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STATE OF NEW JERSEY, : CRIMINAL ACTION
 Plaintiff-Petitioner, : On Petition for Certification to
 v. : the Superior Court of New Jersey,
 : Appellate Division.
 CHARLES A. WATKINS III, : Sat Below:
 Defendant-Respondent. : Hon. Howard H. Kestin, J.A.D.,
 : Hon. Harvey Weissbard, J.A.D.,
 : Hon. Joseph L. Yannotti, J.A.D.

PETITION AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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STATEMENT OF THE MATTER INVOLVED

With a passing reference to the rules that a prosecutor's denial of defendant's Pretrial Intervention ("PTI") application is entitled to the highest deference on appeal, the Appellate Division has substituted its own judgment by reversing defendant's conviction and remanding this matter to the prosecutor to reconsider her denial of defendant's PTI application. In a published decision, State v. Watkins, ___ N.J. Super. ___ (App. Div. 2007), the Appellate Division has established a per se rule that a series of fraudulent transactions occurring over a four-month period of time can never constitute a continuing criminal enterprise simply because in the panel's view, four months is somehow not long enough. (Pa48-55).¹ The court artificially focused solely on the duration of defendant's fraud and ignored the other significant circumstances surrounding the nature of defendant's crimes; namely, that defendant was a state employee who submitted nine false certifications to the Department of Labor ("DOL") over a four-month period and received \$5,670 of unemployment benefits to which he was not entitled. (Pa1-18; Pa20-24). Significantly, defendant's course of criminal conduct continued for as long as it possibly could and terminated only because his objective had

¹ "Da" refers to the appendix to defendant's direct appeal brief.
"1T" refers to the PTI appeal hearing transcript dated September 24, 2004.
"2T" refers to the PTI appeal hearing transcript dated November 19, 2004.
"3T" refers to the plea transcript dated February 7, 2005.
"4T" refers to the sentencing transcript dated April 15, 2005.
"Pa" refers to the appendix to this petition.
"PSR" refers to defendant's Adult Presentence Report.

been reached -- his completion of the training program through which he had fraudulently obtained unemployment benefits. There is no reason whatsoever to believe he would not have continued to bilk the State of more money if his training needs had gone on longer. Moreover, defendant promptly plowed his ill-gotten wealth into new business ventures, and then refused to repay any of these unlawful unemployment benefits after his fraud was discovered by the DOL a year later in 2000. (Pa20-32; Pa45). Only after his 2004 indictment, did defendant agree to repay this money, and that was not until he pleaded guilty pursuant to a negotiated plea agreement some six years later, in February 2005. (Pa28-32; Pa41-45). Before that time, defendant had paid nothing toward the principal debt, fines and penalties totaling \$7,619.78. (2T4-20 to 25; Pa45).

In 1999, defendant, who had been temporarily laid off from Trenton Psychiatric Hospital received an extension of unemployment benefits under the DOL's "Additional Benefits During Training Program," whereby he could receive unemployment benefits while he pursued an education and job training skills in culinary arts at Mercer County Community College. (Pa31-32). Defendant, however, resumed working when he was rehired by the Hospital on January 17, 1999. (Pa24). Defendant realized that, so long as he remained in college, the DOL, through the training program, would send him unemployment checks based on his false certifications that he was not working. (3T12-3 to 20). After he was rehired, defendant submitted nine certifications to the DOL, beginning on February 1, 1999, for weeks January 23 through

May 22, 1999, indicating falsely that he was unemployed and entitled to receive unemployment benefits. (Pa1-9). In addition to falsely certifying that he was entitled to these benefits, defendant falsely certified that he was entitled to these benefits each time he endorsed and cashed the resultant nine unemployment benefit checks. (Pa10-18).

Knowing full well that he was not entitled to these unemployment benefits, defendant on numerous occasions certified that he was in fact eligible and thereafter compounded his fraud by cashing the checks. The dates defendant made these certifications and the dates he negotiated the checks were as follows:

<u>DATES OF FALSE CERTIFICATION</u>		<u>DATES UNEMPLOYMENT BENEFIT CHECK NEGOTIATED</u>
February 1, 1999	-	February 8, 1999
February 16, 1999	-	February 19, 1999
March 1, 1999	-	March 4, 1999
March 15, 1999	-	March 18, 1999
March 29, 1999	-	April 2, 1999
April 12, 1999	-	April 15, 1999
April 26, 1999	-	April 29, 1999
May 10, 1999	-	May 12, 1999
May 24, 1999	-	June 2, 1999

Defendant admitted at his guilty plea hearing that he knowingly failed to report his re-employment by Trenton Psychiatric Hospital to the DOL. (3T12-12 to 14).

During the time span of defendant's fraud, he opened the

"first Culinary Cafeteria at Mercer County Community College, called the 'Lucky 7 Lunch Box'" and "an off-site catering business called 'Treasured Memories Catering'" through the Hospital. (Da15-16; Pa39-40). Defendant submitted his last false certification to the DOL on May 24, 1999, and cashed the check on June 2, 1999. (Pa9; Pa18). Defendant received a culinary technician certificate of completion from the Career Training Institute of Mercer County Community College on June 4, 1999. (Pa19).

After discovering that defendant had been working at the Hospital at the same time he had been paid unemployment benefits, the Bureau of Benefit Payment Control sent defendant a letter on September 12, 2000, indicating that he had received \$5,670 in unemployment benefits to which he was not entitled. (Pa20-21). A fact-finding hearing, in which a repayment schedule would have been established, was scheduled for September 22, 2000. (2T3-4 to 4-1; Pa21). Defendant neither appeared for the hearing nor contacted the DOL. (2T3-23 to 4-1). Thereafter, a determination and demand for refund of unemployment benefits, imposition of penalties and disqualification from future benefits was made because of defendant's "false or fraudulent misrepresentation" that he was entitled to these benefits. (Pa22-23). With the assessment of penalties and fines, defendant then owed \$7,087.50. Ibid.

The State investigator assigned to this case continued to attempt to contact defendant by telephone to no avail. (2T4-2 to 20). On January 29, 2004, when defendant failed to either

cooperate or acknowledge the State's attempt to resolve this matter civilly, the State Grand Jury indicted defendant for third-degree theft by deception and fourth-degree unsworn falsification to authorities. (Pa25-30). Thereafter, defendant submitted a PTI application which was accepted by the Mercer County Criminal Division Manager. (Pa31). From the time the DOL ceased providing unemployment benefits to defendant in May 1999, until the time he was indicted on January 29, 2004, defendant had not made one voluntary repayment of these funds now totaling \$7,619.78. (2T4-20 to 25).

In a letter dated April 19, 2004, the State objected to defendant's entry into PTI for three reasons: (1) defendant's fraud from January to May 1999 constituted a continuing criminal enterprise; (2) he was a public employee; and (3) he had a 1990 disorderly persons offense conviction for receiving stolen property. (Pa31-32).

On April 26, 2004, defendant was notified by Trenton Psychiatric Hospital that he was suspended with pay pursuant to a Preliminary Notice of Disciplinary Action, which also indicated that he was subject to forfeiture of his public office as a result of his indictment. (Pa33-37).

On September 24, 2004, the Honorable Maria M. Sypek, P.J. Cr., after the initial oral argument on the State's denial of defendant's PTI application, adjourned the matter until November 19, 2004. The adjournment was intended to allow the State to address the issue regarding defendant's status as a public employee in its determination of whether to consent to his PTI

application. In advance of that hearing, the prosecutor submitted a letter brief and advised Judge Sypek of the following at the subsequent hearing:

1. the State does not have a per se blanket policy denying PTI admission to public employees;
2. the State's reasons for denying public employees' admission into PTI is well-grounded within the guidelines of PTI rules adopted by the Supreme Court;
3. defendant's crime constituted a breach of the public trust because there was a nexus between defendant's crime of dishonesty and his public employment at Trenton Psychiatric Hospital. Defendant's admission into PTI would deprecate the seriousness of his crime;
4. defendant could have resolved this matter civilly long before the criminal prosecution was begun and defendant's failure to do so was not indicative of someone who was amendable to rehabilitation, but of someone who should go through the ordinary criminal process;
5. defendant made no voluntary payments toward repayment of these ill-gotten benefits;
6. defendant's action constituted a continuing course of criminal activity;
7. defendant's rap sheet showed that defendant had a 1990 disorderly persons offense for receiving stolen property;² and
8. the integrity of the Unemployment Insurance Benefit Fund has to be preserved.

[2T2-23 to 7-7.]

Judge Sypek took the matter under advisement. (2T9-20 to 13-8). On February 22, 2006, after defendant had been sentenced

² In fact, defendant also had been convicted of the disorderly persons offense of interfering with the police on April 13, 2004, and was assessed a \$1,030 fine. (4T5-11 to 14; PSR at 6).

on April 15, 2005, Judge Sypek affirmed the State's rejection of defendant's entry into PTI based on two grounds: (1) his nine false certifications submitted in a four-month period constituted a continuing criminal enterprise; and (2) he had a prior municipal court conviction in 1990 for receiving stolen property. (Pa41-47).³

In its February 5, 2007, published opinion, the Appellate Division ruled that "[w]hatever may be the limits of a continuing enterprise, defendant's actions did not fit that concept" as developed by case law. Watkins, supra, ___ N.J. Super. at ___ (slip op. at 8). (Pa55). Even though the court found that defendant's conduct was an enterprise, it found that it was not a "continuing" enterprise "due to the relatively brief length of time it persisted. A series of unlawful acts intended to profit the criminal do not translate into a 'business' or 'enterprise' simply because they took place over a number of months." Ibid.

On February 13, 2007, the State filed its Notice of Petition for Certification. (Pa56).

STATEMENT OF THE QUESTION PRESENTED

Did the Appellate Division err in finding that a fraud committed against the Unemployment Insurance Benefit Fund for a period of four months by a public employee does not constitute a continuing criminal enterprise under Guideline 3(i)(2) where

³ Contrary to the State's brief and argument at the November 19, 2004 hearing, Judge Sypek's order mistakenly indicated that the State had dropped defendant's status as a public employee as a factor in its decision to reject defendant's PTI application. Compare Pa45-47 with 2T2-23 to 7-7.

defendant submitted nine false certifications, obtaining unemployment benefits to which he was not entitled; where defendant's scheme continued for as long as it took to reach its desired end (with no reason to believe it would not have persisted further if necessary); and where defendant refused to either acknowledge or repay these ill-gotten criminal proceeds for the ensuing five years, during which time he used his illegally-generated income to open new commercial ventures?

REASONS FOR GRANTING THE PETITION

POINT I

THE APPELLATE DIVISION ERRED WHEN IT SUBSTITUTED ITS JUDGMENT FOR THAT OF THE PROSECUTOR AND ESTABLISHED A PER SE RULE THAT A FOUR-MONTH FRAUD, IRRESPECTIVE OF THE ATTENDANT FACTS, DOES NOT CONSTITUTE A CONTINUING CRIMINAL ENTERPRISE UNDER GUIDELINE 3(i)(2).

Inexplicably failing to view the prosecutor's decision through the mandatory highly deferential filter of appellate review, the Appellate Division provided a mere "perfunctory recitation" of the applicable standard and failed "to provide any explanation" for the basis of its decision. State v. Wallace, 146 N.J. 576, 587 (1996). Ignoring all of the attendant facts of this case, the appellate court has found that the prosecutor's determination that defendant's four-month fraud constituted a continuing criminal enterprise under Guideline 3(i)(2) was a patent and gross abuse of her discretion. By its decision, the Appellate Division has "essentially evaluated the case as if it stood in the shoes of the prosecutor," and established a per se rule that a four-month fraud cannot constitute a continuing

criminal enterprise. Id. at 589. This ruling is untenable and has no support in well-established case law. This Court has often ruled that whether the appellate or trial court agrees with the prosecutor's decision is irrelevant, since a reviewing court has no authority to second guess a position taken by the prosecutor. Ibid.; State v. Nwobu, 139 N.J. 236, 254 (1995); State v. DeMarco, 107 N.J. 562 (1987); accord State v. Motley, 369 N.J. Super. 314, 321 (App. Div. 2004). Rather, the standard is "whether the prosecutor's decision could not have been reasonably made upon weighing the relevant factors." Nwobu, supra, 139 N.J. at 254.

Because of the close relationship between the PTI Program and the prosecutor's charging authority, courts allow prosecutors "wide latitude" in deciding whom to divert into the PTI program or whom to prosecute. State v. Negran, 178 N.J. 73, 82 (2003). It is this Court's expectation that a "prosecutor's decision to reject a PTI applicant will rarely be overturned." State v. Baynes, 148 N.J. 434, 443 (1997) (quoting Wallace, supra, 146 N.J. at 585 (quoting State v. Leonardis (II), 73 N.J. 360, 380 (1977)). In fact, the level of deference is so high that such deference is categorized as "enhanced," "extra," and "extreme." Negran, supra, 178 N.J. at 82; Baynes, supra, 148 N.J. at 443; Nwobu, supra, 139 N.J. at 246. Moreover, it is a fundamental proposition of law established by this Court that "[a]bsent evidence to the contrary, it is presumed that the prosecutor considered all relevant factors before rendering a decision." Baynes, supra, 148 N.J. at 444; State v. Dalglish, 86 N.J. 503,

509 (1981).

The enhanced or extreme deference afforded to prosecutors regarding PTI admission translates into a heavy burden for a defendant to overcome a prosecutorial veto of his admission into PTI. A defendant must clearly and convincingly establish that the alleged prosecutorial error complained of constituted a patent and gross abuse of her discretion in that her decision clearly subverted the goals of PTI. Nwobu, supra, 139 N.J. at 247 (quoting State v. Kraft, 265 N.J. Super. 106, 111-12 (App. Div. 1993)). Consequently, this Court has determined that judicial review of a prosecutor's decision is "limited to instances of the most egregious examples of injustice and unfairness," where the prosecutor's decision was more than "just an abuse of discretion as traditionally conceived," but rather, "a prosecutorial decision that 'has gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention.'" Wallace, supra, 146 N.J. at 582-583 (quoting State v. Ridgway, 208 N.J. Super. 118, 130 (Law Div. 1985)).

In this case, defendant, a public employee, defrauded the Unemployment Insurance Benefit Fund of \$5,670 in unemployment benefits to which he was not entitled by submitting nine false certifications to the DOL. He thereafter endorsed the resultant nine benefits checks, which constituted additional false certifications that he was entitled to these benefits. Defendant's crimes constituted third-degree thefts by deception; i.e., a crime of dishonesty, which subjects defendant to

spontaneity," but rather, participated "in a series of deliberate and planned unlawful acts" over a period of time. State v. Bender, 80 N.J. 84, 95 (1979); State v. Marie, 200 N.J. Super. 424, 427 (Law Div. 1984); see also State v. Barrett, 157 N.J. Super. 96, 102 (App. Div. 1978); Cf. State v. Imbriani, 280 N.J. Super. 304, 318 (Law Div. 1984) ("[w]hether the conduct occurred on a daily, weekly, monthly or some other basis, it is clear that every day during that five-year period [Imbriani] knew that he had performed and was continuing to perform illegal acts and was receiving monies to which he was not entitled."), aff'd supra, 291 N.J. Super. 171. It was defendant's repetitive criminal acts (the submission of nine false certifications and illegally cashing nine unemployment benefits checks over a four-month period of time), which clearly provided "a negative implication when rehabilitation is considered." Marie, supra, 200 N.J. Super. at 430. Considering his repetitive course of conduct, his status as a public employee and his criminal record, the prosecutor properly rejected defendant's PTI application. Her three-pronged justification was wholly proper and her denial of defendant's PTI application should have been affirmed by the Appellate Division.

In reviewing PTI decisions, the role of an appellate court is to determine "whether the prosecutor's decision could not have been reasonably made upon weighing the relevant factors." Nwobu, supra, 139 N.J. at 254. The Appellate Division cannot say that the prosecutor's decision here "could not have been reasonably made" given the facts of this case.

Defendant had no pangs of conscience that caused him to desist from his fraud. He bilked the system for as long as he possibly could, and it ended only because his crime reached its natural conclusion -- receipt of a culinary technician certificate of completion. Defendant's criminal activity "was not of such a nature that it had to continue except for defendant's intent and purpose to continue to offend." State v. Imbriani, 291 N.J. Super. 171, 182 (App. Div. 1996).

The appellate panel was also wrong to artificially focus on the four months of false certifications when defendant's improper conduct continued long after that. Critically, defendant refused to either acknowledge or repay this substantial principal debt of \$5,670 for five years. At the time defendant applied for PTI, he had not paid one cent toward this debt. (2T4-20 to 22). Even though defendant could have availed himself of the DOL's civil resolution process three years prior to his PTI application, and could have avoided criminal prosecution altogether, defendant failed to attend a fact-finding hearing and evaded the DOL investigator's attempts to contact him. (2T4-2 to 18). Only when defendant was indicted did he seek to make restitution. He should have done so much earlier. Therefore, defendant's crime against the Fund continued for years because he did not agree to repay these illegally obtained unemployment benefits until he pleaded guilty in 2005 almost six years after he had obtained them.

Meanwhile, during the pendency of this fraud and thereafter, defendant, according to his own counsel's letter brief, was able

to open a cafeteria at Mercer County Community College and open his own personal catering business. (Da15-16; Pa39-40). Thus, defendant has treated these ill-gotten criminal proceeds of \$5,670 as if it were his own money, used it for his personal benefit, and refused to repay it until he was indicted five years later. Such a use implicates the additional crime of money laundering. State v. Harris, 373 N.J. Super. 253, 263 (App. Div. 2004), certif. denied, 183 N.J. 257 (2005) (a defendant is guilty of money laundering contrary to N.J.S.A. 2C:21-25a if he "possesses property known to be derived from a criminal activity"). That the State did not charge defendant with money laundering is of no moment. The prosecutor can look to the actual facts of the case, especially when they are not in dispute, such as in this case, to determine whether defendant should be admitted into PTI. See generally, Imbriani, supra, 280 N.J. Super. at 316.

Given this factual backdrop, it is the "'subjective' evaluations" of the prosecutor for the Unemployment Insurance Benefit Fund regarding reasonable ways to protect the integrity of the fund for all unemployed New Jersey workers and to secure the repayment of ill-gotten unemployment benefits sooner as opposed to later which were absolutely relevant to her denial of defendant's PTI application. This Court has emphasized in no uncertain terms that a "'reviewing court is not permitted to 'discount the prosecutor's responsiveness to the prevailing level of local public anxiety over certain forms of misconduct and its proper effect upon him in choosing between the goals of public

deterrence and the least burdensome form of rehabilitation for the offender.'" Wallace, supra, 146 N.J. at 590 (quoting Kraft, supra, 265 N.J. Super. at 117).

It is the prosecutor who can properly assess "the degree of local public anxiety attaching to certain forms of misconduct," such as a public employee's repeated fraud committed against the Unemployment Insurance Benefit Fund. State v. Sutton, 80 N.J. 110, 119 (1979). This Fund exists to assist "citizens of this state who pay into it and at times need it. [It is] to bridge that gap" between employment and unemployment. (2T2-23 to 7-7). This Fund does not exist to provide defendant with either windfall income or seed money to start catering businesses.

Only as a last resort did the State seek to criminally prosecute defendant, after years during which he refused to acknowledge the State's legitimate and irrefutable claim. Defendant should not be allowed at this late juncture to avoid criminal prosecution by entering PTI which would put him back to exactly that position he rejected for so many years. To allow defendant to enter PTI after years of evading the State's attempts to obtain restitution would establish a disincentive for others to handle these matters earlier, prior to prosecution. Civil resolution of the State's claims benefits defendants in that criminal prosecution is avoided and less interest is accrued; the State and the public benefit because these illegally obtained unemployment benefits are repaid much sooner than they otherwise would be. Both benefits would be irretrievably compromised by rewarding defendant for his abject failure to even

respond to the DOL's legitimate requests for restitution over a five-year period.

The possible value of PTI treatment for defendant was outweighed by the public need for prosecution, given his steadfast refusal to acknowledge the State's claim during the civil remedies phase, and given that the debt went unpaid for five years. See N.J.S.A. 2C:43-12e(14); N.J.S.A. 2C:43-12e(17) ("the harm done to society by abandoning criminal prosecution would outweigh the benefits to be derived by society from the channeling of this defendant into PTI"); accord Imbriani, supra, 291 N.J. Super. at 181 (a defendant's refusal to settle a related civil suit is an appropriate factor to be considered when evaluating whether a defendant should receive PTI). In this case, the State appropriately determined that the public would benefit more from defendant's prosecution rather than his diversion.

The prosecutor's decision denying defendant's admission into PTI was not a patent or gross abuse of her discretion which subverted the goals of PTI. Rather, it is the Appellate Division's decision, and not the prosecutor's, which patently subverts the goals of PTI. The court has "cherry picked" from the prosecutor's multi-faceted justifications one factor, the duration of defendant's fraud, and has examined it completely out of context. The court skewed the analysis with the result that the duration of a defendant's crime is singularly determinative of whether it constituted a continuing criminal enterprise. Thus, the Appellate Division has established a bright line that a

defendant's fraud committed over a four-month period of time can never support a finding of a continuing criminal enterprise. This ruling constitutes error. Whereas this Court has cautioned against prosecutors establishing per se rules regarding PTI, which by their very nature require a disregard of relevant factors, the Appellate Division has established its own per se rule and disregarded the prosecutor's valid justifications for denying defendant's PTI application. Compare State v. Caliguiri, 158 N.J. 28, 44 (1999); Baynes, supra, 148 N.J. at 445 ("the presumption that the prosecutor has considered all relevant facts is overcome" when a defendant establishes that the prosecutor relied on a per se rule).

The time span over which defendant committed his crimes is not determinative of whether he is entitled to PTI. Temporal parameters can never be divorced from the attendant facts. For instance, the Marie Court noted that "a single criminal act may . . . be of such consequence as to permit a prosecutorial decision against admission to PTI" because of the nature of the offense charged alone. Marie, supra, 200 N.J. Super. at 430. This Court's decision in Nwobu proves this point. While this Court found that Nwobu's six week second-degree fraud may not have constituted a continuing criminal enterprise because ordinarily "'a continuing criminal business or enterprise' in Guideline 3(I) is predicated on more long-standing criminal involvement," this Court nonetheless affirmed the prosecutor's denial of defendant's PTI application. Nwobu, supra, 139 N.J. at 251. The nature of Nwobu's offense, a second-degree fraud, was the most significant

Court's guidance, this case "presents a question of general public importance which has not been but should be settled by" this Court. R. 2:12-4.

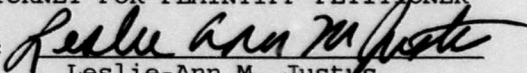
CONCLUSION

For the foregoing reasons, the State respectfully urges that certification be granted.

Respectfully submitted,

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-PETITIONER

BY:

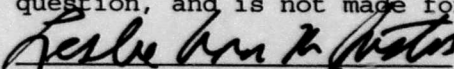

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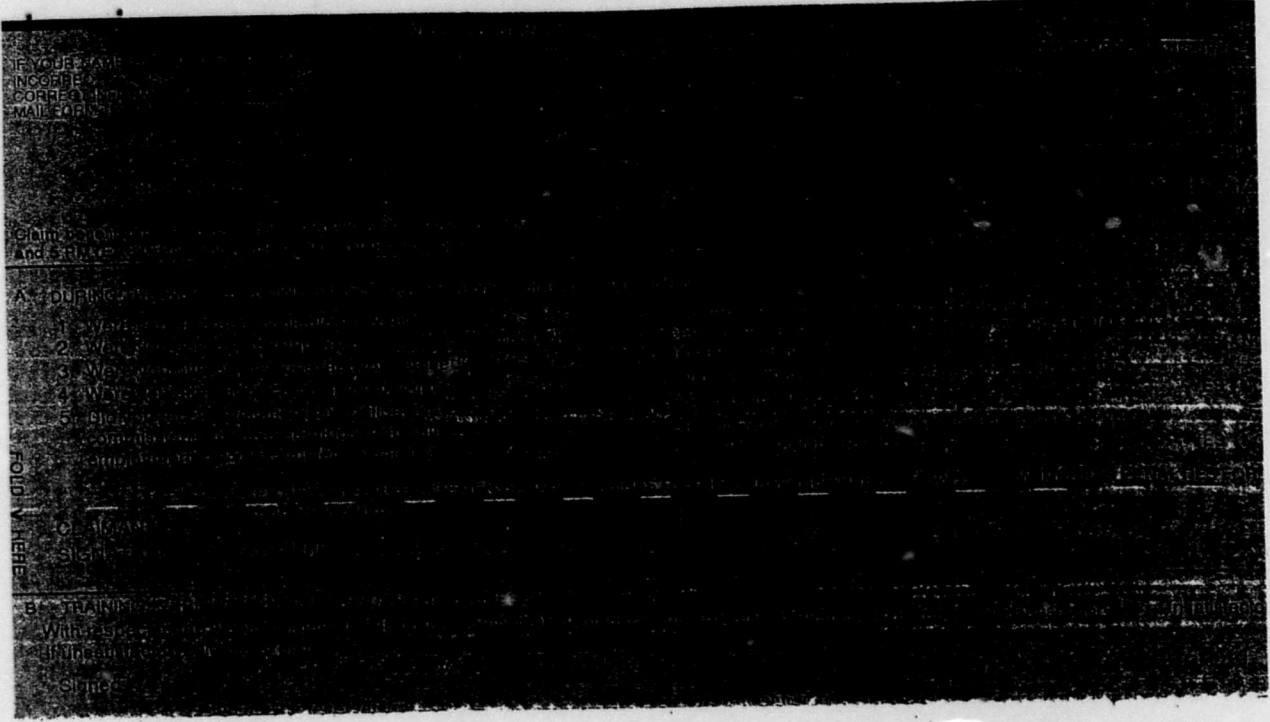
OF COUNSEL AND ON THE PETITION

CERTIFICATION

I hereby certify that this application is made in good faith, presents a substantial question, and is not made for purposes of delay.


Leslie-Ann M. Justus
Deputy Attorney General

DATED: March 9, 2007



c. Complete this Section only if you worked or received holiday or vacation pay during the weeks claimed. If you returned to work **FULL-TIME**, complete items #2 and #3. **DO NOT** complete items #4 and #5. If you are claiming **PARTIAL BENEFITS**, complete items #1, #2, and #3. Mail proof of your earnings, signed by your employer, **OR** complete item #4 and have your employer complete item #5.

1 Did you return to work: FULL TIME PART TIME

If you returned to work full-time, enter date _____

Occupation _____ and

Rate of pay: \$ _____ Per _____

Are you still working? YES NO

If NO, enter last day of work _____ and explain why in REMARKS below.

2 EMPLOYER NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____

WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1 _____ WEEK 2 _____

Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages	
Sunday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Total			\$ _____	Total			\$ _____

5 Verification of Partial Earnings

Employer Instructions: Review the information provided by the claimant to ensure that it is accurate. If correct, complete the employer certification below. If incorrect, please provide correct information. Employee tips **MUST** be included in the gross wages.

