

NEW JERSEY STATE BAR ASSOCIATION
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STATE OF NEW JERSEY : SUPREME COURT OF NEW JERSEY
: Docket No.: 078390
:
: On Notice of Petition for
: Direct Certification from the
Plaintiff/Movant, : Spring Lake Municipal Court
: Summons Nos. 1348-SL-058206;
: 059206; 059207; 059208; 059209;
v. : 059210
:
: Court Below:
EILEEN CASSIDY, : Special Masters Evidentiary
: Hearing
:
Defendants/Respondent. : Sat Below:
: Joseph F. Lisa, P.J.A.D. (ret.
: And t/a on recall)
:
:
:

AMICUS CURIAE NEW JERSEY STATE BAR ASSOCIATION RESPONSE BRIEF

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LEGAL ARGUMENT

I. DESPITE THE STATE'S PROFFER OF OVER 20,000 CASES BEING AFFECTED BY THE COURT'S DECISION IN THIS MATTER, THE NJSBA ESTIMATES THE NUMBER OF CASES THAT WILL BE REOPENED WILL BE MUCH LOWER, AND, REGARDLESS OF THE NUMBER, JUSTICE REQUIRES THAT DEFENDANTS BE AFFORDED AN OPPORTUNITY TO TAKE CORRECTIVE ACTION

A. The number of affected cases.

The State asserts that if this Court adopts the Special Master's findings and conclusion, "20,667 evidential breath samples will, in one fell swoop, be cast aside. . ." (State's brief at 19.) While the State estimates¹ that the number of cases in which faulty Alcotest readings is 20,667, the New Jersey State Bar Association (NJSBA) has consistently asserted that the actual number of defendants seeking post-conviction relief will be a fraction of that number.

The State is correct when it states the available remedies for potentially-affected defendants: (1) move to withdraw a guilty plea, R. 7:6-2(b); (2) move for a new trial, R. 7:10-1; or (3) file a petition for post-conviction relief, R. 7:10-2. In looking a little deeper, however, it becomes clear that the vast majority of cases in question are likely disposed cases where the defendants

¹This number is really only an estimate, which is why the Special Master required the State to prove in each and every case, through discovery, who actually signed the calibration report, and the NJSBA asked for a continuance of that Order in its original brief in response to the Special Master's Report. There is no comprehensive "list" that has been checked to verify throughout the entire state which calibrations were actually done by Sgt. Dennis.

have already served their suspensions and would not likely be motivated to obtain counsel and relitigate their matters in hopes of recovering fines that would amount to less than their legal costs. Furthermore, in most cases where an Alcotest reading would be rightly excluded, the case will still be provable by observations. In those cases, again, there would be little motivation for a defendant to relitigate simply to yield the same likely result. Overall, while the State has set forth the universe of cases that *could* be affected by the Court's decision, the practitioners in the trenches suggest that, realistically, the *actual* number will be a small fraction of that.

B. Mandatory Notice to Defendants is Required.

Regardless of the number of defendants that come forward to reopen their matters, the fact remains that 20,667 individuals referenced by the State were accused, and the NJSBA assumes, convicted of the serious charge of DWI, among others. If the Court accepts the Special Master's recommendation, the evidence used to convict these defendants is now suspect because of the inaction of State Police Sgt. Marc Dennis. As the NJSBA noted in its original response to the Special Master's Report, those defendants deserve plain language notice of the possibility that the evidence used to convict them was tainted and information about how they might proceed. While the State voluntarily provided notice of the Special

Master's hearings, should the Court accept the Special Master's findings, additional notice must advise defendants in plain language of their rights.

As the Court noted in State v. Gookins, 135 N.J. 42, 48 (1994), a defendant who is convicted under tainted evidence is entitled to corrective justice, not as "punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." Id. at 48 (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). When a defendant is prosecuted by the State through the use of tainted evidence, that defendant has the continuing right to challenge the legality of the State's presentation of that evidence. See State v. Sugar, 84 N.J. 1, 27 (1980).

Here, affected individuals stand to suffer irreparable harm as they have been sentenced to consequences of magnitude in violation of their due process rights. Without adequate notice, they may have no way of knowing that they have a right to have counsel review their case, or that a conviction from years ago should not present future consequences for them. Failure to provide such notice will add a second layer of harm to that already done.

II. IF THE COURT ADOPTS THE SPECIAL MASTER'S FINDINGS, MOTIONS FOR RELIEF DO NOT REQUIRE A SPECIAL MASTER AND CAN BE HANDLED IN THE USUAL COURSE BY SITTING MUNICIPAL COURT JUDGES

The State recommends that a Special Master be appointed in each county to handle post-conviction proceedings arising from the miscalibration of Alcotest instruments due to the sheer volume of potentially affected cases. (State's brief at 23.) The NJSBA disagrees and believes that is not necessary.

As noted above, the NJSBA does not believe there will be a huge number of cases. Nor will there be anything special about these cases that cannot be handled in the usual course by the appropriate, local municipal court. A judge hearing a motion for post-conviction relief will simply be applying current law to determine if a reading should be rejected and, if so, will need to examine the other available proofs in the matter. Municipal court judges do that every day. These are routine trial issues that do not call for special consideration.

Moreover, rather than providing relief to municipalities, appointing a special master in each county will likely introduce additional hurdles and expenses. For example, resident defendants and witnesses will have to travel to and from the special master's location, which may be difficult, particularly if a defendant has a suspended driving license from the original conviction now being examined. In addition, coordinating local police officer schedules

to ensure officers are available for court dates in a distant location will likely add extra cost to the municipality to prosecute the matter.

For these reasons, the NJSBA urges the Court to not appoint special masters in each county and allow any post-conviction relief matters to be handled as routine matters by the municipal court judge sitting in the affected municipality.


CONCLUSION

For the reasons set forth above, in addition to the recommendations contained in the NJSBA's original brief in response to the Special Master's Report, the NJSBA recommends that this Court require the State to notify the defendants affected by State Police Sgt. Marc Dennis's conduct and that this Court deny the State's recommendation that special masters be appointed to supersede competent, qualified municipal court judges.

Respectfully submitted,

New Jersey State Bar Association

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Dated:

6/13/18

