



Garden State CLE
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**New Jersey Continuing Legal Education
Services, llc.**

presents

**Post-Conviction Relief in
Municipal Court**

Lesson Plan

Post Conviction Relief in Municipal Court

1. Introduction

- a. *State v. Owczarski*, 236 N.J. Super. 52 (Law Div. 1989)
- b. *State v. Laurick*, 120 N.J. 1 (1990)
- c. Rule 7:10-1 (1998) (Rule 3:22)

2. Procedural Requirements – In general

- a. Civil Action, the equivalent of federal habeas corpus petition;
- b. Petitioner bears burden of production;
- c. Burden of proof by preponderance of the evidence – *State v. Preciose*, 129 N.J. 451, 462 (1992);
- d. Not a substitute for direct appeal
- e. Hearings - Issues outside the trial record

3. Time Limitations –

- a. Five years for ordinary PCR per R. 7:10-2(b)(2);
- b. Five years for *Laurick* Applications per R. 3:22-12;
- c. Begins to run on date of conviction;
- d. May be dispensed for illegal sentence or excusable neglect;
- e. Relaxation per R. 1:1-2 should be granted only under “exceptional circumstances” to avoid an injustice - *State v. Mitchell*, 126 N.J. 565, 580 (1992).
- f. Special Rule for *Laurick* Applications (*State v. Bringham*, 401 N.J. Super. 421 (App. Div. 2008))

4. Procedures for Filing Petition

- a. **Petition must be in writing, verified by petitioner and strictly comply with requirements of R. 7:10-2(f);**
- b. **May not raise issues that were not raised in a prior proceeding (Rule 7:10-2(d))**
- c. **Must assert cognizable grounds for relief under R. 7:10-2(c):**

Substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of New Jersey;

Lack of jurisdiction of the court to impose the judgment rendered on defendant's conviction;

Imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law; or

Any ground previously available as a basis for collateral attack on a conviction by habeas corpus or any other common law or statutory remedy

5. Petition for Relief under R. 7:10-2(a)

- a. **Vacates Conviction and return parties to *status quo ante* based upon cognizable grounds such as ineffective assistance of counsel, lack of factual basis for plea, illegal sentence, etc.**
- b. **Hearing on the merits only should be granted based upon a prima facie showing of grounds for relief in the verified pleadings. (Example – ineffective assistance of counsel should require testimony from former defense attorney.)**

6. Petitions for Post-Conviction Relief

In post-conviction relief proceedings we ordinarily say that a defendant may not raise on collateral attack issues that might reasonably have been raised in a direct appeal. *See R. 3:22*. In addition, we say that a plea of guilt waives all procedural objections that a defendant may have. Of course such a plea may be later challenged on the ground that there was no factual basis for it, [*State v. Barboza*, 115 N.J. 415, 558 A.2d 1303 \(1989\)](#), or that the defendant was unaware of its penal consequences, [*State v. Kovack*, 91 N.J. 476, 453 A.2d 521 \(1982\)](#).

- a. Factual Basis for plea (*State v. Barboza*, 115 N.J. 415 (1989))
- b. Ineffective Assistance of Counsel (*State v. Fritz*, 105 N.J. 42 (1987))
- c. Brady Materials (*Brady v. Maryland*, 373 U.S. 83 (1963))
- d. Illegal Sentence
- e. Lack of Jurisdiction
- f. *Crawford v. Washington*

7. Petition for Relief under Rule 7:10-2(g) (Laurick/Hrycak Applications) State v. Laurick, 120 N.J. 1 (1990); State v. Hrycak, 184 N.J. 351 (2005).

- a. Petition must be brought in the court where the conviction occurred.
- b. All petitioners must demonstrate *pro se* conviction.
- c. All petitioners must demonstrate that conviction was obtained in the absence of an adequate advisement and effective waiver of the right to counsel as required by *Rodriguez v. Rosenblatt*, 58 N.J. 281 (1971).
- d. Petitioner who can demonstrate the above AND indigence at the time of conviction is entitled to relief.
- e. Petitioner who can demonstrate a) and b) above, but who were not indigent must also demonstrate that having had an attorney might have changed the outcome of the case.
- f. Successful petition is not entitled to have conviction vacated. Relief is in the form of an order specifying that the underlying conviction may not be used to enhance the custodial aspect only of a future conviction for the same type of offense.
- g. Appeal from a denial of the petition must be combined with an appeal from the current drunk driving case.

8. New Trial – Rule 7:10-1

On defendant's motion, the court may, pursuant to the time limitations of this rule, grant the defendant a new trial if required in the interest of justice. The court may vacate the judgment if already entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial, based on the ground of newly discovered evidence, shall be made within two years after entry of a final judgment. A motion for a new trial on the grounds of fraud or lack of jurisdiction may be made at any time. A motion for a new trial, based on any other grounds, shall be made within twenty days after the entry of judgment of conviction or within such further time as the court fixes during the twenty-day period.

9. Motion to Vacate a Plea – Rule 7:6-2(b)

A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.

- a. State v. J.J, 397 N.J. Super. 91 (App. Div. 2007).**
- b. Pre-sentence vs. post-sentence burdens**

10. Motion to Reconsider Sentence – Rule 7:9-4

(a) Time. The court, in its discretion, may reduce or change a sentence, either on its own motion or on the motion of defendant, which may be either oral or written, at any time during which the court retains jurisdiction over the matter.

(b) Procedure. All changes of sentence shall be made in open court upon notice to the defendant and the prosecuting attorney. An appropriate order setting forth the revised sentence and specifying the change made and the reasons for the change shall be entered on the record.

11. Motion to Reconsider findings – Rule 1:7-4

(a) Required Findings. The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29. The court shall thereupon enter or direct the entry of the appropriate judgment.

(b) Motion for Amendment. On motion made not later than 20 days after service of the final order or judgment upon all parties by the party obtaining it, the court may grant a rehearing or may, on the papers submitted, amend or add to its findings and may amend the final order or judgment accordingly, but the failure of a party to make such motion or to object to the findings shall not preclude that party's right thereafter to question the sufficiency of the evidence to support the findings. The motion to amend the findings, which may be made with a motion for a new trial, shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred. Motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2.

7:10-2. Post-Conviction Relief

(a) Petition for Relief. A person convicted of an offense may, pursuant to this rule, file with the municipal court administrator of the municipality in which the conviction took place, a petition for post-conviction relief captioned in the action in which the conviction was entered.

(b) Limitations and Exclusiveness.

(1) A petition to correct an illegal sentence may be filed at any time.

(2) A petition based on any other grounds shall not be accepted for filing more than five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect.

(3) A petition for post-conviction relief shall be the exclusive means of challenging a judgment of conviction, except as otherwise required by the Constitution of New Jersey, but it is not a substitute for appeal from a conviction or for a motion incident to the proceedings in the trial court, and may not be filed while appellate review or the filing of a motion in the municipal court is available.

(c) Grounds. A petition for post-conviction relief is cognizable if based on any of the following grounds:

(1) substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of New Jersey;

(2) lack of jurisdiction of the court to impose the judgment rendered on defendant's conviction;

(3) imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law; or

(4) any ground previously available as a basis for collateral attack on a conviction by habeas corpus or any other common law or statutory remedy.

(d) Bar of Grounds Not Raised in Prior Proceedings; Exceptions.

(1) The defendant is barred from asserting in a proceeding under this rule any grounds for relief not raised in a prior proceeding under this rule, or in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of R. 3:22-4, or in any appeal taken in any of those proceedings, unless the court on motion or at the hearing finds that:

(A) the grounds for relief not previously asserted could not reasonably have been raised in any prior proceeding;

(B) enforcement of the bar would result in fundamental injustice; or

(C) denial of relief would be contrary to the Constitution of the United States or of New Jersey.

(2) A prior adjudication on the merits of any grounds for relief asserted in the petition is conclusive, whether made in the proceedings resulting in the conviction or any prior post-conviction proceeding, or in any appeal taken from those proceedings.

(e) Assignment of Counsel. A defendant may annex to the petition a sworn statement asserting indigency in the form (Form 5A) prescribed by the Administrative Director of the Courts, which form shall be furnished by the municipal court administrator. If the court finds that the defendant is indigent as herein provided, and that the original conviction involved a consequence of magnitude, it shall order counsel assigned to represent defendant and shall further order a transcript of testimony of any proceeding shown to be necessary in establishing the grounds of relief asserted. Absent a showing of good cause, which shall not include lack of merit of the petition, the court shall not substitute new assigned counsel. If counsel is assigned, the court shall not thereafter substitute new assigned counsel absent a showing of good cause, which shall not, however, include lack of merit of the petition.

(f) Procedure.

(1) The municipal court administrator shall make an entry of the filing of the petition in the proceedings in which the conviction took place, and if it is filed pro se, shall forthwith transmit a copy to the municipal prosecutor. An attorney filing the petition shall serve a copy on the municipal prosecutor before filing.

(2) The petition shall be verified by defendant and shall set forth with specificity the facts upon which the claim for relief is based, the legal

grounds of the complaint asserted and the particular relief sought. The petition shall include the following information:

(A) the date, docket number and contents of the complaint upon which the conviction is based and the municipality where filed;

(B) the sentence or judgment complained of, the date it was imposed or entered, and the name of the municipal court judge then presiding;

(C) any appellate proceedings brought from the conviction, with copies of the appellate opinions attached;

(D) any prior post-conviction relief proceedings relating to the same conviction, including the date and nature of the claim and the date and nature of disposition, and whether an appeal was taken from those proceedings and, if so, the judgment on appeal;

(E) the name of counsel, if any, representing defendant in any prior proceeding relating to the conviction, and whether counsel was retained or assigned; and

(F) whether and where defendant is presently confined.

A separate memorandum of law may be submitted.

(G) In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged. The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

(3) Amendments of the petitions shall be liberally allowed. Assigned counsel may, as a matter of course, serve and file an amended petition within 25 days after assignment. Within 30 days after service of a copy of the petition

or amended petition, the municipal prosecutor shall serve and file an answer to the petition or move on ten days' notice for dismissal. If the motion for dismissal is denied, the government's answer shall be filed within fifteen days after entry of the order denying the dismissal.

(4) A defendant in custody shall be present in court if oral testimony is adduced on a material issue of fact within the defendant's personal knowledge. A defendant in custody may otherwise be present in court only in the judge's discretion.

(5) In making a final determination on a petition, either on motion for dismissal or after hearing, the court shall state separately its findings of fact and conclusions of law and shall enter judgment or sentence in the conviction proceedings and any appropriate provisions as to re-arraignment, retrial, custody, bail, discharge, correction of sentence or as may otherwise be required.

(g) Petition to Obtain Relief from an Enhanced Custodial Term Based on a Prior Conviction

(1) Venue. A post-conviction petition to obtain relief from an enhanced custodial term based on a prior conviction shall be brought in the court where the prior conviction was entered.

(2) Time Limitations. The time limitations for filing petitions for post-conviction relief under this section shall be the same as those set forth in Rule 3:22-12.

(3) Procedure. A petition for post-conviction relief sought under this section shall be in writing and shall conform to the requirements of Rule 7:10-2(f). In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged . The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

(4) Appeal. Appeals from a denial of post-conviction relief from the effect of a prior conviction shall be combined with any appeal from proceedings involving the repeat offense. Appeals by the State may be taken under R. 3:23-2(a).

State v. Mitchell, 126 N.J. 565, 580 (1992)

In the context of post-conviction relief, a court should relax *Rule 3:22-12*'s bar only under exceptional circumstances. The court should consider the extent and cause of the delay, the prejudice to the State, and the importance of the petitioner's claim in determining whether there has been an "injustice" sufficient to relax the time limits. As we have made clear, the longer the time-span since the original trial, the more difficult a retrial becomes. Absent compelling, extenuating circumstances, the burden of justifying a petition filed after the five-year period will increase with the extent of the delay. The prejudice to the State's ability to litigate the case after a long delay is also relevant. If the key witnesses are unlikely to be available, evidence has disappeared, or other obstacles are present, allowing the petition for post-conviction relief will unduly prejudice the State's ability to bring its case. These concerns must, however, be balanced against the significance of the petitioner's interest in raising his or her petition. If the petitioner articulates facts that demonstrate a serious question about his or her guilt or the propriety of the sentence imposed and is prepared to provide factual evidence to support it, then sufficient grounds for relaxing the Rule might exist. In other words, a court should determine that the procedural rule as applied is unjust only when a significant liberty interest is at stake and the petitioner has offered something more than a bare allegation that that is so. Because a bright line rule is impossible, a review of some of the cases in which procedural bars have been relaxed may provide a better sense of what we mean.

State v. Laurick, 120 N.J. 1, 16-17 (1990)

It is constitutionally permissible that a prior uncounseled DWI conviction may establish repeat-offender status for purposes of the enhanced penalty provisions of the DWI laws of the State of New Jersey. The only constitutional limit is that a defendant may not suffer an *increased* period of incarceration as a result of a *Rodriguez* violation that led to an uncounseled DWI conviction.

(2) No other relief necessarily flows from a *Rodriguez* violation that led to a prior uncounseled DWI conviction. The judicial policies expressed in *Rodriguez v. Rosenblatt*, of giving notice to accused of a right to be represented by counsel, do not create a constitutional entitlement to such notice. Nor does the absence of such notice demonstrate a fundamental injustice unless there be some showing in post-conviction relief proceedings that it prejudiced the defendant in that the defendant (a) was unaware of such rights, and (b) if indigent, would have derived benefit from the notice by seeking the assistance of counsel. A non-indigent defendant would have to show in addition that the lack of notice otherwise affected the outcome. No such showing was made in this case.

(3) Post-conviction relief from the effect of prior convictions should normally be sought in the court of original jurisdiction, which will be in the best position to evaluate whether there has been any denial of fundamental justice. Appeals from the disposition in that court shall be combined with any appeal from proceedings involving the repeat offense.

State v. Hrycak, 184 N.J. 351, 363 (2005)

A defendant is faced with a three-step undertaking in proving that a prior uncounseled DWI conviction should not serve to enhance the jail component of a sentence imposed on a subsequent DWI conviction. As a threshold matter, the defendant has the burden of proving in a second or subsequent DWI proceeding that he or she did not receive notice of the right to counsel in the prior case. He or she must then meet the two-tiered Laurick burden. Supra, 120 N.J. at 11, 575 A.2d 1340. In that vein, if defendant proves that notice of the right to counsel was not provided, the inquiry is then bifurcated into whether the defendant was indigent or not indigent. "[I]f [the] defendant [was] indigent, [the defendant must prove that] the DWI conviction was a product of an absence of notice of the right to assignment of counsel and non-assignment of such counsel without waiver." *Ibid.* On the other hand, if the defendant was not indigent at the time of the prior uncounseled conviction, [the] defendant should have the right to establish such lack of notice as well as the absence of knowledge of the right to be represented by counsel of one's choosing and to prove that the absence of such counsel had an impact on the guilt or innocence of the accused or otherwise 'wrought a miscarriage of justice for the individual defendant.'

State v. Conroy, 397 N.J. Super. 324, 330-331 (App. Div. 2008)

This is defendant's fourth actual conviction, having been previously convicted on October 12, 1982; April 17, 1990; and August 1, 1995. Because defendant's 1982 conviction was entered following an uncounseled plea, that conviction may not be used to enhance the period of incarceration on a subsequent conviction. Accordingly, we agree with defendant that when he appeared before the Law Division he stood as a third offender, not a fourth offender, for the limited purpose of the trial court imposing a jail sentence under the enhanced sentencing provision of the DWI statute.

Moreover, because there was a hiatus of more than ten years between the present offense and his last offense in 1995 (the third and second offenses, respectively, for purpose of incarceration under Laurick), defendant was entitled to the benefit of the step-down provision:

"where *the court shall treat* the third conviction as a second offense for sentencing purposes." N.J.S.A. 39:4-50(a)(3). Sentencing a qualified defendant under the step-down provision is mandatory, not discretionary. We are satisfied that to deny defendant the benefit of the step-down proviso, which the Legislature has provided to all third offenders, would violate the principle of fairness that underpins Laurick.

State v. Schadewald, 400 N.J. 350, 357 (App. Div. 2007)

The amended rule clearly sets forth the procedures for making PCR applications in municipal courts to obtain relief from enhanced penalties for uncounseled subsequent DWI offenses. Although the rule was effective on September 1, 2007, we find those procedures appropriate for cases that arose before September 1, 2007.

In other words, to establish entitlement to the step-down sentence for a second or subsequent DWI:

1. Indigent defendants must establish that they were not given notice of their right to counsel and advised that counsel would be provided for them if they could not afford one.

2. Non-indigent defendants must establish that they were not advised of their right to counsel and that they were unaware of such right at the time they entered the uncounseled pleas.

3. Defendants who establish that they were not adequately noticed of their right to counsel must then demonstrate that if they had been represented by counsel, they had a defense to the DWI charge and the outcome would, in all likelihood, have been different. Police reports, witness statements, insurance investigations and the like may be used to submit proofs that the outcome would have been different if the defendant had the benefit of counsel before pleading guilty.

State v. Schadewald, 400 N.J. 350, 354-355 (App. Div. 2007).

State v. Bringhurst, 401 N.J. Super. 421, 432-433 (App. Div. 2008)

Applying these factors to defendant's PCR petition, we must conclude that the five-year time limit contained in *Rule 3:22-12(a)* should not automatically require dismissal of the application. The fact that a prior DWI conviction may have been uncounseled would, in and of itself, be of no moment unless and until there was a subsequent DWI conviction. By its very nature, a *Laurick* challenge simply cannot be raised until a second or subsequent conviction occurs because there is otherwise no basis for "[r]elief from an [e]nhanced [c]ustodial term [b]ased on a [p]rior [c]onviction." *R. 7:10-2(g)*. Since a second or subsequent conviction may occur at any time in the future, it would be illogical to apply the *Rule's* five-year time limit mechanistically to deny all such applications. Indeed, a defendant could never obtain the benefit of *Laurick's* holding if his second conviction occurred more than five years after the first uncounseled one because his petition would automatically be time-barred. The defendants in *Hrycak* and *Latona*, for example, would have been unable to raise their *Laurick* issues. We can discern no reason why the Supreme Court would have explicitly recognized the *Laurick*-styled PCR petition on the one hand, and at the same time deny its relief where "the extent and cause of the delay" was not occasioned by the defendant.

State v. Bringhurst, 401 N.J. Super. 421, 436-437 (App. Div. 2008)

Ordinarily, a post-conviction relief court should grant an evidentiary hearing to a defendant who has presented a prima facie case in support of his application. *To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits.*

Defendant must demonstrate a prima facie case for relief before an evidentiary hearing is required, and the court is not obligated to conduct an evidentiary hearing to allow defendant to establish a prima facie case not contained within the allegations in his PCR petition. Weighing all the factors to be considered in determining whether defendant's PCR petition was sufficient to establish grounds for relaxation of *Rule 3:22-12(a)*'s five-year time limit, we conclude defendant has failed to establish a prima facie case that any failure to advise him in accordance with [Rodriguez](#) resulted in an injustice requiring extraordinary relief. To summarize, a defendant's [Laurick](#) PCR petition brought more than five years after the predicate DWI conviction he challenges as uncounseled must comply with the requirements of *Rule 7:10-2*. A defendant must first establish that he is entitled to relaxation of *Rule 3:22-12(a)*'s time limit. In general, given the nature of a [Laurick](#) PCR petition, a defendant may routinely establish that any delay in filing his claim was not the result of neglect or some other disqualifying reason. However, a defendant must also allege facts in the petition sufficient to establish a prima facie case for relief under the standards enunciated in [Laurick](#) before relaxation is appropriate. In this case, defendant failed to establish a prima facie case for the relief he sought.

State v. Thomas, 401 N.J. Super. 180, 184 (Law Div. 2007)

Although the defendants in both [Laurick](#) and [Hrycak](#) faced enhanced sentences under the DWI statute, there is nothing in the language or the reasoning of either case that would permit the conclusion urged by the State: that their holdings apply only to sentences imposed under the DWI statute. Rather, although neither required by the federal constitution nor articulated as a state constitutional principle, it remains the law in New Jersey that no defendant may be sentenced to an increased period of incarceration for any offense on the basis of an uncounseled conviction.

At the time of the instant charge of driving while her license was suspended, defendant had only one prior conviction for the same offense. Therefore, a jail sentence exceeding five days here would subject her to an increased loss of liberty predicated solely *185 on the fact that the underlying suspension was imposed for a **332 DWI conviction. However, because the conviction on which the State would have the court predicate an enhanced jail sentence was uncounseled, to impose a sentence in excess of five days would violate the mandate of [Laurick](#).

STATE OF NEW JERSEY : MANSFIELD TOWNSHIP MUN. COURT
BURLINGTON COUNTY
Plaintiff :
vs. : SUMMONS NO. 123456
SCOTT A. BROWN :
Defendant : CERTIFICATION OF
SCOTT A. BROWN

I, Scott A. Brown, of full age do certify the following to be true:

1) On or about March 12, 1983, I was charged with a violation of N.J.S.A.
39:4-50 in Mansfield Township, Burlington County, New Jersey.

2) My first appearance on the drunk driving charge was set for March 24,
1983. I appeared in the Mansfield Township Municipal Court on March 24, 1983
and entered a plea of guilty to the original charge of drunk driving.

3) When I appeared in court and pled guilty, an attorney did not represent
me, nor had I spoken to an attorney about the case because I could not afford
one at the time. In 1983, I was employed making \$7.00 per hour processing x-
rays for a living and raising 2 small children. There was just no way that I could
afford the retainer of a lawyer to represent me. As a result, I simply pled
guilty.

4) During my first appearance, I was not informed by the judge of my
right to an appointed, free attorney. Had I been made aware of this option, I

would have asked for a lawyer because I wanted to be represented by a lawyer, but I could not afford one.

5) I have requested through my lawyer, Robert Ramsey a copy of my plea and sentencing hearing from March 24, 1983. The Court Administrator has informed us that no such transcript exists. I have attached hereto a copy of her letter dated March 11, 2005 marked as Exhibit A.

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Scott A. Brown

Dated: _____

STATE OF NEW JERSEY : MANSFIELD TOWNSHIP MUN. COURT
 : BURLINGTON COUNTY
 Plaintiff :

vs. : SUMMONS NO. 123456

SCOTT A. BROWN :
 : ORDER
 Defendant :

This matter having been opened to the court upon the application of Donini & Ramsey, Attorneys at Law, Robert Ramsey, Esquire appearing, and the Court having considered the arguments of counsel and other good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 2008;

ORDERED that Defendant's conviction for a violation of N.J.S.A. 39:4-50(a), entered in this court on March 24, 1983 shall not be used to enhance the custodial aspect of any future conviction for a violation of N.J.S.A. 39:4-50(a).

Dennis P. McInerney, J.M.C.

STATE OF NEW JERSEY : MANSFIELD TOWNSHIP MUN. COURT
Plaintiff : BURLINGTON COUNTY

vs. : SUMMONS NO. 123456

SCOTT A. BROWN : NOTION OF MOTION FOR RELIEF
Defendant : FROM A PRIOR CONVICTION
PURSUANT TO RULE 7:10-2(g)

PLEASE TAKE NOTICE that on a date to be set by the Court, pursuant to Rule 7:9-4(a), the undersigned, counsel for Defendant, Scott A. Brown, will make an application before the Mansfield Township Municipal Court for relief from a prior conviction pursuant to Rule 7:10-2(g).

In support of the within application, the undersigned counsel will rely upon the annexed Memorandum of Law and oral argument.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: January 12, 2008

STATE OF NEW JERSEY : NORTH WARREN MUNICIPAL COURT
WARREN COUNTY
Plaintiff :
vs. : SUMMONS NO.
SCOTT A. BROWN : QUASI-CRIMINAL ACTION
Defendant : ORDER GRANTING
POST-CONVICTION RELIEF

THIS MATTER having been opened to the Court by Donini & Ramsey, Attorneys-at-Law, Robert Ramsey, Esquire, appearing on behalf of the defendant, Scott A. Brown, Michael Rubbinaccio, Esquire, Municipal Prosecutor, appearing on behalf of the State of New Jersey, and the Court having considered the arguments of counsel, the pleadings and other moving papers submitted and good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 2008;

ORDERED that Defendant's petition for post-conviction relief in the within matter is granted and the plea of guilty and resulting conviction entered be and is hereby vacated;

IT IS FURTHER ORDERED that the within matter be rescheduled in the North Warren Municipal Court at Hope for further proceedings.

J.M.C.

STATE OF NEW JERSEY	:	NORTH WARREN MUNICIPAL COURT WARREN COUNTY
Plaintiff	:	
vs.	:	SUMMONS NO.
	:	QUASI-CRIMINAL ACTION
SCOTT A. BROWN	:	
Defendant	:	MOTION FOR POST-CONVICTION RELIEF PURSUANT TO <u>RULE 7:10-2</u>

PLEASE TAKE NOTICE that on a date to be set by the Court, the undersigned, counsel for defendant-petitioner, Scott A. Brown, will make an application before the North Warren Municipal Court for Post-Conviction Relief in connection with the above captioned matters pursuant to Rule 7:10-2.

In support of this application, the defendant-petitioner will rely upon the annexed Memorandum of Law, transcript of prior sentencing proceedings, Verified Petition of defendant-petitioner and oral argument.

The defendant-petitioner will also rely upon certain precedents of the New Jersey Supreme Court which are set forth with more specificity in the attached memorandum of law.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: January 12, 2008

DONINI & RAMSEY
448 HAMILTON AVENUE
TRENTON, NEW JERSEY 08609
(609) 396-7979
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	:	NORTH WARREN MUNICIPAL COURT
		WARREN COUNTY
Plaintiff	:	
vs.	:	SUMMONS NO.
		QUASI-CRIMINAL ACTION
SCOTT A. BROWN	:	VERIFICATION
Defendant	:	OF DEFENDANT

I, Scott A. Brown, of full age, do certify the following to be true:

1) I am the defendant in the above captioned matter.

2) I petition the North Warren Municipal Court for Post-Conviction Relief in the above-captioned matter.

3) I am seeking relief for substantial denial of my rights in the conviction proceedings under the Constitution of the United States and the Constitution and Laws of the State of New Jersey.

4) I make this application for Post-Conviction Relief in light of certain Supreme Court cases, which have been decided since the date of my offense. I also certify that this type of application is permissible by virtue of a decision by the Supreme Court of New Jersey decided after the date of my conviction.

5) In compliance with Rule 3:22-8, I provide the following information:

a) The docket number relevant to this matter is:

SPY00000 - N.J.S.A. 39:6b-2

b) Complaint SPY00000 was resolved by way of a guilty plea in the North Warren Municipal Court on April 8, 1999, before the Honorable Craig U. Dana, J.M.C.

c) There have been no appellate proceedings brought in my case.

d) There have been no Post-Conviction Relief proceedings related to this conviction.

e) I was not represented by counsel during the plea and sentencing hearing, which took place on April 8, 1999.

f) I am not presently incarcerated.

Pursuant to Rule 1:4-4(b), I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Scott A. Brown

Dated: _____

DONINI & RAMSEY
448 HAMILTON AVENUE
TRENTON, NEW JERSEY 08609
(609) 396-7979
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	:	LAWRENCE TWP. MUNICIPAL COURT MERCER COUNTY
Plaintiff	:	
vs.	:	SUMMONS NO. 123456
	:	QUASI-CRIMINAL ACTION
SCOTT A. BROWN	:	
Defendant	:	NOTICE OF MOTION FOR A NEW TRIAL PURSUANT TO <u>RULE 7:10-1</u>

PLEASE TAKE NOTICE that on a date to be set by the Court, pursuant to Rule 7:10-1, the undersigned, counsel for Defendant, Scott A. Brown, will make an application before the Lawrence Township Municipal Court for a new trial on complaint no. 123456.

In support of the within application, the undersigned counsel will rely upon the annexed Memorandum of Law and oral argument.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: January 12, 2008

DONINI & RAMSEY

448 HAMILTON AVENUE

TRENTON, NEW JERSEY 08609

(609) 396-7979

ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY : LAWRENCE TWP. MUNICIPAL COURT
MERCER COUNTY
Plaintiff :
vs. : SUMMONS NO. 123456
SCOTT A. BROWN : QUASI-CRIMINAL ACTION
Defendant : NOTICE OF MOTION FOR CHANGE OF
SENTENCE PURSUANT TO RULE 7:9-4(a)

TO: Kevin Nerwinski, Municipal Prosecutor Honorable Paul Catanese, J.M.C.
Lawrence Township Municipal Court Lawrence Township Municipal Ct.
2207 Lawrence Road 2207 Lawrence Road
Lawrenceville, New Jersey 08648 Lawrenceville, New Jersey

PLEASE TAKE NOTICE that on a date to be set by the Court, pursuant to Rule 7:9-4(a), the undersigned, counsel for Defendant, Scott A. Brown, will make an application before the Lawrence Township Municipal Court for a change of sentence previously imposed on complaint no. 123456.

In support of the within application, the undersigned counsel will rely upon the annexed Memorandum of Law and oral argument.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: January 12, 2008

DONINI & RAMSEY
448 HAMILTON AVENUE
TRENTON, NEW JERSEY 08609
(609) 396-7979
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	:	EWING TWP. MUNICIPAL COURT MERCER COUNTY
Plaintiff	:	SUMMONS NO. EWG123456
vs.	:	QUASI-CRIMINAL ACTION
SCOTT A. BROWN	:	CERTIFICATION OF DEFENDANT
Defendant	:	

I, Scott A. Brown, do certify the following statements to be true:

1) I am the defendant in the above captioned matter.

2) On or about September 2, 2002, I received a speeding ticket from the Ewing Township Police Department. I subsequently paid the above captioned speeding ticket through the violations bureau in the Ewing Township Municipal Court.

3) As the result of the payment of this traffic ticket, I have been subject to a variety of collateral consequences, which I was not anticipating. Nor was I informed that I would be subject to these consequences by payment of the ticket.

