

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-1129-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TRACY GEE,

Defendant-Appellant.

Submitted January 17, 2018 – Decided February 21, 2018

Before Judges Fuentes and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
00-03-0321.

Joseph E. Krakora, Public Defender, attorney
for appellant (Suzannah Brown, Designated
Counsel, on the brief).

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Daniel Opatut,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

On March 7, 2002, defendant Tracy Gee was tried before a jury and was convicted of first degree aggravated sexual assault, N.J.S.A. 2C:14-2a(1), third degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a), fourth degree criminal sexual contact, N.J.S.A. 2C:14-3(b), and third degree endangering the welfare of a child, N.J.S.A. 2C:24-4. On August 23, 2002, the trial judge sentenced defendant to an aggregate term of nineteen years, with seven years of parole ineligibility. For reasons not explained in the record, the Judgment of Conviction (JOC) signed by the judge on September 5, 2002, erroneously states that defendant pled guilty to first degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1) pursuant to a plea agreement.

In the interest of clarity, we note that defendant's brief in this appeal states that the trial judge signed an amended JOC on July 24, 2002 "to reflect Community Supervision for Life." This is not factually correct. The judge actually signed an amended JOC on July 24, 2003. Furthermore, the amended JOC again misstates that defendant pled guilty to first degree aggravated sexual assault and does not mention Community Supervision for Life.

We affirmed defendant's conviction and sentence on direct appeal. State v. Tracy Gee, No. A-1997-02 (App. Div. Jan. 26, 2004) (slip op. at 3). The Supreme Court denied defendant's petition for certification. State v. Gee, 180 N.J. 355 (2004).

On June 18, 2012, a different judge signed an amended JOC specifically sentencing defendant to Community Supervision for Life. Unfortunately, this amended JOC repeats the error of the two earlier JOCs by misstating that defendant pled guilty pursuant to a negotiated agreement with the State.

In an order entered on October 22, 2012, Judge Richard J. Geiger granted the Attorney General's petition for defendant's temporary civil commitment pursuant to the Sexually Violent Predators Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. In a subsequent order dated August 2, 2013, Judge James F. Mulvihill civilly committed defendant under the SVPA and directed he be housed in the Special Treatment Unit. On March 26, 2015, defendant filed this post-conviction relief (PCR) petition before the Criminal Part, arguing his commitment under the SVPA constituted an unconstitutional violation of his conditions of release as reflected in the JOC signed by the judge who presided in his criminal trial.

The court assigned counsel to represent defendant and the matter was heard for oral argument on September 29, 2016 before Judge Timothy P. Lydon. After considering the arguments of counsel, Judge Lydon denied defendant's PCR petition in an order dated October 12, 2016. Judge Lydon explained the reasons for his

decision in a memorandum of opinion attached to the order. Defendant now appeals to this court raising the following argument.

POINT I

THE PCR COURT ERRED IN RULING THAT CIVIL COMMITMENT DID NOT IMPROPERLY ALTER HIS SENTENCE BY PREVENTING HIM FROM INITIATING COMMUNITY SUPERVISION FOR LIFE.

We reject defendant's argument and affirm substantially for the reasons expressed by Judge Lydon in his memorandum of opinion. We add only the following brief comment. Our Supreme Court has rejected challenges to the constitutionality of the SVPA based on it being a penal statutory scheme in violation of the federal and state ex post facto clauses. See U.S. Const. art. I, § 10, cl. 1; N.J. Const. art. IV, § 7, ¶ 3. In re Civil Commitment of W.X.C., 204 N.J. 179, 183 (2009). Writing for the Court, Justice Hoens explained the SPVA is "designed" to promote "two fundamental purposes . . . to protect the public from dangerous predators and to treat sex offenders who are, by definition, suffering from a mental abnormality." Id. at 188.


These two pillars of public policy are not punitive in intent or in the manner that they are practically implemented, because they are predicated on the "permissible legislative goals that protect the community at large and that also provide care for citizens who are in need of treatment and who are unable to obtain

it by themselves." Ibid. The Legislature adopted the SVPA "relying on its police powers and its parens patriae authority and acting well within the scope of its powers." Ibid.

Defendant's argument lacks sufficient merit to warrant any further discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION