

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4337-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FREDERICK CRUMRINE,

Defendant-Appellant.

Argued October 18, 2017 – Decided December 11, 2017

Before Judges Alvarez and Nugent.

On appeal from Superior Court of New Jersey,
Law Division, Salem County, Accusation No.
00-05-0358.

Justin T. Loughry argued the cause for
appellant (Loughry and Lindsay, LLC,
attorneys; Justin T. Loughry, on the brief).

Louise T. Lester, Assistant Attorney General,
argued the cause for respondent (Christopher
S. Porrino, Attorney General, attorney; Louise
T. Lester, of counsel and on the brief).

PER CURIAM

On September 22, 2000, defendant Frederick Crumrine was
sentenced to concurrent terms of probation, with conditions, in

accordance with his agreement with the State. He had earlier entered guilty pleas to an accusation charging him with two counts of child endangering, N.J.S.A. 2C:24-4(a). Each count alleged conduct committed against a different child. The conduct occurred during defendant's employment as a music teacher and was similar in nature. While measuring students for costumes they would wear in a school play, he asked them to fully disrobe, on two or three occasions per child.

Defendant successfully completed his terms of probation, and since that time has remained offense-free, fully employed, garnered substantial community support, and been evaluated as posing no risk to the safety of others. The judge granted defendant's application for termination of his community supervision for life (CSL), see N.J.S.A. 2C:43-6.4, but denied his request to end his Megan's Law registration obligations, N.J.S.A. 2C:7-2(f), observing that defendant is "a perfect candidate to be relieved of all of these obligations." Defendant appeals, and we affirm.

At the time defendant pled guilty, the statute provided that relief could be sought from registration requirements if: (1) "the person has not committed an offense within [fifteen] years following conviction," and (2) the person "is not likely to pose a threat to the safety of others." N.J.S.A. 2C:7-2(f). In 2001,

however, the statute was amended in compliance with the Federal Jacob Wetterling Act, 42 U.S.C.A. § 14071.¹ That law directed certain guidelines be adopted regarding which offenders must remain registered over their lifetime. In re L.E., 366 N.J. Super. 61, 66 (App. Div. 2003). N.J.S.A. 2C:7-2(g) was therefore amended to bar relief from registration requirements when a person has been convicted of more than one offense, such as this defendant: "[a] person required to register under this section who has been convicted of . . . more than one sex offense as defined in . . . this section . . . is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligations." Thus, defendant raises the following points on appeal:

- I. AS THE LAW DIVISION JUDGE HELD, REGISTRANT FRED CRUMRINE QUALIFIED FOR AND MERITED TERMINATION OF HIS COMMUNITY SUPERVISION FOR LIFE SENTENCE IMPOSED IN YEAR 2000, BECAUSE MR. CRUMRINE HAD DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT HE DID NOT POSE A RISK TO OTHERS SAFETY []
- II. APPELLANT CRUMRINE MEETS THE REQUIREMENTS FOR TERMINATION OF MEGAN'S LAW REGISTRATION UNDER 2C:7-2 []
 - A. Registrant should be released from the registration requirements because the application of N.J.S.

¹ This Act has since been repealed and was replaced by 42 U.S.C.A. § 16902.

2C:7-2g to registrant violates the ex post facto clause. []

- B. N.J.S. 2C:7-2g should only be applied prospectively and the application of N.J.S. 2C:7-2g to Registrant violates the ex post facto clause. []
- C. N.J.S. 2C:7-2g as applied to registrant violates the ex post facto clause because it enhances the punishment and its negative effect is excessive in relationship to any non-punitive purpose. []
- D. New Jersey case law demonstrates the application of N.J.S. 2C:7-2g to registrant violates the Ex Post Facto clause because it is additional punishment. []
- E. The Mendoza-Martinez factors demonstrate that the application of N.J.S. 2C:7-2g to registrant has a punitive effect that outweighs any non-punitive purpose. []

The appeal raises a question of law, which we review de novo. State v. Revie, 220 N.J. 126, 132 (2014).

Both the United States and the New Jersey Constitutions prohibit ex post facto laws. U.S. Const. art. I, § 10, cl. 1; N.J. Const. art. IV, § 7, ¶ 3. "The Ex Post Facto Clause is 'aimed at laws that retroactively alter the definition of crimes or increase the punishment for criminal acts.'" State v. Perez, 220 N.J. 423, 438 (2015) (citation omitted). In order for a criminal or penal law to be ex post facto, two elements must exist. First,

"it must be retrospective, that is, it must apply to events occurring before its enactment." Weaver v. Graham, 450 U.S. 24, 29, 101 S. Ct. 960, 964, 67 L. Ed. 2d 17, 23 (1981). Second, the law must impose additional punishment for an already completed crime. Riley v. N.J. State Parole Bd., 219 N.J. 270, 285 (2014).

