

State v. Natale

834 A.2d 1024

N.J., 2003.

Decided Nov. 20, 2003. (Approx. 2 pages)

178 N.J. 51, 834 A.2d 1024

Supreme Court of New Jersey.

STATE of New Jersey, Plaintiff-Appellant and Cross-Respondent,

v.

Michael J. NATALE Defendant-Respondent and Cross-Appellant.

Argued Sept. 9, 2003.

Decided Nov. 20, 2003.

Defendant was convicted in the Superior Court, Law Division, Camden County, of second-degree aggravated assault, and given enhanced sentence under No Early Release Act (NERA). Defendant appealed. The Superior Court, Appellate Division, 348 N.J. Super. 625, 792 A.2d 565, affirmed in part, reversed in part, and remanded. Certiorari was granted. The Supreme Court held that: (1) if State, at resentencing upon remand, sought imposition of NERA sentence, trial court was required to give jury charge limiting the issues considered by jury, and (2) if State sought NERA sentence, trial court would also be required to give special instructions, before opening statements, limiting the issues considered by jury.

Appellate Division affirmed.

PER CURIAM.

The judgment is affirmed, substantially for the reasons expressed in Judge Conley's opinion in the Appellate Division, reported at 348 *N.J. Super.* 625, 792 A.2d 565 (2002). We add only these brief comments.

On remand, the State may elect not to proceed to a trial on a NERA predicate in which case the trial court must resentence defendant without application of NERA. In the event that the State seeks to have the court impose a NERA sentence, the court shall try the NERA issue to a jury and the jury shall determine, applying the beyond-a-reasonable-doubt standard, whether defendant ****1026** attempted to cause serious bodily injury or whether defendant caused serious bodily injury upon the victim during the commission of second-degree aggravated assault.

If the State seeks to prove the NERA predicate of the use or the threat of the immediate use of a deadly weapon, the trial court must draft the jury charges to limit the jury's determination to whether a deadly weapon was used in the course of committing a second-degree aggravated assault.

The trial court should provide the jury with the following special instructions before opening statements.

In most criminal trials, the same jury will address whether the State has proven each of the elements of the charges beyond a reasonable doubt, and, when certain elements are required to be found before a particular sentence may be imposed, the jury must decide whether those elements are proven. However, in some cases, such as this one, the jury need only consider whether certain elements are proven by the State beyond a reasonable doubt so that the appropriate sentence may be considered by the judge.

Here, a prior jury has determined defendant's guilt of third-degree aggravated assault under *N.J.S.A.* 2C:12-1b(2) (causing or attempting to cause bodily injury with a deadly weapon), and second-degree aggravated assault under *N.J.S.A.* 2C:12-1b(1) (attempt to cause serious bodily injury or causes such injury). That prior jury was not asked to

decide, with respect to the second-degree offense, whether defendant actually caused serious bodily injury or attempted to cause such injury and/or whether defendant used or threatened the immediate use of a deadly weapon in committing the second-degree aggravated assault offense. The purpose of this trial is for you to decide those questions. That is, you must consider all of the evidence presented in this trial, without regard to the prior verdict, and determine whether or not there is proof beyond a reasonable doubt that defendant caused serious bodily injury in committing a second-degree aggravated assault, and/or whether defendant used or threatened the immediate use of a deadly weapon in the course of committing a second-degree aggravated assault. The court will elaborate on these preliminary charges at the conclusion of the trial and will provide separate interrogatories for your use in deciding these questions.

**55 For affirming--*Chief Justice PORITZ and Justices LONG, LaVECCHIA, ZAZZALI, ALBIN, and WALLACE--6.

*Opposed--*None.

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