

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2714-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

R.M.,

Defendant-Appellant.

Argued November 8, 2017 – Decided November 27, 2017

Before Judges Fasciale and Moynihan.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 14-01-0119.

Fletcher C. Duddy, Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Mr. Duddy, of counsel and on the brief).

Roberta DiBiase, Supervising Assistant Prosecutor, argued the cause for respondent (Joseph D. Coronato, Ocean County Prosecutor, attorney; Samuel Marzarella, Chief Appellate Attorney, of counsel; Ms. DiBiase, on the brief).

PER CURIAM

Defendant appeals from her conviction for fourth-degree failure to register under Megan's Law, N.J.S.A. 2C:7-2(d). Defendant substantially makes the same arguments we previously rejected in a prior appeal from an order denying her motion to dismiss the indictment. We now affirm primarily for the reasons we previously expressed.

On appeal, defendant raises the following points:

[POINT] I

THE COURT SHOULD EXERCISE ITS DISCRETION AND DECLINE TO APPLY THE LAW-OF-THE-CASE DOCTRINE TO THIS APPEAL.

[POINT] II

THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT MUST REGISTER AS A SEX OFFENDER IN NEW JERSEY FOR AN OFFENSE SHE COMMITTED IN TEXAS THAT DID NOT REQUIRE SEX-OFFENDER REGISTRATION IN TEXAS. DEFENDANT'S INDICTMENT FOR FAILURE TO REGISTER SHOULD HAVE THEREFORE BEEN DISMISSED.

A. Defendant's offense in Texas is dissimilar to any enumerated offense in N.J.S.A. 2C:7-2(b) that would require sex-offender registration in New Jersey.

B. The trial court violated [d]efendant's right to equal protection and due process when it considered hearsay evidence related to her conviction in Texas to determine whether she must register as a sex offender in New Jersey.

[POINT] III

BASED ON DUE PROCESS, FUNDAMENTAL FAIRNESS, THE SIXTH AMENDMENT AND EQUAL PROTECTION, THIS COURT SHOULD REQUIRE A HEARING FOR OUT-OF-STATE DEFENDANTS TO DETERMINE WHETHER THEY

WERE CONVICTED OF A "SIMILAR" OFFENSE
REQUIRING SEX-OFFENDER REGISTRATION IN NEW
JERSEY BEFORE THEY CAN BE CHARGED WITH FAILURE
TO REGISTER.

We conclude defendant's arguments are "without sufficient merit
to warrant discussion in a written opinion." R. 2:11-3(e)(2). We
add the following remarks.

In August 2014, the court denied defendant's motion to dismiss
the indictment. We granted leave to appeal from that order, and
in that interlocutory appeal, defendant raised the following
points:

[POINT I]
Legal Analysis & Argument Concerning Due
Process.

- a. Background
- b. The Constitutional Interests Implicated
[B]y Megan's Law.
- c. The [R.B.] Decision [A]nd Its Limitations.
- d. Due Process Requires [A] Hearing With A
High Burden [O]f Proof And Evidence.
- i. Significant Due Process Is Required If One
Considers The Private Interests Implicated.
- ii. The Economic Costs Of Increasing The
Process Due Is Nominal Both In Practice And
In Comparison To The Private Interests At
Stake.
- e. The Process Due In This Circumstance
Requires Proof Beyond A Reasonable Doubt And
Use [O]f [T]he Rules [O]f Evidence.

[POINT II]
Legal Analysis and Argument Concerning Offense
Comparison[.]

a. The Prosecution[']s Assertions [O]f
Equivalence Between This State[']s Predicate
Megan's Law Crimes And The Foreign Judgment
[O]f Conviction Cannot Be Supported.

b. The Statute Prohibits The Display,
Possession, [O]r Distribution [O]f Harmful
Material [T]o Minors [O]r With The Use [O]f
Minors.

c. The State Improperly Asserts That
[Defendant] Has Violated The Equivalent [O]f
[N.J.S.A.] 2C:24-4(b)(3) [O]r (4) Endangering
The Welfare [O]f A Child.

d. The New Jersey Analogue To The Texas Crime
Is [N.J.S.A.] 2C:34-3 Obscenity [F]or
[P]ersons [U]nder [E]ighteen[.]

We affirmed the order denying her motion pursuant to Rule
2:11-3(e)(2). See State v. R.M., No. A-0671-14 (App. Div. July
13, 2015) (slip op. at 3). In rejecting defendant's contentions,
we stated:

As to defendant's due process contention, the
New Jersey Supreme Court has determined that
Tier One sex offenders do not have a due
process right to a hearing regarding their
status as a sex offender. Doe v. Por[it]z,
142 N.J. 1, 106 (1995) (holding that only Tier
Two and Tier Three classifications implicate
such interests triggering a right to due
process). As a result, the court did not
deprive defendant of her procedural due
process rights.

Moreover, pursuant to N.J.S.A. 2C:7-
2[(b)](1)-(3), an offender must register due


to a conviction in another jurisdiction so long as the conviction being compared to a Megan's Law offense "contains the same essential elements, and the underlying purposes of the crimes are consonant[.]" In re R.B., 376 N.J. Super. 451, 464 (App. Div.), certif. denied, 185 N.J. 29 (2005), overruled in part by In re T.T., 188 N.J. 321 (2006). Here, the judge thoroughly analyzed the elements of the Texas and New Jersey statutes in question. We agree with the judge that these statutes have the same essential elements and their purpose is to criminalize the same behaviors.

[Id. at 4-5 (third alteration in original).]

Our unpublished decision became law of the case for the trial court. See State v. Hale, 127 N.J. Super. 407, 410-11 (App. Div. 1974) (explaining that "law of the case" doctrine most commonly applies to the binding nature of appellate decisions upon a trial court on remand for further proceedings). On this appeal, we see no reason to disturb our conclusions reached in the interlocutory appeal.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION