

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2982-21

IN THE MATTER OF J.H.

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Argued March 22, 2023 – Decided June 5, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. ML-95-01-0212.

John P. Flynn, Assistant Deputy Public Defender, argued the cause for appellant J.H. (Joseph E. Krakora, Public Defender, attorney; John P. Flynn, of counsel and on the briefs).

Linda A. Shashoua, Assistant Prosecutor, argued the cause for respondent State of New Jersey (William E. Reynolds, Atlantic County Prosecutor, attorney; Mario C. Formica, Deputy First Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Registrant-appellant J.H.<sup>1</sup> challenges a May 13, 2022 order denying his

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<sup>1</sup> We use initials to preserve the confidentiality of these proceedings. R. 1:38-3(c)(9).

motion to terminate his obligations under Megan's Law, N.J.S.A. 2C:7-1 to -23. We affirm.

I.

On January 31, 1992, J.H. was sentenced under Indictment No. 91-10-3152 to 180 days in jail and five years of probation after pleading guilty to fourth-degree criminal sexual contact against a minor, N.J.S.A. 2C:14-3(b), a qualifying offense under Megan's Law.<sup>2</sup> Less than three months after he was sentenced, J.H. violated probation by exposing himself and masturbating in front of two teenagers. He pled guilty under Indictment No. 92-05-1443 to one count of fourth-degree criminal sexual contact against a minor, his second qualifying offense under Megan's Law.

On August 13, 1993, the trial court resentenced J.H. on his first qualifying offense to eighteen months in prison, subject to 149 days of jail credits. The judge also imposed an eighteen-month term for his second qualifying offense,

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<sup>2</sup> A conviction for criminal sexual contact under N.J.S.A. 2C:14-3(b) constitutes a qualifying offense, subjecting a person to Megan's Law registration requirements. N.J.S.A. 2C:7-2(b)(2).

subject to 74 days of jail credits.<sup>3</sup> Additionally, the judge sentenced J.H. to four separate terms on the following unrelated convictions: three years for distribution of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-5A(1); three years for possession of CDS, N.J.S.A. 2C:35-10A(1); eighteen months for forgery, N.J.S.A. 2C:21-1A(1); and eighteen months for failure to make a lawful disposition, N.J.S.A. 2C:20-9. J.H. received varying jail credits on these sentences, with the highest number of jail credits, 213, applied to his distribution of CDS charge. The judge ordered all sentences to run concurrently.

In June 1995, Bayside State Prison notified the Atlantic County Prosecutor's Office that J.H. would be subject to Megan's Law registration requirements upon his release. J.H. was released from prison on his aggregate three-year sentence on August 12, 1995, having received the benefit of the previously awarded jail credits, and having been awarded 92.8 work credits and 49 commutation credits at the time of his release.<sup>4</sup>

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<sup>3</sup> Although the opinion accompanying the May 13 order mistakenly reflects J.H. received 77 days of jail credits on his sentence under Indictment No. 92-05-1443, J.H. admits he was awarded only 74 days of jail credits on this sentence.

<sup>4</sup> J.H. was originally awarded 196 commutation credits but lost those credits during his incarceration for reasons not revealed in the record; 49 commutation credits were restored by his release date in August 1995.

In December 2021, some twenty-six years after he was notified of his Megan's Law registration requirements, J.H. moved to terminate the restrictions. He argued that because his two qualifying offenses for criminal sexual contact predated October 31, 1994, the effective date of Megan's Law, "the only way he could become subject to Megan's Law [was] if he was serving a sentence for a predicate offense" when the law took effect.<sup>5</sup> J.H. contended he was no longer serving his sentences for the criminal sexual contact convictions when Megan's Law became effective, given the number of jail, commutation, and work credits he accrued prior to and during the period of his incarceration from August 13, 1993 to August 12, 1995.

After hearing argument, the judge entered an order on May 13, 2022 denying J.H.'s motion. In an accompanying written opinion, the judge initially considered the jail credits awarded to J.H. on his qualifying offenses, and concluded:

J.H. had 149 days and 77<sup>6</sup> days of jail credits for the criminal sexual contact convictions, which were

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<sup>5</sup> Megan's Law applies to those convicted of a qualifying sex offense after October 31, 1994, and to those serving a sentence of incarceration, probation, or parole for a requisite sex offense on October 31, 1994. N.J.S.A. 2C:7-2(b)(2).

<sup>6</sup> As already noted, J.H. agrees he received 74 days of jail credits on the sentence imposed for his second qualifying offense. The three-day discrepancy has no bearing on our decision.

applied to his sentence on August 13, 1993. This means that the older criminal sexual contact sentence expired on or about September 9, 1994, which is prior to October 31, 1994. However, the other criminal sexual contact conviction did not expire until on or about November 21, 1994. Of course, November 21, 1994 is after October 31, 1994.

Next, the judge rejected J.H.'s argument that the 49 commutation credits he was awarded at the end of his aggregate sentence should have been applied against the sentences he served for the criminal sexual contact convictions, thereby rendering those sentences complete before October 31, 1994. The judge explained:

[a]lthough jail credits are applied to a sentence at its onset, commutation credits are earned throughout the term of incarceration. To be sure, there is a statutory scheme in place that enables defendants, attorneys, courts, and the Department of Corrections to anticipate the number of commutation credits a person may earn. See N.J.S.A. 30:4-140. But commutation credits are based on anticipated good behavior. Whether they are awarded depends upon a person's good behavior while incarcerated. And they may b[e] taken away or re-awarded for various reasons. This means that although they are anticipated at the onset of a sentence, they are not applied until the end of the sentence – after the inmate has (or has not) maintained good behavior. . . .

Registrant's case is a good example of how commutation credits can fluctuate throughout the course of a term of incarceration. According to prison records, when J.H. was sentenced in August 1993, he was eligible to earn a total of 196 commutation credits.

However, at some point . . . during his sentence, he lost all 196 credits. Then, he had 49 credits restored. . . . [T]his serves to demonstrate commutation credits are prone to fluctuation. Thus, it is not possible to take them into account at the onset of a sentence. . . .

Further complicating things is the fact that, on October 31, 1994, J.H. was not only serving [eighteen]-month sentences for criminal sexual contact, but also three-year sentences for CDS offenses. This means that his anticipated commutation credits corresponded with a lengthier, three-year term of incarceration. Commutation credits are awarded based on the aggregate length of a sentence, and applied to the sentence as a whole. They are not awarded and applied to specific charges. When J.H. was ultimately awarded 49 commutation credits, it was not possible to determine which of those credits were earned based on his criminal sexual contact sentences, and which were earned based on his CDS sentences – there is no way to distinguish this. . . .

Therefore, the [c]ourt must rely solely on J.H.'s jail credits.

Finally, the judge reiterated that "after applying jail credits, . . . [J.H.'s] sentences for criminal sexual contact expired on or about September 9, 1994 and November 21, 1994. Therefore, on October 31, 1994, J.H. was serving one criminal sexual contact sentence, and is . . . required to register under Megan's Law." The judge did not address J.H.'s argument that any work credits he accrued would have reduced his sentences for his qualifying offenses.

## II.

On appeal, J.H. renews his argument that "because [he] was not serving a sentence for a requisite sexual offense when Megan's Law became effective, the trial court should have granted the motion to terminate his Megan's Law obligations." He specifically contends the judge erred "by failing to apply institutional credits to the shorter, concurrent sentences" he served on his qualifying offenses, and that based on either a combination of J.H.'s work and jail credits or a combination of his commutation and jail credits, the eighteen-month sentence he served on the second qualifying offense "expired prior to October 31, 1994." These arguments are unavailing.

We begin with the standards that guide our review. An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is *de novo*. See e.g., Matter of Ridgefield Park Bd., 244 N.J. 1, 17 (2020); State v. DiAngelo, 434 N.J. Super. 443, 451 (App. Div. 2014) ("[a] challenge to an award or denial of jail credits . . . constitutes an appeal of a sentence 'not imposed in accordance with law.'" (quoting State v. Rippy, 431 N.J. Super. 338, 347 (App. Div. 2013))). We accord no special deference to a trial judge's "interpretation of the law and legal consequences that flow from established

facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citations omitted).

"[T]he goal of statutory interpretation is to ascertain and effectuate the Legislature's intent." Cashin v. Bello, 223 N.J. 328, 335 (2015) (citation omitted). "[T]he best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citation omitted). "Accordingly, '[t]he starting point of all statutory interpretation must be the language used in the enactment.'" Spade v. Select Comfort Corp., 232 N.J. 504, 515 (2018) (citations omitted). "If the plain language leads to a clear and unambiguous result, then our interpretative process is over." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 386 (2016) (citation omitted).

In that regard, we recognize the calculation of concurrent terms of imprisonment is governed by statute. Specifically, "[w]ith respect to aggregation [of sentences] in the context of the calculation of . . . concurrent terms, the Code states: . . . [w]hen terms of imprisonment run concurrently, the shorter terms merge in and are satisfied by the discharge of the longest term." Richardson v. Nickolopoulos, 110 N.J. 241, 246 (1988) (quoting N.J.S.A. 2C:44-5(e)(1)). As our Supreme Court held years ago, "[a]ggregation of sentences is both a judicial and a parole function" but "[a]ggregation in the



parole setting is . . . done 'for the purpose of determining the primary parole eligibility date.'" Id. at 246-47 (quoting N.J.S.A. 30:4-123.51(h)).

Turning to the credits that led to J.H.'s release from prison in August 1995, we acknowledge jail credits are "governed by . . . Rule [3:28-1]." DiAngelo, 434 N.J. Super. at 451. Under this Rule, a defendant "shall receive credit on the term of a custodial sentence for any time served in custody in jail . . . between arrest and the imposition of sentence." R. 3:28-1. Thus, jail credits are "day-for-day credits" and "subtracted from the original sentence." Buncie v. Dep't of Corr., 382 N.J. Super. 214, 217 (App. Div. 2005). "[They] are applied to the 'front end' of a defendant's sentence." DiAngelo, 434 N.J. Super. at 451-52 (quoting State v. Hernandez, 208 N.J. 24, 37 (2011) (alteration in original)). Jail credits reduce a defendant's overall sentence and any term of parole ineligibility. Rippy, 431 N.J. Super. at 348.

Commutation credits are "'good time' credits" that "are granted for 'continuous orderly deportment'" during service of a sentence. Buncie, 382 N.J. Super. at 217; see also N.J.S.A. 30:4-140. "Although given to an inmate upon . . . entry into the state correctional system, . . . N.J.A.C. 10A:9-5.1, commutation credits, unlike jail credits, are awarded in anticipation of good conduct and may be taken from an inmate for a variety of reasons, including

misconduct." Ibid. (emphasis added) (citing N.J.S.A. 30:4-140; N.J.S.A. 30:4-16.2; and N.J.A.C. 10A:9-5.3(a) and (b)). These credits "are awarded for every year or fractional part of a year of an inmate's sentence."<sup>7</sup> Ibid. (citing N.J.S.A. 30:4-140).<sup>8</sup> "Commutation credits reduce an inmate's maximum incarceration date by reducing the maximum term imposed by the sentencing court." Id. at 219 (emphasis added).

"Work time credit is awarded to inmates pursuant to N.J.S.A. 30:4-92." N.J.A.C. 10A:9-5.1(b).<sup>9</sup> Inmates may be compensated for their work "in the form of cash or remission of time from sentence or both. Such remission from the time of sentence shall not exceed one day for each five days of productive occupation." Ibid. (citing N.J.S.A. 30:4-92). Importantly, work credits, like

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<sup>7</sup> Under the current reduction schedule for sentences, a person sentenced to one year of incarceration is eligible for up to 72 days of commutation credits. See N.J.S.A. 30:4-140. And for each full month of a fractional part of a year, an inmate will be eligible for 7 days of commutation credits. Ibid.

