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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-2481-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HELIO ALVES EVANGELISTA,

Defendant-Appellant.

Submitted July 18, 2023 – Decided July 26, 2023

Before Judges Whipple, Mayer, and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Municipal Appeal No. 21-017-F.

Law Office of Adamo Ferreira, Esq., LLC, attorney for appellant (Adamo Ferreira, on the brief).

Robert J. Carroll, Morris County Prosecutor, attorney for respondent (Paula Jordao, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Helio Alves-Evangelista appeals from the April 14, 2022 Law Division order after a trial de novo of his municipal conviction for driving without a license, N.J.S.A. 39:3-10. After reviewing the record in light of the contentions advanced on appeal and applicable law, we affirm.

Defendant raises the following arguments on appeal.

I. THE MUNICIPAL COURT ERRED WHEN IT APPLIED AN OBSOLETE VERSION OF STATUTE [N.J.S.A.] 39:3-10.

II. DEFENDANT IS NOT GUILTY OF N.J.S.A. 39:3-10[(b)] BECAUSE HE HAS BEEN LICENSED PREVIOUSLY.

III. THE SENTENCE IS ILLEGAL.

IV. THE ENTIRE PROCEEDING WAS FLAWED BECAUSE THERE WAS NO PORTUGUESE-ENGLISH TRANSLATION PROVIDED BY THE COURT.

[V]. DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL BY ENTERING INTO A GUILTY PLEA WITHOUT PROPER ADVISEMENT THAT HE COULD BE INCARCERATED. (Not raised below).

On October 18, 2021, defendant, a Brazilian national who resides in New Jersey, was charged with the unlicensed operation of a motor vehicle as well as other motor vehicle violations. In November 2021, he appeared, represented by counsel, at a remote proceeding via Zoom in the Pequannock Municipal Court

and pleaded guilty to violating N.J.S.A. 39:3-10 in exchange for the dismissal of the remaining motor vehicle violations. The municipal court accepted defendant's plea and sentenced him to thirty days in jail. He was ordered to surrender to the Pequannock Township Police Department. However, he did not surrender, and a bench warrant was issued for his arrest.

A few weeks later, defendant appeared in the Pequannock Township Municipal Court to request a stay pending appeal which the court denied. Defendant then filed for an emergent stay of the jail sentence and filed a municipal appeal. By order of the Law Division, defendant was released and prohibited from "operating a motor vehicle under any circumstances pending resolution of his municipal appeal."

After a trial de novo, Judge Noah Franzblau upheld the municipal court decision finding defendant guilty of N.J.S.A. 39:3-10(b) and sentenced him to thirty days in the Morris County Jail. Defendant was ordered to surrender on April 20, 2022, at 9:00 a.m. to the Pequannock Township Police Department.

This appeal followed. We affirm for the reasons stated by Judge Franzblau in his well-reasoned opinion upholding defendant's municipal conviction.

Our scope of review is limited to whether the conclusions of the Law Division judge "could reasonably have been reached on sufficient credible evidence present in the record." State v. Johnson, 42 N.J. 146, 162 (1964). Furthermore, the two-court rule provides that we "should not undertake to alter concurrent findings of fact and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." State v. Locurto, 157 N.J. 463, 474 (1999) (citing Midler v. Heinowitz, 10 N.J. 123, 128-29 (1952)).

Defendant argues "the municipal court erred by applying an obsolete version of the statute" This argument lacks merit. N.J.S.A. 39:3-10 provides:

A person shall not drive a motor vehicle on a public highway in this State unless the person is under supervision while participating in a behind-the-wheel driving course pursuant to section [six] of P.L.1977, c. 25 (C.39:3-13.2a) or is in possession of a validated permit, or a probationary or basic driver's license issued to that person in accordance with this article.

Defendant asserts that certain 2021 amendments to N.J.S.A. 39:3-10 support his position.¹

¹ One amendment allowed New Jersey residents the opportunity to obtain a driver's license regardless of their immigration status. L. 2019, c. 271, § 8, eff.

