FILED

FEB 23 2024

Heather J. Baker

CLERK

SUPREME COURT OF NEW JERSEY
September Term 2023

IN RE NEW JERSEY

RULES OF COURT,

PART VII, GUIDELINE 4

O R D E R

1. This Order addresses a Court Rule adopted in 1990, known as "Guideline 4," and a recent amendment to N.J.S.A. 39:4-50.

The History of Guideline 4

2. The Court's opinion in State v. Hessen, 145 N.J. 441 (1994), recounts the history of the relevant Court Rule. In 1974, the Court prohibited all plea bargaining in municipal courts. Id. at 446. The ban stemmed from concerns about "abuse in the disposition of municipal court offenses . . . attributable to the part-time nature of the municipal courts and the lack of professionalism in those courts." Id. at 446-47.

3. In the mid-1980s, the Supreme Court Task Force on Improvement in the Municipal Courts, the New Jersey State Bar Association, the County Prosecutors Association, the Supreme Court Criminal Practice Committee, and the Supreme Court Committee on Municipal Courts recommended that

regulated plea bargaining be allowed in municipal courts. Sup. Ct. Comm. on Mun. Ct. Prac., 2015-2017 Report 4 (Feb. 1, 2017).

4. In 1988, the Court authorized a one-year experiment to allow plea agreements in municipal courts except for offenses related to driving while intoxicated (DWI) and certain drug offenses. Id. at 4-5; Hessen, 145 N.J. at 448. In doing so, the Court observed that municipal courts had become more professional and their conditions had generally improved. Ibid.

5. The following year, the Supreme Court Committee to Implement Plea Agreements in Municipal Courts reviewed the results of the experiment and accepted comments about the program. The Committee included representatives of the Office of the Attorney General, the N.J. State Police, the County Prosecutors Association, two Municipal Prosecutors Associations, the State Chiefs of Police Association, the Office of Highway Traffic Safety, the N.J. State Conference of Mayors, the Public Advocate, the Garden State Bar Association, the Hispanic Lawyers Association of N.J., Mothers Against Drunk Driving, the N.J. League of Women Voters, judges, and others. Sup. Ct. Comm. to Implement Plea Agreements in Mun. Cts., Final Report, 125 N.J.L.J. 46 (Jan. 25, 1990) (1990 Final Report).

6. The Superintendent of the State Police, a member of the Committee, submitted a letter urging that "the ban on plea agreements in the municipal

court should be reinstated on a permanent basis." As an alternative, he "urged the committee not to expand plea agreements to encompass driving while intoxicated and drug offenses."

7. The Superintendent stated that "alcohol is said to contribute to between 50,000 and 150,000 deaths each year," which counseled against "any recommendation" to permit plea bargaining for DWI offenses. Plea bargaining, he wrote, would "clearly contradict[]" and "severely undermine[]" legislative intent. He added that

> New Jersey's [driving] while intoxicated program over the years has gained recognition for its efforts in reducing alcohol related traffic deaths. The secret of success of New Jersey's efforts is said to lie in the certainty of punishment. The penalties are mandatory. There is no judicial discretion. There is no plea bargaining. . . .
>
> The health and public safety concerns should not be lessened for the sake of efficiency of time and use of resources in the municipal court system.

8. The Committee ultimately recommended "that a plea agreement process be permanently authorized in the municipal courts" subject to limitations. 1990 Final Report, 125 N.J.L.J. at 46. It proposed a court rule with guidelines, namely, Guideline 4: "Plea agreements are not permitted in . . . [d]runk [d]riving [c]ases" arising under N.J.S.A. 39:4-50 (driving under the

influence) and -50.2 (refusal to provide a breath sample), as well as certain drug offenses.

9. The Supreme Court adopted the recommendation on June 29, 1990 and incorporated Guideline 4 as part of Rule 7:4-8. Hessen, 145 N.J. at 449, 455. The Rule has been amended multiple times and appears today in Part VII of the N.J. Court Rules. Guideline 4 now reads, in part, as follows: "No plea agreements whatsoever will be allowed in driving while under the influence of liquor or drug offenses (N.J.S.A. 39:4-50)."