In regards to the first element, "[a] law is retrospective if it 'appl[ies] to events occurring before its enactment' or 'if it changes the legal consequences of acts completed before its effective date.'" Ibid. (quoting Miller v. Florida, 482 U.S. 423, 430, 107 S. Ct. 2446, 2451, 96 L. Ed. 2d 351, 360 (1987)). As to the second element, the court must "ascertain whether the legislature meant the statute to establish 'civil' proceedings," Kansas v. Hendricks, 521 U.S. 346, 361, 117 S. Ct. 2072, 2082, 138 L. Ed. 2d 501, 514-15 (1997), and, if so, further consider whether the statutory scheme is "so punitive either in purpose or effect as to negate [the State's] intention to deem it civil." Ibid. (quoting United States v. Ward, 448 U.S. 242, 248-49, 100 S. Ct. 2636, 2641, 65 L. Ed. 2d 742, 749 (1980)). Notably, "[t]here is 'no ex post facto violation . . . if the change in the law is merely procedural and does not increase the punishment, nor change the ingredients of the offen[s]e or the ultimate facts necessary to establish guilt.'" Perez, supra, 220 N.J. at 438-39 (emphasis omitted) (quoting Miller, supra, 482 U.S. at 433). Essentially,

defendant contends that the change of law instituted two years after his sentence increased the punishment for the offenses to which he pled guilty.

Before reaching defendant's ex post facto arguments, we address his claim that in any event, the prohibition found in N.J.S.A. 2C:7-2(g) does not apply to him because the aberrant behavior should be treated as one criminal episode. This argument is unconvincing. The counts of the accusation, although charging conduct similar in nature, occurred on separate dates, separate times, and involved two victims. Therefore, defendant was convicted of "more than one sex offense." N.J.S.A. 2C:7-2(g).

In rendering his decision, the Law Division judge relied on Doe v. Poritz, 142 N.J. 1 (1995). There, the Court concluded that Megan's Law notification and registration requirements, as embodied in N.J.S.A. 2C:7-1 to -23, are not punitive—merely "remedial in purpose." Doe, supra, 142 N.J. at 73. Notification and registration requirements are regulatory restrictions only. State v. Schubert, 212 N.J. 295, 319-20 (2012). In contrast, CSL and parole supervision for life (PSL), N.J.S.A. 2C:43-6.4, are punitive in nature, imposed as a separate element of the sentence. Perez, supra, 220 N.J. at 440-41. Since the registration requirements were found to not be punitive in Doe, the judge

concluded they are not subject to ex post facto prohibitions. Doe, supra, 142 N.J. at 73-75.

The conclusion, with which we agree, is supported by analysis of the so-called Mendoza-Martinez factors. See Riley, supra, 219 N.J. at 285-86. The Mendoza-Martinez factors, adopted in Riley after the United States Supreme Court decision in Smith v. Doe, 538 U.S. 84, 97, 123 S. Ct. 1140, 1149, 155 L. Ed. 2d 164, 179-80 (2003), are: whether the scheme "in its necessary operation" (1) "has been regarded in our history and traditions as a punishment;" (2) "imposes an affirmative disability or restraint;" (3) "promotes the traditional aims of punishment;" (4) "has a rational connection to a nonpunitive purpose;" or (5) "is excessive with respect to this purpose."

Even where the legislative intent was to merely regulate, courts must make an independent determination as to whether the effect of a law is punitive. Id. at 92. As our Supreme Court has repeatedly stated, the registration requirements are not punitive, nor do they impose affirmative disabilities or restraints in contrast with CSL or PSL. Schubert, supra, 212 N.J. at 305-07; Doe, supra, 142 N.J. at 12. Hence, the first two Mendoza-Martinez factors weigh towards the conclusion that application of N.J.S.A. 2C:7-2(g) to this defendant is not an ex post facto law. The registration requirements do not promote the traditional aims of

punishment as they do not serve a purpose to either sanction or rehabilitate. They are designed essentially only to track.² This third applicable factor balances towards retroactive application being constitutionally acceptable. The registration requirements are squarely fashioned to meet the nonpunitive goals of the law and are not excessive. They are reasonable in light of the State's purpose in enacting the law.

Consideration of the Mendoza-Martinez factors demonstrates that retroactive application of the Megan's Law restriction for offenders who have been found guilty of two sex offenses is not unconstitutional. We agree with the Law Division judge that defendant cannot be relieved from Megan's Law as a result of the statutory provision enacted two years after he was sentenced.

Finally, the copy of the judgment of conviction (JOC) included in the appendix does not state that defendant was subject to Megan's Law. We do not have a copy of the transcript of the plea colloquy, and do not know if the ramifications of the law were then explained to defendant. The plea form clearly states that defendant would be subject to registration requirements, however, no mention of Megan's Law was made during his sentencing. Because,

² N.J.S.A. 2C:7-1 states in part: "The danger of recidivism . . . require[s] a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety."

like the Law Division judge, we follow longstanding precedent interpreting registration requirements as regulatory and not punitive, it is not improper to now amend the JOC to correctly reflect this obligation. See Schubert, supra, 212 N.J. at 308-10. Accordingly, we remand for the sole purpose of correcting the JOC. The correction is a mere ministerial act intended to properly reflect the sentence and all its ramifications.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION