other provisions of the same statute.

Four provisions of N.J.S.A. 2C:35-14 make clear that subsection (a)(5) refers only to the present offense on which defendant seeks admission to recovery court and other charges still pending at the time defendant seeks



admission: the prefatory language to subsection (a); the language of subsections (a)(5) and (a)(7); and the prefatory language to subsection (b).

Subsections (a)(5) and (a)(7) read in relevant part, including the prefatory language:

“Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S.2C:44-1, whenever a person with a substance use disorder who is subject to sentencing under this section is convicted of or adjudicated delinquent for an offense, other than one described in subsection b. of this section, the court, upon notice to the prosecutor, may, on motion of the person, or on the court's own motion, place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that:”

. . .

(5) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and

(6) the person has not been previously convicted on two or more separate occasions of crimes of the first or second degree, other than those listed in paragraph (7); or the person has not been previously convicted on two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime of the first or second degree; and

(7) the person has not been previously convicted or adjudicated delinquent for, and does not have a pending charge of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault, or a similar crime under the laws of any other state or the United States; and

[N.J.S.A. 2C:35-14(a) (emphasis added).]

In turn, subsection (b) states:

A person shall not be eligible for special probation pursuant to this section if the person is convicted of or adjudicated delinquent for:

- (1) a crime of the first degree;
- (2) a crime of the first or second degree enumerated in subsection d. of section 2 of P.L.1997, c. 117 (C.2C:43-7.2), other than a crime of the second degree involving N.J.S.2C:15-1 (robbery) or N.J.S.2C:18-2 (burglary);
- (3) a crime, other than that defined in section 1 of P.L.1987, c. 101 (C.2C:35-7), for which a mandatory minimum period of incarceration is prescribed under chapter 35 of this Title or any other law; or
- (4) an offense that involved the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile near or on school property.

[N.J.S.A. 2C:35-14(b).]

Structurally, the above listed criteria that disqualify candidates from Track One based on criminal charges or convictions contain three categories of disqualifying offenses: (1) “present offenses” (offenses for which the defendant has been convicted and for which he is being sentenced under the indictment under which he seeks admission into Track One Recovery Court); (2) “other pending charges” (pending charges in an indictment other than the indictment under which he seeks admission into Track One Recovery Court); and (3) “prior convictions.” The structure of N.J.S.A. 2C:35-14 makes clear

that these are three distinct categories, cf. Body-Rite Repair Co. v. Dir., Div. of Tax'n, 89 N.J. 540, 544 (1982) (“The internal structure of the Sales Tax Act treats the taxation of goods and services distinctly.”), and that these are the only categories of disqualifying offenses. Cf. Brodsky v. Grinnell Haulers, Inc., 181 N.J. 102, 112 (2004) (“The canon of statutory construction, *expressio unius est exclusio alterius*—expression of one thing suggests the exclusion of another left unmentioned.”)

The first category of present offenses—disqualifying offenses for which the defendant has been convicted and for which is being sentenced under the indictment(s) under which he seeks admission into Track One—is primarily set forth in subsection (b). State v. Ancrum, 449 N.J. Super. 526, 531 (App. Div. 2017). The offenses include (1) first-degree crimes, (2) first- and second-degree No Early Release Act (NERA) offenses other than robbery or burglary, (3) crimes with a mandatory minimum period of incarceration other than N.J.S.A. 2C:35-7, and (4) distribution or attempt/conspiracy to distribute CDS to a juvenile near school property. N.J.S.A. 2C:35-14(b). Additionally, defendant is ineligible for Track One if he possessed a firearm “at the time of” the offense(s) of which he has been convicted and for which he seeks admission to Track One. N.J.S.A. 2C:35-14(a)(5).

The second category, concerning other pending charges, is based on a

defendant's pending charges in cases other than the indictment(s) under which he seeks admission into Track One Recovery Court. Ancrum, 449 N.J. Super. at 535. A defendant is ineligible for Track One if he has a pending charge "of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault," N.J.S.A. 2C:35-14(a)(7), or if he has a pending charge in which he possessed a firearm. N.J.S.A. 2C:35-14(a)(5).

The final category, concerning prior convictions, disqualifies a Recovery Court applicant based on his prior criminal history. A defendant is ineligible for Track One if he has a prior conviction for "murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault," N.J.S.A. 2C:35-14(a)(7), or if he was "convicted on two or more separate occasions of crimes of the first or second degree" or on "two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime of the first or second degree." N.J.S.A. 2C:35-14(a)(6). A defendant with a prior conviction for an offense during which he possessed a firearm is not ineligible for Track One solely by virtue of that single conviction, unless, of course, that conviction was for one of the offenses enumerated in N.J.S.A. 2C:35-14(a)(7). State v. Maurer, 438 N.J. Super. 402,

415 (App. Div. 2014).

The State’s interpretation seeks to expand on these three simple, straightforward categories—present offenses, other pending charges, and past convictions—by creating a fourth disqualification category for offenses committed while on bail or pretrial release, which would only apply to firearms offenses. The State’s reading of the statute is incorrect for four reasons: (i) it misreads the plain language of section (a); (ii) by reading “any pending charge” in subsection (a)(5) to include “the present offense,” it would render the term “present offense” superfluous; (iii) it would give a different meaning to “pending offense” in subsections (a)(5) and (a)(7); and (iv) the language of subsection (a)(5) is clear that the Legislature’s aim was to target pending firearms offenses rather than the commission of a firearms offense while on bail or pretrial release for another offense.

To admit a defendant into Track One, the Recovery Court judge must make findings that the defendant meets all nine eligibility criteria enumerated in subsection (a) and does not presently stand convicted of any of the offenses listed in subsection (b). The judge must also make these findings at a particular time—when defendant stands convicted of the offenses on which he seeks admission to Recovery Court. N.J.S.A. 2C:35-14(a) (“[W]henever a person . . . is convicted of . . . an offense, other than one described in subsection b. of this

section, the court . . . may . . . place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that . . . .”). Thus, to qualify as a “pending charge” under subsections (a)(5) or (a)(7), the charge must still be pending at the time that defendant seeks admission to Recovery Court. But at the time the judge is evaluating the criteria under subsections (a)(5) or (a)(7), the defendant must have already been convicted of the offense for which he seeks admission to Recovery Court, and thus, by definition, that offense is no longer pending.

Two elements of the structure of the statute make clear that a “pending charge” refers to a charge other than the charge for which the defendant has been convicted on which he is seeking admission to Track One. First, subsection (a)(5) disqualifies defendants who possessed a firearm either during (i) the “present offense” (the offense on which defendant seeks admission to Recovery Court) or (ii) a “pending criminal charge.” As Judge Hanna astutely observed, because subsection (a)(5) refers to the “present offense” separately from “any pending criminal charge,” these two terms must describe distinct categories; to read “any pending criminal charge” to include the “present offense” would be to render the term “present offense” superfluous. (Sa82) A long established cannon of statutory interpretation is that courts “must presume that every word in a statute has meaning and is not mere surplusage.”

Cast. Art Indus., LLC v. KPMG LLP, 209 N.J. 208, 222 (2012) (quotation omitted).

Second, subsection (b) also makes clear that “pending charge” as used in subsections (a)(5) and (a)(7) refers to charges other than those on which defendant seeks admission to Track One. This Court analyzed the relationship between subsection (b) and subsection (a)(7) in Ancrum. 449 N.J. Super. at 528. Subsection (a)(7) prohibits admission into Track One of a defendant who was “previously convicted or adjudicated delinquent for” or has “a pending charge of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault.” N.J.S.A. 2C:35-14(a)(7). In contrast, under subsection (b), “A person shall not be eligible for special probation pursuant to this section if the person is convicted of or adjudicated delinquent for” a crime falling into one of four categories, including a NERA crime other than robbery or burglary. N.J.S.A. 2C:35-14(b)(2).

