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APPENDIX A

SUPREME COURT OF NEW JERSEY

DOCKET NO. 090033

STATE OF NEW JERSEY

March 11, 2025

Before

Honorable Stuart Rabner, Chief Justice

ORDER

No. 090033

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V.

FRANK J. ANDERSON, JR.,

Defendant-Appellant.

A petition for certification of the judgment in A-003528-22 having been submitted to this Court, and the Court having considered the same.

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner,
Chief Justice, at Trenton, this 11th day of March
2025.

IT IS SO ORDERED.

Date: 3/11/2025

Entered: /s/

STUART RABNER,
New Jersey Supreme Court
Chief Justice

APPENDIX B

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3528-22
STATE OF NEW JERSEY**

Argued September 25, 2024

Decided October 25, 2024

Before

Judges DeAlmeida and Puglisi.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V.

FRANK J. ANDERSON, JR.,

Defendant-Appellant.

PER CURIAM

Defendant Frank Anderson appeals from two orders of the Law Division: (1) a January 26, 2023, order denying his petition for post-conviction relief (PCR) challenging the legality of his sentence to

community supervision for life (CSL); and (2) a June 1, 2023, order denying his motion for reconsideration of the January 26, 2023, order. We reverse the orders on appeal and remand for a new sentencing hearing.

In 1998, a jury convicted defendant of: (1) aggravated sexual assault, N.J.S.A. 2C:14-2(a); (2) sexual assault, N.J.S.A. 2C:14-2(c); (3) aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a); (4) criminal sexual contact, N.J.S.A. 2C:14-3(b); (5) possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); and (6) unlawful possession of a weapon, N.J.S.A. 2C:39-5(d).

On February 13, 1998, at the sentencing hearing, the court merged several of the convictions and sentenced defendant as follows:

Mr. Anderson, you're committed to the custody of the Department of Corrections for the maximum sentence of [twenty] years. You are to serve that sentence without parole for a period of ten years, which is the maximum parole ineligibility provided by law. On count nine, you're sentenced to five years in State Prison to run concurrent with the previous sentence. You have [forty-five] days to file an appeal of this sentence. The sentencing court did not mention defendant was subject to mandatory CSL pursuant to N.J.S.A. 2C:43-6.4.

On February 20, 1998, the court entered a judgment of conviction (JOC) that reflected the custodial term imposed at the hearing and included the following: "[x] You are hereby sentence[d] to community supervision for life." The JOC was later amended to increase the jail credits applied to

defendant's sentence. No other term of the JOC was altered.

Defendant appealed his convictions and sentence. Although he raised numerous other arguments, defendant did not argue imposition of CSL in the JOC was illegal because the sentencing court did not mention CSL at the sentencing hearing. We affirmed. *State v. Anderson*, No. A-5619-97 (App. Div. Dec. 6, 2000). The Supreme Court denied certification. *State v. Anderson*, 167 N.J. 636 (2001).

Defendant thereafter filed a petition for PCR. With respect to sentencing, he argued only that he received a grossly disproportionate maximum prison term. We affirmed the trial court's denial of the petition. *State v. Anderson*, No. A-4330-05 (App. Div. July 18, 2007). The Supreme Court denied certification. *State v. Anderson*, 192 N.J. 598 (2007).

In August 2009, defendant was approaching the end of his custodial sentence. The State Parole Board (Board) sent defendant a letter informing him that he would soon be released from custody to the supervision of the Division of Parole (DOP). Attached to the letter were two pages of "general conditions" for CSL. "COMMUNITY SUPERVISION FOR LIFE" appeared at the top of each page. The first paragraph on the first page stated:

I understand that pursuant to N.J.S.A. 2C:43-6.4 my sentence includes a special sentence of [CSL]. I understand that during the service of the special sentence of [CSL] I shall be under the supervision of the [DOP] of the [Board]. I understand that I shall be

subject to the following general conditions as established by the [Board.]

The notice lists twenty-one numbered conditions and several paragraphs of additional conditions. At the bottom of page two the following appears: "I hereby acknowledge receiving [on] this date a copy of the above conditions [,]" followed by defendant's signature and "Aug. 14, 2009." Below his signature defendant hand-wrote "some of the conditions I will speak to my parole officer because they are relative to repetitive and compulsive behavior, and I was not sentenced under those guidelines." He did not express surprise that he was subject to CSL or that the sentence to CSL was illegal because it was not imposed at the sentencing hearing. Defendant was released from custody on September 18, 2009.

More than four years later, on October 18, 2013, defendant filed a second PCR petition in which he challenged his sentence to CSL and a motion for suspension of CSL. He argued the CSL provision in his JOC is illegal because CSL was not imposed at his sentencing hearing.

On March 7, 2014, prior to any substantive filings by the parties and without argument, the court notified defendant his second PCR petition was time barred pursuant to Rule 3:22-12(a)(2) because it was filed more than a year after the date on which the court denied his first PCR petition. The court also denied defendant's motion, stating he was not eligible to be released from CSL because he had not been out of custody for fifteen years. See N.J.S.A. 2C:43-6.4(c) (authorizing release from CSL upon proof by clear and

convincing evidence the applicant has not committed a crime for fifteen years since his last conviction or release from incarceration, whichever is later, and is not likely to pose a threat to the safety of others if released from CSL).¹

Defendant moved for reconsideration of the dismissal of his second petition and denial of his motion for suspension of CSL. In a supplemental filing, he argued he was not seeking release from CSL under N.J.S.A. 2C:43-6.4(c) but was arguing his CSL sentence is illegal because it was imposed in the JOC but not mentioned at the sentencing hearing. The court never addressed defendant's motion for reconsideration.

On August 10, 2022, defendant filed a third PCR petition. He again argued his CSL sentence is illegal because it was not imposed at his sentencing hearing. In addition, relying on the holding in *State v. Schubert*, 212 N.J. 295 (2012), defendant argued because he was released from custody without having been sentenced to CSL at a hearing, the Double Jeopardy Clauses of the federal and State constitutions prohibit his sentencing to CSL at a new hearing.

The State opposed the motion, arguing CSL is a mandatory term for defendant's convictions and his sentence would be illegal if it did not include CSL. In

¹ The court mistakenly stated defendant was released from custody on October 22, 2004, and would be eligible to apply for release from CSL on October 22, 2019. Defendant was released from custody on September 18, 2009.

addition, the State argued the appropriate remedy for the inconsistency between the sentencing hearing and the JOC would be a new sentencing hearing at which the mandatory CSL term would be imposed. According to the State, a rehearing would not offend double-jeopardy principles because defendant has been on notice of his CSL term, at the earliest since issuance of the JOC a week after his sentencing hearing and, at the latest, before his release from custody.

On January 9, 2023, the trial court issued a written decision denying defendant's third PCR petition. First, the court concluded the petition was time barred by Rule 3:22-12(a)(2)(B) because it was filed more than one year after "the factual predicate for the relief sought was discovered . . ." According to the court, under the most favorable interpretation of the record for defendant, he became aware of his sentence to CSL shortly before his release from custody in September 2009. His second PCR petition, which was the first to raise the CSL issue, was filed in October 2013, more than four years after the factual predicate for seeking relief was discovered. His third petition, which also challenged his CSL term, was filed nearly thirteen years after he received notice of his CSL sentence. Thus, the court concluded, his request for relief from the CSL term was untimely.

In addition, the court found that even if defendant's petition had been timely filed, inclusion of the CSL term in his JOC did not violate double-jeopardy principles. The court held that, unlike the defendant in Schubert, defendant's JOC was not amended after he completed his custodial term to add

CSL. To the contrary, the court found, defendant's JOC always included CSL, and he became aware of that term prior to his release from incarceration. A January 26, 2023, order memorialized the trial court's decision.

Defendant thereafter moved for reconsideration of the January 26, 2023, order. On June 1, 2023, the court issued a written decision and order denying defendant's motion, concluding he merely reiterated the arguments the court rejected in its January 26, 2023, order.

This appeal followed.

Defendant argues: THE ADDITION OF CSL WAS AN ILLEGAL SENTENCE AND THERE IS NO PROCEDURAL BAR AS AN ILLEGAL SENTENCE MAY BE CORRECTED AT ANY TIME.

II. Whether defendant's challenge to his CSL term is procedurally barred is a legal question subject to *de novo* review. *State v. Robinson*, 217 N.J. 594, 603-04 (2014). The trial court relied on Rules 3:22-4(b) and 3:22-12(a)(2)(B) for its determination that defendant's third PCR petition was time barred. Rule 3:22-4(b) provides, in relevant part:

A second or subsequent petition for post-conviction relief shall be dismissed unless: (1) it is timely under R. 3:22-12(a)(2); and (2) it alleges on its face either:

(A) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the

Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or

(B) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable probability that the relief sought would be granted; or

(C) that the petition alleges a *prima facie* case of ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief.

Rule 3:22-12(a)(2) provides that "no second or subsequent petition shall be filed more than one year after the latest of" the following:

(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or

(B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence; or

(C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief is being alleged.

"These time limitations shall not be relaxed, except as provided herein." R. 3:22-12(b).

The trial court concluded defendant's petition is barred under subsection (B) of Rule 3:22-12(a) because he discovered for the first time that his JOC included a CSL term in September 2009, four years before he filed his second petition challenging his CSL term.² The rule, however, does not apply to defendant's request for relief.

Despite his characterization of his request as one for PCR, defendant's claim is a challenge to an illegal sentence. As explained in Rule 3:22-2(c), a PCR petition based on "[i]mposition of [a] sentence . . . not in accordance with the sentence authorized by law" is cognizable as a PCR claim only "if raised together with other grounds cognizable under paragraph (a), (b), or (d) of" the rule. "Otherwise, a claim alleging the imposition of sentence . . . not in accordance with the sentence authorized by law shall be filed pursuant to R.3:21-10(b)(5)." Rule 3:21-10(b)(5) allows a motion to correct a sentence not authorized by law to be filed at any time.

"A sentence is illegal if it exceeds the maximum penalty provided in the Code for a particular offense, is not imposed in accordance with law, or fails to include a mandatory sentencing

² Although defendant's brief states that he "was informed for the first time that he was sentenced to CSL" thirty-three days after serving his maximum sentence, he provides no citation to the record for that statement. The record establishes defendant was notified he was subject to CSL prior to his release from custody.

requirement." *State v. Bass*, 457 N.J. Super. 1, 8 (App. Div. 2018) (internal quotations omitted) (quoting *State v. Locane*, 454 N.J. Super. 98, 117 (App. Div. 2018)). Defendant's central argument is his CSL sentence is illegal because it appears in his JOC but was not imposed at his sentencing hearing. It was, therefore, an error for the court to conclude that defendant's request for relief from his CSL sentence was time barred.

On the merits of defendant's claim, we agree with his argument that it was improper for the JOC to include a CSL term when CSL was not imposed at his sentencing hearing. "In the event of a discrepancy between the court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the sentencing transcript controls and a corrective judgment is to be entered." *State v. Abril*, 444 N.J. Super. 553, 564 (App. Div. 2016). A remand to correct the discrepancy is the appropriate remedy in such circumstances. *Ibid.*; see also *State v. Pohlabel*, 40 N.J. Super. 416, 423 (App. Div. 1956) ("[W]here there is a conflict between the oral sentence and the written commitment, the former will control if clearly stated and adequately shown, since it is the true source of the sentence . . .").

The sentence imposed on defendant at the sentencing hearing controls. Defendant's oral sentence, however, is illegal. CSL is a mandatory term for convictions of aggravated sexual assault, sexual assault, and aggravated criminal sexual contact prior to January 14, 2004. N.J.S.A. 2C:43-

6.4(a).³ CSL is a required part of a sentence for conviction of those crimes and its omission makes the sentence illegal. *State v. Cooke*, 345 N.J. Super. 480, 490 (App. Div. 2001). Remand for correction of defendant's sentence at a sentencing hearing to include CSL is required to comply with N.J.S.A. 2C:43-6.4(a).

We disagree with defendant's argument that resentencing would violate the Double Jeopardy Clauses of the federal and State constitutions. In support of his argument, defendant relies on the holding in *Schubert*. In that case, Schubert was indicted in 1996 on four counts arising from his alleged intercourse with a victim without consent. 212 N.J. at 299. Pursuant to a negotiated plea agreement, in 2000, he pled guilty to second-degree sexual assault. *Ibid.* In exchange, the State agreed to dismiss the remaining charges and recommend both that defendant be sentenced as if he pled to a crime of the third-degree and that he receive a noncustodial period of probation. *Ibid.*

³ The Legislature and Governor enacted L. 2003, c. 267, effective January 14, 2004. The statute replaced all references to CSL in N.J.S.A. 2C:43-6.4 with references to parole supervision for life (PSL), as well as made substantial changes to the CSL post-sentence supervisory scheme. See *State v. Perez*, 220 N.J. 423, 440 (2015). To the extent that the amendment "substituted PSL for defendants already on CSL, [it] violated the Ex Post Facto Clauses of our Federal and State Constitutions because the conversion enhanced the penal exposure of those convicted of crimes when CSL was the applicable law." *State v. Hester*, 233 N.J. 381, 388 (2018).

At his plea hearing, defendant acknowledged he would be examined at the Adult Diagnostic and Treatment Center and that he understood he would be required to register with his local police and provide verification of his address. Id. at 300. "Those exchanges were the extent of the colloquy between defendant and the trial court with respect to the potential consequences of pleading guilty to sexual assault." Ibid.

At sentencing in 2000, the court imposed a noncustodial probationary term of three years. Ibid. The court did not mention CSL, although CSL was mandatory for a sexual assault conviction. Ibid. The court concluded sentencing by stating:

If you do all those things, you are not going to have a problem with this court. I don't anticipate any problem from you. I don't anticipate this probation is going to be difficult for [you] but you got to understand that if you mess up, that you face up to five years in jail. I don't expect this to happen, not going to happen. [Ibid.]

The court entered a JOC that mirrored the oral sentence and did not include CSL. Ibid.

Schubert successfully completed his probationary sentence and was discharged from probation in 2003. Ibid.

On October 3, 2007, more than seven years after the trial court sentenced Schubert and more than four years after he had successfully completed his probationary sentence and had been discharged, the Chairman of the Parole Board (Chairman) wrote to the trial court. Id. at 300-01. He noted that the

court had not sentenced Schubert to CSL as required by N.J.S.A. 2C:43-6.4. Id. At 301.

In response, the trial court contacted the attorney who represented Schubert at the plea hearing, informing him that it would file an amended JOC that would include a provision subjecting *Schubert* to CSL, if no objection was lodged. Ibid. After the attorney informed the court that he no longer represented *Schubert*, the court provided a similar notice to Schubert directly. Ibid. Having not received a communication from Schubert, the court on April 30, 2008, entered an amended JOC adding CSL to his prior probationary sentence. Ibid. *Schubert* thereafter filed a petition for PCR challenging the amendment of his JOC. Id. at 302. The State opposed the petition, arguing that amendment of the JOC was required because CSL was mandatory for a conviction of sexual assault. Ibid.

The trial court denied the petition. Ibid. We reversed, concluding that amending the JOC violated *Schubert's* double-jeopardy rights. Id. at 303.

The Supreme Court affirmed. The Court concluded that CSL is punitive in nature. Id. at 305-308. The Court then turned to a second question: "whether the trial court's action was merely a valid correction of an illegal sentence or an improper imposition of an additional penalty." Id. at 308.

The Court concluded that *Schubert's* original sentence was illegal because it was "not authorized by our criminal code." Id. at 308-09. Noting precedents permitted the correction of an illegal sentence at any time, "even though the imposition of a lawful term

involves an increase in a defendant's aggregate sentence," the Court found that principle is not unlimited. *Id.* at 309 (quoting *State v. Baker*, 270 N.J. Super. 55, 76 (App. Div.), aff'd o.b., 138 N.J. 89 (1994)). The rule, the Court explained, "was not designed to authorize an enlargement of the punishment after the sentence imposed had been satisfied and the defendant discharged." *Ibid.* (quoting *State v. Laird*, 25 N.J. 298, 307 (1957)). Thus, "an illegal sentence 'may be corrected at any time before it is completed.'" *Ibid.* (quoting *State v. Murray*, 162 N.J. 240, 247 (2000)). "An illegal sentence that has not been completely served may be corrected at any time without impinging upon double-jeopardy principles." *Ibid.* (quoting *State v. Austin*, 335 N.J. Super. 486, 494 (App. Div. 2000)).

The Court noted two reported decisions permitting modification of a JOC that omitted a statutorily mandated provision for CSL. As the Court explained:

In *State v. Horton*, 331 N.J. Super. 92 (App. Div. 2000), the defendant pled guilty in September 1995 to one count of third-degree endangering the welfare of a child, and the State agreed to recommend a probationary sentence, conditioned on serving 364 days in the county jail. *Id.* at 94. The trial court accepted the defendant's plea and sentenced the defendant on January 12, 1996. *Id.* at 95.

In April 1997, the Chairman . . . wrote to the trial court inquiring about the omission of any reference to [CSL]. *Ibid.* At the time of that letter, the defendant had completed the custodial portion of his sentence but remained on probation. *Ibid.* In July

1997, when approximately six months remained to the defendant's probationary sentence, the State moved to amend the [JOC] to include [CSL]. *Id.* at 96. The trial court granted the motion, and the defendant appealed. *Ibid.* The appellate panel concluded that the trial court's action in amending the [JOC] did not run afoul of the constitutional prohibition against double jeopardy. *Id.* at 102. [*Id.* at 310.]

The Court found that *Horton* was distinguishable from the facts presented in *Schubert* "in one critical respect. In that case, the State sought to amend the [JOC] prior to the completion of the defendant's probationary sentence, while in the present matter defendant had completed his probationary sentence and been discharged from probation for more than four years when the issue first arose." *Id.* at 311.

The Court continued:

In the other published opinion, the Appellate Division addressed amending a [JOC] to include a provision for [CSL] that had been omitted when the sentence was imposed. [*Cooke*, 345 N.J. Super. at 490]. In that case, however, the State appealed the sentence, and the defendant cross-appealed his conviction. *Id.* at 483. Because the issue of the defendant's sentence was properly before the court, the court could correct what was otherwise an illegal sentence. [*Ibid.*]

Having distinguished those precedents, the Court held:

We fail to see how it could be said that [*Schubert*], at least by the time he was discharged

from probation, did not have a legitimate expectation of finality in his sentence. If there was some indication in this record that either [*Schubert*] or his attorney had engaged in some effort to mislead the court with respect to omitting [CSL] from [*Schubert's*] sentence, we would agree that any expectation of finality [*Schubert*] might have achieved would not be a legitimate one. The record before us contains not a hint, however, of such a devious plot.

The State has not cited to us any published case from any jurisdiction that has permitted a defendant's sentence to be increased after the sentence has been completed. In our judgment, the reason for the omission is clear: to permit such an action is a violation of a defendant's fundamental rights under the Double Jeopardy Clauses of the United States and New Jersey Constitutions. [Id. at 313.]

The facts in *Schubert* are meaningfully distinct from those presently before this court. Although CSL was not mentioned at defendant's sentencing hearing, the JOC entered seven days later included a CSL provision. Defendant was on notice of the JOC, which was the subject of his direct appeal and first PCR petition. In both instances, defendant challenged aspects of his sentence, but not the CSL provision in the JOC. In addition, prior to his release from prison, the Board notified defendant he was to be released on CSL and gave him a two-page recitation of the conditions of CSL. Defendant acknowledged he understood he was subject to CSL and had received a copy of the written conditions. In a handwritten statement accompanying his acknowledgement,

defendant did not express surprise at being subject to CSL and stated only that he would object to certain conditions he thought were not applicable to him. After his release, defendant remained on CSL for more than four years before he filed his second PCR petition seeking relief from CSL. After that petition was dismissed on procedural grounds, defendant remained on CSL for another six years before he filed his third PCR petition.

In light of these facts, it can hardly be said defendant had an expectation of finality in 2009 that he had served his custodial sentence without a term of CSL. To the contrary, the record demonstrates that defendant was aware of his CSL term before he was released from prison and remained on CSL for nearly long enough to seek relief from CSL under the fifteen-year period in 2C:43-6.4(c) before he filed his third PCR petition. A resentencing hearing to orally impose the CSL term under which defendant has been supervised for more than a decade would not offend double-jeopardy principles.

Reversed. The matter is remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

APPENDIX C

**SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
INDICTMENT NO. 2232-12-95
STATE OF NEW JERSEY**

Decided June 1, 2023

Before

HON. NESLE A. RODRIGUEZ, J.S.C.

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V

FRANK J. ANDERSON, JR.,

Defendant-Appellant.

THIS MATTER, having been brought before this Court by way of the petition from Terry Webb, Esq., on June 1st, 2023, appearing on behalf of Petitioner, Frank Anderson; and by Andrew Frank

Guarini, Assistant Prosecutor, on behalf of the State; and for good cause shown,

IT IS on this 1 st day of June 2023, held that Petitioner's petitioner for post-conviction relief is hereby DENIED for the reasons set forth in the accompanying decision.

SO ORDERED,
/s/HON. NESLE A. RODRIGUEZ

STATEMENTS OF FACTS AND PROCEDURAL HISTORY

This Court adopts the Statements of Facts and Procedural History as stated in the opinion *State v. Frank Anderson*, which this court issued on January 26, 2023, as if set forth at length herein, with the addition that petitioner filed a motion to correct an illegal sentence on February 15, 2023. The contents of this motion are that of a certification and order arguing for a motion for reconsideration. Petitioner's filing was labeled as a motion to correct an illegal sentence; however, its content is arguing as a motion for reconsideration.

LEGAL STANDARD AND ANALYSIS

The decision whether to grant a motion for reconsideration is "committed to the sound discretion of the trial court," *State v. A.S.-M.*, 444 N.J. Super. 334, 346 (App. Div. 2016), "to be exercised in the interest of justice." *State v. Wilson*, 442 N.J. Super. 224, 233 n.3 (App. Div. 2015) (quoting *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996)), rev'd on other grounds, 227 N.J. 534 (2017). Motions for reconsideration "are generally intended 'to correct a

court's error or oversight.'" *A.S.-M.*, 444 N.J. Super. at 346 (quoting *State v. Puryear*, 441 N.J. Super. 280, 294 (App. Div. 2015)).

Reconsideration should be granted only where "either 1) the [court] has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [court] either did not consider, or failed to appreciate the significance of probative, competent evidence.", 441 N.J. Super. at 294 (alterations in original) (quoting *Palombi v. Palombi*, 414 N.J. Super. 274, 288 (App. Div. 2010)). This Court finds that because the Defendant failed to demonstrate how either of these prongs have been met, or what has changed since the decision issued in January 2023, the Motion for Reconsideration must be denied for the reasons stated below.

I. There have been no changes since the Court issued its initial decision and found that the instant matter is not analogous to the facts in *Schubert*.

