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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-5276-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL TAYLOR,

Defendant-Appellant.

Argued March 7, 2017 – Decided March 23, 2017

Before Judges Yannotti, Fasciale and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
15-01-0234.

Stephen W. Kirsch, Assistant Deputy Public
Defender, argued the cause for appellant
(Joseph E. Krakora, Public Defender, attorney;
Mr. Kirsch, of counsel and on the briefs).

Jennifer E. Kmieciak, Deputy Attorney General,
argued the cause for respondent (Christopher
S. Porrino, Attorney General, attorney;
Jeffrey P. Mongiello, Deputy Attorney General,
of counsel and on the brief).

PER CURIAM

Defendant pled guilty to an amended charge of third-degree violating a condition of his special sentence of community supervision for life (CSL), contrary to N.J.S.A. 2C:43-6.4(d). The trial court imposed a suspended sentence of three years, and a mandatory special sentence of parole supervision for life (PSL). Defendant appeals from the judgment of conviction (JOC) dated June 30, 2015. We reverse.

In December 1996, defendant pled guilty to second-degree sexual assault in violation of N.J.S.A. 2C:14-2(c), for crimes he committed in or about August 1996. On March 21, 1997, defendant was sentenced to a prison term of seven years, and ordered to comply with Megan's Law, N.J.S.A. 2C:7-1 to -23. The court also imposed a special sentence of CSL pursuant to N.J.S.A. 2C:43-6.4 (prior to amendment). Violation of a condition of CSL was then a crime of the fourth degree. L. 1994, c. 130.

Effective July 1, 2014, N.J.S.A. 2C:43-6.4(a) and (d) were amended to upgrade a violation of a condition of CSL to a third-degree offense and to add convictions for a violation of CSL to the list of predicate crimes that mandate the imposition of PSL (the 2014 amendment). L. 2013, c. 214. Approximately five months later, on November 26 and 28, 2014, defendant failed to report to his parole officer as required by the conditions of his CSL. See N.J.A.C. 10A:71-6.11(b)(2).

On January 28, 2015, a grand jury charged defendant with third-degree violation of the conditions of his CSL contrary to N.J.S.A. 2C:43-6.4(d), for his November 2014 conduct (count one); third-degree escape from parole in violation of N.J.S.A. 2C:29-5(b) (count two); and third-degree failure to register a change of address in violation of N.J.S.A. 2C:7-2(a) (count three).

On February 24, 2015, defendant pled guilty to count one, which was amended to charge a fourth-degree violation of CSL. On March 27, 2015, the court sentenced defendant to 364 days of incarceration, and did not impose a special sentence of PSL.

Thereafter, the parties agreed that the plea, conviction, and sentence were not consistent with the 2014 amendment. Consequently, on June 19, 2015, defendant pled guilty to count one of the indictment, which charged defendant with a third-degree violation of a condition of CSL. Defendant did not preserve the right to appeal any issues and acknowledged that the conditions of PSL would apply.

On the same date, the court sentenced defendant in accordance with the plea agreement to a three-year suspended sentence for time served, with a special sentence of PSL. The other charges were dismissed. The judge signed a JOC on June 30, 2015.

Defendant appeals and raises the following argument:

POINT I

PURSUANT TO THE RECENT [EX POST FACTO] DECISIONS IN STATE V. PEREZ AND STATE V. F.W., DEFENDANT'S CONVICTION SHOULD BE REVERSED. DEFENDANT WAS ONLY ELIGIBLE TO BE CONVICTED OF THE FOURTH-DEGREE VERSION OF N.J.S.A. 2C:43-6.4D AND SHOULD NOT HAVE HAD HIS COMMUNITY SUPERVISION FOR LIFE CONVERTED TO PAROLE SUPERVISION FOR LIFE.

We note initially that the State argues that defendant's appeals should be dismissed because defendant entered into an unconditional plea agreement, did not raise any constitutional arguments in the trial court, and did not preserve any issues for appeal pursuant to Rule 3:9-3(f). We choose not to apply the rule because "[s]trict adherence to [its] requirements . . . 'would result in an injustice.'" State v. Gonzalez, 254 N.J. Super. 300, 304 (App. Div. 1992) (quoting R. 1:1-2) (considering the defendant's unreserved argument challenging the constitutionality of N.J.S.A. 2C:35-12).

Accordingly, we have considered defendant's arguments and the State's response. We reverse defendant's conviction for the reasons stated in State v. Hester, ___ N.J. Super. ___ (App. Div. 2017). We conclude that, as applied to defendant, the amendments to N.J.S.A. 2C:43-6.4(a) and (d), which upgrade a violation of a condition of CSL to a third-degree offense, and mandate imposition

of a special sentence of PSL, violate the constitutional prohibition against ex post facto laws.

Reversed.

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



CLERK OF THE APPELLATE DIVISION