The Constitutional Challenge to Guideline 4 -- State v. Hessen

10. Several years later, the Rule was challenged in a DWI case. In the matter, defendant Florence Hessen had "allowed a clearly intoxicated person to drive her car." Hessen, 145 N.J. at 445. After "[t]he driver caused a head-on collision with another car, killing the other driver and seriously injuring four other persons," defendant Hessen was charged under N.J.S.A. 39:4-50. Id. at 445-46. In June 1993, the defendant and the County Prosecutor filed an application to dismiss the charge in favor of a lesser offense. Id. at 446. The municipal court rejected the plea bargain in light of Guideline 4, and the Law Division affirmed that judgment. Ibid. The Supreme Court then granted direct certification. Ibid.

11. The defendant in Hessen argued that Guideline 4 "violate[d] the separation of powers provisions of the New Jersey Constitution and impermissibly infringe[d] on the discretion of the prosecutor." Id. at 449. The Court rejected the constitutional challenge. Id. at 454. It held,

> This Court has the prerogative and the power to limit plea bargaining in the municipal courts. The limited ban on plea bargaining must be understood as one aspect of the Supreme Court's authority to use plea bargaining in the exercise of its supervening responsibility and authority over the administration of the criminal justice system. (citations omitted).
>
> . . . .
>
> The judicial authorization of plea bargaining subject to strict standards and the regulation of the process are well within the Court's rule-making authority over plea-bargaining practice in the courts as contemplated by the Constitution. N.J. Const. (1947), Art. VI, § 2, ¶ 3.
>
> [Id. at 450-51.]

12. Underlying its ruling, the Court noted, in part, "that this State's executive, judicial and legislative branches are unanimous in their pronouncements that deterrence of drunk driving is a paramount goal of this State." Id. at 453 (citing 1990 Final Report). The Court added that "[t]he imposition of a ban on plea bargaining in drinking and driving cases is intended to support the policy decisions of the legislative and the executive branches, in their commitment to eradicate drunk driving." Id. at 454.

13. The Court's decision invoked its constitutional authority under the New Jersey Constitution. Article VI, Section 2, Paragraph 3 grants the Court authority over the administration of, and practice and procedure within, all courts within the state. The Constitution reads as follows: "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts." N.J. Const. art. VI, § 2, ¶ 3.

14. In Winberry v. Salisbury, 5 N.J. 240 (1950), authored by Chief Justice Arthur T. Vanderbilt two years after the modern Constitution was adopted, the Court reviewed the meaning of the phrase "subject to law" and the scope of the Court's constitutional rule-making power. The Court "conclude[d] that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration." Id. at 255. The Court drew a distinction between "substantive law, which defines . . . rights and duties," and "procedural law," like "the law of pleading and practice, through which such rights and duties are enforced in the courts." Id. at 247-48. It explained that procedural rules fall under the domain of the Court. Id. at 248. But although "the courts necessarily make new substantive law through the decision of specific cases

coming before them, they are not to make substantive law wholesale through the exercise of the rule-making power." Ibid.

15. In some settings, determining the precise line between procedural and substantive rules in practice is challenging. Over the years, the Court has considered multiple questions on this topic and has attempted to accommodate other branches of government when possible. See, e.g., Busik v. Levine, 63 N.J. 351, 373 n.10 (1973) (amending a court rule on prejudgment interest after the Legislature enacted the Tort Claims Act); Passaic Cnty. Prob. Officers' Ass'n v. County of Passaic, 73 N.J. 247, 254-56 (1977) (holding that the Judiciary's supervision of probation officers cannot be modified by the Employer-Employee Relations Act); State v. Leonardis, 73 N.J. 360, 368, 374-75 (1977) (noting that pre-trial intervention (PTI) was "within the practice and procedure over which our rule-making power extends" and, at the same time, not "foreclos[ing] the Legislature from enacting measures affecting the substantive aspects of PTI"); Knight v. City of Margate, 86 N.J. 374, 387 (1981) (deferring to legislative amendments to the Conflicts of Interest Law, which restricted dealings with casinos for certain members of the Judiciary and others, even though the statute "implicate[d] matters that are constitutionally committed to the" Court's authority); State v. Des Marets, 92 N.J. 62, 66 n.3, 80 (1983) (finding that the Legislature had the "power to preclude judicial