This court came to its decision reviewing petitioner's JOC which listed his sentence to include Community Supervision for Life (CSL). Petitioner's argument that his case is similar to *State v. Schubert*, 212 N.J. 299 (2012), was considered by this court, however this court reiterates the distinction between *Schubert* and petitioner's case. PCR counsel's certification attempts to re-argue the same points that were brought up on oral argument. PCR counsel contends that petitioner is suffering under the same circumstances that the defendant in *Schubert* suffered. This court found that the defendant in *Schubert* accepted a plea offer which had no mention of CSL nor was it on his JOC, and the trial court

sought to amend the defendant's JOC to include CSL without notice. This court noted that unlike the defendant in Schubert, petitioner went to trial and was convicted.

Therefore, he was subjected to whatever sentence the court imposed on him, including CSL which is a mandatory sentence for the offenses that petitioner was convicted of. Additionally, petitioner's JOC listed CSL and was only amended in order to correct jail credits.

II. Procedurally the Petitioner's motion for reconsideration must be denied based on Rule 3:22-4 which mandates timely filing of a Post Conviction Relief.

Once again, this Court notes that under Rule 3:22-4(b), mandates as follows: A second or subsequent petition for post-conviction relief shall be dismissed unless:

(1) It is timely under R.3:22-12(a)(2); and

(2) It alleges on its face either: (a) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or (b) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable or (c) that the petition alleges a *prima facie* case of ineffective assistance of

counsel that represented the defendant on the first or subsequent application for post-conviction relief.

R. 3:22-12(a)(2) also governs successive applications for PCR. It provides the following one-year limitation:

(2) Second or Subsequent Petition for Post-Conviction Relief. Notwithstanding any other provision in this rule, no second or subsequent petition shall be filed more than one year after the latest of:

(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or

B) the date on which the factual predicate for the relief sought was discovered if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence. or

(C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief is being alleged.

R. 3:22-12(a)(2) bars second petitions for PCR that are filed more than one year after the latest of three events. The Court found and stated in the opinion issued in January 2023 that the present application for PCR was filed more than one year after "the date on which the factual predicate for the

relief sought was discovered if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence" R. 3:22-12(a)(2)(B). Nothing has changed in the facts of the case since that time. Petitioner filed a pro se motion for post-conviction relief in October of 2013. This petition was denied on or about March 10, 2014, because it was procedurally barred. Petitioner was released in September of 2009, where he claims that was the first time, he learned he would be subjected to CSL.¹ His petition for post-conviction relief was filed four years after. Thus, even if petitioner did discover this when he was released, his claim is still procedurally barred under R. 3:22-12(a)(2)(B).

Lastly, Petitioner's conviction at trial automatically subjects him to community supervision for life under N.J.S.A. 2C:43-6.4. Petitioner was sentenced to community supervision for life when he was sentenced in 1998, as reflected on his original judgement of conviction. (Sa 1-2)2. Petitioner's argument that his sentence to community supervision for life was not imposed by the sentencing court is incorrect as his original judgement of conviction and order of commitment contains his sentence, with community supervision for life, and it is signed by the sentencing court.

¹ This Court notes and references the State's exhibit Sa, the "Judgement of Conviction and Order for Commitment" in the State of New Jersey v. Frank J. Anderson, Jr. and that the Judgment of Conviction very clearly included that the Defendant was to be on CSL.

CONCLUSION

For the foregoing reasons, the Motion for Reconsideration is DENIED.

/s/ SO ORDERED,

HON. NESLE A. RODRIGUEZ, J.S.C.

APPENDIX D

**SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
INDICTMENT NO. 2232-12-95
STATE OF NEW JERSEY**

Decided January 26, 2023

Before

HON. NESLE A. RODRIGUEZ, J.S.C.

**ORDER DENYING DEFENDANT'S
PCR APPLICATION**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V.

FRANK J. ANDERSON, JR.,

Defendant-Appellant.

THIS MATTER, having been brought before this Court by way of the petition from Terry Webb, Esq., on June 1, 2023, appearing on behalf of Petitioner, Frank Anderson; and by Andrew Frank Guarini, Assistant Prosecutor, on behalf of the State; and for good cause shown,

IT IS on this 1st day of June 2023, held that Petitioner's petitioner for post-conviction relief is hereby DENIED for the reasons set forth in the accompanying decision.

/s/ SO ORDERED,
HON. NESLE A. RODRIGUEZ, J.S.C

STATEMENTS OF FACTS AND PROCEDURAL HISTORY

The decision whether to grant a motion for reconsideration is "committed to the sound discretion of the trial court," *State v. A.S.-M*, 444 N.J. Super. 334, 346 (App. Div. 2016), "to be exercised in the interest of justice." *State v. Wilson*, 442 N.J. Super. 224, 233 n.3 (App. Div. 2015) (quoting *Cummings v. Bahr*, 295 N.J. SUPER. 374, 384 (APP. DIV. 1996)), REV'D ON OTHER GROUNDS, 227 N.J. 534 (2017). Motions for reconsideration "are generally intended 'to correct a court's error or oversight.'" *A.S.-M*, 444 N.J. Super. at 346 (quoting *State v. Puryear*, 441 N.J. Super. 280, 294 (App. Div. 2015)). Reconsideration should be granted only where "either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.". See, 441 N.J. Super. at 294 (alterations in original) (quoting *Palombi v. Palombi*, 414 N.J. Super. 274, 288

(App. Div. 2010)). This Court finds that because the Defendant failed to demonstrate how either of these prongs have been met, or what has changed since the decision issued in January 2023, the Motion for Reconsideration must be denied for the reasons stated below.

