SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0219-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICARDO J. SALAZAR a/k/a RICO,

Defendant-Appellant.

Argued November 30, 2016 – Decided May 11, 2017

Before Judges Alvarez and Accurso.[1]

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Indictment No. 14-10-0963.

Patrick J. Grimes argued the cause for appellant.

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[1] Hon. Carol E. Higbee was a member of the panel before whom this case was argued. The opinion was not approved for filing prior to Judge Higbee's death on January 3, 2017. Pursuant to R. 2:13-2(b), "Appeals shall be decided by panels of 2 judges designated by the presiding judge of the part except when the presiding judge determines that an appeal should be determined by a panel of 3 judges." The presiding judge has determined that this appeal remains one that shall be decided by two judges. Counsel has agreed to the substitution and participation of another judge from the part and to waive reargument.

Joseph A. Glyn, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Mr. Glyn, of counsel and on the brief).

PER CURIAM

Defendant Ricardo J. Salazar was convicted of driving while intoxicated (DWI), N.J.S.A. 39:4-50, on July 20, 2009. Thereafter, on March 19, 2013, he was convicted of refusing to submit to chemical testing (refusal), N.J.S.A. 39:4-50.4a. On May 9, 2014, defendant was stopped while driving a motor vehicle and still serving his two-year court-imposed term of license suspension. After his motion to dismiss the indictment was denied, he entered a conditional guilty plea to fourth-degree driving while suspended, N.J.S.A. 2C:40-26(b), and on July 31, 2015, was sentenced to six months in county jail, in addition to other mandatory fines and penalties.

Defendant now appeals, contending, as he did before the Law Division judge, that the driving while suspended criminal statute requires an actor to be convicted of either two DWI offenses, or two refusal offenses. He also contends that the Legislature did not intend for a defendant convicted of one of each motor vehicle offense to be subject to prosecution for the fourth-degree crime. We affirm.

In his oral decision, the Law Division judge gave the statute a common sense reading, stating that he believed the use of the word "or" was not intended to be preclusionary in effect, but rather, to offer an alternative. He quoted the statute, N.J.S.A. 2C:40-26(b): "It shall be a crime of the fourth degree to operate a motor vehicle during the period of license suspension in violation of [N.J.S.A.] 39:3-40, if the actor's license was suspended or revoked for a second or subsequent violation of [N.J.S.A.] 39:4-50 or [N.J.S.A.] 39:4-50.4a." He found it was the Legislature's intent to prohibit driving while suspended regardless of whether the predicate offense was DWI, refusal, or some combination. He also noted that pursuant to N.J.S.A. 39:4-50, the consequences for a refusal were similar to a DWI.

Now on appeal, defendant reiterates his argument for dismissal.[2] In support, defendant relies principally on State v. Ciancaglini, 204 N.J. 597 (2011). He suggests that since the Court in that case concluded that N.J.S.A. 39:4-50 precluded the use of a prior refusal conviction to enhance sentencing on a DWI, Ciancaglini, supra, 204 N.J. at 600, one conviction for each of

[2] Rule 2:6-2(a)(6) requires an appellant's legal argument to be in a formal brief with "appropriate point headings[.]" No point heading was included in the brief, which is five pages in length and appears to be a hybrid between a letter brief and a formal brief not authorized by the rules.

the two offenses cannot be used to find a defendant guilty of a violation of N.J.S.A. 2C:40-26(b).

"In [Ciancaglini], however, the Court left undisturbed the holding of In re Bergwall, 85 N.J. 382 (1981), rev'g on dissent, 173 N.J. Super. 431, 436-40 (App. Div. 1980) (Lora, P.J.A.D., dissenting), that a prior DWI conviction is deemed a prior violation for purposes of enhancing the sentence on a subsequent refusal conviction[.]" State v. Taylor, 440 N.J. Super. 387, 389 (App. Div.), certif. denied, 223 N.J. 283 (2015). That Ciancaglini, based on a question of statutory interpretation, did not permit the refusal statute to be used to enhance a DWI sentencing, while leaving intact the doctrine that a DWI conviction does enhance a refusal sentence, is not dispositive on the question at issue, also one of statutory interpretation.

We review questions of statutory interpretation de novo. State v. Revie, 220 N.J. 126, 132 (2014). In this case, however, we agree with the trial court that the issue is one readily resolved by the plain language used in the statute. See ibid. Our role is not to rewrite a plainly worded statute. Ibid.

The statute is couched in clear and plain language as to the nature of the predicate offenses. A common sense reading establishes that the word "or" is used as a coordinating conjunction that presents an alternative. In order to be subject

to prosecution under this statute, a defendant must have been convicted on two occasions or more of DWI, refusal, or one of each. The Legislature did not intend for the nonsensical outcome that a person who has been convicted on one occasion of DWI and on another of refusal, both integral parts of the statutory effort to control the great evil of drunken driving, would be spared prosecution, while an individual who was twice convicted of refusal, would not.

The Legislature could easily have drafted the statute to read that it applied only when a driver had been convicted of two or more DWI violations, or two or more refusal violations, but it did not. To interpret the statute as defendant suggests would be to rewrite it and distort the Legislature's plain words and patent intent. See DiProspero v. Penn, 183 N.J. 477, 492 (2005).

There is no necessity for us to turn either to the legislative history or principles of lenity as aids to interpretation. When the plain language of a statute "leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources." State v. D.A., 191 N.J. 158, 164 (2007) (citing DiProspero, supra, 183 N.J. at 492).

Affirmed.