The question in Ancrum was whether defendant’s merged charge of second-degree aggravated assault disqualified him from drug court under either subsection (a)(7) or subsection (b). 449 N.J. Super. at 528. This Court held that “the Legislature intended to exclude the crime for which a defendant is facing sentence from consideration under Section a(7).” Id. at 535. Although

defendant Ancrum’s second-degree aggravated assault charge might have been considered “pending” in the sense that he had not yet been sentenced for that charge, this Court held that subsection (a)(7) speaks to “other pending charges for [a disqualifying] offense”—meaning other than the crime for which a defendant seeks admission to Track One. Ibid. However, defendant Ancrum’s present conviction for second-degree aggravated assault did disqualify him from consideration for Track One under subsection (b)(2).<sup>2</sup> Id. at 537-39. Thus, it is subsection (b), not subsection (a)(7), which disqualifies a defendant from Track One based on the present offense on which he seeks admission to Recovery Court.

Because the Ancrum Court held that a “pending charge” under subsection (a)(7) refers pending charges other than the present offense on which a defendant seeks admission to Recovery Court, the phrase “pending charge” in subsection (a)(5) must also refer to charges other than the present offense on which a defendant seeks admission to Recovery Court. “[W]here the Legislature uses the same language more than once in a statute, the same

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<sup>2</sup> Not relevant to this case, the Ancrum Court faced the additional question of whether the disqualification for the present offense of second-degree aggravated assault survived the merger of that crime into second-degree robbery (as second-degree robbery is not a disqualifying offense under subsection (b)(2), and this Court held that the disqualification for a present conviction second-degree aggravated assault does survive the merge. 449 N.J. Super. at 537-39.



meaning will be ascribed to each usage unless the Legislature has specifically indicated otherwise.” Oldfield v. N.J. Realty Co., 1 N.J. 63, 69 (1948); see also State v. Canfield, 470 N.J. Super. 234, 304 (App. Div. 2022) (holding that the term “dwelling” must have “the same meaning in both N.J.S.A. 2C:3-4(b)(2)(b)(i) and N.J.S.A. 2C:3-4(c)”), aff’d as modified on other grounds, 252 N.J. 497 (2023).

Finally, the language of “possess a firearm at the time of any pending charge” in subsection (a)(5) clearly refers to possessing a firearm during the offense for which defendant has “pending charges” rather than targeting the scenario where a defendant possessed a firearm while on bail or pretrial release for another offense. Simply put, the Legislature knows how to specify sentencing provisions that target offenses committed while on bail or pretrial release and uses quite different language when targeting those offenses. In the provision that creates a presumption of consecutive sentences for offenses committed while on bail or pretrial release, the Legislature used the language, “When a defendant is sentenced to imprisonment for an offense committed while released, with or without bail, pending disposition of a previous offense.” N.J.S.A. 2C:44-5(h). Additionally, the Legislature created a mandatory extended term for defendants who commit certain enumerated crimes while on bail for those same crimes, using the language: “at the time of

the commission of the crime, the defendant was released on bail or on his own recognizance for one of the enumerated crimes and was convicted of that crime.” N.J.S.A. 2C:44-5.1.

Both N.J.S.A. 2C:44-5(h) and N.J.S.A. 2C:44-1 demonstrate that the Legislature knows how to specify when it is targeting a crime committed by a defendant while released on other charges. Cf. Zabilowicz v. Kelsey, 200 N.J. 507, 517 (2009) (“The Legislature knows how to draft a statute to achieve that result when it wishes to do so.”). Had the Legislature intended to target possession of a firearm while on pretrial release, the second clause of subsection (a)(5) would read, “and did not possess a firearm while released on any pending charge,” as both N.J.S.A. 2C:44-5(h) and N.J.S.A. 2C:44-1 use the word “released.” That the Legislature (1) knows how to target offenses committed while on pretrial release as evidenced by its use of the term “released” in N.J.S.A. 2C:44-5(h) and N.J.S.A. 2C:44-1 but (2) chose not to use the same clear language in N.J.S.A. 2C:35-14(a)(5) indicates that (a)(5) does not refer to a firearms offense committed while on pretrial release. Cf. State v. Ryan, 249 N.J. 581, 599 (2022) (the Legislature’s use of minimum ages for predicate offenses in the persistent offender statute but not in the Three Strikes statute indicates that the Legislature did not intend to impose a minimum age requirement for predicate offenses in the Three Strikes statute).

