

22-7160

NO. _____

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT of the UNITED STATES

DANIEL RIOS,

Appellant,

-against-

STATE OF NEW JERSEY,

Appellees

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEWJERSEY

PETITION FOR A WRIT OF CERTIORARI

Mr. Daniel Rios
#896944 / 857353
New Jersey State Prison
P.O. Box 861
Trenton, New Jersey 08625
Appellant, Pro-se

QUESTIONS PRESENTED

1. Whether Rule 3:21-10(b) authorizes a reviewing court to reconsider a sentence based upon post-conviction rehabilitative efforts pursuant to establish case law and statute?
2. Whether the State Court decisions were contrary to the following cases, statutes: *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. ____ (2012); *United States v. Sally*, 116 F.3d 76 (3rd Cir. 1997); *State v. Case*, 220 N.J. 49 (2014); *State v. Jaffe*, 220 N.J. 114 (2014) and *N.J.S.A. 2C:1-2(b)(2)*?
3. Whether or not New Jersey Court Rule 3:21-10(b) is Unconstitutional as it does not provide an actual subsection that allows a proper review of Post-conviction rehabilitative efforts even if a Appellant's Motion is not preceded by a remand?

PARTIES

The Appellant is Daniel Rios a prisoner at New Jersey State Prison, P.O. Box 861, Trenton, New Jersey.

The Appellees are Meredith Balo, Ass't Prosecutor, Union County Prosecutor's Office, 32 Rahway Avenue, Elizabeth, New Jersey 07202-2115.

CORPORATE DISCLOSURE

There are no corporate entities involved in this case.

RELATED CASES

State v. Daniel J. Rios, Dkt. #087262 (Jan. 17, 2023), Order of the New Jersey State Supreme Court denying Certification from a Denial Motion for Reconsideration of Sentence

State v. Daniel J. Rios, A-3141-20 (App. Div. June 8, 2022) Opinion of the Superior Court of New Jersey, Appellate Division from a Denial Motion for Reconsideration of Sentence

State v. Daniel J. Rios, Indictment No: 13-09-00804-I (June 2, 2021) Opinion and Order of the Superior Court of New Jersey, Union County, denying Motion for Reconsideration of Judge's February 3, 2021 Decision.

State v. Daniel J. Rios, Indictment No: 13-09-00804-I (February 3, 2021)

Opinion and Order of the Superior Court of New Jersey, Union County, denying

Motion for Reconsideration of Sentence

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C. Whether or not New Jersey Court Rule 3:21-10(b) is Unconstitutional as it does not provide an actual subsection that allows a proper review of Post-conviction rehabilitative efforts even if a Appellant's Motion is not preceded by a remand Conclusion

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**IN THE
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**ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW JERSEY**

PETITION FOR A WRIT OF CERTIORARI

Appellant Daniel J. Rios (“Rios”) respectfully petitions for a Writ of Certiorari to review the Opinion of the State Intermediate Appellate Court (last court to issue a decision) in this case.

OPINIONS AND ORDERS BELOW

The Order of the Supreme Court of New Jersey denying Certification, *State v. Daniel J. Rios*, Dkt. #087262, appears at 1a to this Petition. The Opinion of the Superior Court of New Jersey, Appellate Division affirming the denial of Motion for Reconsideration of Sentence, *State v. Daniel J. Rios*, A-3141-20 (App. Div.

June 8, 2022) appears at 2a to this Petition. The Opinion and Order of the Superior Court of New Jersey, Union County, *State v. Rios*, Indictment No: 13-09-00804-I (June 2, 2021) denying Motion for Reconsideration of Judge's February 3, 2021 Decision appears at 9a in this Petition. The Opinion and Order of the Superior Court of New Jersey, Union County, *State v. Rios*, Indictment No: 13-09-00804-I (February 3, 2021) denying Motion for Reconsideration of Sentence appears at 12a in this Petition.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on January 17, 2023. The Appellate Division having entered its decision on June 8, 2022. Jurisdiction is conferred by 28 *U.S.C.* §1257(a).

CONSTITUTIONS AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On September 25, 2013, Union County Grand Jury returned Indictment Number 13-09-00804 charging the Appellant, Daniel J. Rios, with violating the following New Jersey laws: **Count One** - 1st degree murder in violation of *N.J.S.A. 2C:11-3a(1)(2)*; **Count Two** - 2nd degree robbery in violation of *N.J.S.A. 2C:15-1*; **Count Three** - 2nd degree burglary in violation of *N.J.S.A. 2C:18-2*, and **Count Four** - 1st degree felony murder in violation of *N.J.S.A. 2C:11-3a(3)*.

On June 24, 2014, the Appellant appeared before Judge McDaniel and entered a plea of guilty to Count Four, felony murder. In exchange for his guilty plea, the state agreed to recommend a custodial sentence of 35 years with an 85% parole disqualifier under NERA. Additionally, under the terms of a Supplemental Form for Non-Negotiated Pleas, the Court proposed to sentence Appellant to "30 years w/30 years NJSP."

Prior to imposing sentence on August 1, 2014, the Judge found the following aggravating factors pursuant to *N.J.S.A. 2C:44-1(a)(3)(6)* and (9). The Judge found no mitigating factors.

Judge McDaniel then sentenced Appellant to "30 years with a 30-year parole disqualifier, pursuant to NERA." All remaining counts of the Indictment were dismissed.

On August 22, 2014, an Amended Judgment of Conviction and Order for Commitment was entered to reflect the 5-year period of parole supervision. No Direct Appeal was taken from the Judgments of the Trial Court.

On or about February 12, 2016, Appellant filed a Petition for Post-conviction relief with the Union County Superior Court. This Petition was supplemented by PCR Counsel. On April 21, 2017, Judge McDaniel heard oral

argument and on May 23, 2017, he denied the Petition in a written opinion and issued a June 5, 2017 Order memorializing the denial.

On August 4, 2017, a Notice of Appeal was filed appealing the adverse decision of the PCR Court.

On September 18, 2018, the Appellate Division affirmed the PCR Court's Order denying Appellant's Post-conviction relief. *State v. Daniel J. Rios*, A-5218-16T1 (App. Div. Sept. 18, 2018). Appellant did not seek discretionary review in the New Jersey Supreme Court.

On January 5, 2021, Appellant filed a Motion for Reconsideration of sentence under New Jersey Rule 3:21-10(b), claiming that the trial court should consider his post-conviction rehabilitation efforts, including completion of several institutional programs. Appellant relied upon *Pepper v. United States*, 562 U.S. 476 (2011); *State v. Randolph*, 210 N.J. 330 (2012) and *State v. Towery*, 244 N.J. Super. 582 (App. Div. 1990).

On February 3, 2021, the Motion Court issued an order and letter opinion denying relief. On February 16, 2021, Appellant submitted an informal letter request for the court to reconsider its denial of his motion for reconsideration of sentence. Appellant claimed that Rule 3:21-10 is unconstitutional because it prevents [d]efendants from seeking a just sentence. Appellant further claimed that Rule 3:21-10 does not specify whether a Appellant can seek the reconsideration of sentence based on post-sentencing rehabilitation. On June 2, 2021, the Motion issued an order and letter opinion denying the application without prejudice. The Motion court also rejected Appellant's reliance on *Miller v. Alabama*, 567 U.S. 460 (2012) and *Graham v. Florida*, 560 U.S. 48 (2010).

Appellant appealed both Orders to the State Intermediate Appellate Court which affirmed both orders. *State v. Rios*, A-3141-20 (App. Div. June 8, 2022). The Supreme Court of New Jersey denied Appellant's Petition for Certification.

Rios submits that the State Courts erred when they denied the relief requested and hereby seeks Certiorari from this Court to review the constitutional issues presented.

REASONS FOR GRANTING THE WRIT

- A. **WHETHER RULE 3:21-10(B) AUTHORIZES A REVIEWING COURT TO RECONSIDER A SENTENCE BASED UPON POST-CONVICTION REHABILITATIVE EFFORTS PURSUANT TO ESTABLISH CASE LAW AND STATUTE?**
- B. **WHETHER THE STATE COURT DECISIONS WERE CONTRARY TO THE FOLLOWING CASES, STATUTES: *GRAHAM v. FLORIDA*, 560 U.S. 48 (2010); *MILLER v. ALABAMA*, 567 U.S. ____ (2012); *UNITED STATES v. SALLY*, 116 F.3d 76 (3rd Cir. 1997); *STATE v. CASE*, 220 N.J. 49 (2014); *STATE v. JAFFE*, 220 N.J. 114 (2014) AND N.J.S.A. 2C:1-2(B)(2)?**

Mr. Rios argues that the State Courts decisions are an unreasonable application of clearly established law.

The "clearly established laws" relevant here are the United States Supreme Court decisions in *Pepper v. United States*, 562 U.S. 476 (2011); *Miller v. Alabama*, 567 U.S. ____ (2012); and *Graham v. Florida*, 560 U.S. 48 (2010). The "clearly established state laws" relevant here are the New Jersey Cases of *State v. Randolph*, 210 N.J. 330 (2012); *State v. Towey*, 244 N.J. Super. 582 (App. Div. 1990); *State v. Jaffe*, 220 N.J. 114 (2014) and *State v. Case*, 220 N.J. 49 (2014).

Both *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010); and *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012) stands for the proposition that "A

State is not required to guarantee eventual freedom, but it must provide some meaningful opportunity to obtain release, based upon demonstrated maturity and rehabilitation." Both these cases and *N.J.S.A. 2C:1-2(b)(2)*, supports the proposition of a motion that is being submitted by the Appellant.

In *State v. Randolph*, 210 N.J. 330 (2012), the Court held that a Appellant should be assessed as he stands before the court on the day of sentencing, and that the sentencing court must consider a Appellant's relevant post-offense conduct in weighing aggravating and mitigating factors. *Id.* at 354.

In this instant matter, the Appellant had plead guilty to felony murder and before sentencing, the Court found the risk of recidivism, *N.J.S.A. 2C:44-1a(3)*; Appellant's prior record, *N.J.S.A. 2C:44-1a(6)*, and the need for deterrence, *N.J.S.A. 2C:44-1a(9)* to be aggravating factors. The Court found no mitigating factors.

The Court, when sentencing Appellant, also failed to rely on *N.J.S.A. 2C:44-1c(2)* in considering Appellant's actual eligibility for release on parole.

Based on the above Aggravating Factors, on August 1, 2014, the Appellant was sentenced by Honorable McDaniel to an aggregate term of 30-years with 30-years of parole ineligibility with a 5-year Parole Supervision.

In *Pepper v. United States*, 131 S.Ct. 1229, 1240 (2011), the U.S. Supreme Court determined that when a sentence is set aside, which is not the case at-bar, the [re]sentencing court may consider evidence of post-sentencing rehabilitation. Although *Pepper* involved federal sentencing grounds and setting a sentence aside, it emphasized, that "the fullest information possible" about a Appellant's characteristics is "highly relevant - if not essential - to" determining the appropriate sentence. The Court noted the tradition for sentencing judges to consider each convicted person as an individual, which is based on "the principle that the punishment should fit the offender and not merely the crime" (quoting *Williams v. New York*, 337 U.S. 241, 247, 69 S.Ct. 1079 (1949)).

Sentencing Judges have discretion "when presented with extraordinary or exceptional post-conviction rehabilitative efforts" to take those efforts into account and Judges may also consider post-conviction rehabilitative efforts in support of mitigating factors *N.J.S.A.* 2C:44-1b(8) and (9), or to negate Aggravating Factors, *N.J.S.A.* 2C:44-1a(3) and (9). Aggravating factor a(3) has been found related to mitigating factors b(8) and (9) and therefore Appellants steps towards rehabilitation taken after original sentencing should be considered by a judge. *State v. Towey*, 244 N.J. Super. 582 (Law Division 1990).

The Court could use the standards articulated by the Third Circuit Court of Appeals in *United States v. Sally*, 116 F.3d 76, 80 (3d Cir. 1997) for admitting post-sentencing rehabilitation evidence when efforts are extraordinary or exceptional. Such a case is presently being presented by the Appellant in this instant matter.

Additionally, the Court in *State v. Case*, 220 N.J. 49, 70 (2014) stated:

[T]he sentencing court may consider Appellant's conduct and comportment while imprisoned, whether positive or negative. Appellant is entitled to bring to the court's attention to any rehabilitative or other constructive measures he has taken in the intervening years. The State, likewise, is not limited in its presentation. The only restriction placed on both parties is that the evidence presented be competent and relevant.

See also, *State v. Jaffe*, 220 N.J. 114, 124 (2014) ("[T]he trial court should view a Appellant as he or she stands before the court on the day of sentencing. This means evidence of post- offense conduct, rehabilitative or otherwise, must be considered in assessing the applicability of, and weight to be given to, aggravating and mitigating factors").

N.J.S.A. 2C:1-2(b) specifically identifies the "general purpose" of the sentencing provisions of the Code, which reveal a tension between an individualized sentencing approach on the one hand and the reforms aimed at sentencing uniformity on the other. *Randolph*, *supra* at 346. The Code does not,

however, require the trial court to ignore a Appellant's individual characteristics and circumstances.

N.J.S.A. 2C:1-2(b) states: "The general purpose of the provisions governing the sentencing of offenders are: **1)** to prevent and condemn the commission of offenses; **2)** to promote the correction and rehabilitation of offenders; **3)** to insure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protection; **4)** to safeguard offenders against excessive, disproportionate or arbitrary punishment; **5)** to give warning of the nature of the sentences that may be imposed on conviction of an offense; **6)** to differentiate among offenders with a view to a just individualization in their treatment; **7)** to advance the use of generally accepted scientific methods and knowledge in sentencing offenders; and **8)** to promote restitution to victims."

Furthermore, the post-sentencing rehabilitative evidence provided the Court with the most up-to-date picture of Appellant's history and characteristics since being sentenced by the Court. *State v. Merlino*, 208 N.J. Super. 247, 262 (Law Div. 1984) (holding that there is no constitutional impediment to the consideration of any reliable evidence); see also, *State v. Towey*, 244 N.J. Super. 582 (App. Div.), certif. den., 122 N.J. 159 (1990) (the Towey Court still held that "the trial

court must consider all current information that is relevant to an appraisal of aggravating and mitigating factors, including evidence related to post-sentencing rehabilitation." *Id.* at 593-94)). Courts have acknowledged that, unlike the Federal sentencing statute, 18 *U.S.C.A.* 661, New Jersey sentencing statutes contains no de-limiting provision regarding information to be considered by the sentencing court in relation to a Appellant's background, character, and conduct. *Randolph*, *supra.* at 346.

C. WHETHER OR NOT NEW JERSEY COURT RULE 3:21-10(B) IS UNCONSTITUTIONAL AS IT DOES NOT PROVIDE AN ACTUAL SUBSECTION THAT ALLOWS A PROPER REVIEW OF POST-CONVICTION REHABILITATIVE EFFORTS EVEN IF A APPELLANT'S MOTION IS NOT PRECEDED BY A REMAND?

Subsection (b) of *N.J.Ct.R.* 3:21-10 violates the Eighth and Fourteenth Amendments of the United States Constitution and Article 1, par. 1 of the New Jersey Constitution because the Subsection fails to prescribe procedural safeguards to enforce due process and equal protections requirements.

For Subsection (b) of *N.J.Ct.R.* 3:21-10 to be constitutional, it must not be interpreted so as to exclude "evidence relevant and necessary to a fair determination of the issues." See e.g., *State v. Garron*, 177 N.J. 147, 171 (2003). In this present matter, Subsection (b) of *N.J.Ct.R.* 3:21-10 is ambiguous, vague

and unconstitutional as it does not allow "a fair determination of the issues" that were presented in Mr. Rios' Motion for Reconsideration.

Subsection (b) of *N.J.Ct.R. 3:21-10* (Reduction or Change of Sentence)

states:

(b) Exceptions. A motion may be filed and an order may be entered at any time 1) changing a custodial sentence to permit entry of the defendant into a custodial or non-custodial treatment or rehabilitation program for drug or alcohol abuse, or 2) amending a custodial sentence to permit the release of a defendant because of illness or infirmity of the defendant, or 3) changing a sentence for good cause shown upon the joint application of the defendant and prosecuting attorney, or 4) changing a sentence as authorized by the Code of Criminal Justice, or 5) correcting a sentence not authorized by law including the Code of Criminal Justice, or 6) changing a custodial sentence to permit entry into the Intensive Supervision Program, or 7) changing or reducing a sentence when a prior conviction has been reversed on appeal or vacated by collateral attack.

The Appellant counters by arguing that he has demonstrated herein that he is not foreclosed by Subsection (b) as it does not directly provides a provision dealing with the issues currently that was presented and denied by this Honorable Court. As currently written, the Subsection does not allow, nor does it prevent, a defendant from seeking relief based upon Post-Sentence Rehabilitative Evidence. In fact, there is nothing in the statutes that directly prevents a defendant from seeking [a just] reconsideration of sentence based upon post conviction rehabilitative evidence, although New Jersey caselaw do support such a

consideration, but only when a higher court orders a resentencing proceeding. See e.g., *State v. Towey*, 244 N.J. Super. 582 (App. Div.), certif. den, 122 N.J. 159 (1990); *Pepper v. United States*, 131 S.Ct. 1229 (2011) and *State v. Randolph*, 210 N.J. 330 (2012).

The purpose of N.J.S.A. 2C:1-2(b)(2) is to promote the correction and rehabilitation of offenders, however, there is no way for the offender to present to the Court such correction and rehabilitation as Subsection (b) bars defendants from doing such. (Emphasis added).

When a Statute's constitutionality is in doubt, courts have an obligation to interpret the law, if possible, to avoid the constitutional problem. See, e.g., *Edwards J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Constr. Trades Council*, 485 U.S. 568, 575 (1988). It is emphatically the province and duty of the Judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.

This Court has the power to review the acts of the New Jersey Legislature and to even strike down, in this instance, Subsection (b) of R. 3:21-10, as unconstitutional regardless of N.J. Legislature's intent.

Furthermore, the Fifth Amendment provides that "[N]o person shall ... be deprived of life, liberty, or property, without due process of law." The United

States Supreme Court have established that the Government (and States) violates these guarantees by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357-58, 103 S.Ct. 1855 (1983). The prohibition of vagueness in criminal statutes "is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law," and a statute that flouts it "violates the first essential of due process." *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126 (1926). These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences, see, e.g., *United States v. Batchelder*, 442 U.S. 114, 123 (1979).

Subsection (b) argued herein should convince the Courts that they have embarked upon a failed enterprise. Each of the subpoints in Subsection (b) may be tolerable in isolation, but "their sum makes a task for the Courts which at best could be only guesswork." See e.g., *United States v. Evans*, 333 U.S. 483, 495 (1948). Invoking so shapeless a provision to condemn someone to prison for a very long time without allowing that person to show the Court that they are rehabilitated by way of a Motion for Reconsideration of Sentence does not

comport with the Constitution's guarantee of Due Process and Equal Protection which are afforded to others.

The Appellant has identified several procedural and substantive problems within the Subsection (b) of *N.J.Ct.R.* 3:21-10. First, the Subsection forecloses defendants like Mr. Rios, from seeking a just Reconsideration of Sentence, which amounts to a Due Process and Equal Protection violation. Second, Subsection (b) do not contain provisions that protect procedural safeguards to make certain that individuals could seek a modified sentence based on demonstrated post-sentence rehabilitative evidence, such as being shown by defendant, that comply with State and Federal Constitutional Due Process and Equal Protection requirements, and Third, as shown, Subsection (b) does not specify whether a defendant can seek a Reconsideration of Sentence based on what he or she has done since sentencing.

Moreover, both *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010); and *Miller v. Alabama*, 567 U.S. ____, 132 S.Ct. 2455 (2012) stands for the proposition that "A State is not required to guarantee eventual freedom, but it must provide some meaningful opportunity to obtain release, based upon demonstrated maturity and rehabilitation." These United States Supreme Court cases are in conflict with *N.J.Ct.R.* 3:21-10(b) as it is currently written as the

Subsection in question preclude defendants from being able to seek a meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation.

No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids, therefore *N.J.Ct.R.* 3:21-10(b) clearly violate Appellant's right to present to the Court that he has matured and has rehabilitated himself. Furthermore, Subsection (b) of *N.J.Ct.R.* 3:21-10 must be deemed unconstitutional as it is currently written and the Appellant should be entitled to the relief sought in this matter.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Date: 3-21-23

A handwritten signature in black ink, appearing to read "Daniel Rios", with a stylized flourish at the end.

Daniel Rios, Pro Se
New Jersey State Prison