

To: New Jersey Law Revision Commission
From: Erik Topp
Re: *State v. Torella*
Operation of Motor Vehicle During License Suspension, N.J.S. 2C:40-26
Date: October 10, 2017

MEMORANDUM

Executive Summary

In *State v. Torella*,¹ the Appellate Division considered the proper interpretation of N.J.S. 2C:40-26, regarding the criminality of driving with a license between a period of suspension and reinstatement.

The court determined that driving under such circumstances does not constitute criminal conduct, relying upon the decision in *State v. Perry*, which states that the statute “criminalizes the operation of a motor vehicle only during the court-ordered period of suspension, not thereafter.”²

Background

The case examined whether an individual may be found criminally liable for driving with a license that had been suspended, after the period of suspension had ended but before the licensed had been formally reinstated. Torella had been previously been convicted of a series of DWI offenses in 2001 and 2002, leading to a suspension of his license.³ He failed to restore his license after the suspension ended, and was arrested twice in 2012 for driving with a suspended license and charged for violation of N.J.S. 2C:40-26(b).⁴

This section of the statute reads as follows:

It shall be a crime of the fourth degree to operate a motor vehicle during the period of license suspension in violation of R.S.39:3-40, if the actor’s license was suspended or revoked for a second or subsequent violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a). A person convicted of an offense under this subsection shall be sentenced by the court to a term of imprisonment.⁵

¹ 2015 WL 11391309 (N.J. App. Div. 2016).

² *State v. Perry*, 439 N.J. Super. 514 (App. Div.), *certif. denied*, 222 N.J. 306 (2015).

³ 2015 WL 11391309 at *1.

⁴ *Id.*

⁵ N.J.S. 2C:40-26(b).

The court interpreted this provision in conjunction with *Perry*, where the Appellate Division previously explained that “[t]he statute is silent as to those driving without reinstatement beyond the court-imposed term of suspension” and that “[h]ad the Legislature intended to include those persons, the necessary language could have easily been included in both sections of the law.”⁶ Accordingly, the court held that the statute does not criminalize Torella’s conduct, and determined that finding otherwise “would be to engraft additional terms onto the statute that the Legislature did not intend to include and to expand the list of potential prosecutions beyond the scope of the plain language.”⁷

Conclusion

The language of the statute is not particularly specific and has sparked a fair amount of litigation over its interpretation.⁸ Modifying the statute would serve to clear up what has become a contentious debate, resolving the matter either by either codifying the holding in *Perry* and its application in *Torella* (to continue to criminalize driving only while the license is suspended) or to re-frame the statute in the stricter manner in which prosecutors have read it (requiring drivers to always pursue formal reinstatement).

Staff seeks authorization to conduct additional research and outreach to determine whether modifying N.J.S. 2C:40-26 to clarify whether one may drive with a license that had been suspended before the license is formally reinstated without facing criminal liability would aid in interpreting the law and potentially eliminate the need for further litigation regarding the issue raised in *State v. Torella*.

⁶ *Torella*, 2015 WL 11391309 at *3.

⁷ *Id.* at *3 (citing *Perry*, 439 N.J. Super. at 525–26).

⁸ *Perry*, for instance, was a consolidation of seven cases challenging the interpretation of the statute. *Id.* at *2.