suspension of sentences" and "enact mandatory sentencing laws," and noting that the Court "prohibit[ed] conventional plea bargaining of Graves Act offenses" to give effect to legislative intent); In re Hearing on Immunity for Ethics Complainants, 96 N.J. 669, 672, 677-78 (1984) (finding that, because the issue of attorney discipline was within the Judiciary's domain, a court rule that provided immunity for grievants in ethics and fee arbitration proceedings prevailed over a contrary statutory provision); In re P.L. 2001, Chapter 362, 186 N.J. 368, 372-73 (2006) (invalidating legislation that would create an "armed unit . . . of probation officers" within the Judiciary because the statute "interfere[d] with the Court's exclusive constitutional authority over the administration of the courts"); In re Advisory Comm. on Pro. Ethics Op. 705, 192 N.J. 46, 48, 58 (2007) (deferring to the Legislature and holding that attorneys formerly employed by the State must comply with statutory post-employment restrictions notwithstanding a less stringent Rule of Professional Conduct).

16. In Hessen, which relates to Guideline 4, the Court expressly placed "judicial authorization of plea bargaining . . . well within the Court's rule-making authority over plea-bargaining practice in the courts as contemplated by the Constitution." 145 N.J. at 451.

The 2024 Amendment to N.J.S.A. 39:4-50

17. On September 22, 2022, S. 3011 was introduced to extend an unrelated provision in N.J.S.A. 39:4-50. The draft bill was later amended to include the following language:

> Notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement under this section is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the revised statutes or offense under Title 2C of the New Jersey Statutes.
>
> [S. 3011 (Second Reprint, June 26, 2023).]

No parties testified about the plea agreement provision, and no statements in the Senate or Assembly bills discuss the reasoning for it.

18. The Senate and Assembly voted unanimously in favor of the bill. See New Jersey Legislature, "Bill S3011," at https://www.njleg.state.nj.us/bill-search/2022/S3011. The Governor signed it on December 21, 2023. Press Release, Governor Murphy Takes Action on Legislation (12/21/2023), https://www.nj.gov/governor/news/news/562023/20231221c.shtml. The plea-bargaining agreement provision became effective on February 19, 2024. L. 2023, c. 191, §§ 2, 9.

19. The text of the new statute and the language of Guideline 4 directly conflict with one another. In light of that conflict, the Acting Administrative Director of the Courts issued a short memo on February 16, 2024 directing that

any challenge to Guideline 4 be brought to his attention. As the Court's spokesperson explained in a statement on February 21, 2024, the memo, issued at the direction of the Court, did not "address the merits of any potential legal issues."

The Court's Withdrawal of Guideline 4

20. To date, no legal challenge has been filed related to the conflict between the revised statute and Guideline 4. The law effectively directs that "any judicial directive" that contradicts the recent amendment is to be disregarded. In essence, the law directs that a Court Rule -- which the Supreme Court in 1994 held was "within the Court's rule-making authority over plea-bargaining practice in the courts as contemplated by the Constitution," see Hessen, 145 N.J. at 451 -- is null and void. As a result, there is a genuine question about the constitutionality of the law under the separation of powers doctrine.

21. Because no actual case is before the Court, we do not make a finding on that issue. At the same time, we recognize that the amendment reflects a policy statement by the Legislature, which is within its prerogative, related to plea bargaining in municipal courts. In 1994, the Court relied on the Final Report of the Committee to Implement Plea Agreements in Municipal Courts, which pointed to public concerns about not "undermin[ing] the

deterrent thrust of New Jersey's tough laws" on DWI. Id. at 449 (citing 1990 Final Report at 28). As noted before, the Court also explained the ban on plea bargaining was "intended to support the policy decision of the legislative and the executive branches." Id. at 454. The revised statute provides new direction on that policy.

22. On multiple occasions, this Court has stressed the importance of "cooperation among the branches of government." Ibid.; see also In re Op. 705, 192 N.J. at 54-55; Commuc'ns Workers of Am., AFL-CIO v. Florio, 130 N.J. 439, 449 (1992); Knight, 86 N.J. at 388-89. It does not serve "either the Judiciary or the Legislature [to] engage in a test of the limits of their power." Leonardis, 73 N.J. at 374 n.6; see also Busik, 63 N.J. at 373. The public interest is better served by collaboration among the coordinate branches of government.

23. Accordingly, in the interest of comity, the Court adopts the statement of policy in the amendment to N.J.S.A. 39:4-50 and withdraws Guideline 4.

24. This order will take effect immediately.

For the Court:

Stuart Rabner
Chief Justice

Justices Patterson, Solomon, Pierre-Louis, Wainer Apter, Fasciale, and Noriega join in the Order.

Filed: February 23, 2024