

**To:** New Jersey Law Revision Commission  
**From:** Joseph Pistritto, Legislative Fellow  
**Re:** “Under the influence” - State v. Siervo, 2018 WL 266734 (App. Div. 2018)  
**Date:** October 8, 2018

### Executive Summary

The Defendant’s efforts to withdraw previously entered guilty pleas to driving while intoxicated and refusing to submit to a breath test were denied.<sup>1</sup> The Appellate Division affirmed the denial, noting that Defendant’s application was untimely, but suggested that the DWI statute pursuant to which Defendant was convicted did not define “under the influence of intoxicating liquor”.<sup>2</sup>

### Statute

N.J.S. 39:4-50: Driving while intoxicated

(a) Except as provided in subsection (g) of this section, a person who operates a motor vehicle while *under the influence* of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject:...

[Penalties for first, second, and third offenses listed]

### Background

In 2009, Defendant pled guilty to driving while intoxicated (DWI) and refusal to take a breathalyzer test (“Refusal”).<sup>3</sup> Seven years later, Defendant applied to the municipal court to vacate his guilty pleas.<sup>4</sup> The municipal court denied his petition and on appeal to the Law Division, his request for post-conviction relief was again denied as time-barred under the five year window to file.<sup>5</sup> Defendant appealed to the Appellate Division arguing (1) the relief sought was not time-barred as the procedural rule for filing post-conviction relief from municipal courts did not explicitly state a time limit and (2) there were no factual bases for his convictions.<sup>6</sup>

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<sup>1</sup> *State v. Siervo*, No. A-0989-16T2, 2018 WL 266734 at \*1 (N.J. Super. Ct. App. Div. Jan. 3, 2018).

<sup>2</sup> *Id.* at \*2; *Id.* at \*3.

<sup>3</sup> *Id.* at \*1.

<sup>4</sup> *State v. Siervo*, No. A-0989-16T2, 2018 WL 266734 at \*1 (N.J. Super. Ct. App. Div. Jan. 3, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

## Decision

The Appellate Division denied Defendant’s application to withdraw his pleas but did so for different reasons than the Law Division.<sup>7</sup> The Court examined Rule 7:6-2 which authorizes guilty pleas in municipal court and Rule 3:21-1, and found that neither imposed a time limit on petitions for post-conviction relief.<sup>8</sup> Both rules simply provided that relief can be granted only to “correct a manifest injustice.”<sup>9</sup> The Court found that no such injustice existed.<sup>10</sup> The Defendant admitted to both the DWI and Refusal and did not claim that he was not guilty of the two offenses or indicate that he did not understand the nature of the statutory offenses.<sup>11</sup>

During its consideration of the case, the Appellate Division did note that the DWI statute in question did not contain a definition of the phrase “under the influence.”<sup>12</sup> The Appellate Division pointed out that the New Jersey Supreme Court has generally understood this phrase to refer to a deterioration of a person’s physical or mental condition.<sup>13</sup> Turning to the case at hand, the Appellate Division highlighted that although the case was properly disposed of by applying the state procedural rules for vacating previous convictions, the municipal court judge did not ask Defendant about what kind of physical or mental condition he was under while operating his vehicle.<sup>14</sup> The Court seemed to be suggesting that additional specificity regarding what constitutes “under the influence of intoxicating liquor” might have led the municipal court to inquire further of the Defendant at the time of his plea, obviating the subsequent litigation of the issue.

## Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether modification of N.J.S. 39:4-50(a) as it pertains to “under the influence” would assist application of the above provision and reduce the need for additional litigation regarding the issues discussed in *State v. Siervo*.

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<sup>7</sup> *Id.* at \*2.

<sup>8</sup> *Id.*

<sup>9</sup> *State v. Siervo*, No. A-0989-16T2, 2018 WL 266734 at \*2 (N.J. Super. Ct. App. Div. Jan. 3, 2018).

<sup>10</sup> *Id.* at \*2.

<sup>11</sup> *Id.* at \*3.

<sup>12</sup> *Id.* at \*4.

<sup>13</sup> *State v. Siervo*, No. A-0989-16T2, 2018 WL 266734 at \*4 (N.J. Super. Ct. App. Div. Jan. 3, 2018).

<sup>14</sup> *Id.* at \*5.