

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0625-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN TORRES, a/k/a JOSE
ROSALES,

Defendant-Appellant.

Submitted May 9, 2016 – Decided June 6, 2016

Before Judges Lihotz and Higbee.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No.
12-04-0719.

Joseph E. Krakora, Public Defender, attorney
for appellant (Michele E. Friedman, Assistant
Deputy Public Defender, of counsel and on
the briefs).

Joseph D. Coronato, Ocean County Prosecutor,
attorney for respondent (Samuel Marzarella,
Supervising Assistant Prosecutor, of
counsel; William Kyle Meighan, Assistant
Prosecutor, on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant John Torres appeals from his conviction for a third degree offense, operating a motor vehicle during a period of license suspension imposed for a second or subsequent driving while intoxicated (DWI) offense, contrary to N.J.S.A. 2C:40-26(b). Defendant argues the trial judge erred by denying his motion to dismiss the indictment and that his conviction should be vacated. We vacate the judgment of conviction.

We discern the following facts from the record. Defendant was convicted of DWI, N.J.S.A. 39:4-50, in 2004 and 2006. After the 2006 conviction, defendant's license was suspended for two years. In 2011, after his two year license suspension ended but before administrative reinstatement, defendant was stopped by a police officer who, after a random check of the license plate, determined the vehicle operated was not the vehicle registered. During the traffic stop, defendant explained to the police officer his license was suspended, and that he owned the vehicle, but the license plates were from a relative's vehicle. The police officer then confirmed defendant's license was suspended and issued defendant a citation for a motor vehicle violation. After the vehicle stop, the police officer reviewed defendant's driver's abstract and then issued a complaint charging a violation of N.J.S.A. 2C:40-26(b).

Defendant was subsequently indicted on a single count of fourth-degree operating a motor vehicle during a period of license suspension imposed for a second or subsequent DWI, contrary to N.J.S.A. 2C:40-26(b). Defendant filed a motion to dismiss the indictment asserting legal insufficiency, which was denied by order on July 30, 2013. At trial, defendant was found guilty on the single count and sentenced to two-years of probation. Probation was conditioned on defendant serving an eight-month custodial term in county jail subject to 180-days of parole ineligibility. Defendant now appeals from his judgment of conviction.

On appeal, defendant argues:

POINT I

N.J.S.A. 2C:40-26 DOES NOT APPLY TO AN INDIVIDUAL WHO DRIVES AFTER HIS COURT-ORDERED PERIOD OF LICENSE SUSPENSION FOR A DWI OR REFUSAL OFFENSE HAS LAPSED. THEREFORE, THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING MR. TORRES'S MOTION TO DISMISS THE INDICTMENT ON THE BASIS OF LEGAL INSUFFICIENCY.

A. The Trial Court's Ruling Defies the Plain Meaning of N.J.S.A. 2C:40-26 and is Fundamentally Inconsistent with the Statutory Scheme.

B. The Statute's Legislative History Reveals That N.J.S.A. 2C:40-26 Was Intended to Punish Repetitive Drunk Drivers Who Disregard Court-Ordered Terms of License Suspension for DWI or Refusal Offenses.

C. Even If the Duration of a Period of License Suspension Under N.J.S.A. 2C:40-26 Was Deemed Ambiguous, the Rule of Lenity Would Require that the Law Be Construed in the Defendant-Appellant's Favor.

D. The Trial Court's Reliance Upon State v. Zalta was Misplaced, As Zalta Pertains Exclusively to N.J.S.A. 39:3-40, a Title 39 Motor Vehicle Regulation, Rather Than the Indictable Offense Set Forth Under N.J.S.A. 2C:40-26.

POINT II

THE TRIAL COURT'S REFUSAL TO CHARGE THE JURY ON THE MENS REA REQUIREMENT APPLICABLE TO DRIVING DURING A PERIOD OF LICENSE SUSPENSION FOR A SECOND DWI, COUPLED WITH THE COURT'S DENIAL OF THE DEFENSE'S MOTION TO ARGUE THE ABSENCE OF THE REQUISITE MENS REA, IMPERMISSIBLY RELIEVED THE STATE OF ITS BURDEN OF PROOF.

POINT III

THE OMISSION OF A LIMITING INSTRUCTI[ON] REGARDING SERGEANT DUFFY'S OPINION AS TO THE ULTIMATE ISSUE OF MR. TORRE[S]'S GUILT REQUIRED REVERSAL. (Not Raised Below)

Defendant argues on appeal N.J.S.A. 2C:40-26(b) does not apply to an individual who drives after a court-ordered period of license suspension has ended. Defendant contends the trial court committed reversible error by not dismissing his indictment and requests we vacate his conviction.

The issue presented requires a review of the statutory construction of N.J.S.A. 2C:40-26(b). Statutory interpretation is considered a question of law; "[a]ccordingly, a de novo

standard of review applies on appeal." State ex rel. K.O., 217 N.J. 83, 91 (2014).

Our role in statutory interpretation is to determine the Legislature's intent. Ibid. "In interpreting a statute, we give the relevant language its ordinary meaning and construe it 'in a common-sense manner.'" State v. Perry, 439 N.J. Super. 514, 523 (App. Div.) (quoting K.O., supra, 217 N.J. at 91), certif. denied, 222 N.J. 306 (2015).

N.J.S.A. 2C:40-26(b) states:

It shall be a crime of the fourth degree to operate a motor vehicle during the period of license suspension in violation of [N.J.S.A.]39:3-40, if the actor's license was suspended or revoked for a second or subsequent violation of [N.J.S.A.]39:4-50 or [L. 1981, c. 512 [§ 2] ([N.J.S.A.] 39:4-50.4a). A person convicted of an offense under this subsection shall be sentenced by the court to a term of imprisonment.

Defendant relies on our recent holding in Perry, supra, 439 N.J. Super. at 532 to bolster his position. In Perry, we analyzed the same issue raised here, whether charges could be brought under N.J.S.A. 2C:40-26 "when the act of driving occurs beyond the determinate sentenced term of suspension, but before reinstatement, while the driver continues on administrative suspension." Perry, supra, 439 N.J. Super. at 519. We applied a common sense construction of the statute, and determined the

Legislature intended N.J.S.A. 2C:40-26(b) to apply "solely to drivers with a license suspension for a second or subsequent DWI or refusal violation." Id. at 525-26. It further determined the statute was "silent as to those driving without reinstatement beyond the court-imposed term of suspension," and concluded:

[h]ad the Legislature intended to include those persons, the necessary language could have been easily included in [the statute]. It was not. Such language would, obviously, have cast the far wider net the State proposes. The omission is significant, and for us to interpret the statute as the State suggests would be to add terms that may well have been intentionally excluded.

[Ibid.]

We agree with defendant that our holding in Perry governs in this matter.¹ The statute clearly requires an individual must be driving during the court imposed license suspension period to be subject to conviction under N.J.S.A. 2C:40-26(b). The statute does not state it applies to individuals who fail to reinstate their license after the suspension period ends. Here, defendant had already completed his two-year court imposed license suspension period for his second DWI before he was stopped by the police officer. It would be outside of the

¹ We recognize Perry was decided after defendant's trial, but its reasoning does not create a new rule of law.

statute's plain meaning to convict him under N.J.S.A. 2C:40-26(b) for failing to take the procedural steps necessary to reinstate his license after his suspension period ended. After reaching our conclusion, we do not need to reach defendant's other claims on appeal.

Defendant's conviction is vacated. We remand to the trial court for the purpose of entering a judgment of dismissal.

Reversed and remanded.

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



CLERK OF THE APPELLATE DIVISION