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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-1465-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT N. SHAVER, III,

Defendant-Appellant.

Submitted May 10, 2022 – Decided June 8, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Law
Division, Atlantic County, Indictment No. 06-09-2106.

Robert N. Shaver, III, appellant pro se.

Matthew J. Platkin, Acting Attorney General, attorney
for respondent (Debra G. Simms, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM

Defendant alleges he requested the administrators of East Jersey State
Prison award him public health emergency credits for time served on his

sentence during COVID-19 as permitted under N.J.S.A. 30:4-123.100 to - 123.103. When he did not receive the credits, he moved before the trial court for the credits, arguing the pertinent statute "should apply to all inmates, regardless of their date of release." On January 5, 2021, the court denied defendant's motion and, in a letter accompanying the order, stated, "There is no appropriate avenue for which the [c]ourt may apply credits to inmates not intended by the legislature."

We affirm the court's order on very limited grounds. The statute empowered only the Commissioner of the Department of Corrections with the authority to grant public health emergency credits to a specific set of inmates. See N.J.S.A. 30:4-123.101. Therefore, the trial court correctly denied defendant's motion for the credits because it lacked the authority to grant them. In addition, defendant has not presented any evidence that he applied to the Commissioner for the credits or that the Commissioner denied the application. Therefore, there is no final decision from the Commissioner for this court to review. As a result, we have not considered defendant's substantive arguments.

In May 2009, defendant pleaded guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a); one count of first-degree robbery, N.J.S.A. 2C:15-1; two counts of second-degree robbery, N.J.S.A. 2C:15-1; third-degree

receiving stolen property, N.J.S.A. 2C:20-7; and second-degree attempted extortion, N.J.S.A. 2C:20-5 and N.J.S.A. 2C:5-1. The following month, the court sentenced defendant to an aggregate term of twenty-five years in prison, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. We affirmed the convictions and sentence in 2013. State v. Shaver, No. A-2005-10 (App. Div. Feb. 20, 2013) (slip op. at 5). We also affirmed the denial of a petition for post-conviction review. State v. Shaver, No. A-1825-14 (App. Div. June 15, 2016) (slip op. at 8). Defendant is eligible for parole in December 2027.

In October 2020¹, the Legislature enacted N.J.S.A. 30:4-123.100, which permits the Commissioner to award credits to certain inmates serving a sentence during a public health emergency that "arises as a result of a communicable or infectious disease." N.J.S.A. 30:4-123.100(a)(1). The credits may be awarded to any inmate who is scheduled to be released from custody "within 365 days." N.J.S.A. 30:4-123.100(b)(2).

Defendant alleges, without any evidential support, that he requested information about the health emergency credits from correctional facility administrators and was told in response that "they did not know if [the credits] would be awarded to [him]." He then moved before the trial court for the

¹ The statute became effective November 4, 2020.

emergency credits. The trial court denied the motion, finding it did not have the authority to award credits under the statute.

Defendant raises the following points for our consideration:

POINT I.

THE LOWER COURT ERRED IN DENYING THE MOTION TO APPLY PUBLIC HEALTH EMERGENCY CREDITS TO APPELLANT'S SENTENCE

POINT II.

FAILURE TO APPLY THE PUBLIC HEALTH EMERGENCY CREDITS TO ALL INMATES IS A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE NEW JERSEY AND UNITED STATES CONSTITUTIONS

We review a court's interpretation of a statute de novo. State v. Courtney, 243 N.J. 77, 85 (2020). A statute is presumed valid and will be upheld "unless its repugnancy to the Constitution is clear beyond a reasonable doubt." State v. Dalal, 467 N.J. Super. 261, 280 (App. Div. 2021) (quoting State v. Lenihan, 219 N.J. 251, 266 (2014)).

Defendant contends the trial court erred in denying him the emergency health credits. He states that a plain reading of the statute indicates that emergency health credits should be applied to all eligible inmates who served time during the COVID-19 pandemic, even if their release date was not within 365 days of the effective date of the statute.

Defendant's arguments lack merit. Under the plain language of the statute, only the Commissioner was empowered to award emergency health credits to eligible inmates. The trial court was correct in its determination that it did not have the authority to award defendant the credits.

We only affirm the trial court's order on those limited grounds. Defendant has not presented any documents from the correctional facility regarding his request for the credits. He did not appeal the correctional facility's decision to the Commissioner. Therefore, there is no final order of the Commissioner for us to review. See R. 2:2-3(a)(2). Because defendant has not properly pursued his remedies, neither the trial court nor this court has considered or decided defendant's substantive arguments regarding his eligibility for the statutory public health emergency credits.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION