SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1718-20

IN THE MATTER OF W.W.
_____

Submitted February 14, 2022 – Decided May 4, 2022

Before Judges Sumners and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Warren County, Docket No. 2019-21-0017.

W.W., appellant pro se.

James L. Pfeiffer, Warren County Prosecutor, attorney for respondent (Dit Mosco, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

W.W. appeals the Law Division order from Warren County denying his application to terminate his Megan's Law requirement of Community Supervision for Life (CSL) pursuant to N.J.S.A. 2C:43-6.4(c) because he has been crime free for over fifteen years since his sexual offense convictions in 2004 and is not a threat to the community. He contended that his 2011 and 2016 convictions in Union and Middlesex Counties, respectively, for violation of CSL

parole conditions prohibiting him from the use of internet devices (hereinafter "CSL violations") abridged his constitutional rights, thereby making the CSL convictions illegal and him eligible to terminate his CSL obligations for being crime free for fifteen years. We affirm because we agree with Judge H. Matthew Curry's interpretation of our decision in State v. R.K., 463 N.J. Super. 386 (2020) that W.W.'s remedy to vacate his convictions to make him eligible for termination of his CSL obligations is to seek relief in the jurisdictions where he was convicted.

We begin with a brief discussion of W.W.'s criminal history. In 2000, following guilty pleas, W.W. was convicted of two counts of sexual assault, N.J.S.A. 2C:14-2(c), and six counts of criminal sexual contact, N.J.S.A. 2C:14-3(b). He was sentenced to an aggregate prison term of seven years to be served at the Adult Diagnostic & Treatment Center (ADTC) for sex offender treatment due to the diagnosis that his behavior was repetitive and compulsive. Because W.W.'s convictions were Megan's Law offenses, he acknowledged he was subject to the following special CSL parole conditions upon his release:

> I am to refrain from the possession, procurement, purchase or utilization of a computer[,] which includes any equipment, device or appliance that permits access to any form of computer network, bulletin board, internet, e-mail service, or other exchange format unless specifically authorized by the District Parole

> Supervisor. If authorized to utilize a computer for employment purposes, I am to maintain a daily log of all addresses accessed other than for authorized employment and make this log available to the assigned parole officer. If authorized to utilize a computer, I agree to install on my computer, at my expense, one or more hardware or software equipment, device or appliance designed to monitor computer usage, if such installation of the items is determined to be necessary by the District Parole Supervisor.

In 2007, W.W. was notified of a new parole board regulation imposing a CSL condition prohibiting him from accessing or using any social networking websites or chat rooms. N.J.A.C. 10A:71-6.11(b). Thereafter, W.W. incurred two convictions for CSL[1] violations.

In February 2011, W.W. pled guilty in Union County to violating his CSL special conditions by possessing a Blackberry with internet access, N.J.S.A 2C:43-6.4(d). He was sentenced to county jail for thirty days and ordered not to possess an "internet device [allowing] . . . social networking use, access, or creation." In 2016, W.W. pled guilty in Middlesex County to purposely or knowingly disobeying the 2011 court order regarding use of an internet capable

[1] In 2003, N.J.S.A. 2C:43-6.4 was amended, "replacing [CSL] with parole supervision for life." State v. Hester, 233 N.J. 381, 387 (2018). For convenience, we continue to refer to W.W.'s parole condition as CSL.

device, N.J.S.A. 2C:29-9(a). He was sentenced to probation for two years with a suspended county jail sentence of 364 days.

In October 2019, W.W. filed a motion in the Law Division, Warren County vicinage, seeking termination of his CSL obligations under N.J.S.A. 2C:43-6.4(c) claiming he "ha[d] not committed a crime for [fifteen] years since [his] last conviction or release from incarceration, whichever is later, and that [he] [wa]s not likely to pose a threat to the safety of others if released from supervision." He argued that because his CSL convictions were invalid as unconstitutional violations of his free speech rights, he was crime free for fifteen years since his underlying 2004 release from ADTC and did not pose a threat to others' safety, thereby entitling him to removal of his CSL conditions. W.W. relied upon Packingham v. North Carolina, 137 S. Ct. 1730 (2017) and United States v. Holena, 906 F.3d 288 (3d Cir. 2018) to support his contention that his CSL internet restrictions were unconstitutional.

The State opposed the motion, contending W.W. was ineligible for release from CSL because his most recent conviction in 2016, was for the violation of the 2011 court order banning him from using an internet device due to his CSL conditions. The State argued that W.W. was required to litigate the

constitutionality of his CSL convictions in the vicinages—Union and Middlesex—where he was convicted.

W.W. responded by arguing he was not challenging the constitutionality of his CSL convictions but contending the convictions were null and void because the law upon which they were based is unconstitutional. Thus, Judge Curry sitting in Warren County had jurisdiction under N.J. Const. art.VI, § 3, ¶ 4 to determine whether his constitutional rights were violated.

Following the publication of R.K., W.W. submitted a letter to the court contending the decision supported his position that the CSL parole conditions were unconstitutional thereby making his CSL convictions "illegal and void." In response, the State stressed that R.K. reinforced its position that W.W. was required to litigate the constitutionality of his CSL convictions in the vicinages of his convictions.

In a lengthy written decision, Judge Curry detailed the parties' arguments and determined the issue was "whether the . . . Superior Court in Warren County ha[d] [j]urisdiction to strike two prior convictions in Union and Middlesex Counties as unconstitutional on the basis that the underlying law imposing restrictions on social media use as written is unconstitutional." The judge held:

> While it is true that the [p]etitioner's request to the Appellate Division in R.K. did not address [W.W.'s]

> arguments here, nonetheless R.K. provides guidance on how to proceed. There exists a path, particularly given the R.K. and Packingham decisions, for [W.W.] to, at a minimum, request permission to withdraw his guilty pleas in both Union and Middlesex Count[ies] and/or perhaps even have the convictions vacated based upon the arguments advanced in this application. If successful, and the convictions are vacated, [W.W.] may then bring an application to be removed from CSL in the county of his residence.

Before us, W.W. argues:

> POINT I
>
> THE STATUTE UNDER WHICH [W.W.] WAS PREVIOUSLY CONVICTED, WAS UNCONSTITUTIONAL TO THE EXTENT THAT IT CRIMINALIZED CONSTITUTIONALLY PROTECTED BEHAVIOR[.]
>
> > A. Conditions of Supervision Imposed Pursuant to N.J.S.A. 2C:43-6.4 Are Elements of a Criminal Offense and thus Subject to a Constitutional Analysis of Their Validity.
> >
> > B. Statutes, Regulations, or Court Orders Imposing Absolute Bans on Accessing or Using the Internet or Social Media Violate the First Amendment Where the Statute Is Not Narrowly Tailored to Achieve a Compelling State Interest.
> >
> > C. The Special Conditions Imposed by the Parole Board in 2004 and 2007, and by the Court in 2011, Categorically Prohibiting Petitioner from Accessing the Internet or Social Media, Are Unconstitutional.

POINT II

A CRIMINAL CONVICTION GROUNDED IN AN UNCONSTITUTIONAL LAW IS A NULLITY AND MAY NOT BE USED BY THE STATE FOR ANY PURPOSE[.]

A. Convictions Arising from Unconstitutional Laws Are Null and Void and May Not Be Used by the State in any Future Proceeding.

B. The May 20, 2011 Conviction and the April 11, 2016 Convictions Are Grounded in Unconstitutional Laws, and Are Thus Null and Void.

C. The Megan's Law Court Misapplied the Holding in R.K. to Preclude the Relief [W.W.] Sought.

POINT III

THE JUDGMENTS OF CONVICTION ARISING FROM [W.W.'S] MAY 20, 2011 AND APRIL 11, 2016 CONVICTIONS MAY NOT BE USED TO BAR [W.W.'S] TERMINATION FROM [CSL][.]

A. [W.W.] Has No Legal and Constitutionally Valid History of Criminal Convictions or of Having Committed a Crime in the Fifteen Years Since Release from Incarceration from His Sex Offense Conviction.

W.W.'s arguments principally reiterate those rejected by Judge Curry. We are unpersuaded and affirm essentially for the reasons expressed by the judge in his written decision. We add the following comments.

Our decision, as well as Judge Curry's, is guided by our recent opinion in R.K., where the convicted sexual offender sought to correct his sentences for violating CSL conditions barring his access to social media on the internet without approval. 463 N.J. Super. at 395. R.K. argued the sentences were violations of his free speech rights under the federal and state constitutions "because the restrictions are overbroad, vague, and criminalize his protected free speech." Ibid. We held that CSL conditions prohibiting the convicted sexual offender's access to social networking on the internet without express authorization of the District Parole Supervisor "violate[d] his constitutional rights of free speech because his sexual offense convictions of lewdness and endangering the welfare of a child resulting in his CSL sentence were not related to his use of a social networking website, or even the Internet at all." Id. at 416.

Upon analyzing Packingham, Holena, K.G. v. N.J. State Parole Bd.,[2] as well as other rulings from this state, the federal courts, and other state courts, we concluded that any supervised parole conditions prohibiting the use of an internet accessible device "must be specifically designed to address the goals of recidivism, rehabilitation, and public safety, which are specifically tied to the individual parolee's underlying offenses." Id. at 417-18. In addition, we held

[2] 458 N.J. Super. 1 (App. Div. 2019).

that "[s]tatutes and regulations must not afford parole supervisors and officers unlimited personal discretion to determine what conditions are constitutionally permissive." Id. at 418.

Based on the facts and circumstances surrounding R.K.'s sexual offenses,

> we remand[ed] to the trial court to: (1) resentence R.K. and remove the 2007 CSL condition prohibiting him from accessing social networking on the Internet without the express authorization of the District Parole Supervisor, which the [Parole] Board added to his June 2000 conviction for fourth-degree lewdness and third-degree endangering the welfare of a child; and (2) allow R.K. to withdraw his September 14, 2012 guilty plea for violating the probation terms of his CSL condition prohibiting social networking on the Internet without the express authorization of the District Parole Supervisor.
>
> [Ibid.]

As was the case in R.K., W.W. must seek to vacate his CSL convictions and sentences in the vicinages where he was prosecuted to seek termination of his CSL conditions under N.J.S.A. 2C:43-6.4. We take no position whether the CSL conditions imposed upon W.W. violate his constitutional rights, thereby making his CSL convictions null and void.

Affirmed.