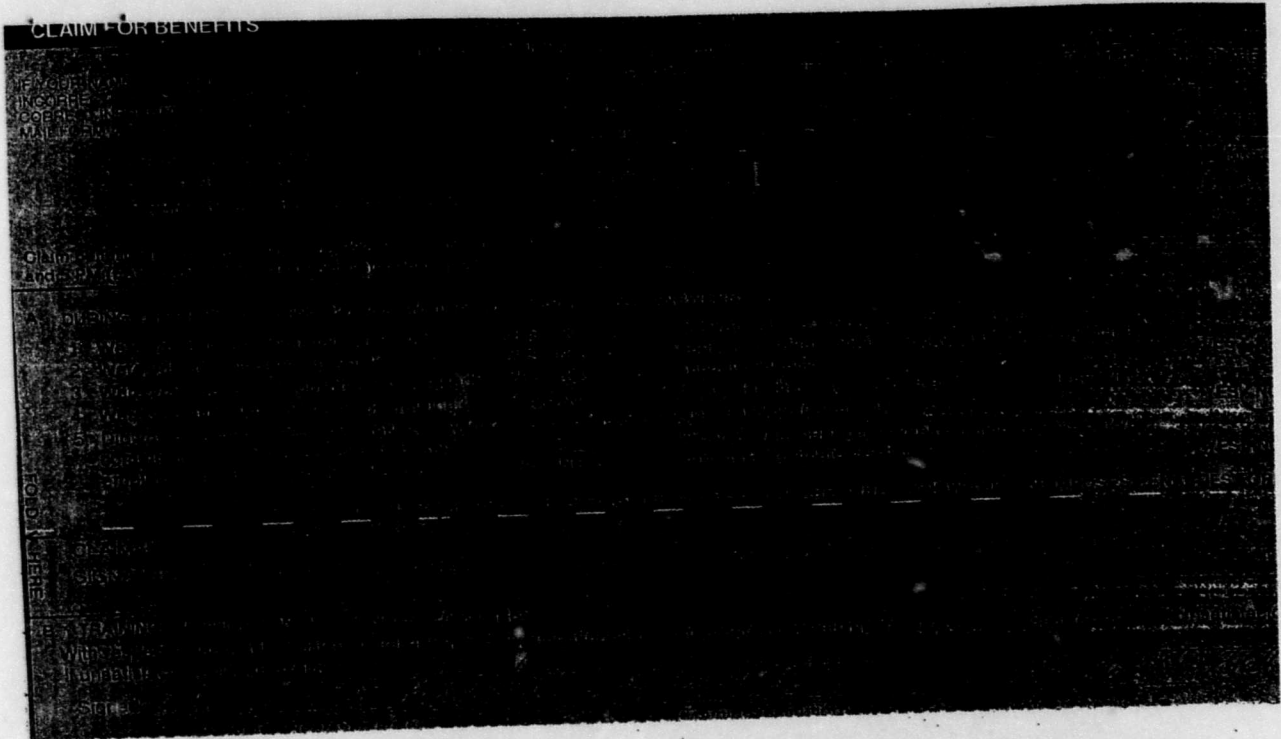
Employer Certification: The above individual has accepted all work offered and earned less than full-time remuneration as shown above.

Employer's Signature **X** _____

Title _____

Tel # () _____

CLAIM FOR BENEFITS



C. Complete this Section only if you worked or received holiday or vacation pay during the weeks claimed. If you returned to work **FULL-TIME**, complete items #2 and #3. **DO NOT** complete items #4 and #5. If you are claiming **PARTIAL BENEFITS**, complete items #1, #2, and #3. Mail proof of your earnings, signed by your employer, **OR** complete item #4 and have your employer complete item #5.

1 Did you return to work: FULL TIME PART TIME

If you returned to work full-time, enter date _____;

Occupation _____ and _____

Rate of pay: \$ _____ Per _____

Are you still working? YES NO

If NO, enter last day of work _____ and explain why in REMARKS below.

2 EMPLOYER NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____

WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1 _____ WEEK 2 _____

Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages	
Sunday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Total			\$ _____	Total			\$ _____

5 Verification of Partial Earnings

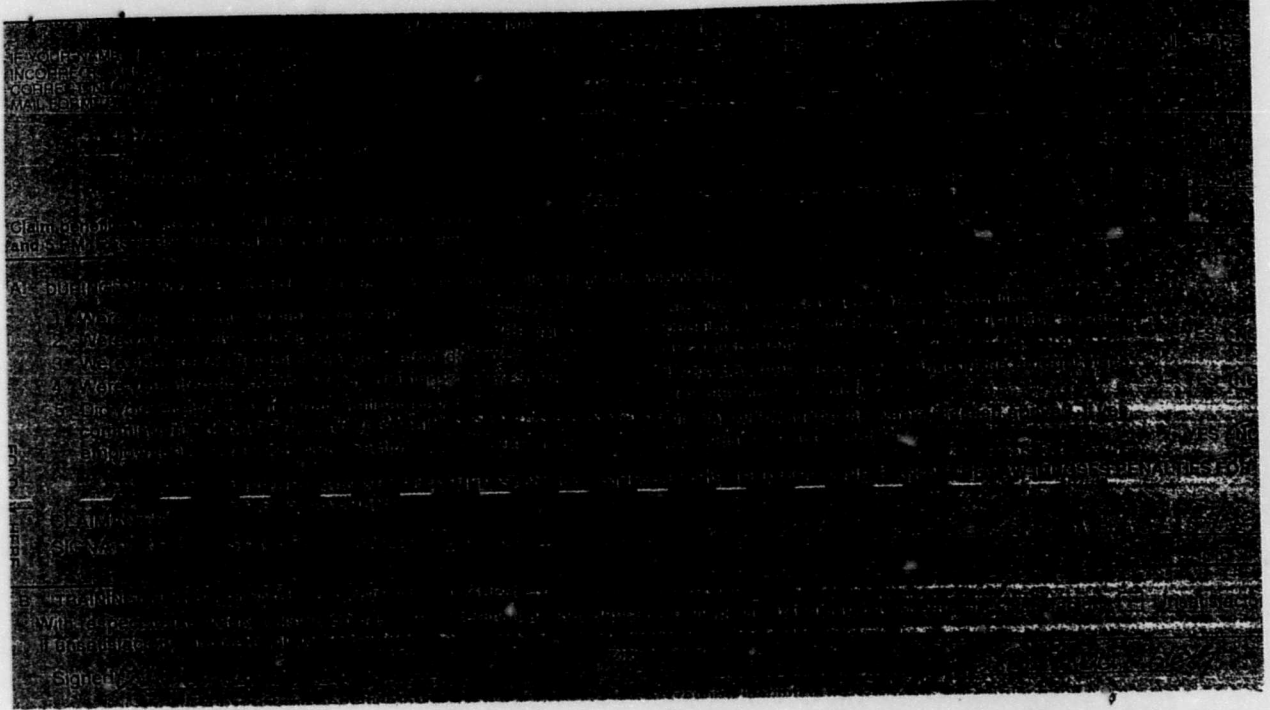
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Employer's Signature **X** _____

Title _____

Tel # () _____



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1 Did you return to work: FULL TIME PART TIME

If you returned to work full-time, enter date _____;
 Occupation _____ and
 Rate of pay: \$ _____ Per _____

Are you still working? YES NO
 If NO, enter last day of work _____ and explain why in
 REMARKS below.

2 EMPLOYER NAME _____
 ADDRESS _____
 CITY, STATE, ZIP _____ Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____ WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1 _____ WEEK 2 _____

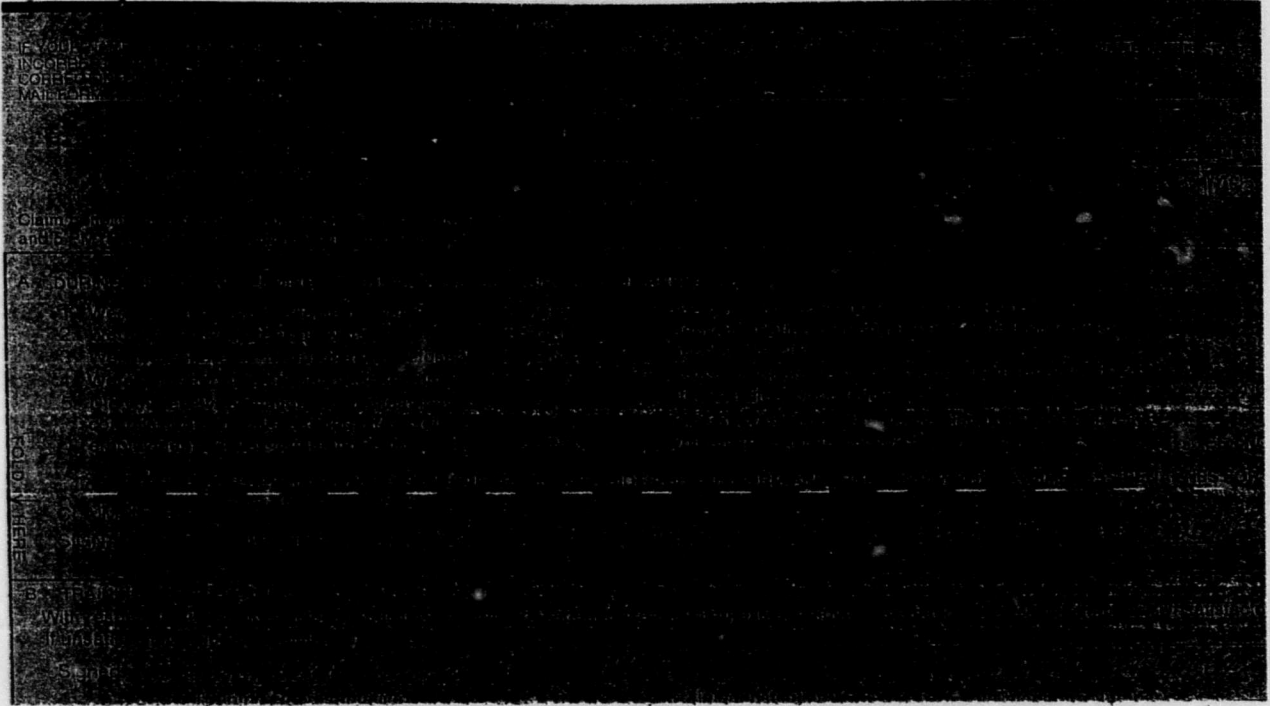
Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages	
Sunday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Total			\$ _____	Total			\$ _____

5 Verification of Partial Earnings

Employer Instructions: Review the information provided by the claimant to ensure that it is accurate. If correct, complete the employer certification below. If incorrect, please provide correct information. Employee tips **MUST** be included in the gross wages.

Employer Certification: The above individual has accepted all work offered and earned less than full-time remuneration as shown above.

Employer's Signature **X** _____
 Title _____ Tel # () _____



C. Complete this Section only if you worked or received holiday or vacation pay during the weeks claimed. If you returned to work **FULL-TIME**, complete items #2 and #3. **DO NOT** complete items #4 and #5. If you are claiming **PARTIAL BENEFITS**, complete items #1, #2, and #3. Mail proof of your earnings, signed by your employer, **OR** complete item #4 and have your employer complete item #5.

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If you returned to work full-time, enter date _____;

Occupation _____ and

Rate of pay: \$ _____ Per _____

Are you still working? YES NO

If NO, enter last day of work _____ and explain why in REMARKS below.

2 EMPLOYER NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____

WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1 _____ WEEK 2 _____

Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages	
Sunday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Total			\$ _____	Total			\$ _____

5 Verification of Partial Earnings

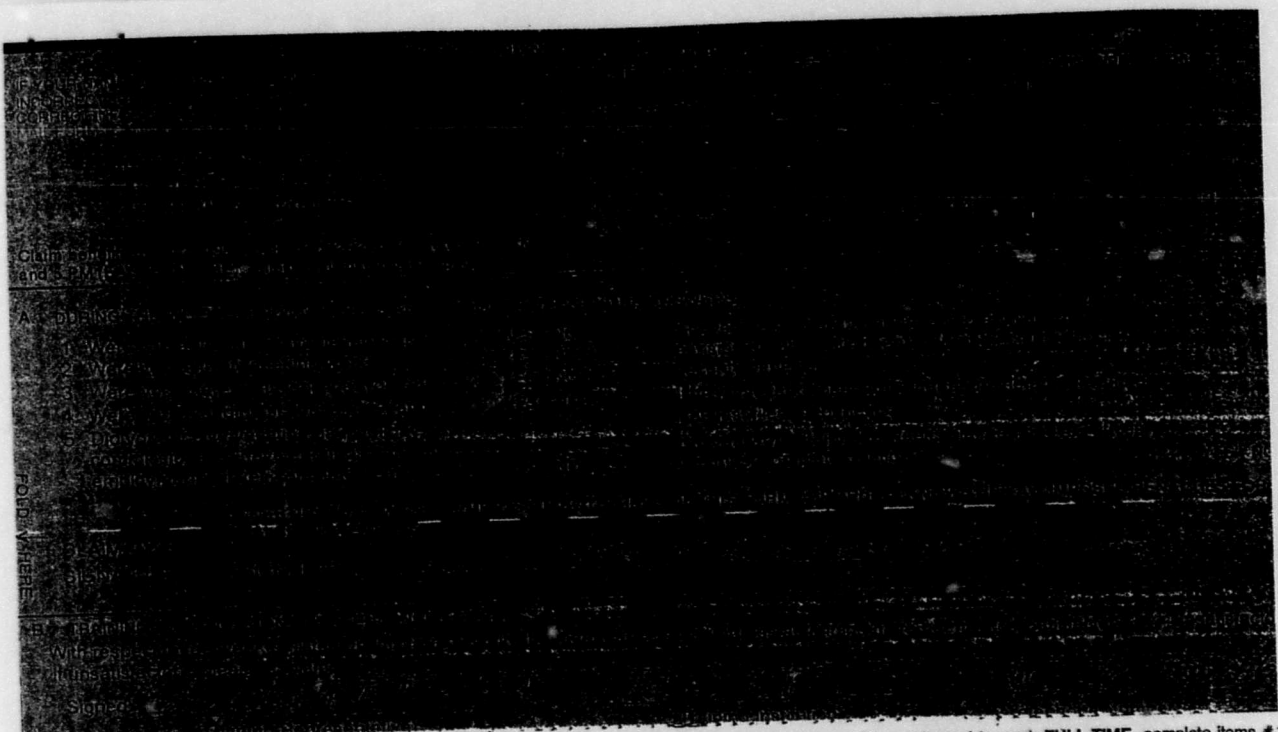
Employer Instructions: Review the information provided by the claimant to ensure that it is accurate. If correct, complete the employer certification below. If incorrect, please provide correct information. Employee tips **MUST** be included in the gross wages.

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Employer's Signature **X** _____

Title _____

Tel # () _____



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If you returned to work full-time, enter date _____;
 Occupation _____ and
 Rate of pay: \$ _____ Per _____

Are you still working? YES NO
 If NO, enter last day of work _____ and explain why in
 REMARKS below.