As the State’s argument regarding the language of the statute fails to support its proffered reading, we should address the State’s secondary argument; that Mr. Jones’s interpretation of the statute “would lead to an absurd and unreasonable result.” (Sb18) Specifically, the State notes that this interpretation means that defendant facing a firearms charge in a case other than that for which he seeks admission to Recovery Court is ineligible for Track One while the firearms charge is pending—while he retains the presumption of innocence—but becomes eligible once he is convicted and the firearms charge is no longer pending. (Sb18) But this Court has already unequivocally held that N.J.S.A. 2C:35-14 does not bar a defendant with a prior firearms conviction from Track One, as a defendant may “have a prior conviction for a weapons charge and still be eligible for Drug Court.” Maurer, 438 N.J. Super. at 415.

The simple fact is that the statute disqualifies defendants for different classes of offenses depending on whether those offenses are prior convictions, present charges on which defendants seek admission to Recovery Court, or other pending charges. The Legislature disqualified persons with prior convictions for “murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault,” N.J.S.A. 2C:35-14(a)(7), but did not disqualify persons with prior convictions for

firearms offenses. N.J.S.A 2C:35-14(a)(5). The Legislature also treated charges for aggravated assault differently depending on the degree and whether they are present, pending, or prior convictions. A defendant who is presently convicted for third-degree aggravated assault may be admitted to Track One on that charge (subsection (b)(2) bars only convictions for second-degree aggravated assault), but a defendant with a prior conviction or pending charge for third-degree aggravated assault is ineligible for Track One.

Compare N.J.S.A. 2C:35-14(a)(7) with N.J.S.A. 2C:35-14(b)(2).

Perhaps the Legislature's reason for targeting pending firearms charges was that, because the Graves Act imposes mandatory incarceration for most offenses involving the possession of a firearm, see N.J.S.A. 2C:43-6(c), the Recovery Court judge should wait to see whether the defendant is going to be convicted and sentenced to prison on the firearms offense; after all, a defendant cannot be sentenced to Recovery Court if he is presently serving a prison term. But if the other pending firearms charge were resolved by acquittal, dismissal, or non-custodial probation, the Legislature apparently believed it would not be *per se* contrary to public safety to allow that individual to enter Recovery Court.

Regardless of whether this Court concurs with the policy choice of the Legislature, "a court may neither 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.” O’Connell v. State, 171 N.J. 484, 488 (2002). Here, the Legislature plainly disqualified a defendant from Recovery Court who seeks admission on present charges in which he possessed a firearm or who has other presently pending charges during which he possessed a firearm, but does not disqualify a defendant with a conviction for an offense involving possession of a firearm where that case has been resolved via conviction and is no longer pending.

As applied to Mr. Jones, Mr. Jones’s Morris County indictment under which he seeks admission to Recovery Court does not charge him with possessing a firearm; thus, he is not disqualified by the “present offense” clause of subsection (a)(5). Additionally, because his firearm charge in Essex County was resolved via guilty plea and a sentence of probation by the time of the Recovery Court Judge’s legal determination, the Essex County case was no longer pending. Accordingly, Mr. Jones was not barred by the “pending charge” clause of subsection (a)(5). This Court should therefore affirm Judge Hanna’s decision that Mr. Jones is not disqualified from Recovery Court by subsection (a)(5).

**B. The State In This Case Had The Right To Seek Appellate Review Of The Recovery Court Judge’s Legal Interpretation Of Subsection (a)(5), But This Court Need Not And Should Not Decide Whether All Determinations Under Subsection (a)(5) Are Appealable By The State.**

In State v. Hyland, the Supreme Court held that “the State may appeal a Drug Court sentence only when the sentencing judge makes a plainly mistaken, non-discretionary, non-factual finding under N.J.S.A. 2C:35-14(a).” 238 N.J. 135, 139 (2019). Hyland noted that both subsections (a)(4) and (a)(9) “are discretionary determinations requiring the sentencing judge to engage in fact-finding.” Id. at 147. The Court contrasted these subsections with subsections (a)(1), (6), (7), and (8), which the Court said “require objective, per se legal determinations” and are thus appealable. Id. at 148. The Hyland Court did not, however, state whether subsections (a)(2), (3), or (5) fall into the discretionary, fact-finding, and non-appealable category, or the non-discretionary, non-factual finding, objective per se legal determination category.

Because Mr. Jones entered a plea of guilty to Unlawful Possession of a Handgun, N.J.S.A. 2C:39-5(b)(1), under Essex County Indictment No. 22-09-2264-I, the Court below in this case did not need to engage in any fact finding regarding whether Mr. Jones “possess[ed] a firearm at the time of any pending criminal charge.” The question the State poses on appeal is a purely

legal question regarding the correct interpretation of the language of subsection (a)(5). Thus, the State had the right to ask this Court to evaluate whether Judge Hanna’s legal interpretation of subsection (a)(5) was correct. However, as set forth above, Judge Hanna’s legal interpretation was correct, and thus not “plainly mistaken.” 238 N.J. at 139.

This Court need not decide whether all determinations under subsection (a)(5) are appealable by the State in order to resolve this appeal. Subsection (a)(5) is not as clean cut as subsections (a)(1), (6), (7), and (8) precisely because it commands the court to make a factual finding about whether a defendant possessed a firearm in the present case or separate pending case. There may be a future scenario where a defendant awaiting trial on a pending firearm charge seeks admission to Recovery Court before his trial and asks the Recovery Court Judge to evaluate the evidence in the pending case to determine whether he did or did not possess a firearm. Such a scenario would involve fact-finding<sup>3</sup> and may not be appealable under Hyland. But such a hypothetical is not presented by this case, and as such must be left for another day.

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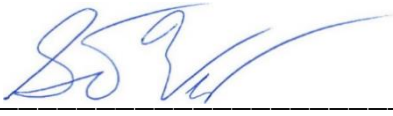
<sup>3</sup> Such judicial fact-finding, however, may violate the Sixth Amendment right to a jury trial. See State v. Franklin, 184 N.J. 516, 534 (2005).

**CONCLUSION**

For the aforementioned reasons, this Court should affirm the order of the Recovery Court finding that Mr. Jones is not disqualified from Recovery Court under N.J.S.A. 2C:35-14(a)(5).

Respectfully submitted,

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By:   
\_\_\_\_\_  
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ID. No. 084402013

Date: March 25, 2024



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# Superior Court Of New Jersey

APPELLATE DIVISION  
DOCKET NO. A-1648-23 (AM-227-23)

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THE STATE OF NEW JERSEY,

Plaintiff-Appellant,

vs.

AHJHIR JONES,

Defendant-Respondent.

April 8, 2024  
Criminal Action

On Appeal from an Interlocutory  
Order of the Superior Court,  
Law Division, Morris County

Sat Below:  
Hon. Robert M. Hanna, J.S.C.  
(Motion for Recovery Court  
Admittance)

**Defendant is Not Detained**

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REPLY BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

The State relies upon its Statement of Facts and Procedural History contained within its merits brief.<sup>1</sup>

### **LEGAL ARGUMENT**

#### **POINT I**

**THE PLAIN LANGUAGE OF N.J.S.A. 2C:35-14A(5) DEMONSTRATES CLEAR LEGISLATIVE INTENT TO BAR THE DEFENDANT FROM ENTRY INTO THE RECOVERY COURT PROGRAM FOR UNLAWFULLY POSSESSING A FIREARM WHILE CRIMINAL CHARGES WERE PENDING IN MORRIS COUNTY.**

#### **(Addressing Defendant's Point IA)**

Defendant Jones argues the State is attempting to create a new disqualifying category to bar him from entry into the Recovery Court program as a Track One applicant. (Db 9).<sup>2</sup> According to the defendant, the State intends to bar applicants solely as the result of the commission of a firearm offense while the applicant is released on bail or pretrial release and prior to the filing of a Recovery Court application. (Db9). This does not represent the State's position. The State is simply requesting this Court to effectuate the plain language of N.J.S.A. 2C:35-14(a)(5) (hereinafter referred to as "factor a(5)"), and apply it as the Legislature intended, thus barring this defendant from entry into the Recovery Court program. To do otherwise would lead to an absurd result as detailed in Point IIC of the State's merits brief.

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<sup>1</sup> The State opted to rely upon its initial Motion for Leave to Appeal submission as its Merits Brief.

