

To: Commission
From: Laura C. Tharney
Re: Meaning of “conviction” in N.J.S. 2C:7-2(f) (*In re J.S.*)
Date: January 9, 2017

MEMORANDUM

Executive Summary

The case of *In re J.S.*¹ the Appellate Division considered whether the term “conviction” as used in N.J.S. 2C:7-2(f), refers to a plea of guilty, or to the entry of a judgment of conviction.

The Court determined that “conviction”, in that section of the statute, referred to the judgment of conviction, rather than to the plea of guilty. In doing so, the Court suggested that “exacting precision in drafting statutes would obviate the need for judicial interpretation” and noted that the issue on appeal was “an important matter of public interest and capable of repetition warranting our review.”²

Background

The issue in the case was when the clock started running for purposes of the 15-year time period set forth in N.J.S. 2C:7-2(f). That statutory section provides that “a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following *conviction* or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others. [emphasis added]”³

The defendant in *In re J.S.* pled guilty on January 14, 2000 to two counts of third-degree aggravated criminal sexual contact.⁴ His sentence was imposed on November 13, 2000.⁵ In early 2015, the defendant sought the termination of his obligations pursuant to Megan’s Law and community supervision for life (CSL) pursuant to N.J.S. 2C:7-2(f).

The State agreed that the defendant met all of the requirements except for the running of the 15-year time period. In response, the defendant argued that the clock started running on the day that he pled guilty and, as a result, the required period had elapsed by the time he filed his application.⁶

¹ *In re J.S.*, 444 N.J. Super. 303 (App. Div. 2016).

² *In re J.S.*, 444 N.J. Super. 303, 313-314 (App. Div. 2016).

³ N.J.S. 2C:7-2(f).

⁴ *Ibid.* at 306.

⁵ *Id.* at 307.

⁶ *Id.*

The judge accepted the position of the defendant, and terminated the defendant's obligations pursuant to Megan's Law and CSL.⁷ In doing so, the judge relied on the case of *State v. Baker*⁸ in which the Court had distinguished "conviction" from "judgment" when reviewing the predecessor statute to N.J.R.E. 609.⁹ In that earlier case, the Court said that the ordinary, "legal meaning of conviction...*is the confession of the accused in open court, or the verdict returned against him by the jury...while 'judgment' or 'sentence' is the appropriate word to denote the action of the court.*"¹⁰

In making its determination, the Appellate Division in *J.S.* considered the context of the term under consideration,¹¹ and explained that when a term is subject to differing interpretations, it should be interpreted in such a way as to further the general purposes of the Criminal Code (which was adopted *after* the case on which the defendant relied) and the purposes of the particular provision in issue.¹² The Court also looked to the history and purpose of Megan's Law and noted that the "registration requirements of Megan's Law, as well as related legislation adopted at the same time, including CSL, are imposed at sentencing."¹³

The Court concluded that the design of the statute "signals a desire to measure the offense-free time frame against fifteen years of compliance with the registration requirements."¹⁴ It suggested that its conclusion was "further supported by the use of similar language when allowing termination of CSL."¹⁵

The Court said that "had the Legislature used the term 'judgment of conviction,' rather than 'conviction,' any debate would have unmistakably ended" and rejected the defendant's assertion that the Legislature deliberately chose not to use the term "judgment of conviction" in N.J.S. 2C:7-2(f).¹⁶

As of the date on which the Court issued its decision, the 15-year period had run, but the Court explained that mootness did not preclude its review because the trial judge actually had to determine whether the defendant was offense-free during the pendency of his case in 2015, and because "the issue on appeal is an important matter of public interest and capable of repetition warranting our review."¹⁷

⁷ *Id.*

⁸ *State v. Baker*, 133 N.J. Super. 398, 399–400 (App.Div. 1975).

⁹ *Ibid.* at 309

¹⁰ *Id.*

¹¹ *Id.* at 310.

¹² *Id.*

¹³ *Id.* at 311.

¹⁴ *Id.* at 312.

¹⁵ *Id.*

¹⁶ *Id.* at 313.

¹⁷ *Id.* at 313-314.

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding this issue in order to determine whether modifying N.J.S. 2C-7-2(f) to add the words “judgment of” before “conviction”, or changing it in some other limited way, would aid in interpreting the provision and potentially obviate the need for additional litigation regarding the issue addressed in *In re J.S.*