4) I was not aware that this was going to happen as a result of my entering this plea of guilty through the Ewing Township violations window.

5) I have been informed that I could possibly resolve this case in a more beneficial way to myself through the plea bargaining process or, by taking the case to trial. I was not aware that any of these possibilities existed for me.

Pursuant to Rule 7:6-2(b), I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Scott A. Brown

Dated: _____

**DONINI & RAMSEY
448 HAMILTON AVENUE
TRENTON, NEW JERSEY 08609
(609) 396-7979
ATTORNEY FOR DEFENDANT**

STATE OF NEW JERSEY	:	EWING TWP. MUNICIPAL COURT MERCER COUNTY
Plaintiff	:	SUMMONS NO. EWG123456
vs.	:	QUASI-CRIMINAL ACTION
SCOTT A. BROWN	:	ORDER GRANTING
Defendant	:	WITHDRAW OF GUILTY PLEA

THIS MATTER having been opened to the Court by Donini & Ramsey, Attorneys-at-Law, Robert Ramsey, Esquire, appearing, on behalf of Defendant, Scott A. Brown, and the Court having considered the arguments of counsel and other moving papers submitted and good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 2008;

ORDERED that the guilty plea entered in the above captioned matter through the Ewing Township Violation's Bureau be and hereby is vacated;

IT IS FURTHER ORDERED that the within matter be scheduled in the Ewing Township Municipal Court for further proceedings.

J.M.C.

DONINI & RAMSEY
448 HAMILTON AVENUE
TRENTON, NEW JERSEY 08609
(609) 396-7979
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY : EWING TWP. MUNICIPAL COURT
MERCER COUNTY
Plaintiff :
SUMMONS NO. EW6123456
vs. :
QUASI-CRIMINAL ACTION
SCOTT A. BROWN :
Defendant : NOTICE OF MOTION TO WITHDRAW A
GUILTY PLEA PURSUANT TO R. 7:6-2(b)

PLEASE TAKE NOTICE that on a date to be set by the Court, the undersigned, counsel for Defendant, Scott A. Brown, will make an application before the Ewing Township Municipal Court for Defendant to withdraw his plea of guilty pursuant to Rule 7:6-2(b).

In support of the within application, Defendant will rely upon the annexed Certification as well as oral argument.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: January 12, 2008

STATE OF NEW JERSEY : LAWRENCE TWP. MUNICIPAL COURT
MERCER COUNTY
Plaintiff :
vs. : SUMMONS NO. 123456
SCOTT A. BROWN : QUASI-CRIMINAL ACTION
Defendant : NOTICE OF MOTION FOR CHANGE OF
SENTENCE PURSUANT TO RULE 7:9-4(a)

TO: Kevin Nerwinski, Municipal Prosecutor Honorable Paul Catanese, J.M.C.
Lawrence Township Municipal Court Lawrence Township Municipal Court
2207 Lawrence Road 2207 Lawrence Road
Lawrenceville, New Jersey 08648 Lawrenceville, New Jersey 08648

Sandy Terry, Court Director
Lawrence Township Municipal Court
2207 Lawrence Road
Lawrenceville, New Jersey 08648

PLEASE TAKE NOTICE that on a date to be set by the Court, pursuant to Rule 7:9-4(a), the undersigned, counsel for Defendant, Scott A. Brown, will make an application before the Lawrence Township Municipal Court for a change of sentence previously imposed on complaint no. 123456.

In support of the within application, the undersigned counsel will rely upon the annexed Memorandum of Law and oral argument.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: January 12, 2008

DONINI & RAMSEY
448 HAMILTON AVENUE
TRENTON, NEW JERSEY 08609
(609) 396-7979
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	:	LAWRENCE TWP. MUNICIPAL COURT MERCER COUNTY
Plaintiff	:	SUMMONS NO. 123456
vs.	:	QUASI-CRIMINAL ACTION
SCOTT A. BROWN	:	
Defendant	:	ORDER GRANTING DEFENDANT'S RECONSIDERATION OF SENTENCE PURSUANT TO <u>RULE 7:9-4(a)</u>

THIS MATTER having been opened to the Court upon the application of Donini & Ramsey, Esquires, Robert Ramsey, Esquire, appearing, and the Court having considered the arguments of counsel, and other good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 2008;

ORDERED that Defendants application for reconsideration of sentence pursuant to Rule 7:9-4(a) on the above captioned complaints be and is hereby granted.

Paul Catanese, J.M.C.