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An unwise departure from judicial restraint

In February 2006, I wrote to *New Jersey Lawyer* to criticize an editorial that faulted a then-recent opinion from the New Jersey Supreme Court because the opinion did not address an issue the author of the editorial felt should have been addressed. The crux of my criticism of that editorial was that the issue in question was not properly before the Supreme Court in the context of that case, and that the Supreme Court should not have been faulted for its failure to address an issue not properly before it. I write today on a similar subject, one commonly known to lawyers and jurists as the concept of judicial restraint.

POINT of VIEW

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In a recent opinion approved for publication, *Patel v. New Jersey Motor Vehicle Commission*, the Appellate Division was called upon to interpret the provisions of N.J.S.A. 39:4-97.2, a provision of the Motor Vehicle Code that is quite well-known among practitioners who appear in this state's municipal courts. The statute, enacted in 2000, was designed with the specific purpose of permitting municipal prosecutors to amend appropriate traffic violations to the newly created offense, which carries no motor vehicle points for the first and second offenses.

In *Patel*, the Appellate Division addressed the reach of an exception to the requirement that points be assessed for a third or subsequent offense. The appellant argued that she qualified for the exception which provides that a violation "committed more than five (5) years after the prior offense shall not be considered a subsequent offense for purposes of assessing motor vehicle penalty points."

The Appellate Division quite appropriately concluded that the five-year waiting period defined in the exception referred to the length of time that elapsed from the violation immediately preceding the present one. In so ruling, the Appellate Division appropriately rejected Patel's argument that the five-year waiting period should be calculated to include the lapse of time between the first offense and the most recent offense.

Had the Appellate Division opinion rested on this relatively straightforward question of statutory interpretation, the opinion would be unassailable and rather unremarkable. However, for reasons known only to the Appellate Division, the opinion continued, expressing observations and conclusions not at all germane to the matter before it.

Even the opinion itself recognized as much: "Although not necessary to the disposition of this appeal, we make one final observation. The MVC argues that relief from the assessment of motor vehicle penalty points is afforded by subsection e. only after the third offense. That is a reasonable construction of the statute."

To those who embrace the concept of judicial restraint, an introductory phrase like "although not necessary to the disposition of this appeal, we make one final observation" sends shivers. With all due respect, courts should not make observations concerning legal issues that are not necessary to the disposition of the matter, unless extraordinary circumstances are present or directions are necessary to a lower court concerning issues to be resolved on remand.

For reasons known only to the Appellate Division, the opinion expressed observations and conclusions not at all germane to the matter before it.

This case presented neither scenario. The appellant in *Patel* was appealing the assessment of motor vehicle penalty points for her fourth conviction. Under any construction of the statute, a fourth conviction under the statute is potentially eligible for the "step-down" provision contained in the exception. The remainder of the opinion consists of an analysis of the statute to determine whether third-time offenders are eligible for the step-down provision. Inasmuch as Ms. Patel was admittedly a fourth-time offender, the Appellate Division should not have addressed the issue at all.

Some may ask, what difference does all of this make? The fact is, thousands of people across the state seek to resolve their municipal court cases by accepting a plea agreement and paying a fine, as long as no motor vehicle points are assessed, for fear their insurance rates will go up. Municipal judges, prosecutors, defense attorneys and the public have long interpreted the step-down exception to the assessment of motor vehicle points to apply to third offenders, and subsequent offenders.

The appellant in *Patel* was a fourth (subsequent) offender and therefore likely had no interest in litigating whether third-time offenders were entitled to the step-down avoidance of penalty points. Therefore, without an appropriate litigant to advance the position that third-time offenders are entitled to the step-down, the Appellate Division effectively foreclosed any argument to the contrary to be made by someone who might have a real interest in the issue.

The Appellate Division opinion prematurely, and without the benefit of having a case or controversy on the issue properly before it, in essence gave an anticipatory ruling that the Motor Vehicle Commission's position that third-time offenders are not entitled to the step-down provision to avoid the assessment of penalty points, is to be the law of the land.

The concept of judicial restraint — the principle that courts should decide only the cases before them — is based on sound policy reasons. The Appellate Division in Patel represents an unwise departure from these axioms.

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