RESPONSE OF THE SUPREME COURT CRIMINAL PRACTICE COMMITTEE TO THE SUPREME COURT'S REQUEST TO REVIEW RULE 3:4A "PRETRIAL DETENTION"

DECEMBER 5, 2018

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I. Rule 3:4A. Pretrial Detention

The Criminal Practice Committee is proposing amendments to paragraph (e) of R. 3:4A "Pretrial Detention" in response to the request by the Supreme Court that the Committee "review expeditiously the language of Rule 3:4A(e) and to make any appropriate recommendation to the Court considering possible future amendments to clarify the rule, if necessary." See State v. Satorius, No. S-081818 (Supreme Court September 20, 2018). This review was necessitated because the Satorius matter "raised questions of the meaning and application of language in Rule 3:4A(e)." Ibid.

A. State v. Satorius

In State v. Satorius, the Appellate Division held that the State's motion for leave to appeal the trial court's order denying its pretrial detention motion was filed out of time. The State's motion was filed twenty-one days after entry of the order granting pretrial release. The Appellate panel concluded that "R. 3:4A(e) does impose a forty-eight hour deadline for a motion by the State for interlocutory review of an order denying detention." See State v. Satorius, No. AM-00695-17 (App. Div. September 14, 2018) at 4-5.

Specifically, paragraph (e) of R. 3:4A states:

> (e) Interlocutory Order from Appellate Division. Nothing in this Rule shall be deemed to preclude the State's right to seek an interlocutory order from the Appellate Division within 48 hours.

In making this determination, the Appellate panel reviewed the 2016 Report of the Criminal Practice Committee for background on its recommendation for R. 3:4A(e).

Except for the addition of the caption, the Supreme Court adopted the language as proposed without any modifications. See Report of the Supreme Court Committee on Criminal Practice on Recommended Court Rules to Implement the Bail Reform Law, Part 2, Pretrial Detention and Speedy Trial (May 12, 2016) at 13-14.

In reviewing the Committee's Report, the Appellate panel noted the following comment:

> Rule 3:4A(e) addresses the issue of a possible appeal by the State of the denial of [a] pretrial detention motion and acknowledges that the State has a right, as with any adverse interlocutory trial court ruling, to seek an interlocutory appeal and provides that such an application must be made within 48 hours of the trial court order denying a motion for pretrial detention.
> [Ibid.]

Notwithstanding, the panel recognized that paragraph (e) "does not affirmatively require the State to file a motion for leave to appeal from an order denying detention within forty-eight hours." See State v. Satorius, No. AM-00695-17, supra, at 6.

The Appellate panel further stated:

> Nothing in the balance of Rule 3:4A would appear to preclude the State to seek interlocutory relief. Nonetheless, as we noted, the Rule's drafters clearly expressed its intent that applications by the State 'must be made within 48 hours of the trial court order denying a motion for pretrial detention.'
> [Id. at 6-7.]

Following the Appellate Division's decision to dismiss as untimely its motion for leave to appeal, the State filed for emergent relief to the Supreme Court pursuant to R. 2:9-8. The Supreme Court granted the State's application, in part, for the

Appellate Division to consider the merits of the State's motion for leave to appeal on an emergent basis, and continued the stay of defendant's release pending those proceedings. See State v. Satorius, No. S-081818, supra.

B. Discussion of the Committee

At the outset, the Committee agreed that the "within 48 hours" language in R. 3:4A(e) was never intended to impose a shorter time frame for an interlocutory appeal than the twenty-day period under R. 2:5-6. Rather, the "48 hours" originated from a proposal by the Division of Criminal Justice for an automatic stay of the trial court's release order during the drafting stages of this rule in the 2015-2017 term.[1]

1. Background on R. 3:4A(e)

During the preliminary discussions of the Criminal Justice Reform Act in the Committee's 2015-2017 term, it was recognized that N.J.S.A. 2A:162-18(c) expressly confers the defendant with the right to appeal an order granting a motion for pretrial detention. Additionally, N.J.S.A. 2A:162-18(c) requires that appeal to "be heard in an expedited manner." Whereas the Criminal Justice Reform Act does not expressly confer the State with the right to appeal an order denying its motion for pretrial detention.

Consequently, the Division of Criminal Justice expressed concerns that the Criminal Justice Reform Act could be interpreted as implicitly denying the State any right to appeal an order granting pretrial release. To address this concern, the Division of Criminal Justice

[1] The proposal was set forth in a memorandum from the Division of Criminal Justice (November 24, 2015).

proposed that paragraph (e) provide for an automatic stay of the defendant's pretrial release for 48 hours following the court's denial of its motion for pretrial detention.

Specifically, the language proposed by the Division of Criminal Justice stated:

> (e) Stay of Release Pending Appeal. If the court denies the prosecutor's motion seeking pretrial detention, the order granting release shall, on application of the prosecutor, be stayed for 48 hours to permit an appeal by the State.

Under this proposal, the "48 hours" referred to the defendant's continued detention or stay of pretrial release and not the period for the State to file an interlocutory appeal. Thus, if the State filed an interlocutory appeal within the 48-hour period, the Appellate Division would continue or deny the stay as part of its interlocutory appeal review. In the alternative, if the State chose not to file an interlocutory appeal within that 48-hour period, the defendant would be released pursuant to the trial court's release order.

The Committee ultimately decided not to support the Division of Criminal Justice's proposal for an automatic stay, and eliminated that language in its recommendation to the Supreme Court for R. 3:4A(e). The Committee, however, did agree with the need for paragraph (e) to recognize the State's right to file an interlocutory appeal from a trial court's order denying pretrial detention. See Report of the Supreme Court Committee on Criminal Practice, supra.

2. Proposed Amendments to R. 3:4A(e)

To address the language that the Appellate Division in Satorius interpreted as imposing a 48-hour filing deadline, the Committee first considered simply deleting the

"within 48 hours" language in paragraph (e). While this revision would preserve the State's existing appeal rights, it still left the balance of this provision phrased in the negative.

The Committee decided to recommend language that would clearly affirm the State's right to move for leave to appeal an interlocutory order granting pretrial release. This language would also serve to clarify that these appeals are to be treated the same as other appeals from interlocutory orders under R. 2:5-6 "Appeals from Interlocutory Orders, Decisions and Actions." Specifically, R. 2:5-6(a) states that "Applications for leave to appeal from interlocutory orders …shall be made by serving and filing … a notice of motion for leave to appeal …within 20 days after the date of service of such order…."

The proposed revisions to paragraph (e) of R. 3:4A follow:

Rule 3:4A. Pretrial Detention

(a) … no change

(b) … no change

(c) … no change

(d) … no change

(e) Interlocutory Order from Appellate Division. [Nothing in this Rule shall be deemed to preclude the State's right to seek an interlocutory order from the Appellate Division within 48 hours] The State may move for leave to appeal from an interlocutory order granting an eligible defendant's pretrial release.

Note: Adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended July 28, 2017 to be effective September 1, 2017; paragraph (b)(5) amended May 1, 2018 to be effective immediately; subparagraphs (b)(1) and (b)(2) amended July 27, 2018 to be effective September 1, 2018; paragraph (e) amended_____ to be effective _____.

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