The amendments might have made it easier for defendant to obtain a New Jersey driver's license after January 1, 2021, but defendant still had not obtained a valid New Jersey driver's license as of October 18, 2021, the date of the current motor vehicle violation. The amendments never modified the requirement that "[a] person shall not drive a motor vehicle on a public highway" unless that person is in possession of a "basic driver's license issued to that person in accordance" with the law. See L. 2020, c. 148, § 1, eff. Aug. 1, 2021; L. 2021, c. 139, § 4, eff. June 30, 2021; L. 2019, c. 271, § 8, eff. Jan. 1, 2021; L. 2017, c. 374, § 1, eff. Aug. 1, 2018; L. 2017, c. 91, § 1, eff. Jan. 1, 2018. Defendant conceded he was driving a vehicle on October 18, 2021, in Pequannock Township and did not possess a valid driver's license. The municipal court judge

Jan. 1, 2021. The amendment served, among other things, to enable undocumented immigrants to obtain a new driver's license without a social security number. L. 2019, c. 271, § 8, eff. Jan. 1, 2021. Another amendment to N.J.S.A. 39:3-10 became effective on June 30, 2021, authorizing the Motor Vehicle Commission to share voter and motor vehicle information with state-based non-profit organizations in order to maintain accuracy of voter registration information. L. 2021, c. 139, § 4, eff. June 30, 2021. A third amendment to N.J.S.A. 39:3-10 became effective on August 1, 2021, and required a person to watch a video created by the Motor Vehicle Commission explaining the rights and responsibilities of a driver stopped by a law enforcement officer. L. 2020, c. 148, § 1, eff. Aug. 1, 2021.

accepted his plea as knowing and voluntary and found defendant was "violating the motor vehicle statute."

We similarly reject defendant's argument he is not guilty of N.J.S.A. 39:3-10(b) because he was previously licensed to drive in Brazil. N.J.S.A. 39:3-10 does not authorize a person to drive a motor vehicle on public highways in New Jersey if that person possessed a foreign driver's license at some point in the past. Visitors to the United States are permitted to drive up to one (1) year with their foreign license as long as it is accompanied by an International Driving Permit issued in their prior country of residency. See NEW JERSEY MOTOR VEHICLE COMM'N, [Frequently Asked Questions: First-Time N.J. Drivers](http://www.njmvc.gov), www.njmvc.gov (last accessed June 9, 2023). Defendant did not establish his foreign license was valid at the time of the infraction. Furthermore, the record demonstrates defendant knew he was not permitted to drive in New Jersey with his Brazilian license, based upon a prior conviction for driving without a license for which he was previously sentenced to jail.

Defendant argues his sentence is illegal. It is not. N.J.S.A. 39:3-10(u) states that a driver who has never been licensed in New Jersey or any other jurisdiction can only be sentenced to a fine and an order directing the Motor Vehicle Commission to not issue a license to him for a period of 180 days.

Because defendant previously held a driver's license from Brazil, however, he falls under the first subsection of violators who have previously been licensed. As such, the statute authorizes either a fine or imprisonment. N.J.S.A. 39:3-10(u).

Defendant was sentenced in accordance with the statute to thirty days in the Morris County Jail. That sentence does not offend the cruel and unusual punishment clause of the state or federal constitutions. See State v. Pimentel, 461 N.J. Super. 468, 481 (App. Div. 2019) (upholding mandatory minimum sentence of 180 days for driving while suspended due to a second or subsequent driving while intoxicated conviction). As instructed by the standards enunciated in State v. Moran, 202 N.J. 311, 328-29 (2010), and State v. Henry, 418 N.J. Super. 481, 490-91 (App. Div. 2010), the sentencing court made findings regarding defendant's driving record, most recent infractions, character, the likelihood of these circumstances to recur, the potential for economic hardship, and the need for personal deterrence. We discern no error.


We also reject the argument the proceedings were flawed because Portuguese is defendant's first language. Neither defendant nor his counsel requested an interpreter or indicated defendant had any difficulty

communicating in English. The record of the plea proceedings reflects no lack of understanding by the defendant.

We discern no basis to disturb the court's decision. We are satisfied there is sufficient credible evidence in the record to substantiate the Law Division judge's finding defendant was operating a car without a driver's license. To the extent we have not addressed defendant's remaining arguments, we are satisfied they are without sufficient merit to warrant 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