I. There have been no changes since the Court issued its initial decision and found that the instant matter is not analogous to the facts in *Schubert*. This court came to its decision reviewing petitioner's JOC which listed his sentence to include Community Supervision for Life (CSL). Petitioner's argument that his case is similar to *State v. Schubert*, 212 N.J. 299 (2012), was considered by this court, however this court reiterates the distinction between *Schubert* and petitioner's case. PCR counsel's certification attempts to re-argue the same points that were brought up on oral argument. PCR counsel contends that petitioner is suffering under the same circumstances that the defendant in *Schubert* suffered. This court found that the defendant in *Schubert* accepted a plea offer which had no mention of CSL nor was it on his JOC, and the trial court sought to amend the defendant's JOC to include CSL without notice. This court noted that unlike the defendant in *Schubert*, petitioner went to trial and was convicted. Therefore, he was subjected to whatever sentence the court imposed on him, including CSL which is a mandatory sentence for the offenses that petitioner was convicted of. Additionally, petitioner's JOC listed CSL and was only amended in order to correct jail credits.

II. Procedurally, the Petitioner's motion for reconsideration must be denied based ON RULE 3.22-

4 WHICH MANDATES TIMELY FILING OF A POST CONVICTION RELIEF. Once again, this Court notes that under Rule 3:22-4(b), mandates as follows: A second or subsequent petition for post-conviction relief shall be dismissed unless:

(1) It is timely under R.3:22-12(a)(2); and

(2) It alleges on its face either:

(a) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or (b) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable probability that the relief sought would be granted; or (c) that the petition alleges a prima facie case of ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief. R. 3:22-12(a)(2) also governs successive applications for PCR. It provides the following one-year limitation: (2) Second or Subsequent Petition for Post-Conviction Relief. Notwithstanding any other provision in this rule, no second or subsequent petition shall be filed more than one year after the latest of: (A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on

collateral review; or (B) the date on which the factual predicate for the relief sought was discovered if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence. Or (C) the date of the denial of the first or subsequent application for post conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief is being alleged. R. 3:22-12(a)(2) bars second petitions for PCR that are filed more than one year after the latest of three events. The Court found and stated in the opinion issued in January 2023 that the present application for PCR was filed more than one year after "the date on which the factual predicate for the relief sought was discovered if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence" R. 3:22-12(a)(2)(B). Nothing has changed in the facts of the case since that time. Petitioner filed a pro se motion for post-conviction relief in October of 2013. This petition was denied on or about March 10, 2014, because it was procedurally barred. Petitioner was released in September of 2009, where he claims that was the first time, he learned he would be subjected to CSL.¹ His petition for post-conviction relief was filed four years after. Thus, even if petitioner did discover this when he was released, his claim is still procedurally barred under R. 3:22-12(a)(2)(B).

¹ This Court notes and references the State's exhibit Sa-, the "Judgement of Conviction and Order for Commitment" in the State of New Jersey v. Frank J. Anderson, Jr. and that the Judgment of Conviction very clearly included that the Defendant was to be on CSL.

Lastly, Petitioner's conviction at trial automatically subjects him to community supervision for life under N.J.S.A. 2C:43-6.4. Petitioner was sentenced to community supervision for life when he was sentenced in 1998, as reflected on his original judgement of conviction. Petitioner's argument that his sentence to community supervision for life was not imposed by the sentencing court is incorrect as his original judgement of conviction and order of commitment contains his sentence, with community supervision for life, and it is signed by the sentencing court.

CONCLUSION

For the foregoing reasons, the Motion for Reconsideration is DENIED.

/s/ SO ORDERED

HON. NESLE A. RODRIGUEZ, J.S.C.

APPENDIX E

**SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
INDICTMENT NO. 2232-12-95
STATE OF NEW JERSEY**

Decided March 07, 2014

Before

PAUL M. DePASCALE, J.S.C.

**LETTER DENYING DEFENDANT'S
SECOND PCR APPLICATION**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V.

FRANK J. ANDERSON, JR.,

Defendant-Appellant.

Mr. Anderson: The Court has received your Second motion for post-conviction relief as well as your motion for suspension of community supervision for life. New Jersey Court Rule 3:22 governs the post-conviction relief process. Rule 3:22 12(a)(2) provides

"no second or subsequent petition shall be filed more than one year after..., the date of the denial of the first or subsequent application for post-conviction relief." The present motion for post-conviction relief was filed on October 18th, 2013. Your first motion for post-conviction relief was denied on October 21, 2014. Almost ten years have passed between the filing of your first and second post-conviction motions, clearly in excess of the one-year time limit provided in Rule 3:22-12.

Therefore, your second motion for post-conviction relief is procedurally barred. Additionally, your motion to suspend community supervision for life is without merit. N.J.S.A. 2C:43-6.4(c) states "the judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and conviction that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later." You were released from prison on October 22, 2004.¹ You will not be eligible for suspension of life supervision until October 22, 2019. Therefore, your motion to suspend lifetime supervision is procedurally barred

¹The court mistakenly stated defendant was released from custody on October 22, 2004, and would be eligible to apply for release from CSL on October 22, 2019. Defendant was released from custody on September 18, 2009.

/s/

PAUL M. DePASCALE, J.S.C.
Criminal Division
Hudson Vicinage

APPENDIX F

**New Jersey State Parole Board
CSL PSL or MSV
Supervision Reporting Instructions
PN# 299092 SBI# 791627B**

To: ANDERSON, Frank Jr From: SPB (EJSP)
Approved Address: (96 West 26th St Apt 3
Bayonne, NJ 07002)

Date: August 12, 2009

You are being released from custody (or from any
detainer) to the supervision of the Division of Parole
in accordance with the conditions set by the State
Parole Board. You are hereby instructed to report
immediately to the following District Office:

District Office # 4

438 Summit Avenue - 6th Floor, Box 6
Jersey City, New Jersey 07306

Attention: District Parole Supervisor In the event you
will be late reporting, you must call the District Office
at the following number: (201) 795-8804 (If the
District Office is closed, you can call 1-800-668-7025
or 609:633-6703) If you have occasion to write the

District Office, you may do so by using the following address:

New Jersey Division of Parole
438 Summit Avenue - 6th Floor, Box 6
Jersey City, New Jersey 07306

Detainer Information

You are being turned over to _____ on _____. This warrant was issued by _____ and signed by _____, charging you with _____. Once you are released from the custody of this detainer, you are to immediately report to the above District Office.

