

To: Commission
From: John Cannel
Re: Meaning of “conviction” -- N.J.S. 2C:7-2(f) (*In re J.S.*)
Date: February 6, 2017

M E M O R A N D U M

The case of *In re J.S.*, 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. At the January meeting, the Commission considered whether to propose some kind of an amendment defining “conviction” and asked for an examination of the use of the word “conviction” in the statutes.

There are 748 statutes that use the word, some several times. The term, “conviction” is not used fully consistently. However, in the majority of instances, the issue of when the conviction takes place is not relevant. The most common example is, “. . . upon conviction, the defendant may be sentenced to . . .” However, there are some important areas where the issue is important, such as availability for expungement, and a few contained in licensing provisions.

The Short Answer

Defining “conviction” for all uses may not be easy, but it is also not necessary. As was suggested at the January meeting, the definition can deal narrowly with the time of conviction when that is an issue. One way to do that is as follows:

The date of conviction, for the purpose of calculating the time from a conviction, shall mean the date of the judgment of conviction. If the conviction is modified, whether on appeal or by the trial court, the date of conviction shall remain the date of the original conviction. This subsection shall apply to provisions outside of this code unless a different meaning is plainly required.

The first sentence of the paragraph above is essentially that suggested at the January meeting. The second sentence has been added to deal with modifications such as changes in sentence or merger of charges. While modification will occasion a new judgment of conviction, it does not change the basic fact that the defendant has been under conviction since the original judgment. There remains the issue of a total reversal and remand. I have assumed for this purpose that that would result in an entirely new proceeding that could result in a new conviction.

The proposed provision is structured as a definition so that it can be added as subsection (s) to 2C:1-14. The last sentence applies the provision to statutes outside of the criminal code. Placement in the Code with application outside is not ideal, but it seems the best option. A

person looking for the definition of “conviction”, a criminal law concept, would be more likely to look in the Code than anywhere else.

Provisions that would be effected by this time provision include (in addition to 2C:7-3(f)):

- 2A:18-61.1 Grounds for removal of tenants.
- 2C:33-12.1. Abating nuisance (closing premises)
- 2C:52-4. Ordinances (expungement)
- 2C:51-2 Forfeiture of public office
- 2C:52-2 Expungement; Indictable offenses.
- 2C:52-3 Disorderly persons offenses and petty disorderly persons offenses. (expungement)
- 2C:52-4. Ordinances (expungement)
- 2C:52-5. Expungement of records of young drug offenders
- 13:1E-99.3 Penalties for littering (subsequent offense)
- 13:1E-127 Definitions. (convictions that must be disclosed for licensing)
- 17:22A-40 Causes for probation, suspension, revocation, refusal to issue or renew.
- 19:34-25 bribery (period of disenfranchisement)
- 23:3-22. Subsequent convictions; penalty
- 51:1-96. Penalties for using false weights (subsequent offense)

The Longer Answer

As stated above, the most common kind of provision using the word conviction is one establishing a penalty. Most of them are similar to 2A:53-3, “Any person convicted of violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than \$500 nor more than \$1,000.” In these cases it is irrelevant whether “upon conviction” indicates that the conviction precedes the sentence or is concurrent with it. The same is true with the frequent Criminal Code provisions stating that a particular conviction does not merge with others.

The basic sense that conviction means judgment of conviction (and the judgment of conviction includes a statement of the sentence imposed) is widespread, but the statutes do not use the term consistently. For example, see:

2A:4A-26.1(e)(2) If a juvenile is not convicted of an offense set forth in paragraph (2) of subsection c. of this section, a conviction for any other offense shall be deemed a juvenile adjudication and be remanded to the Superior Court, Chancery Division, Family Part for disposition, in accordance with the dispositional options available to that court and all records related to the act of

delinquency shall be subject to the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60);

That statute provides that if a juvenile is waived to adult court but is convicted only of a lesser offense that would not have supported waiver, he is to be remanded to the juvenile court for sentence. That clearly equates “conviction” with finding of guilt. There are provisions in the Court Rules that take the same approach. (See, R.3:21-3 requiring a diagnostic center report after conviction and before sentence for certain offenses.)

There are some statutes that specifically include findings of guilt along with convictions as prerequisites for certain actions. N.J.S. 45:14D-7, for example, states that for license revocation purposes, “a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction”, and N.J.S. 52:27D-25aa states that for purposes of barring a person from taking a licensing exam, a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction.” Those provisions can be read as assuming that conviction means sentence. N.J.S. 2C:44-4, defining a prior conviction of an offense, “an adjudication by a court of competent jurisdiction that the defendant committed an offense constitutes a prior conviction” can be read either way.

As a matter of concept, the conviction seems to occur when the judge accepts the jury verdict or plea of guilty. However, that event is not evidenced by a formal order until the judgment of conviction is prepared at sentencing. There are cases where a verdict is not accepted immediately; a motion for acquittal notwithstanding the verdict may need to be decided. And procedures under R. 3:9-3 put final acceptance of a plea agreement at the time of sentence. If conviction were to mean adjudication of guilt, in some cases it would be difficult to establish the date on which it occurred. On the other hand, the judgment of conviction is the final order evidencing the conviction; it has an ascertainable date from which time calculations can be made.

My first impression that conviction means judgment of conviction appears not to be totally correct. Both the statutes and the rules are ambiguous. If the Commission were to define “conviction” for all purposes, it would need to handle a variety of hard cases. A conviction for the purpose of allowing appeal would need to be different from a conviction used to impeach a witness under N.J.R.E. 609. Limiting the definition to issues concerning calculation of time avoids most of these problems. What is needed to calculate the time after a conviction is a clear rule with time running from a clear starting point. The judgment of conviction provides these benefits.