

RECORD IMPOUNDED

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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-3848-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

L.F.S.,¹

Defendant-Appellant.

Submitted October 16, 2023 – Decided November 1, 2023

Before Judges Sabatino and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 19-04-0713.

Joseph E. Krakora, Public Defender, attorney for appellant (Stefan Van Jura, Assistant Deputy Public Defender, of counsel and on the brief).

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Erin M. Campbell, Assistant Prosecutor, of counsel and on the brief).

¹ We have sua sponte replaced defendant's name in the caption with initials. See R. 1:38-3(d)(7).

PER CURIAM

In this appeal, we are asked to consider whether the trial court erred in granting the State's motion to amend an order of expungement. Based on our review of the record and the applicable legal principles, we vacate and remand for further proceedings.

Defendant L.F.S. was indicted by a Middlesex County grand jury for aggravated assault, N.J.S.A. 2C:12-1(b)(1). The trial court granted defendant's motion to dismiss the indictment. At the time of dismissal, the trial court entered an order of expungement directing the Middlesex County Prosecutor's Office and any related agencies to remove all information from any of defendant's records concerning the aggravated assault charge.²

A year later the State moved for an order seeking to vacate the expungement order and granting the State permission to access its file for further

² See 2015 N.J. Laws 261(m) ("An Act concerning expungement of criminal and other records and information, amending various section of Title 2C of the New Jersey Statutes." This law implements an automatic expungement policy for certain persons who fulfill obligations related to prior crimes or have charges dismissed. This subsection of this law also explains the circumstances under which expunged records may remain accessible, which demonstrates that an individual's records that are expunged under this policy are not so permanently removed that the State would not be able to continue to pursue prosecution in certain circumstances.)

investigation in support of filing a new indictment against defendant. On the same date, an email chain was created that included assistant prosecutors, the Office of the Public Defender, court staff, and the trial judge for the purpose of discussing the State's motion. At no point during those communications was defendant given the opportunity to file a brief, and a court date to hear the motion was never scheduled.

On July 8, 2022, the trial judge entered an order amending the expungement order "to reflect that the State is allowed to access and utilize their prosecutor file to support the filing of a new indictment should they choose to revive the prosecution of this case."

Defendant appeals from that order claiming:

POINT I.

THE ORDER AMENDING THE EXPUNGEMENT ORDER SHOULD BE VACATED BECAUSE THE STATE'S APPLICATION WAS DEFICIENT, DEFENDANT WAS DEPRIVED OF AN OPPORTUNITY TO BE HEARD, AND THERE IS NO RECORD AVAILABLE TO REVIEW THE PROPRIETY OF THAT ORDER.

Defendant argues his due process rights were violated by the State's failure to afford him an opportunity to be heard. Defendant asserts a remand is necessary to allow him to properly oppose the State's motion. The State argues

defendant had the opportunity to be heard by way of the email chain establishing the State's purpose for requesting access to defendant's expunged records.

"[D]ue process requires an opportunity to be heard at a meaningful time and in a meaningful manner." Doe v. Poritz, 142 N.J. 1, 106 (1995). "At a minimum, due process requires notice and an opportunity to be heard 'appropriate to the nature of the case.'" McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 558 (1993) (quoting Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313 (1950)).

The email chain between attorneys, court staff, and the trial judge is not an appropriate substitute to briefing or a hearing for the parties to adequately articulate their positions. While the email chain included minor substantive discussions of the State's motion as well as some discussion to coordinate the scheduling of an attorney conference, these are not a sufficient means of affording defendant a meaningful opportunity to be heard.

The trial judge's order is accordingly vacated and remanded to allow defendant to exercise his due process rights. On remand, the court shall "state clearly [its] factual findings and correlate them with the relevant legal conclusions, so the parties and appellate courts [are] informed of the rationale underlying th[ose] conclusion[s]." Avelino-Catabran v. Catabran, 445 N.J.

Super. 574, 594-95, (App. Div. 2016) (alterations in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)). See also R. 1:7-4.

We do not pass judgment on the merits of the parties' claims or defenses but identify them solely to illustrate that by failing to provide any reasons for its decision, we, along with the litigants, "are left to conjecture as to what the judge may have had in mind." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). See also Estate of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 301 (App. Div. 2018) (noting that Rule 1:7-4's "requirements are unambiguous").

Vacated and remanded. We do not retain jurisdiction.

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



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