Supervision Agreement^I¹

I hereby agree that when I am released from custody (or from a detainer or warrant filed against me), that I will report immediately to District Office #4. I understand that my failure to do so may result in a warrant being filed for my arrest.

Witness, Parole

/s/ Jodi Ermal.

Signature of Offender

/s/ Frank Anderson

¹ Petitioner Frank Anderson was not released from a detainer to parole since there were no detainers against petitioner Frank Anderson. Petitioner Anderson was released from the Adult Diagnostic Treatment Center to CSL/Parole.

State of New Jersey
General Conditions
Community Supervision for Life
Anderson Frank PN# 299092 SBI# 791627B

A. I understand that pursuant to N.J.S.A. 2C:43-6.4 my sentence includes a special sentence of community supervision for life. I understand that during the service of the special sentence of community supervision for life I shall be under the supervision of the Division of Parole of the State Parole Board. I understand that I shall be subject to the following general conditions as shown by the State Parole Board:

1. I am required to obey all laws and ordinances.
2. I am to report to the assigned parole officer as instructed.
3. I am to notify the assigned parole officer immediately after any arrest, after being served with or receiving a complaint or summons and after accepting any pre-trial release, including bail.
4. I am to notify the assigned parole officer immediately upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation. I am to

comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court.

5. I am to reside at a residence approved by the assigned parole officer.
6. I am to obtain the approval of the assigned parole officer prior to any change of residence.
7. I am to obtain the permission of the assigned parole officer prior to leaving the state of the approved residence for any purpose.
8. I am to refrain from owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose.
9. I am to refrain from owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r.
10. I am to refrain from the purchase, use, possession, distribution, or administration of any narcotic or controlled dangerous substance, controlled dangerous substance analog, imitation controlled dangerous substance, or any paraphernalia related to such substances except as prescribed by a physician.
11. I am to cooperate in any medical and/or psychological examinations or tests as directed by the assigned parole officer.
12. I am to participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer.

13. I am to submit to drug or alcohol testing at any time as directed by the assigned parole officer.
14. I am to obtain the permission of the assigned parole officer prior to securing, accepting, or engaging in any employment, business, or volunteer activity and prior to a change of employment.
15. I am to immediately notify the assigned parole officer of any change in employment status.
16. I am to refrain from any contact (verbal, written or through a third party) with the victim(s) of the offense unless contact is authorized by the assigned parole officer.
- 17.. I am to comply with any curfew established by the assigned parole officer.
18. I am to refrain from the behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.
19. Refrain from any contact (written or otherwise) with any group, club, association, or organization that engages in, promotes or encourages illegal or sexually deviant behavior.
20. Submit to a search conducted by a parole officer, without a warrant, of the offender's person, place of residence, vehicle or other real or personal property within the offender's control at any time a parole officer has a reasonable, articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband; and

21. Pursuant to N.J.S.A. 30:4-123.88, the State Parole Board, on at least an annual basis, may administer a polygraph examination to all offenders serving a special sentence of community supervision for life. You shall submit to a polygraph examination as directed by the District Parole Supervisor.

B. I understand that if the victim(s) of an offense committed by me is a minor, I shall, in addition to the conditions specified in A above, be subject to the following conditions:

1. I am to refrain from initiating, establishing or maintaining contact with any minor.
2. I am to refrain from attempting to initiate, establish or maintain contact with any minor.
3. I am to refrain from residing with any minor without the prior approval of the assigned parole officer.

I understand that the following circumstances are deemed exceptions to the conditions specified in B above:

1. When the minor is engaged in a lawful commercial or business activity, I may engage in the lawful commercial or business activity, provided the activity takes place in an area open to the public view.
2. When the minor is in the physical presence of his or her parent or legal guardian.
3. When I am present in a public area, as long as I am not associating with a minor, and the public area is not one frequented mainly or exclusively by minors.

4. When the appropriate court may authorize contact with a minor.

C. I understand that if the sentencing court had determined that my conduct was characterized by a pattern of repetitive and compulsive behavior and had committed me to the Adult Diagnostic and Treatment Center for a program of specialized treatment, I shall, in addition to the conditions specified in A and B above, participate in and successfully complete any program of counseling or therapy identified by the treatment staff of the Adult Diagnostic and Treatment Center.¹

D. I understand that if the sentencing court had determined that my conduct was characterized by a pattern of repetitive and compulsive behavior and had committed me to the Adult Diagnostic and Treatment Center and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that I am a high risk to re-offend and if the appropriate court affirms the determination of the county prosecutor, I shall, in addition to the condition:

¹ Prior to sentencing, petitioner was evaluated by staff at the Adult Diagnostic and Treatment Center and was found not be repetitive and compulsive in nature. Therefore, petitioner was not sentenced under the New Jersey sex offender act and was sentenced to state prison.

SPECIAL CONDITION(S):¹

I am to be evaluated by a mental health program designated by the District Parole Office and, upon completion of the evaluation I am to comply with the recommended course of treatment / counseling / therapy. I shall allow the treatment / counseling / therapy provider unrestricted communication with my parole officer regarding my attendance, level of participation, progress and any other information that may be deemed relevant.

I am to comply with the recommended course of treatment/counseling/therapy. I shall allow the

I am to refrain from the purchase, the possession and any use of alcohol.

I am to enroll and participate in an appropriate substance abuse counseling program until the District Parole Office approves discharge from this condition.

