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August 9, 2024

Honorable Chief Justice and
Associate Justices
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State v. Zaire J. Cromedy
Supreme Ct. Docket No. 089188

Your Honors:

This office is in receipt of defendant's Petition for Certification in the captioned matter. The State opposes the petition and relies on its brief to the Appellate Division, its supplemental letter to the Appellate Division, and the Appellate Division's opinion. Enclosed are a copy of the State's Appellate Division brief, as well as the State's supplemental letter. The petition should be denied since grounds for certification have not been shown under Rule 2:12-4.

A petitioner must do more than simply disagree with the Appellate Division's decision to establish grounds for certification under Rule 2:12-4. Rather, certification will be granted only if

> the appeal presents a question of general public

> importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires.
>
> [Ibid.]

Defendant contends certification is warranted because of an alleged split in the Appellate Division, but the cases he invokes are unpublished, see State v. Mack, No. A-3423-16T1 (App. Div. Oct. 11, 2017) and State v. Canadas, No. A-4486-15T2 (App. Div. July 11, 2018), certif. denied, 236 N.J. 604 (2019), whereas Cromedy is published precedent. And in any event, a closer examination of both cases reveals no direct conflict with the published ruling in Cromedy.

In Mack, the appellate panel considered the State's appeal from an order dismissing an indictment charging the defendant with first-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(j) (subsection (j)). The panel concluded that subsection (j) identifies a substantive crime, and reversed the order dismissing the indictment. But Mack did not squarely address the specific question at issue in Cromedy: whether the Graves Act mandatory parole disqualifier applies to subsection (j). Indeed, the panel would not have had the occasion to address the penalties because it was only ruling that the prosecution under subsection (j) could proceed.

In Canadas, the defendant challenged his extended-term thirty-year prison sentence, with fifteen years of parole ineligibility, for his conviction under subsection (j). The appellate panel vacated the extended-term sentence because subsection (j) is not enumerated in N.J.S.A. 2C:43-6(c). But the panel did not squarely address the question of whether an ordinary first-degree sentence under subsection (j) is subject to a parole disqualifier. Indeed, as the panel specifically noted, "the issue is whether the Legislature intended to *both* create a new first-degree offense *and* require an extended term for that offense." (Dpa44). Also, the panel was concerned that applying an extended term to a conviction under subsection (j) would increase the range of imprisonment to twenty-years-to-life, but found "[n]othing in the act or its legislative history even hints the Legislature intended such a dramatic increase." (Dpa43).

Unlike Canadas, Cromedy did not involve an extended-term sentence, which, in Canadas, dramatically increased the overall length of that defendant's sentence. Rather, the issue in Cromedy was whether the Legislature intended for a first-degree offender under subsection (j) to escape any period of parole ineligibility, and thus potentially serve less real time in prison than a second-degree offender who engages in the same conduct, but does not have a prior enumerated offense. The panel in Cromedy correctly "decline[d] to interpret N.J.S.A. 2C:43-6(c) and N.J.S.A. 2C:39-5(j) in such a fashion, because it would lead to an absurd

result." (Dpa011). Under these circumstances, certification is not warranted.

Defendant further contends that certification should be granted because the panel's ruling purportedly "render[s] invalid countless plea agreements." As an initial matter, defendant's claim that "hundreds (if not thousands) of offenders are likely serving illegal second- and third-degree sentences" is purely speculative and based on defendant's assumption that "prior NERA offenses are common among N.J.S.A. 2C:39-5 offenders." Aside from that, if the State did not present proof at sentencing of a prior qualifying conviction (or defendant did not admit the existence of such conviction), then it is unclear why the second-degree or third-degree sentence must be vacated.

Nor is it clear how Cromedy "jeopardizes convictions under subsection (j)" for the "several dozen prisoners" currently in the custody of the Department of Corrections for subsection (j) convictions. The fact that the Judgment of Conviction may designate subsection (j) as the operative offense does not mean that the plea, verdict, or resulting sentence is rendered illegal. As long as the underlying N.J.S.A. 2C:39-5 offense was admitted to or proved, along with the existence of a prior qualifying conviction, then the conviction and sentence should remain valid. Even accepting defendant's argument, at most, the Judgment of Conviction could be amended to reflect the underlying N.J.S.A. 2C:39-5 violation, but the wholesale vacating of valid guilty pleas or jury verdicts is clearly

unwarranted.

As Rule 2:12-4 demands, "Certification will not be allowed on final judgments of the Appellate Division except for special reasons." Ibid. Because defendant's petition does not satisfy the standard set forth in Rule 2:12-4, it should be denied.

Respectfully submitted,

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