2 EMPLOYER NAME _____
 ADDRESS _____
 CITY, STATE, ZIP _____ Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____ WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1 _____ WEEK 2 _____

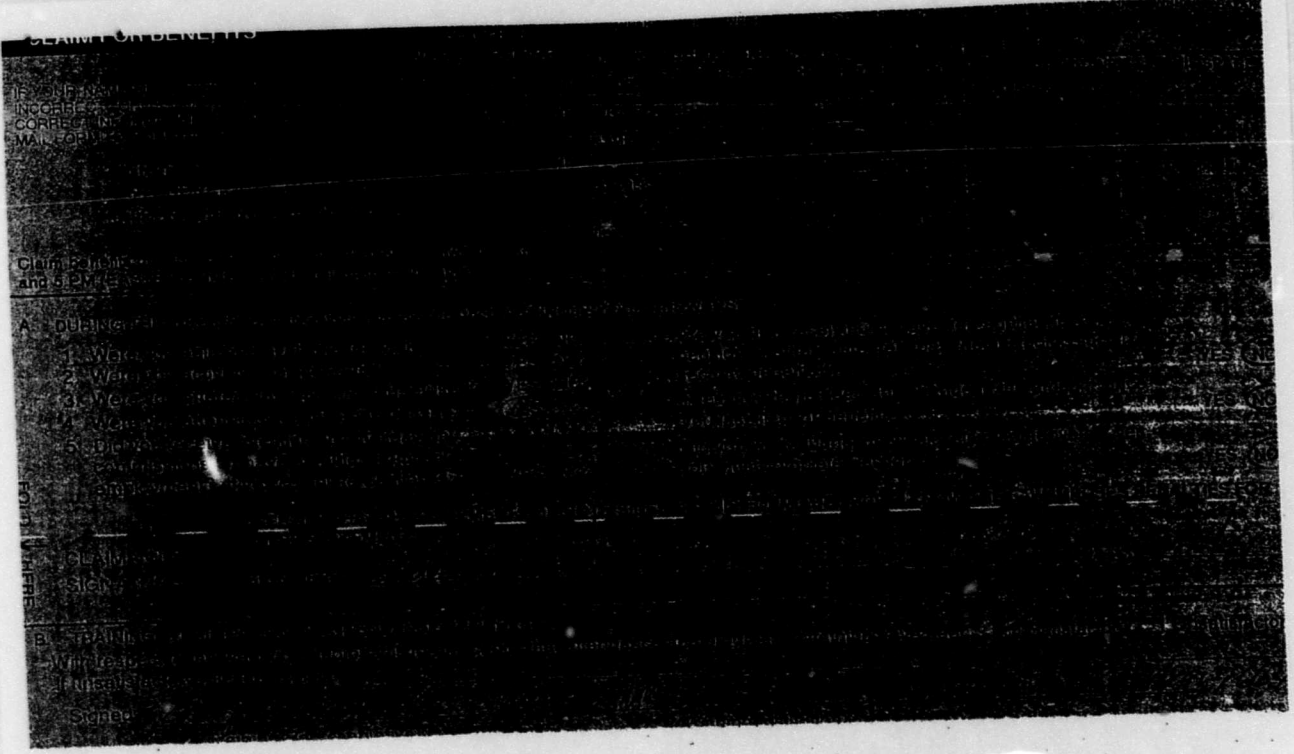
Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages	
Sunday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Total			\$ _____	Total			\$ _____

5 Verification of Partial Earnings

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Employer's Signature **X** _____
 Title _____ Tel # () _____



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If you returned to work full-time, enter date _____
 Occupation _____ and
 Rate of pay: \$ _____ Per _____

Are you still working? YES NO
 If NO, enter last day of work _____ and explain why in
 REMARKS below.

2 EMPLOYER NAME _____

ADDRESS _____

CITY, STATE, ZIP _____ Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____ WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1			WEEK 2			
Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages
Sunday						
Monday						
Tuesday						
Wednesday						
Thursday						
Friday						
Saturday						
Total			\$ _____	Total		\$ _____

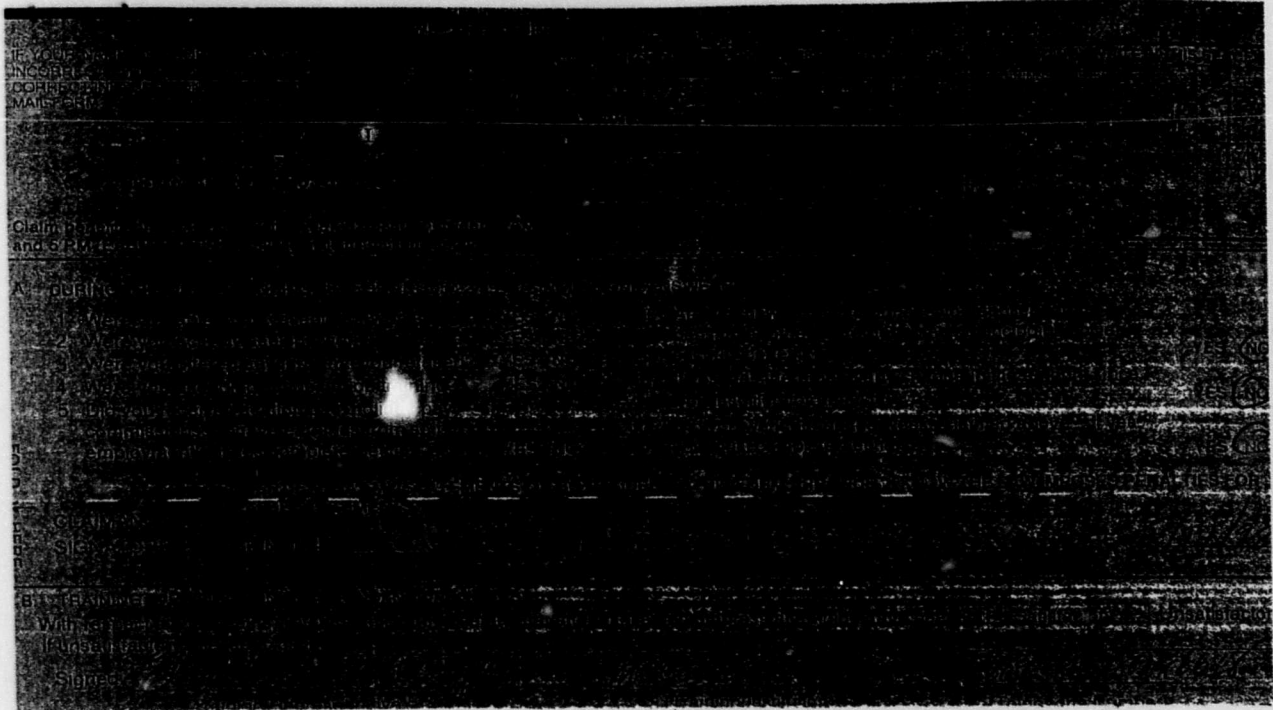
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Employer's Signature _____

Title _____ Tel # () _____



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If you returned to work full-time, enter date _____;
 Occupation _____ and
 Rate of pay: \$ _____ Per _____

Are you still working? YES NO
 If NO, enter last day of work _____ and explain why in
 REMARKS below.

2 EMPLOYER NAME _____
 ADDRESS _____
 CITY, STATE, ZIP _____ Telephone _____

3 Enter the amount of gross wages you earned including holiday or vacation pay

WEEK 1 \$ _____ WEEK 2 \$ _____

REMARKS: _____

4 WEEK 1 _____ WEEK 2 _____

Day	Date	Hours	Gross Wages	Date	Hours	Gross Wages	
Sunday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Total			\$ _____	Total			\$ _____

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Employer Certification: The above individual has accepted all work offered and earned less than full-time remuneration as shown above.

Employer's Signature **X** _____
 Title _____ Tel # () _____



STATE OF NEW JERSEY
Department Of Labor
Employment Security Agency

55-73
312
27289

CHECK NUMBER
18081264

DATE OF CHECK	C.W.E. DATE	PC	ID	WF
02/01/99	01/23/99	10	07287	
Warrant Check	136-62-9156			
	01/30/99			

Days After Date

PAY Six Hundred Thirty Dollars and No Cents

To The Order Of: **CHARLES WATKINS III**
67, GENERAL GREEN AVE
TRENTON NJ 08618-5517

ESTATES NEW JERSEY NATIONAL BANK
Trenton, N.J. 08606



Not Good For More Than \$999.00

DOLLARS CENTS
\$630.00

⑈ 18081264 ⑈ ⑆031200730⑆ 0127 3496⑈

⑈0000063000⑈

FOR DEPOSIT ONLY
ABC MONEY LOAN, INC.
OPERATING ACCOUNT
031200730
PAY TO THE ORDER OF
SUN NATIONAL BANK
02/01/99
66-62-9156/99

W. J. ...
W. J. ...

Charles Watkins III
ENDORSEMENT

By signing this check, I certify that I am the payee, and my social security number is as indicated and that for the work or weeks represented by this check, I was able to work, available for work and made an active search for work except as reported. I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with New Jersey law. I know the law provides penalties for false statements made in connection with this claim.



STATE OF NEW JERSEY
Department of Labor
Employment Security Agency

55-73
312

CHECK NUMBER
18242529

DATE OF CHECK	C.W.E. DATE	PC	IO	WF
02/16/99	02/06/99	10	07207	
Warrant Check 136-62-9256	02/13/99			

003656

Not Valid For More Than \$999.00

DOLLARS & CENTS
\$630.00

DATE
of
this
Check

PAY Six Hundred Thirty Dollars and No Cents

To The
Order Of: **CHARLES WATKINS III**
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

DEPOSIT AT
FIRST STATES NEW JERSEY NATIONAL BANK
Trenton, N.J. 08606



⑈ 18242529 ⑈ ⑆0310000114⑆ 0127⑈3496⑈

⑈0000063000⑈

⑆3000 02/21/99
⑆0LE:250 ⑆00-FKT:1-1

⑆3000 12/16/98
⑆0LE:78 ⑆00-FKT:1-4

⑆0310000114⑆
FSLB-PA 02191999
NORTH BRUNSWICK NJ

⑆02216300⑆

FOR DEPOSIT ONLY
ATLANTA BRANCH OF SHIRLEY
CHANGED CASHIER ON 1/14/99
FEB 19 99

Charles Watkins III
ENDORSEMENT

social security number is as indicated and that for the week or weeks represented by this check, I was able to work, available for work and made an active search for work except as reported I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with New Jersey law. I know the law provides penalties for false statements made in connection with this claim.



STATE OF NEW JERSEY
Department Of Labor
Employment Security Agency

55-79
312

CHECK NUMBER
18361057

DATE OF CHECK	C.W.E. DATE	PC	ID	WF
03/01/99	02/20/99	10	07287	
136-62-9156	02/27/99			

EFIT ACCOUNT
Warrant Check

Not Good For More
Than \$999.00

DOLLARS: CENTS
*630.00

After
is
Date

PAY Six Hundred Thirty Dollars and No Cents

100180

To The
Order Of: CHARLES WATKINS III
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

Med. Wade
COMMISSIONER

STATES NEW JERSEY NATIONAL BANK
N. N. J. 08606

⑈ 18361057 ⑈ ⑆031200730⑆ 0127⑈3496⑈

⑈0000063000⑈

1-NR 03/05/1999
ACELPHIA PA

123062191

03/04/99
U3000 #88/05/99
CYCLE: 78 NOD-FKT:6-6

78084639

PAY TO THE ORDER OF
SUN NATIONAL BANK
03/20/99
FOR DEPOSIT ONLY
ABC MONEY LOAN, INC.
OPERATING ACCOUNT
03/17/99

ENDORSEMENT

Charles Watkins III

or weeks represented by this check I was able to work,
available for work and made an active search for work except
as reported. I reported all my earnings, including vacation
pay and met all other eligibility requirements in accordance
with New Jersey law. I know the law provides penalties for
false statements made in connection with this claim



THE FACE OF THIS DOCUMENT HAS A MULTICOLORED BACKGROUND AND MULTIPLE SECURITY FEATURES

201543

STATE OF NEW JERSEY
Department Of Labor
Employment Security Agency

55-7
312

CHECK NUMBER
18499655

DATE OF CHECK	C.W.E. DATE	PC	ID	WF
03/15/99	03/06/99	10	07287	
Warrant Check 136-62-9156	03/13/99			

NETFIT ACCOUNT 03/15/99
Warrant Check 136-62-9156

DAfter
Days
n Date

PAY Six Hundred Thirty Dollars and No Cents

To The
Order Of: CHARLES WATKINS III
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

LEGATES NEW JERSEY NATIONAL BANK
E.M., N.J. 08606



⑈ 18499655 ⑆ ⑆ 031200730 ⑆ 0127 ⑆ 3496 ⑆

⑈ 0000063000 ⑆

PAY TO THE ORDER OF
SUN NATIONAL BANK
031206420
FOR DEPOSIT ONLY
ABC MONEY LDAN, INC.
OPERATING ACCOUNT

W08211206420

CKM

3-1

URB-NA 03191999
PHILADELPHIA PA

723625594

03/19/99
CYCLE 78
MOD-PKT: 06
03/19/99
03/19/99
03/19/99

ENDORSEMENT
Charles Watkins III

I warrant that the work represented by this check was performed by me or under my direct supervision and that I was able to work available for work and made an active search for work except as reported. I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with New Jersey law. I know the law provides penalties for false statements made in connection with this claim.



THIS PAGE OF THIS DOCUMENT HAS A MULTICOLORED BACKGROUND AND MULTIPLE SECURITY FEATURES

STATE OF NEW JERSEY
Department Of Labor
Employment Security Agency

55-75
312

CHECK NUMBER

18627428

DATE OF CHECK	C W E. DATE	PC	ID	WF
03/29/99	03/24/99	10	06000	
Warrant Check 136-62-9156	03/21/99			

WARRANT ACCOUNT
Warrant Check

03/29/99

03/24/99

10

06000

After
72
Date

PAY Six Hundred Thirty Dollars and No Cents

To The
Order Of: **CHARLES WATKINS III**
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

ESTATES NEW JERSEY NATIONAL BANK
Trenton, NJ 08606

Not Good For More
Than \$639.00

DOLLARS - CENTS

*630.00

Michael J. ...
COMMISSIONER

⑈ 18627428 ⑆ ⑆ 031200730 ⑆ 0127 ⑆ 3496 ⑆

⑈0000063000⑈

B-11A 04021999
LACELPHIA PA

527577528

V3000 04/02/99
CYCLE: 78 100-0311799

1111

000006413

PAY TO THE ORDER OF
SUN NATIONAL BANK
FOR DEPOSIT ONLY
AMC MONEY LOAN, INC.
OPERATING ACCOUNT
0001030555

ENDORSEMENT

Charles Watkins III

social security number is as indicated and that for the work or weeks represented by this check I was not to work, available for work and made an active search for work except as reported I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with New Jersey law. I know the law provides penalties for false statements made in connection with this claim



STATE OF NEW JERSEY
Department of Labor
Employment Security Agency

55-73
312

CHECK NUMBER
18746914

DATE OF CHECK	C.W.E. DATE	FC	ID
04/12/99	04/03/99	10	07287
156-62-9156	04/16/99		

WF 404827

WARRANT ACCOUNT
Warrant Check

Not Used For More Than \$999.00

DOLLARS AND CENTS
630.00

After Date

PAY Six Hundred Thirty Dollars and No Cents

To The Order Of: **CHARLES WATKINS III**
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

STATED NEW JERSEY NATIONAL BANK
n. N.J. 08606



⑈ 18746914 ⑈ ⑆ 031200730 ⑆ 0127 ⑈ 3496 ⑈

⑈ 0000063000 ⑈

Handwritten:
NEW JERSEY
04/16/99
04161999
0310-0601-1
04161999
04/16/99
04161999
04161999
04161999

⑆ 011000138 ⑆
FLEET-NA MALDEN, MA 16
3884 125 26 90 04151999
0500125315

APR 15 98

Handwritten Signature: Charles Watkins III
ENDORSEMENT

social security number as indicated and that for the week or weeks represented by this check I was able to work, available for work and made an active search for work except as reported I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with the law. I do not have any fines or penalties for false statements made in connection with this claim.



STATE OF NEW JERSEY
Department Of Labor
Employment Security Agency

55-73
312

CHECK NUMBER
18862384

DATE OF CHECK	G.W.E. DATE	FC	ID	WF
04/26/99	04/17/99	10	06564	
Warrant Check 136-62-6156	04/24/99			

WARRANT ACCOUNT
Warrant Check

PAY Six Hundred Thirty Dollars and No Cents

To The
Order Of: **CHARLES WATKINS III**
67 GENERAL GREEN AVE
TRENTON NJ 08618-3517

ESTATES NEW JERSEY NATIONAL BANK
of, N.J. 08608

B58428

Has Good Will Mark
Trade Used On

DOLLARS - CENTS
630 - 00

Michael L. Lohr
COMMISSIONER

⑈ 18862384 ⑈ ⑆ 031200730 ⑆ 0127 3496 ⑈ ⑆ 0000063000 ⑈

MS
6/15/99
WATKINS III

STATE OF NEW JERSEY
EMPLOYMENT SECURITY AGENCY
TRENTON, NJ 08618-3517
04/26/99 06564

JUN 23 99

⑆ 0110001384 ⑆
FLEET-PA MALDEN, MA 27
1651 125 25 90 04291999
⑆ 02005602790 ⑆

3061
07139

Charles A. Little
ENDORSEMENT

social security number is as indicated and that for the work or weeks represented by this check I was able to work available for work and made an active search for work except as reported. I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with New Jersey law. I know this law provides penalties for false statements made in connection with this claim.



STATE OF NEW JERSEY
Department of Labor
Employment Security Agency

55-73
312

CHECK NUMBER
18973488

DATE OF CHECK	O.W.E. DATE	PC	ID	WF
05/10/99	05/01/99	10	07287	
Warrant Check 136-62-9156	05/08/99			

WARRANT ACCOUNT
Warrant Check

PAY Six Hundred Thirty Dollars and No Cents

To The
Order Of: **CHARLES WATKINS III**
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

ESTATES NEW JERSEY NATIONAL BANK
on, N.J. - 08606

Not Good For More
Than \$999.00

DOLLARS CENTS
\$ 630.00

Charles Watkins III
COMMISSIONER

181098

⑈ 18973488 ⑈ ⑆031200730⑆ 0127⑈3496⑈ ⑈0000063000⑈

*per Bill
10/8/11
Bill*

2003
RAT:06
0313-001-1 05131999
05/13/99
0241 125 26 90 05121999
021275462

⑆0110001384
FLEET-HA WALDEN, MA 27
0241 125 26 90 05121999
0200626565

MAY 12 99

Charles Watkins III
ENDORSEMENT

social security number is as indicated and that for the week or weeks represented by this check, I was able to work, available for work and made an active search for work except as reported I reported all my earnings and holiday/vacation pay and met all other eligibility requirements in accordance with New Jersey law. I know the law provides penalties for false statements made in connection with this claim



STATE OF NEW JERSEY
Department Of Labor
Employment Security Agency

55-73
312

CHECK NUMBER
19070987

DATE OF CHECK	C.W.E. DATE	PG	ID	WF
05/24/99	05/15/99	10	06738	
136-62-9156	05/22/99			

EFIT ACCOUNT
Warrant Check

Not Good For More
Than \$999.00

DOLLARS CENTS
\$ 630.00

After Date
PAY Six Hundred Thirty Dollars and No Cents

To The Order Of: **CHARLES WATKINS III**
67 GENERAL GREEN AVE
TRENTON NJ 08618-5517

STATES NEW JERSEY NATIONAL BANK
N. J. 08608

Michael A. L...
COMMISSIONER

⑈ 19070987⑈ ⑆031200730⑆ 0127⑈3496⑈

⑈0000063000⑈

B62553

Handwritten notes:
22-8111
11/10/99
11/10/99

0310-0001-1 06031999
RATI
CYCLE
06/02/99
06/02/99
06/02/99

⑆0110001384⑆
FLEET-MA MAJ DEN, MA 27
1636 125 26 90 06021999
0900760922

ENDORSEMENT
Michael A. L...
or weeks represented by this check I was able to work, available for work and made an active search for work except as reported. I reported all my earnings and holiday/vacation pay and me; all other eligibility requirements in accordance with New Jersey law. I know the law provides penalties for false statements made in connection with this claim.



MERCER COUNTY COMMUNITY COLLEGE
JAMES KERNEY CAMPUS
CAREER TRAINING INSTITUTE

THIS CERTIFICATE OF COMPLETION IS AWARDED TO

Charles Watkins

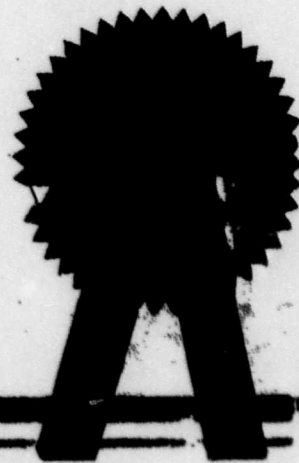
FOR HAVING EARNED THE CERTIFICATE OF

CULINARY TECHNICIAN

PRESENTED THIS 4TH DAY OF JUNE, 1999

Reggie B. Sandoz
DIRECTOR

Andrea J. Heller
GRAM COORDINATOR





NEW JERSEY DEPARTMENT OF LABOR
BUREAU OF BENEFIT PAYMENT CONTROL

CHARLES WATKINS III
67 GENERAL GREEN AVE
TRENTON, NJ 08618

DATE OF MAILING: 9-12-00
SSN: 136-62-9156

AS A RESULT OF AN INVESTIGATION OF YOUR UNEMPLOYMENT INSURANCE CLAIM, EVIDENCE HAS BEEN OBTAINED THAT YOU MAY HAVE BEEN EMPLOYED BY THE EMPLOYER(S) SHOWN BELOW AT SOME TIME DURING THE WEEK(S) LISTED BELOW, DURING WHICH TIME YOU ALSO RECEIVED UNEMPLOYMENT BENEFITS.

WEEK PAID	INCOME		EMPLOYER	BENEFITS		AMOUNT OVERPAID
	REPORTED	EARNED		PAID	ALLOWED	
01/23/99	.00	385.93	TRENTON PSYCH HOSP	315.00	.00	315.00
01/30/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
02/06/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
02/13/99	.00	578.89	TRENTON PSYCH HOSP	315.00	.00	315.00
02/20/99	.00	482.42	TRENTON PSYCH HOSP	315.00	.00	315.00
02/27/99	.00	385.93	TRENTON PSYCH HOSP	315.00	.00	315.00
03/06/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
03/13/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
03/20/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
03/27/99	.00	578.89	TRENTON PSYCH HOSP	315.00	.00	315.00
04/03/99	.00	385.93	TRENTON PSYCH HOSP	315.00	.00	315.00
04/10/99	.00	578.89	TRENTON PSYCH HOSP	315.00	.00	315.00
04/17/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
04/24/99	.00	378.21	TRENTON PSYCH HOSP	315.00	.00	315.00
05/01/99	.00	482.41	TRENTON PSYCH HOSP	315.00	.00	315.00
05/08/99	.00	464.32	TRENTON PSYCH HOSP	315.00	.00	315.00
05/15/99	.00	470.35	TRENTON PSYCH HOSP	315.00	.00	315.00
05/22/99	.00	385.93	TRENTON PSYCH HOSP	315.00	.00	315.00

TOTAL AMOUNT OVERPAID \$5,670.00

ACCORDINGLY, YOU MAY BE SUBJECT TO REFUND, DISQUALIFICATION, FINES AND/OR PROSECUTION PURSUANT TO N.J.S.A. 43:21-5(G). (SEE REVERSE FOR EXTRACT OF THIS STATUTE)

DNR

SCHEDULE OF OVRFPAYMENTS

136-62-9156

10

5/24/98

CHARLES WATKINS III

WEEK ENDING	BENEFITS PAID	WAGES EARNED	AMOUNT OVERPAID
1/23/99	315	385.00	315.00
1/30/99	315	482.00	315.00
2/06/99	315	482.00	315.00
2/13/99	315	578.00	315.00
2/20/99	315	482.00	315.00
2/27/99	315	385.00	315.00
3/06/99	315	482.00	315.00
3/13/99	315	482.00	315.00
3/20/99	315	482.00	315.00
3/27/99	315	578.00	315.00
4/03/99	315	385.00	315.00
4/10/99	315	578.00	315.00
4/17/99	315	482.00	315.00
4/24/99	315	378.00	315.00
5/01/99	315	482.00	315.00
5/08/99	315	464.00	315.00
5/15/99	315	470.00	315.00
5/22/99	315	385.00	315.00
TOTAL OVERPAYMENT INCLUDING FINES			7,087.50



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

PETER C. HARVEY
Attorney General

PO Box 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

VAUGHN L. MCKOY
Director

December 30, 2003

Mr. Charles A. Watkins III
67 General Green Avenue
Trenton, NJ 08618

Re: State of New Jersey v. Charles A. Watkins III
DCJ No. 2003-2454-S

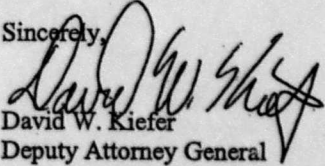
Dear Mr. Watkins:

The New Jersey Department of Labor, Division of Unemployment and Disability Insurance, has referred information regarding your claims for Unemployment Insurance Benefits to this office for criminal prosecution. This information is currently being reviewed and may be presented to a Grand Jury for indictment.

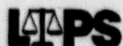
I ask that you or your attorney contact State Investigator Gary O'Brien by January 9, 2004 to advise us of your position regarding these charges. SI O'Brien may be reached at (609) 292-4995.

SI O'Brien will be happy to discuss this matter with you or your attorney in an effort to arrive at a mutually acceptable disposition of this matter.

Sincerely,


David W. Kiefer
Deputy Attorney General

c: SI Gary O'Brien



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State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

PETER C. HARVEY
Attorney General

PO Box 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

VAUGHN L. MCKOY
Director

January 5, 2004

Mr. Charles A. Watkins III
67 General Green Avenue
Trenton, NJ 08618

Re: State of New Jersey v. Charles A. Watkins III
DCJ No. 2003-2454-S

Dear Mr. Watkins:

Based upon a recent investigation, it is the State's position that you wrongfully obtained unemployment insurance benefits by representing that you were unemployed while working for Trenton Psychiatric Hospital. Such an offense is a third degree violation of N.J.S.A. 2C:20-4 (Theft by Deception) and a fourth degree violation of N.J.S.A. 2C:28-3a (Unsworn Falsification to Authorities).

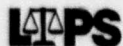
I am writing to you in an attempt to resolve this matter before presenting it to a State Grand Jury for indictment. If you are represented by an attorney, please provide this letter to him or her and review it with him or her as soon as possible. This offer will remain open until January 16, 2004. If written acceptance is not received by this office on or before that date, the offer will expire.

Sentencing Exposure

The violation of N.J.S.A. 2C:20-4 charged in the Accusation carries a statutory range of up to five years imprisonment and a \$15,000 fine, restitution, or both. In addition, you will be required to pay a VCCB assessment of \$50, N.J.S.A. 2C:43-3.1, a Safe Neighborhoods assessment of \$75, N.J.S.A. 2C:43-3.2, and a Law Enforcement Officers Training Fund assessment of \$30, N.J.S.A. 2C:43-3.2.

Agreements

Conditioned on the understandings specified below, the State of New Jersey will file with the Court an Accusation, charging one count of third degree Theft By Deception, in violation of



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Page 2

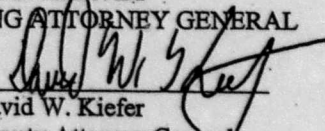
N.J.S.A. 2C:20-4 and one count of fourth degree Unsworn Falsification to Authorities in violation of N.J.S.A. 2C:28-3a.

You and the State of New Jersey agree to the following terms and conditions of sentencing, subject to the approval of the Court:

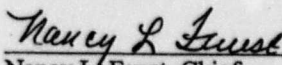
- (a) The State of New Jersey will recommend a period of non-custodial probation conditioned upon full restitution to the State of New Jersey, Department of Labor in the amount of \$7,610.78 and the execution of a Civil Consent Judgment described in paragraph (b) below in exchange for a guilty plea on the count of third degree Theft By Deception in the Accusation. If you fully comply with the terms of this agreement, this Office will not bring any further charges against you relating to the above-captioned matter.
- (b) You shall enter into a Civil Consent Judgment for the full restitution amount. The Civil Consent Judgment shall provide that upon default on your restitution payments, the State may execute said judgment, less credit for any payments made. The Civil Consent Judgment shall be entered by the Court at the time of sentencing. The Civil Consent Judgment shall be in addition to, and not to the exclusion of any other rights that the State might have as a result of any failure to make restitution payments.
- (c) You shall forfeit your employment with the Trenton Psychiatric Hospital and any other position with the state of New Jersey that you currently hold.

Very truly yours,

PETER C. HARVEY
ACTING ATTORNEY GENERAL

By: 
David W. Kiefer
Deputy Attorney General

APPROVED:


Nancy L. Faust, Chief
Labor Prosecutions Unit

SUPERIOR COURT OF N.J.

FILED

JAN 29 2004

DONALD E. PHELAN
CLERK

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

State Grand Jury

Number SGJ489-04-2

Superior Court

Docket Number 04-01-00008-S

STATE OF NEW JERSEY)

v.)

CHARLES A. WATKINS III)

INDICTMENT

The Grand Jurors of and for the State of New Jersey,
upon their oaths, present that:

COUNT ONE

(Theft By Deception-Third Degree)

CHARLES A. WATKINS III

between on or about May 24, 1998 and on or about May 22, 1999, at
the City of Trenton, in the County of Mercer, elsewhere, and
within the jurisdiction of this Court, purposely did obtain by
deception property of the State of New Jersey valued in excess of
\$500; that is, the said CHARLES A. WATKINS III did purposely
obtain unemployment insurance benefits in the amount of \$5,670.00
by submitting or causing to be submitted documents for
unemployment insurance benefits to the State of New Jersey,
thereby creating or reinforcing false impressions to the State of
New Jersey that the said CHARLES A. WATKINS III was unemployed;

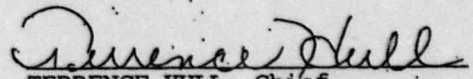
WHEREAS IN TRUTH AND IN FACT, as the said CHARLES A. WATKINS
III then and there well knew, he was employed, all contrary to
the provisions of N.J.S.A. 2C:20-4, and against the peace of this
State, the government and dignity of the same.

COUNT TWO

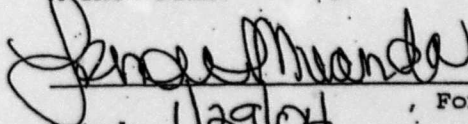
(Unsworn Falsification to Authorities-Fourth Degree)

CHARLES A. WATKINS III

on or about February 1, 1999, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, knowingly did make a written false statement which he did not believe to be true on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable; that is, the said CHARLES A. WATKINS III did make and submit or cause to be submitted Unemployment Insurance Benefit check number 18081264 dated February 1, 1999, containing a false statement that the said CHARLES A. WATKINS III did report all earnings and holiday or vacation pay and otherwise met all eligibility requirements to receive unemployment insurance benefits for the weeks ending January 23, 1999 and January 30, 1999 and said form bearing notice, authorized by law, to the effect that false statements made therein are punishable, contrary to the provisions of N.J.S.A. 2C:28-3a, and against the peace of this State, the government and dignity of the same.


TERRENCE HULL, Chief
Major Financial Crimes Bureau

TRUE BILL:


Dated: 1/29/04 Foreperson



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
FIVE EXECUTIVE CAMPUS - SUITE 205
CHERRY HILL, NJ 08002
TELEPHONE: (856) 486-3900

PETER C. HARVEY
Attorney General

VAUGHN L. MCKOY
Director

JAMES E. MCGREEVEY
Governor

April 19, 2004

Janet VanFossen, Assistant Division Manager
Superior Court of New Jersey
Mercer Criminal Division
Court House, Room 105
Trenton, New Jersey 08650

Re: Charles Watkins III

Dear Ms. VanFossen:

This letter is in response to the admission of Charles Watkins III into Mercer County's Pre-Trial Intervention Program. For the following reasons the State must withhold its consent from Mr. Watkins' admission into the diversionary program.

As your postponement order indicated, a two-count indictment was returned on January 29, 1999 charging Charles Watkins III with theft by deception (third degree) and unsworn falsification to authorities (fourth degree). These charges are based on misrepresentations that Mr. Watkins made to the New Jersey Department of Labor (DOL) in order to receive unemployment benefits to which he was not entitled. Mr. Watkins began receiving unemployment insurance benefits in May 1998 when he was temporarily laid-off from Trenton Psychiatric Hospital. Mr. Watkins' unemployment benefits were extended in 1999 under the "Additional Benefits During Training Program" (ABT) whereby certain "eligible" claimants may obtain an extension of unemployment insurance benefits while pursuing education and job training skills to enhance their employment opportunities. Mr. Watkins pursued a degree at the community college while receiving UI benefits under the ABT program but knowingly failed to report his re-employment with the Trenton Psychiatric Hospital to the Department of Labor.

Between January 23, 1999 through May 22, 1999 Mr. Watkins cashed nine unemployment checks, all of which required him to certify that he was unemployed, collecting \$5,670 in unemployment benefits. Based upon his earnings at Trenton Psychiatric Hospital

LIPS

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EXHIBIT A

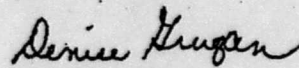
during this time period, Mr. Watkins was not entitled to any of this money.

The facts of this case indicate that the fraud continued from January to May 1999, a five-month period of time, involving nine separate instances where Mr. Watkins lied about his employment status in order to cash employment checks. Accordingly it is the State's position that the defendant's crime falls within the ambit of Guideline 3(i)(2) of Rule 3:28 as a continuing criminal enterprise justifying his rejection from PTI. Mr. Watkins committed a substantial fraud over a lengthy period of time. The circumstances surrounding this case coupled with his status as a public employee clearly demonstrates that he is not amenable to a rehabilitative process.

Finally, although there are no explicit per se rules excluding offenders from PTI eligibility, the statute provides that "supervisory treatment should ordinarily be limited to persons who have not previously been convicted of any criminal law . . ." N.J.S.A. 2C:43-12a. According to NCIC, Charles Watkins has a 1990 municipal court conviction for receiving stolen property. Obviously Mr. Watkins prior experience with the criminal justice systems has not had a significant deterrent effect on him and further indicating that he is not a suitable candidate for PTI.

In conclusion, the State has considered all relevant and material factors pertaining to Mr. Watkins PTI application and concludes that he is not a candidate amenable to the diversionary process and accordingly, must withhold its consent.

Respectfully submitted,



Denise Grugan
Deputy Attorney General



JAMES E. MCGREEVEY
Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MENTAL HEALTH SERVICES
TRENTON PSYCHIATRIC HOSPITAL
OFFICE OF COOPERATIVE LABOR RELATIONS

JAMES DAVY
Commissioner

GREGORY P. ROBERTS
Chief Executive Officer

Tel (609) 633-1500

In reply respond to:
P.O. Box 7500
WEST TRENTON, NJ 08628

April 26, 2004

Denise Grugan, Esq.
Labor Prosecutions Unit
Division of Criminal Justice
25 Market Street
PO Box 085
Trenton, New Jersey 08625-0085

RECEIVED

RE: Charles Watkins, III
DOB: 13-19-66

APR 29 2004

LABOR PROSECUTIONS UNIT

Dear Ms. Grugan:

This letter is regarding the above referenced Trenton Psychiatric Hospital employee who was indicted on January 29, 2004 for theft by deception, third degree and falsification to authorities, fourth degree (NJSA 2C:20-4 and NJSA 2C:28-3a). A conviction of this charge would impact on this individual's continued employment due to various State Statutes including NJSA 2C:51-2 and 30:4-3.5.

I am requesting your cooperation to consult with me prior to entering into any disposition of the charges that may impact on this facility's ability to comply with the above mentioned statutes. I look forward to hearing from you regarding this matter.

Sincerely,

Gregory P. Roberts
Chief Executive Officer
Phone: (609) 633-1588
FAX: (609) 396-5701

Enclosure: Title 4A:2-2.7 with case notes
C: Linda W. Rutskin, ERC
File

ATTACHMENT 1

TRENTON PSYCHIATRIC HOSPITAL

NOTICE OF INFORMAL PRETERMINATION HEARING

NAME OF EMPLOYEE: Charles Watkins, Human Services Technician

You are hereby notified to attend the required informal pretermination hearing, which has been scheduled as follows:

DATE: April 30, 2004

TIME: 10:00 a.m.

**PLACE: EMPLOYEE RELATIONS CONFERENCE ROOM
STRATTON BUILDING/THIRD FLOOR**

A summary of the evidence supporting the stated charge(s) and specification(s) is as follows:

- **Copy of Indictment, Count One (Theft by Deception – Third Degree) and Count Two (Unsworn Falsification to Authorities – Fourth Degree)**

You are hereby notified that during this hearing you will be given the opportunity to respond to the charges and supporting evidence. You may do this through testimony or documentary evidence. You will not be required to testify, you may be cross-examined.

The purpose of this hearing is to determine if there are reasonable grounds to believe the charges are supported by the evidence or that the charges should be dismissed. You will receive a written decision.

(c) The parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. The employee shall not be required to testify, but an employee who does testify will be subject to cross-examination.

(d) Within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action.

Case Notes

Due process. Carr v. Sharp, C.A., 454 F.2d 271 (1971).

Requirement of exhaustion of administrative remedies. City of New Brunswick v. Speights, 157 N.J.Super. 9, 384 A.2d 225 (Co.1978).

Res judicata: delay in hearing: limits on de novo hearing. In re Darcy, 114 N.J.Super. 454, 277 A.2d 226 (1971).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

Public employee voluntarily and deliberately planned his nonappearance at hearing and was not entitled to further hearing. Cue v. Camden County, 92 N.J.A.R.2d (CSV) 131.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include a statement that N.J.S.A. 2C:51-2 may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) When a court has entered an order of forfeiture pursuant to N.J.S.A. 2C:51-2, the appointing authority shall notify the employee in writing of the forfeiture and record the forfeiture in the employee's personnel records. The appointing authority shall also forward a copy of this notification to the Department of Personnel.

1. If the criminal action does not result in an order of forfeiture issued by the court pursuant to N.J.S.A. 2C:51-2, the appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2 but the court has not entered an order of forfeiture, the appointing authority may seek forfeiture by applying to the court for an order of forfeiture. The appointing authority shall not hold a departmental hearing regarding the issue of the applicability of N.J.S.A. 2C:51-2. If the court declines to enter an order of forfeiture in response to the appointing authority's application, the appointing authority may hold a departmental hearing regarding other disciplinary charges, if any, as provided in (b)1 above.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)1: added text, "The standard . . . public services."

Amended by R.1992 d.414, effective October 19, 1992.

See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Revised (a).

Public Notice: Notice of Receipt of a Petition for Rulemaking.

See: 29 N.J.R. 5333(a).

Amended by R.2000 d.433, effective October 16, 2000.

See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).

Rewrote (b) and (c).

Case Notes

Forfeiture of public office was not unconstitutional. State v. Timoldi, 277 N.J.Super. 297, 649 A.2d 872 (A.D.1994), certification denied 142 N.J. 449, 663 A.2d 1356.

Merit System Board of State Department of Personnel did not have exclusive jurisdiction for prosecution of forfeiture action against senior corrections officer. State v. Lee, 258 N.J.Super. 313, 609 A.2d 513 (A.D.1992).

Whether public employee's conviction involves or touches employment does not depend upon whether criminally proscribed acts took place within immediate confines of employment's daily routine. Moore v. Youth Correctional Institute at Ammandale, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

APPEALS, DISCIPLINE AND SEPARATIONS

4A:2-2.7

Senior corrections officer's criminal conviction for harassing his immediate superior was one "involving or touching" his employment. Moore v. Youth Correctional Institute at Annandale, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Automatic termination of correction sergeant based on conviction for crime of dishonesty affirmed. Christian v. Department of Corrections, Northern State Prison, 97 N.J.A.R.2d (CSV) 636.

Next Page is 2-29

2-28.1

Supp. 4-1-02

Pa37

of service due to the advanced progression of the cancer. Despite his protracted battle, the disease spread to his brain and spine, finally killing his spirit in 2001. Prior to his death, Charles Watkins Sr. was confined to a wheelchair and needed constant assistance, provided by the defendant. During this time frame, not only was Charles Watkins, III giving around the clock care to his father, Mr. Watkins was responsible for the full time care of his mother, Pauline Watkins and brother, Larry Steel, both diagnosed as being terminally ill.

Specifically, Pauline contracted cancer of the bladder and ultimately died on April 8, 1996. Defendant's brother, Larry Steele, contracted the HIV virus in the early 1960's due to intravenous drug use. Ultimately, the virus advanced to full blown Aids, causing liver failure. Larry died on March 23, 1996, just (2) two week before his mother. Both family members died at defendant's home and under his care. Not only did he support them physically and emotionally, but financially as well.

Defendant has extremely strong commitment to family. Aside from the care and compassion provided to his mother, father, and oldest brother, defendant took in his youngest brother, Curtis Watkins, Jr. and his (2) two children Dominique, age (8) eight and Curtis, age (5) five. Curtis Sr. has battled a drug addiction for many years and is losing. Recently losing his home, Curtis and his (2) two young children would have been put out into the street if not for the kindness of defendant. Charles provided not only a roof over their heads and food on the table, but provides a stable environment and a steady parental figure to these kids. Aside from the financial commitment extended to Curtis, defendant made sure that his brother entered a long term rehabilitation center and is finally completing a stay at the "Carrier Clinic". I am advised that the children's mother is also an addict and has no contact with the kids. Certainly, she provides no financial support towards their care.