I shall refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room (including but not limited to MySpace, Facebook, Match.com, Yahoo 360) in my own name or any other name for any reason unless expressly authorized by the District Parole Supervisor.

¹ In addition to the standard conditions of parole and the added conditions of community supervision for life, that have been applied to Petitioner, the special conditions have also been applied to petitioner Frank Anderson even though the court did not sentence him to the Adult Diagnostic and Treatment Center.

I understand that I shall be subject to any special conditions that may be imposed by the District Parole Supervisor, or Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor and which is affirmed by the appropriate Board panel.

I understand that I will be under the supervision of the Division of Parole of the State Parole Board until I am released from community supervision by the Superior Court.

I understand that a violation of a condition specified above without good cause constitutes a crime of the fourth degree.

I hereby acknowledge receiving this date a copy of the above conditions.

New Jersey State Parole Board

General Conditions

Community Supervision for Life

Name. /s/ Frank Anderson PN# 299092 SBI#
791627B

Witness. /s/ Jodi Eurnal Parole Officer

Dated: August 14, 2009

APPENDIX G
STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS
INDICTMENT NO. 2232-12-95
STATE OF NEW JERSEY

Decided September 18, 2009

Before

GEORGE W. HAYMAN
Commissioner

FINAL DISCHARGE

BE IT KNOWN THAT:

Frank J. Anderson, Jr. (791627B / 299092)

Convicted and sentenced in the court of Hudson County by JUDGE JOSE L. FUENTES PRESIDING ON DAY OF February 13, 1998, for a term of 20 years, is hereby discharged from The Adult Diagnostic AND Treatment Center, Avenel, ON THIS DAY OF September 18, 2009, BY REASON OF THE EXPIRATION OF HIS MAXIMUM SENTENCE

Dated: September 18, 2009
/s/ BERNARD GOODWIN Administrator

APPENDIX H
SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
INDICTMENT NO. 2232-12-95
STATE OF NEW JERSEY

Judgment of Conviction / Change of Judgment

Prepared February 20, 1998

Before

Jose L. Fuentes, J.S.C.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V.

FRANK J. ANDERSON, JR.,

Defendant-Appellant,

1. Name. Frank J. Anderson, Jr.

2. Date of Birth. April 4, 1973

3. Date of Arrest. July 30, 1995

4. Date of Indictment Filed. December 30, 1995

5. Date of Original Plea. February 8, 1996

[x] Not Guilty [] Guilty—Original Plea

6. Adjudicated By: [x] Jury Trial 7/30/97-8/15/97

ORIGINAL CHARGES

IND./ACCU. NO. 2232-12-95

COUNTS, DESCRIPTION,

1,2 Aggravated Sex. Assault 2C:14-2a
3 Sexual Assault 2C:14-3a
4,5 Aggravated Crim. Sex. Contact 2C:14-3a
6 Criminal Sex. Contact 2C:14-3b
7 Burglary w/Armed 2C:18-2
8. Burglary 2C:18-2
9 Poss. Weapon for Unlawful Purpose 2C:39-4d
10 Unlawful. Possession. Weapon. 2C:39-5d

FINAL CHARGES

COUNTS, DESCRIPTION,

2 Aggravated Sex. Assault 2C:14-2a
3 Sexual Assault 2C:14-3a
5 Aggravated Crim. Sex. Contact 2C:14-3a
6 Criminal Sex. Contact 2C:14-3b
9 Poss. Weapon for Unlawful Purpose 2C:39-4d
10 Unlawful. Possession. Weapon. 2C:39-5d

It is, therefore, on 2/13/98 **ORDERED AND ADJUDGED** that the defendant is sentenced as follows:

Jury trial defendant found guilty of Counts 2, 3, 5, 6, 9, and 10. Counts 6, 5 and 3 merge with count 2; Count 10 merges with count 9. As to count 2, Defendant is placed in the custody of The New Jersey Department of Corrections for a period of twenty (20) years, parole ineligibility for a period of ten (10) years. As to count 9, Defendant is placed in the custody of The Department of Corrections for a period of five (5) years. Concurrent with each other. Defendant to comply with Megan's Law.

Right to Appeal w/i 45 days.

You are hereby sentenced to community supervision for life.

The court finds that your conduct was characterized by a pattern of repetitive and compulsive behavior.

It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

Defendant is to receive credit for time spent in custody. (B. 3:21-8).

Total Number of Days 207

Dates from - to: 7/30/1995 – 8/22/95

Defendant is to receive gap time for time spent in custody (N.J.S.A. 2C: 44-5b (211)).

Total Custody - Term 20 years

Institution - State Prison

Total Probation Term - 0

[x] Assessment's imposed on count(s) 2 and 9 is \$100 each.

Total VCCB Assessment \$200.

If the offense occurred on or after February 1, 1993, and the sentence is to probation or to a state correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169), If the offense occurred on or after March 13, 1995, and the sentence is to probation, or a sentence otherwise requires payments of a financial obligation to the probation division a transaction fee of up to \$2.00 is ordered for each occasion when a payment is made.

If the offense occurred on or after August 2, 1993, a safe neighborhood services fund assessment is ordered for each conviction. (P.L. 1993, c. 220) (\$150.00 \$75.00 each count.

If the offense occurred on or after January 5, 1994, and the sentence is to probation, a fee of up to \$25 per month for the probationary term is ordered. (P.L. 1993, c. 275). Amount per month. _____.

If the crime occurred on or after Jan 9, 1997, a \$30 law enforcement training and equipment fund penalty is ordered.

(Person who prepared this form) Susan Smith

Phone Number 201-795-6392

Name Attorney for Defendant: Marc Darienzo

Name Attorney for State: Luis Valentin

STATEMENT OF REASONS

Aggravating Factors: 3, 9,

Mitigating Factors: None

The court further incorporates all other reasons as stated on the record at the time of sentencing.

Judge: /s/ Jose L. Fuentes J.S.C.

Date 2/20/1998