<sup>8</sup> "N.J.S.A. 30:4-140 sets forth a schedule that details the amount of commutation credits applicable to various maximum sentences." Buncie, 382 N.J. Super. at 217 (emphasis added).

<sup>9</sup> N.J.A.C. 10A:9-5.1(b) provides, in part, that "inmates of all correctional . . . institutions . . . shall be employed in productive occupations consistent with their health, strength, and mental capacity and shall receive compensation for this employment as the [C]ommissioner [of Corrections] shall determine."

commutation credits, "may be declared to be forfeited as a penalty for misconduct." N.J.A.C. 10A:9-5.3; see also Bender v. N.J. Dep't of Corr., 356 N.J. Super. 432, 437-38 (App. Div. 2003) ("Both commutation and work credits may be taken from an inmate for a variety of reasons, including misconduct, under N.J.S.A. 4:4-140 and N.J.A.C. 10A:9-5.3(a).")

Next, we observe:

Each adult inmate sentenced to . . . a specific term of years at the State Prison . . . shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or one-third of the sentence imposed where no mandatory minimum term has been imposed less commutation time for good behavior . . . and credits for diligent application to work and other institutional assignments . . . . Consistent with the provisions of the New Jersey Code of Criminal Justice (N.J.S.[A.] 2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work credits shall not in any way reduce any judicial or statutory mandatory minimum term and such credits accrued shall only be awarded subsequent to the expiration of the term.

[N.J.S.A. 30:4-123.51(a) (emphasis added).]

Applying these principles and given the plain language of N.J.S.A. 2C:44-5(e)(1), we have no reason to doubt J.H.'s concurrent sentences for his qualifying offenses and his four other sentences from August 13, 1993, were properly aggregated, consistent with the statute. Indeed, J.H. points to no evidence to the contrary. Therefore, we are persuaded that his shorter eighteen-month sentences

for his qualifying offenses merged in and were satisfied by the discharge of his longest three-year terms for his CDS offenses. Moreover, because J.H.'s commutation and work credits would not have been applied until the expiration of his aggregated term in August 1995, we perceive no basis to disturb the judge's determination that J.H. was still serving his sentence on his second qualifying offense when Megan's Law became effective.

In reaching this conclusion, we understand the judge did not address the impact of J.H.'s work credits on his aggregated sentence. But "appeals are taken from orders and judgments and not from opinions." Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)). Thus, we are satisfied that although the judge failed to address the impact of J.H.'s work credits in either his May 13, 2022 order or in the accompanying written opinion, this error was harmless. R. 2:10-2. That is because J.H. was afforded the benefit of all accrued jail credits in the judge's calculations and because J.H.'s work credits, like his commutation credits, were subject to forfeiture for misconduct and would not have been awarded until J.H.'s aggregated term of concurrent sentences expired. N.J.S.A. 30:4-123.51(a).

Finally, to the extent J.H. argues the doctrine of fundamental fairness

warrants the application of his commutation and work credits to the individual sentence he served on his second qualifying offense so that he can be relieved from his Megan's Law obligations, we are not convinced. As mentioned, in January 1992, J.H. was sentenced for his first qualifying offense to 180 days in county jail and five years of probation. He quickly violated probation when he committed his second qualifying sex offense. Once he was resentenced on his first qualifying offense in August 1993, his probationary sentence was extinguished. Thus, but for J.H.'s intervening criminal behavior, he likely would have been serving out his five-year probationary sentence for his first qualifying offense when Megan's Law became effective on October 31, 1994. Under these circumstances, there is no reason to employ the doctrine of fundamental fairness to relieve J.H. from his registration requirements.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION