SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1495-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAVID C. LILLY,

Defendant-Appellant.

Argued February 13, 2017 – Decided February 28, 2017

Before Judges Haas and Currier.

On appeal from Superior Court of New Jersey, Law Division, Gloucester County, Indictment No. 14-04-00359.

Peter J. Bonfiglio, III, argued the cause for appellant (Hoffman Dimuzio, attorneys; Mr. Bonfiglio, on the brief).

Carol M. Henderson, Assistant Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Ms. Henderson, on the brief).

PER CURIAM

On April 16, 2014, a Gloucester County grand jury returned a one-count indictment charging defendant David Lilly with fourth-degree operating a motor vehicle while his license was suspended

after multiple driving while intoxicated ("DWI") convictions. N.J.S.A. 2C:40-26(b). On March 16, 2015, the trial judge denied defendant's motion to dismiss the indictment.

On June 29, 2015, defendant entered a conditional guilty plea to the indictment and reserved his right to appeal the trial judge's denial of his motion to dismiss the indictment. On October 30, 2015, the judge sentenced defendant to three years of probation conditioned upon a mandatory term of 180 days in jail without parole. The judge also imposed appropriate fines and penalties, and stayed the custodial portion of the sentence pending appeal.

On appeal, defendant presents the following argument:

> DEFENDANT'S MOTION TO DISMISS THE INDICTMENT SHOULD HAVE BEEN GRANTED BECAUSE DEFENDANT CANNOT BE FOUND GUILTY OF VIOLATING N.J.S.A. 2C:40-26(b) FOR DRIVING WITH A SUSPENDED LICENSE WHERE THE UNDERLYING DWI OFFENSE WAS TREATED AS A FIRST OFFENSE PURSUANT TO N.J.S.A. 39:4-59(a)(3).

Having considered this argument in light of the record and applicable law, we affirm.

On September 5, 2000, defendant was convicted of DWI under N.J.S.A. 39:4-50. On July 11, 2013, defendant was again convicted of DWI. This was defendant's second conviction for DWI, but he was sentenced as a first offender under the step-down provision of N.J.S.A. 39:4-50(a)(3) because there was more than a ten-year

gap between his first and second DWI convictions. The trial court suspended defendant's driver's license for seven months.

During this seven-month period of suspension, defendant drove his car on December 22, 2013 and was stopped by a police officer. Because defendant had two DWI convictions, he was charged under N.J.S.A. 2C:40-26(b) for "operat[ing] a motor vehicle during the period of license suspension . . . for a second or subsequent violation of" N.J.S.A. 39:4-50.

In his motion to dismiss the indictment, defendant argued that because he was sentenced on his second DWI conviction as if it were his first DWI offense under the step-down provision of N.J.S.A. 39:4-50(a)(3), he had not committed "a second or subsequent" DWI and, therefore, should not have been charged under N.J.S.A. 2C:40-26(b).

Following oral argument, the trial judge denied defendant's motion. In his March 16, 2015 written opinion, the judge stated:

> Here, [d]efendant operated a motor vehicle while his license was suspended after his second DWI. Although true that [d]efendant was sentenced as though the 2013 DWI was his first offense, the language of N.J.S.A. 39:4-50(a)(3) states that the step-down is for "sentencing purposes." Therefore, the July 2013 DWI was [d]efendant's second DWI for all other purposes, including the applicability of N.J.S.A. 2C:40-26(b).

On appeal, defendant again argues that his qualification for lenient sentencing under the step-down provision of N.J.S.A. 39:4-50(a)(3) essentially dissolved his prior DWI conviction and rendered him a first-time offender. As a result, defendant maintains that he could not be charged under N.J.S.A. 2C:40-26(b) because that statute applies only to second or subsequent DWI offenders. However, defendant's argument is contrary to the unambiguous language of N.J.S.A. 39:4-50(a)(3) and creates a false connection between that statute and N.J.S.A. 2C:40-26(b).

N.J.S.A. 39:4-50(a)(3) provides:

> A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him [or her] in order to render him [or her] liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.
>
> [(emphasis added).]

As noted above, a person is chargeable under N.J.S.A. 2C:40-26(b) with fourth-degree operating a motor vehicle during a period of license suspension "if the actor's license was suspended or revoked for a second or subsequent violation of" N.J.S.A. 39:4-50.

"It is well settled that the goal of statutory interpretation is to ascertain and effectuate the Legislature's intent." In re Fisher, 443 N.J. Super. 180, 190 (App. Div. 2015) (quoting State v. Olivero, 221 N.J. 632, 639 (2015)), certif. denied, 224 N.J. 528 (2016). "Our analysis of a statute begins with its plain language, giving the words their ordinary meaning and significance." Ibid. (citing Olivero, supra, 221 N.J. at 639). "When the language 'clearly reveals the meaning of the statute, the court's sole function is to enforce the statute in accordance with those terms.'" Ibid. (quoting Olivero, supra, 221 N.J. at 639).

N.J.S.A. 39:4-50(a)(3) unambiguously states that the leniency in sentencing afforded a second-time DWI offender under the step-down provision is "for sentencing purposes" only, and that the second offense is considered just that, a "second offense" and a "second conviction." Ibid. Common sense dictates that the step-down provision does not serve to rewrite history and reduce the total number of DWIs committed by the defendant or his or her total number of convictions to one. We also find it obvious that as used in N.J.S.A. 39:4-50(a)(3), the phrase "for sentencing purposes" means sentencing for violations of that provision of the DWI statute only. See State v. Revie, 220 N.J. 126, 139 (2014) (citing State v. Conroy, 397 N.J. Super. 324, 330 (App Div.),

certif. denied, 195 N.J. 420 (2008)) (observing that the step-down provision of N.J.S.A. 39:4-50(a)(3) applies to the imposition of a custodial sentence under the DWI statute).

N.J.S.A. 2C:40-26(b) punishes the crime of driving on a suspended license and prescribes a mandatory 180-day jail term for second-time DWI offenders. Despite the fact that a second DWI offense is a prerequisite to the mandatory 180-day incarceration period, it is important to note that "[d]efendant is not being punished under N.J.S.A. 2C:40-26(b) for his prior DWI . . . offenses; he is being punished for driving without a license." State v. Carrigan, 428 N.J. Super. 609, 624 (App. Div. 2012), certif. denied, 213 N.J. 539 (2013) (finding that N.J.S.A. 2C:40-26(b) applies to recidivist DWI offenders driving during a period of license suspension irrespective of whether the DWI offenses occurred before the effective date of N.J.S.A. 2C:40-26(b)).

Defendant was convicted of DWI once in September 2000 and for a second time in July 2013. Even though he was sentenced in 2013 as a first-time offender, the 2013 DWI conviction clearly and unambiguously constituted his second DWI offense and his second DWI conviction. During the period of license suspension following defendant's second DWI, he drove, giving rise to criminal charges under the statute that prohibits driving during a period of license suspension. Thus, defendant was properly charged under N.J.S.A.

2C:46-20(b) and the trial judge correctly denied defendant's motion to dismiss the indictment.

Affirmed. The stay of sentence previously granted by the trial court shall dissolve within twenty days of this opinion.