Notwithstanding the above personal setbacks, defendant has provided himself with an education and has a strong work history; In 1985, defendant received a certificate from Mercer County Community College for Secretarial and Clerical Skills. After working several unfulfilling office jobs throughout the Trenton area, defendant re-entered school in Philadelphia attending the "Art and Fashion Institute of Pennsylvania", studying Fashion Merchandising, Marketing and Design, receiving an additional certificate in 1987.

In 1988, defendant was hired by the Trenton Psychiatric Hospital as a Human Service Assistant. Soon thereafter, defendant was promoted to a Human Service Technician where he has worked for over the last (14) fourteen years. In 1998, due to the massive State downsizing and financial pressure, defendant was temporarily laid off. It was during this time frame that defendant re-entered Mercer County Community College to study Culinary Arts. Ultimately, defendant completed an extensive program through Rutgers University, graduating with Honors. In the summer of 1999, defendant's job at Trenton Psychiatric Hospital was re-extended to him, at which time he worked full time and completed advanced credits at school, again graduating with Honors.

Subsequently, defendant started applying his skills and talents at the Trenton Psychiatric Hospital cooking for his clients and promoting an over-all better living environment. Defendant also started an off-site catering business called "Treasured Memories Catering" through the Hospital which is benefiting everyone. Clearly, this is a man that loves his job and is extremely devoted to his colleagues and clients.

Additionally, during his Culinary Arts education, defendant opened the first Culinary Cafeteria at Mercer County Community College, called the "Lucky 7 Lunch Box". (The name

was derived due to the fact that only seven students were able to complete the courses successfully)

It should be noted that it was during this time frame that the within offense was committed.

Defendant has represented that he is extremely willing to make restitution and will execute a Civil Judgment. Given the fact that he is a state employer, a conviction of this nature will result in the termination of his employment with Trenton Psychiatric Hospital. Aside from the obvious financial hardship that would be endured by the defendant, his family member, specifically his young niece and nephew will suffer as well.

It is acknowledged that defendant has a prior mark on his criminal record, but it also respectfully pointed out that the charge was only municipal court conviction dating back to 1990, over fourteen (14) years ago. The crime entailed "receiving stolen property". This was not a crime of violence and is extremely old. It is respectfully submitted that given the nature of this offense and its date, it should not even be factored into considering whether the defendant would make a good P.T.I. candidate.

In conclusion it is submitted that there is more to Charles Watkins, III than meets the eyes. He is a compassionate, motivated hardworking individual that loves his family and is devoted to his patients. He made a minor mistake in 1990 and has spent the last (14) fourteen years trying to rebuild his life. In 1999, he made a mistake, but it was one of opportunity, not one that was premeditated. Defendant is willing to make full restitution, participate in community service, and successfully meet any and all conditions of PTI. Failure to permit defendant a chance to prove himself as a good PTI candidate, will result in the termination of his employment. Aside from the devastating effects same will have upon his dependant family, defendant will have a conviction on his record, making securing future employment even more difficult. Without a steady income, defendant will be hard-pressed to make timely restitution payments.

The court is urged to view defendant as a whole person and not to consider the offense in a vacuum. Defendant has expressed deep remorse and shame for his actions. It is submitted that he is exactly the kind of candidate that the legislature and Courts contemplated. It is further submitted that the State's rejection is capricious and arbitrary and that the Deputy Attorney General failed to consider all the relevant factors. In support of defendant's appeal, the following legal argument and authorities are offered, infra.

PLEA FORM

County MURKIN
 Prosecutor File Number _____

DEFENDANT'S NAME Charles Nathan
 before Judge M. K. BRIDGEMAN, J.S.C.

1. List the charges to which you are pleading guilty:

Ind	Acc./Comp.#	Count	Nature of Offense	Degree	Statutory Maximum	Statutory Maximum		
						Time	Fine	VCCB Assmt
<u>01-0008-5</u>		<u>1</u>	<u>THIEF, 3rd</u>	<u>3rd</u>	MAX	<u>5</u>	<u>15,000</u>	<u>50</u>
			<u>20:30-4</u>		MAX			
					MAX			
					MAX			
					MAX			
Your total exposure as the result of this plea is:					TOTAL	<u>5</u>	<u>15,000</u>	<u>50</u>

PLEASE CIRCLE APPROPRIATE ANSWER

2. a. Did you commit the offense(s) to which you are pleading guilty? YES NO
- b. Do you understand that before the judge can find you guilty, you will have to tell the judge what you did that makes you guilty of the particular offense(s)? YES NO
3. Do you understand what the charges mean? YES NO
4. Do you understand that by pleading guilty you are giving up certain rights? Among them are:
 - a. The right to a jury trial in which the State must prove you guilty beyond a reasonable doubt? YES NO
 - b. The right to remain silent? YES NO
 - c. The right to confront the witnesses against you? YES NO
5. Do you understand that if you plead guilty:
 - a. You will have a criminal record? YES NO
 - b. Unless the plea agreement provides otherwise, you could be sentenced to serve the maximum time in confinement, to pay the maximum fine and to pay the maximum Violent Crimes Compensation Board Assessment? YES NO
 - c. You must pay a minimum Violent Crimes Compensation Board assessment of \$50 (\$100 minimum if you are convicted of a crime of violence) for each count to which you plead guilty? (Penalty is \$30 if offense occurred between January 9, 1986 and December 22, 1991 inclusive. \$25 if offense occurred before January 1, 1986.) YES NO
 - d. If the offense occurred on or after February 1, 1993 but was before March 13, 1995, and you are being sentenced to probation or a State correctional facility, you must pay a transaction fee of up to \$1.00 for each occasion when a payment or installment payment is made? If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, you must pay a transaction fee of up to \$2.00 for each occasion when a payment or installment payment is made? YES NO

VIOLENT CRIMES COMPENSATION BOARD ASSESSMENT

Defendant's Initials CW

5. e. If the offense occurred on or after August 2, 1993 you must pay a \$75 Safe Neighborhood Services Fund assessment for each conviction? [YES] [NO]
- f. If the offense occurred on or after January 5, 1994 and you are being sentenced to probation, you must pay a fee of up to \$25 per month for the term of probation? [YES] [NO]
- g. If the crime occurred on or after January 9, 1997 you must pay a Law Enforcement Officers Training and Equipment Fund assessment? [YES] [NO]
- h. You will be required to provide a DNA sample, which could be used by law enforcement for the investigation of criminal activity, and pay for the cost of testing? [YES] [NO]
6. Do you understand that the court could, in its discretion, impose a minimum time in confinement to be served before you become eligible for parole, which period could be as long as one half of the period of the custodial sentence imposed? [YES] [NO]
7. Did you enter a plea of guilty to any charges that require a mandatory period of parole ineligibility or a mandatory extended term? [YES] [NO]
- a. If you are pleading guilty to such a charge, the minimum mandatory period of parole ineligibility is _____ years and _____ months (fill in the number of years/months) and the maximum period of parole ineligibility can be _____ years and _____ months (fill in the number of years/months) and this period cannot be reduced by good time, work, or minimum custody credits.
8. Are you pleading guilty to a crime that contains a presumption of imprisonment which means that it is almost certain that you will go to state prison? [YES] [NO]
9. Are you presently on probation or parole? [YES] [NO]
- a. Do you realize that a guilty plea may result in a violation of your probation or parole? [YES] [NO] [N/A]
10. Are you presently serving a custodial sentence on another charge? [YES] [NO]
- a. Do you understand that a guilty plea may affect your parole eligibility? [YES] [NO] [N/A]
1. Do you understand that if you have plead guilty to, or have been found guilty on other charges, or are presently serving a custodial term and the plea agreement is silent on the issue, the court may require that all sentences be made to run consecutively? [YES] [NO] [N/A]
2. List any charges the prosecutor has agreed to recommend for dismissal:

Ind./Acc./Compl.#	Count	Nature of Offense and Degree
1-01-000185	2	Warranted Felony 21.24.3 - 1st Degree

3. Specify any sentence the prosecutor has agreed to recommend:
 Probation (Supervised (3 years)) Warrant of Det. Sup. J. in
 condition upon consent judgment - Conditional Plea -
 under § 30.3 def. preserves right to appeal criminal
 PFI

Defendant's Initials CW

14. Has the prosecutor promised that he or she will NOT:
- a. Speak at sentencing? [YES] [NO]
 - b. Seek an extended term of confinement? [YES] [NO]
 - c. Seek a stipulation of parole ineligibility? [YES] [NO]
15. Are you aware that you must pay restitution if the court finds there is a victim who has suffered a loss and if the court finds that you are able or will be able in the future to pay restitution? [YES] [NO] [N/A]
16. Do you understand that if you are a public office holder or employee, you can be required to forfeit your office or job by virtue of your plea of guilty? [YES] [NO] [N/A]
17. Do you understand that if you are not a United States citizen or national, you may be deported by virtue of your plea of guilty? [YES] [NO] [N/A]
18. Have you discussed with your attorney the legal doctrine of merger? [YES] [NO] [N/A]
19. Are you giving up your right at sentence to argue that there are charges you pleaded guilty to for which you cannot be given a separate sentence? [YES] [NO] [N/A]
20. List any other promises or representations that have been made by you, the prosecutor, your defense attorney, or anyone else as a part of this plea of guilty:
-


1. Have any promises other than those mentioned on this form, or any threats, been made in order to cause you to plead guilty? [YES] [NO]
2. a. Do you understand that the judge is not bound by any promises or recommendations of the prosecutor and that the judge has the right to reject the plea before sentencing you and the right to impose a more severe sentence? [YES] [NO]
- b. Do you understand that if the judge decides to impose a more severe sentence than recommended by the prosecutor, that you may take back your plea? [YES] [NO]
- c. Do you understand that if you are permitted to take back your plea of guilty because of the judge's sentence, that anything you say in furtherance of the guilty plea cannot be used against you at trial? [YES] [NO]
3. Are you satisfied with the advice you have received from your lawyer? [YES] [NO]
4. Do you have any questions concerning this plea? [YES] [NO]

DATE 2/7/05 DEFENDANT Chak O. White

DEFENSE ATTORNEY John D. Caruso

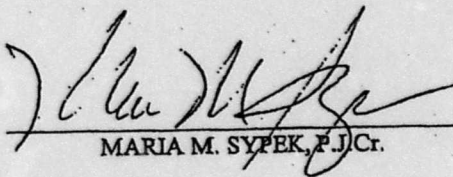
PROSECUTOR Denise Hugan DAG

I This plea is the result of the judge's conditional indications of the maximum sentence he or she would impose independent of the prosecutor's recommendation. Accordingly, the "Supplemental Plea Form for Non-Negotiated Pleas" has been completed.

State of New Jersey				v.				New Jersey Superior Court Law Division - Criminal Mercer County	
Defendant: Charles A. Watkins (Specify Complete Name)									
DATE OF BIRTH		3/19/66		SBI NUMBER		698108b			
DATE OF ARREST		4/26/04		DATE INDICTMENT/ ACCUSATION FILED		1/29/04			
DATE OF ORIGINAL PLEA		4/5/04		ORIGINAL PLEA		<input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty			
ADJUDICATION BY									
<input checked="" type="checkbox"/> GUILTY PLEA		DATE: 2/7/05		<input type="checkbox"/> NON-JURY TRIAL		DATE:			
<input type="checkbox"/> JURY TRIAL		DATE:		<input type="checkbox"/> DISMISSED / ACQUITTED		DATE:			
ORIGINAL CHARGES									
IND / ACC NO.	COUNT	DESCRIPTION				DEGREE	STATUTE		
Ind: 04-01-0008	1	Theft by Deception				3 rd	2C:20-4		
Pros: 04-0398	2	Unsworn Falsification to Authorities				4 th	2C:28-3a		
FINAL CHARGES									
COUNT	DESCRIPTION				DEGREE	STATUTE			
Ct. 1	Theft by Deception				3 rd	2C:20-4			
It is, therefore, on <u>4/15/05</u> ORDERED and ADJUDGED that the defendant is sentenced as follows: Ct.1- Probation: Three years(3). Probation may be terminated after 2 years if restitution is paid in full.									
<input type="checkbox"/> The defendant is hereby sentenced to community supervision for life. <input type="checkbox"/> The defendant is hereby ordered to serve a _____ year term of parole supervision which term shall begin as soon as defendant completes the sentence of incarceration. <input type="checkbox"/> The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior. <input type="checkbox"/> The court finds that the defendant is amenable to sex offender treatment. <input type="checkbox"/> The court finds that the defendant is willing to participate in sex offender treatment. <input checked="" type="checkbox"/> The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided.									
<input type="checkbox"/> It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.									
<input type="checkbox"/> Defendant is to receive credit for time spent in custody (R. 3:21-8).				TOTAL NUMBER OF DAYS		DATE: (From/To)			
<input type="checkbox"/> Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2)).				TOTAL NUMBER OF DAYS		DATE: (From/To)			
Total Custodial Term, _____				Institution _____		Total Probation Term <u>3 yrs.</u>			