<sup>2</sup> Db refers to Defendant's Brief.

**A. The State Did Not Misread the Plain Language of Factor a(5).**

Defendant cites several reasons the State's interpretation of N.J.S.A. 2C:35-14(a)(5) is erroneous. Each will be addressed in turn. First, the defendant contends the State misread the plain language of factor a(5). (Db9). The text of factor a(5) is clear. A defendant is barred from Recovery Court if: (1) "the person did not possess a firearm at the time of the present offense" and (2) "did not possess a firearm at the time of any pending criminal charge." N.J.S.A. 2C:35-14a(5). Defendant did not possess a firearm at the time of the present offenses, specifically, the theft and burglary of the GT Motors car dealership in Morris County on August 6, 2021. However, while the first prong of factor a(5) limits firearm possession to the underlying Morris County offenses, the second prong broadens the language to include firearm possession at the time of any pending criminal charge, whether that charge originates from Morris County, Essex County, or any other county.

In the instant appeal, the entirety of the defendant's Essex County unlawful firearm possession case, from arrest to sentencing, occurred while the Morris County charges were pending. It is undisputed the defendant actually and unlawfully possessed a firearm on July 1, 2022, as the Morris County charges were actively pending. Therefore, applying the plain, textual language of factor a(5), the defendant is barred from entry into the Recovery Court program.

**B. The State's Interpretation of the Language of Factor a(5) is in Equipose with the Language of Factor a(7) and Does Not Assign New Meaning to Any of the Terms or Render Any of the Terms Superfluous.**

Next, the defendant argues if the Morris County charges are included within the terms "present offense" and "any pending charge," it would render the term "present offense" superfluous and unnecessary. (Db9-Db10). Further, the defendant claims if the State's interpretation of the statute is taken, it would give a new meaning to the term "pending offense" in factors a(5) and a(7). (Db9). Defendant asserts his firearm possession charge "must still be pending at the time [the] defendant seeks admission to Recovery Court" for the term "pending charge" under factors a(5) and a(7) to apply. (Db10). Relying on State v. Ancrum, 449 N.J. Super. 526, 528 (App. Div. 2017), the defendant attempts to bridge the gap between the language of N.J.S.A. 2C:35-14b and the term "pending charge" as it is used in factors a(5) and a(7). (Db11). Specifically, the defendant states because the Ancrum Court held "that a 'pending charge' under subsection (a)(7) refers [to] pending charges other than the present offense on which a defendant seeks admission to Recovery Court, the phrase "pending charge" in subsection a(5) must also refer to charges other than the present offense on which a defendant seeks admission to Recovery Court." (Db12).

According to the defendant, the term "any pending charge," despite the broad implication of the word "any," refers solely to the Essex County firearm charges. Even with that interpretation, the defendant is still barred from entry into the Recovery Court program as it was established that he physically possessed a

firearm during the Essex County case through his guilty plea and subsequent conviction. If the Morris County offenses occurred after the Essex County firearm case concluded, the defendant's firearm conviction would not bar his entry into the Recovery Court program under N.J.S.A. 2C:35-14b. However, even though his Recovery Court appeal was initiated after the firearms conviction, the physical act of unlawful possession of a firearm in Essex County occurred while the Morris County charges, which form the basis of the Recovery Court appeal, were still pending.

The Ancrum Court's determination also does not support the defendant's position that because the Essex County firearm conviction occurred before the initiation of the Morris County Recovery Court appeal, it is no longer a "pending charge" barring him from the program by the time the Recovery Court appeal was commenced. Hypothetically, if the defendant had not been charged with and convicted in Essex County of second degree unlawful possession of a firearm but rather second degree aggravated assault while the Morris County burglary and theft charges were pending, would the defendant be barred as a Track One applicant as someone previously convicted of aggravated assault since the Morris County Recovery Court appeal was initiated after that conviction? According to the defendant's interpretation of Ancrum, he would be barred under factor a(7) even though that aggravated assault case is no longer pending, due to conviction, by the time the Morris County Recovery Court application was filed. Ancrum instead bolsters the State's position. Even though the defendant had been previously

convicted in Essex County before the filing of the Morris County Recovery Court appeal, the fact he possessed a firearm in Essex County while the Morris County case was pending demonstrates he did possess a firearm “at the time of any pending criminal charge.” The mere changing of status from “pending” to “closed” of the defendant’s Essex County firearm charges, by way of conviction, does not preclude a finding that the second prong of factor a(5) disqualifies him from Morris County Recovery Court. Additionally, the language of factor a(5) differs significantly from the language of factor a(7) by the inclusion of the word “any” in the phrase “did not possess a firearm at the time of any pending criminal charge.” As this word was not included in factor a(7), this signifies the Legislature intended to cast a broad net to stop those who possess illegal firearms from entry into the Recovery Court program.

**C. The Legislature’s Intent with Factor a(5) is to Exclude Applicants Who Possess Firearms from the Recovery Court Program.**

Defendant states the Legislature’s goal for factor a(5), “was to target pending firearm offenses rather than the commission of a firearms offense while on bail or pretrial release for another offense.” (Db9). Defendant further claims that permitting his entry into Recovery Court would not create in an “absurd and unreasonable result.” (Db14).

With regard to N.J.S.A. 2C:35-14a(5), the intent of the Legislature is clear. Those who unlawfully possess firearms, either during the underlying offense or at the time of any pending criminal charge, shall not be permitted into Recovery



Court. This subsection does not include defendants with prior firearm convictions. If the defendant was arrested for, charged with, pleaded guilty to, and was sentenced on an unlawful possession of a firearm offense the day before the commission, arrest, and formal charging of burglary and theft in Morris County, the State agrees factor a(5) would not act as a disqualifier for Recovery Court.

However, these are not the circumstances presented in the instant appeal. Instead, this defendant was charged with unlawful possession of a firearm in Essex County on July 2, 2022, approximately five months after he was formally charged with the Morris County offenses on January 19, 2022. When convicted, it was established the defendant did, in fact, unlawfully possess a firearm the night of July 1, 2022. His violation of his Morris County pretrial release conditions as a result of the new Essex County firearm charges formulated the basis of the State's Motion to Revoke Release and does not bear upon the applicability of factor a(5), as the defendant would have this Court believe. Rather, the State, as does the Legislature, focuses upon the physical act of possessing the firearm and when that act of possession occurred. For example, if the physical possession of the firearm occurred during the burglary of GT Motors, then the defendant is barred from Recovery Court under the first prong of factor a(5). If the physical possession of the firearm occurred before the Morris County offenses, then the defendant could not have possessed it "at the time of any pending criminal charge," and is not barred from Recovery Court. However, as presented in these facts, if the physical possession of the firearm occurred during the pendency of the Morris County case,

as the defendant had on July 1, 2022, then the defendant is barred from Recovery Court under the second prong of factor a(5).

Defendant cites to sentencing statutes, namely N.J.S.A. 2C:44-5(h) and N.J.S.A. 2C:44-1, to bolster his argument and asserts, “if the Legislature intended to target possession of a firearm while on pretrial release, the second clause of subsection (a)(5) would read, ‘and did not possess a firearm while released on any pending charge.’” (Db13-Db14). By the same token, the Legislature could have added language that specified, “did not possess a firearm at the time of any pending Recovery Court appeal.” Rather, it specifically and carefully chose the language, “did not possess a firearm at the time of any pending criminal charge.” The State is not attempting to create a new disqualifying category but instead seeks to effectuate the clear intent of the Legislature as the statute is presently written. See State v. Robinson, 217 N.J. 594, 604 (2014) (“The objective of statutory interpretation is to effectuate the intent of the Legislature”). It would be illogical for the Legislature to solely focus on a small subset of defendants who attempt to file a Recovery Court appeal while they have other, active firearm charges pending in other jurisdictions.

Defendant further argues a Recovery Court judge should wait to see whether a defendant will be convicted and sentenced to a period of incarceration on a firearms offense as a defendant cannot serve a prison sentence and Recovery Court Special Probation simultaneously. (Db16). Defendant then conflates a resolution

of “non-custodial probation” for a Graves Act offense<sup>3</sup> with “acquittal” and “dismissal” as reasons that it would not be contrary to public safety to permit an individual into Recovery Court. (Db16).

If the defendant’s position was applied, it would incentivize similarly situated defendants to delay their other criminal matters in order to resolve their unlawful possession of a firearm charge before applying to Recovery Court on their other pending charges, effectively circumventing the disqualifying bar of factor a(5). This contravenes the essence of factor a(5) which focuses on the act of physical possession of a firearm and when it occurs. If a defendant is acquitted of a firearm possession charge or the charges against him are dismissed, then it is clear he did not possess a firearm, either during the underlying offense or at the time of any pending criminal charge. However, if a defendant is sentenced to non-custodial probation as a result of his conviction for unlawful firearm possession, the physical act of possessing the firearm is proven, regardless of the sentence meted out.

Therefore, as the defendant plead guilty to and was convicted of the physical act of possessing a loaded ghost gun on July 1, 2022, while the Morris County burglary and theft charges were still active and pending, he is disqualified from entry into Recovery Court under the second prong of factor a(5).

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<sup>3</sup> Defendants convicted of a Graves Act offense are typically sentenced to a term of incarceration with a period of mandatory parole ineligibility. N.J.S.A. 2C:43-6(c). However, there are scenarios where a Graves Act waiver is applied when a defendant has not been previously convicted of a firearm offense and the interests of justice would not be served. N.J.S.A. 2C:43-6.2. For example, a shortened period of parole ineligibility or the institution of a noncustodial probation term is appropriate if a defendant, with no prior record and who lawfully possesses a firearm in another state, travels to New Jersey with a firearm and does not possess a firearm permit in this state.

**POINT II**

**THIS COURT SHOULD DECIDE THE APPLICABILITY OF N.J.S.A. 2C:35-14A(5) AS A NONDISCRETIONARY RECOVERY COURT ELIGIBILITY FACTOR.**

**(Addressing Defendant's Point IB)**

The Supreme Court in State v. Hyland, 238 N.J. 135 (2019), is silent as to applicability of N.J.S.A. 2C:35-14a(5) as either a discretionary or nondiscretionary eligibility factor. As previously noted in Point IIB of the State's merits brief, and briefly reiterated here, the Hyland Court categorized factors a(4) and a(9) as "discretionary" factors, permitting a Recovery Court judge to engage in fact-finding, and even a clear error in judgment in sentencing a defendant into the program will still be upheld. Id. at 147. "Nondiscretionary" factors, determined by the Hyland Court as factors a(1), (6), (7), and (8), require objective, per se legal determinations which, if not properly applied, could result in a sentence that is "not imposed in accordance with law." Id. at 148.

The State contends factor a(5) falls squarely into the latter category as a nondiscretionary, objective factor. The inquiry made by a Recovery Court judge as to this factor is whether the defendant possessed a firearm, either during the offense which forms the basis of the Recovery Court appeal, or at the time of any pending criminal charge, whether it is the underlying offense or during another pending offense. If the defendant possessed a firearm, he is disqualified under factor a(5). If the defendant did not possess a firearm, he is not disqualified under factor a(5).

This Court is well within its power and purview to definitively decide this issue as it will provide needed guidance to both future defendants when assessing the viability of applying to Recovery Court as well as Recovery Court judges when determining whether a defendant is eligible for the program under factor a(5).

Defendant requests this Court reserve on making such a determination and poses a hypothetical scenario where a defendant awaiting trial on a pending firearm charge seeks admission to Recovery Court before his trial. (Db19). In this scenario, the defendant expressed concern that pretrial fact-finding would occur by a sentencing judge and thus raise Sixth Amendment violations. However, this concern is unwarranted as a Recovery Court judge, confronted with a defendant charged with firearm possession offenses, may reserve on making a sentencing determination until after a verdict is rendered at trial or a plea to a non-firearm offense occurs, whereas the objectivity of factor a(5), as discussed above, will present itself.

Therefore, this Court should deem N.J.S.A. 2C:35-14a(5) a nondiscretionary, objective factor for the determination of eligibility for Recovery Court Special Probation.

**CONCLUSION**

WHEREFORE, the State of New Jersey respectfully submits that the lower court's Order approving the defendant's application for acceptance into the Recovery Court as a Track One applicant program be REVERSED.

Respectfully submitted,

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