<p>Total Fine \$ Total RESTITUTION \$7,619.78</p> <p>If the offense occurred on or after December 23, 1991, an assessment of \$50 is imposed on each count on which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is \$30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is \$25 if offense is before January 9, 1986.)</p> <p><input type="checkbox"/> Assessment imposed on count(s) <u>C11</u> is \$50 each.</p> <p>Total VCCB Assessment \$50.</p> <p>Installment payments are due at the rate of \$ _____ per _____ beginning _____ (Date)</p>	<p>If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C,</p> <p>1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)</p> <p>_____ 1st Degree @ \$3000 _____ 4th Degree @ \$750 _____ 2nd Degree @ \$2000 _____ Disorderly Persons or Petty Disorderly Persons @ \$500 _____ 3rd Degree @ \$1000 _____</p> <p style="text-align: right;">Total D.E.D.R. Penalty \$ _____</p> <p><input type="checkbox"/> Court further Orders that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.</p> <p>2) A forensic laboratory fee of \$50 per offense is ORDERED. _____ Offenses @ \$50. Total Lab Fee \$ _____</p> <p>3) Name of Drugs Involved _____</p> <p>4) A mandatory driver's license suspension of _____ months is ORDERED. The suspension shall begin today, _____ and end _____. Driver's License Number _____ (IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.) Defendant's Address _____ Date of Birth 3/19/66 Eye Color _____ Sex _____</p> <p><input type="checkbox"/> The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____, Driver's License Number _____</p> <p><input type="checkbox"/> Defendant's non-resident driving privileges are hereby revoked for _____ months.</p> <p>If the offense occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a state correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 189). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to \$2.00 is ordered for each occasion when a payment is made. (P.L. 1995, c. 9).</p> <p>If the offense occurred on or after August 2, 1993, a \$75 Safe Neighborhood Services Fund assessment is ordered for each conviction. (P.L. 1993, c.220) \$75.</p> <p>If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to \$25 per month for the probationary term is ordered. (P.L. 1993, c. 275) Amount per month \$ _____.</p> <p>If the crime occurred on or after January 9, 1997, a \$30 Law Enforcement Officers Training and Equipment Fund penalty is ordered. \$30.</p> <p>If the crime occurred on or after May 4, 2001, and the defendant has been convicted of aggravated sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1(2), endanger the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a minor under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor, kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or false imprisonment pursuant to 2C:13-3 if the victim is a minor and the offender is not the parent, promoting child prostitution pursuant to 2C:34-1b(3) or (4), or an attempt to commit any of these crimes, a \$800 Statewide Sexual Assault Nurse Examiner Program Penalty is ordered for each of these offenses.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:40%;">Name (Court Clerk or Person preparing this form)</td> <td style="width:20%;">Telephone Number</td> <td style="width:40%;">Name (Attorney for Defendant at Sentencing)</td> </tr> <tr> <td>Isabella Provost</td> <td>(609) 571-4155</td> <td>Christopher G. Hewitt, Esquire</td> </tr> </table> <p>STATEMENT OF REASONS - Include all applicable aggravating and mitigating factors</p> <p>Defendant, age 38; entered guilty plea to theft by deception, based upon his receipt of unemployment benefits while employed for a period of 5 months. This is his first upper court conviction.</p> <p>Aggravating factors: Need for deterring defendant and others from violating the law; the offense involved deceptive practices committed against a division of State government.</p> <p>Mitigating factors: Defendant will compensate victim for his conduct; he has 2 prior disorderly persons offenses, but no prior indictable convictions; he is particularly likely to respond affirmatively to probationary treatment.</p> <p>The court finds the mitigating factors outweigh the aggravating. Under all circumstances a term of probation conditioned upon restitution is found to serve the interests of justice.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:45%;">Judge (Name)</td> <td style="width:35%;">Judge (Signature)</td> <td style="width:20%;">Date</td> </tr> <tr> <td>Maryann K. Bielamowicz, J.S.C.</td> <td><i>MK Bielamowicz</i></td> <td>4/26/05</td> </tr> </table>	Name (Court Clerk or Person preparing this form)	Telephone Number	Name (Attorney for Defendant at Sentencing)	Isabella Provost	(609) 571-4155	Christopher G. Hewitt, Esquire	Judge (Name)	Judge (Signature)	Date	Maryann K. Bielamowicz, J.S.C.	<i>MK Bielamowicz</i>	4/26/05
Name (Court Clerk or Person preparing this form)	Telephone Number	Name (Attorney for Defendant at Sentencing)											
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Judge (Name)	Judge (Signature)	Date											
Maryann K. Bielamowicz, J.S.C.	<i>MK Bielamowicz</i>	4/26/05											

two other aforementioned bases. After considering those bases for rejection, the Court finds that the State's denial was not arbitrary or capricious and, therefore, denies the defendant's appeal of his PTI rejection.



MARIA M. SYPEK, P.J.Cr.

STATE OF NEW JERSEY, Plaintiff-Respondent, v. CHARLES A.
WATKINS, Defendant-Appellant.

DOCKET NO. A-3853-05T4

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

2007 N.J. Super. LEXIS 38

December 5, 2006, Submitted
February 5, 2007, Decided

SUBSEQUENT HISTORY: [*1] Approved
For Publication February 5, 2007.

PRIOR HISTORY: On appeal from Superior
Court of New Jersey, Law Division, Mercer
County, Ind. No. 04-01-0008.

COUNSEL: *Yvonne Smith Segars*, Public
Defender, attorney for appellant (*Abby P.
Schwartz*, Assistant Deputy Public Defender, of
counsel and on the brief).

Stuart Rabner, Attorney General, attorney for
respondent (*Leslie-Ann M. Justus*, Deputy
Attorney General, of counsel and on the brief).

JUDGES: Before Judges Kestin, Weissbard
and Payne. The opinion of the court was
delivered by WEISSBARD, J.A.D.

OPINION BY: WEISSBARD

OPINION: The opinion of the court was
delivered by

WEISSBARD, J.A.D.

Defendant, Charles Watkins, appeals from

an order of February 22, 2006, denying his
appeal of the State's rejection of his application
for entry into the Pre-Trial Intervention (PTI)
program, R. 3:28, following his indictment for
third-degree theft by deception, *N.J.S.A. 2C:20-
4* (count one), and fourth-degree unsworn
falsification to authorities, *N.J.S.A. 2C:28-3a*
(count two). Following the denial of his appeal,
defendant entered a guilty plea to count one
and, pursuant to a plea agreement, was
sentenced to [*2] a three-year probationary
term with a condition of restitution in the
amount of \$ 7619.78. If defendant completed
the restitution before three years, his probation
would be terminated after two years.
Appropriate penalties and assessments were
also imposed.

On appeal, defendant argues that the State's
rejection of his PTI application, in the face of a
recommendation for admission by the Criminal
Division Manager, constituted a gross abuse of
discretion. We reverse and remand for
reconsideration of defendant's application in
light of the views expressed in this opinion.

The facts leading to defendant's indictment
were set forth in the State's rejection letter of
April 19, 2004:

These charges are based on misrepresentations that Mr. Watkins made to the New Jersey Department of Labor (DOL) in order to receive unemployment benefits to which he was not entitled. Mr. Watkins began receiving unemployment benefits in May 1998 when he was temporarily laid-off from Trenton Psychiatric Hospital. Mr. Watkins' unemployment benefits were extended in 1999 under the "Additional Benefits During Training Program" (ABT) whereby certain "eligible" claimants may obtain an extension of unemployment [*3] insurance benefits while pursuing [sic] education and job training skills to enhance their employment opportunities. Mr. Watkins pursued a degree at the community college while receiving UI benefits under the ABT program but knowingly failed to report his re-employment with the Trenton Psychiatric Hospital to the Department of Labor.

Between January 23, 1999 through May 22, 1999, Mr. Watkins cashed nine unemployment checks, all of which required him to certify that he was unemployed, collecting \$ 5,670 in unemployment benefits. Based upon his earnings at Trenton Psychiatric Hospital during this time period, Mr. Watkins was not entitled to any of this money.

Apparently efforts were made to resolve the matter civilly but to no avail. The indictment

followed.

In denying defendant's appeal, the judge wrote as follows:

During the hearings on the appeal, the State initially asserted three bases for PTI denial: the fact that the defendant was a state employee and the policy of the Attorney General's Office was to hold state employees to a higher standard of conduct and deny them PTI entry; the fact that the offense occurred over a five-month period of time and involved [*4] nine separate unemployment checks; and the defendant's prior criminal behavior, which involved a 1990 disorderly persons conviction for receiving stolen property. At a subsequent hearing conducted on November 19, 2004, the State withdrew the defendant's employment with the State as a basis for rejection and relied upon the two other aforementioned bases. After considering those bases for rejection, the Court finds that the State's denial was not arbitrary or capricious and, therefore, denies the defendant's appeal of his PTI rejection.

At the outset, we note our limited scope of review. Due to the close relationship between the PTI Program and the prosecutor's charging authority, "courts allow prosecutors wide latitude in deciding whom to divert into the PTI Program and whom to prosecute through a traditional trial. The deference has been categorized as 'enhanced' or 'extra' in nature." *State v. Negran*, 178 N.J. 73, 82, 835 A.2d 301 (2003) (quoting *State v. Baynes*, 148 N.J. 434, 443-44, 690 A.2d 594 (1997)).

Thus, a prosecutor's decision rejecting a PTI application "rarely will be overturned." *State v. Kraft*, 265 N.J. Super. 106, 111, 625 A.2d 579 (App. Div. 1993) [*5] (quoting *State v. Leonardis (II)*, 73 N.J. 360, 380 n.10, 375 A.2d 607 (1977)). We review "to check only the most egregious examples of injustice and unfairness." *Ibid.* (quoting *State v. DeMarco*, 107 N.J. 562, 566, 527 A.2d 417 (1987)); see also *Negran, supra*, 178 N.J. at 82, 835 A.2d 301.

To overturn a prosecutor's rejection, a defendant must clearly and convincingly establish that the prosecutor's decision constitutes a patent and gross abuse of discretion. *Negran, supra*, 178 N.J. at 82, 835 A.2d 301; *State v. Nwobu*, 139 N.J. 236, 246, 652 A.2d 1209 (1995); *State v. Motley*, 369 N.J. Super. 314, 321, 848 A.2d 875 (App. Div. 2004). A patent and gross abuse of discretion has been defined as "more than just an abuse of discretion as traditionally conceived; it is a prosecutorial decision that 'has gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention.'" *State v. Wallace*, 146 N.J. 576, 582-83, 684 A.2d 1355 (1996) (quoting *State v. Ridgway*, 208 N.J. Super. 118, 130, 504 A.2d 1241 (Law Div. 1985) [*6] (citations omitted)). Defendant must show that the prosecutor's decision "(a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in judgment." *Negran, supra*, 178 N.J. at 83, 835 A.2d 301 (quoting *State v. Bender*, 80 N.J. 84, 94, 402 A.2d 217 (1979)). Because we conclude that the Prosecutor, and the judge, misinterpreted a critical factor, we remand for reconsideration.

The bases for defendant's rejection were also set forth in the prosecutor's rejection letter of April 19, 2004. Immediately following the statement of facts quoted above, the Deputy

Attorney General (DAG) stated:

The facts of this case indicate that the fraud continued from January to May 1999, a five-month period of time, involving nine separate instances where Mr. Watkins lied about his employment status in order to cash unemployment checks. Accordingly it is the State's position that the defendant's crime falls within the ambit of Guideline 3(i)(2) of Rule 3:28 as a continuing criminal enterprise justifying his rejection from PTI. Mr. Watkins [*7] committed a substantial fraud over a lengthy period of time. The circumstances surrounding this case coupled with his status as a public employee clearly demonstrates that he is not amenable to a rehabilitative process.

Finally, although there are no explicit per se rules excluding offenders from PTI eligibility, the statute provides that "supervisory treatment should ordinarily be limited to persons who have not previously been convicted of any criminal [offense]" N.J.S.A. 2C:43-12a. According to NCIC, Charles Watkins has a 1990 municipal court conviction for receiving stolen property. Obviously, Mr. Watkins [sic] prior experience with the criminal justice system has not had a significant deterrent effect on him and further indicating that he is not a suitable candidate for PTI.

Thus, a key element in the rejection determination was the DAG's conclusion that defendant's crime fell within Guideline 3(i)(2)

as a "continuing criminal enterprise." Such a conclusion "generally constitutes sufficient justification for rejection from pretrial intervention." *State v. Imbriani*, 280 N.J. Super. 304, 317, 654 A.2d 1381 (Law Div. 1994), *aff'd*, 291 N.J. Super. 171, 677 A.2d 211 (App. Div. 1996). [*8] The Guideline reads, in pertinent part, as follows:

(i) Assessment of the Nature of the Offense:

Any defendant charged with crime is eligible for enrollment in a PTI program, but the nature of the offense is a factor to be considered in reviewing the application. If the crime was (1) part of organized criminal activity; or (2) part of a continuing criminal business or enterprise; or (3) deliberately committed with violence or threat of violence against another person; or (4) a breach of the public trust where admission to a PTI program would deprecate the seriousness of defendant's crime, the defendant's application should generally be rejected.

While Guideline 3(i)(2) does not define its terms, the concept has been addressed in a number of cases, not always consistently.

In a comprehensive discussion in *State v. Marie*, 200 N.J. Super. 424, 491 A.2d 784 (Law Div. 1984), Judge Haines concluded, after examining numerous cases, that a "continuing criminal enterprise" consists "of a course of conduct involving a series of transactions continuing over a period of time." *Id.* at 429, 491 A.2d 784. "It is a defendant's repetitive criminal activities which [*9] provide a negative implication when rehabilitation is considered." *Id.* at 429-30, 491 A.2d 784. In

Marie, the defendant was arrested based on the discovery of eighty-five pounds of marijuana in a vehicle in which he was a passenger. *Id.* at 426, 491 A.2d 784. He was thereafter indicted for possession and possession with intent to distribute narcotics. *Ibid.* While recognizing that defendant's activity, although a single transaction, "may well be a link in a chain of further activities dealing with the disposition of marijuana," the judge concluded that it was "not, however, the kind of continuing criminal activity which requires the defendant to face the high barrier created by Guideline 3(i). There is no showing of any repetitive criminal activity. Guideline 3(i) should not be applied." *Id.* at 430, 491 A.2d 784.

In the course of his opinion, Judge Haines catalogued the cases that had, to that date, addressed Guideline 3(i), beginning with *State v. Bender*, 80 N.J. 84, 402 A.2d 217 (1979), in which defendant, a licensed pharmacist, diverted narcotics from his employer's inventory over a four-year period to feed his cocaine addiction. The Court stated [*10] as follows:

We agree with the State that in order for a series of criminal acts to constitute a continuing enterprise, it is not necessary that a "profit" be realized in the sense that the fruits of those crimes be sold to third persons and hence be converted into cash. Nonetheless, the defendant's course of conduct must ordinarily involve commercial overtones. That is, the crimes perpetrated must be undertaken for the purpose of enriching defendant in some material way.

As such, the crimes here engaged in by defendant cannot be characterized as a continuing criminal business or enterprise in

the sense of being undertaken for commercial purposes. Although defendant systematically diverted cocaine from his employer's stocks over a four-year period, his course of conduct was not motivated by a desire to, nor did it, add to his worldly possessions or in any other manner result in financial gain. Rather, his crimes were merely undertaken in order to satisfy his need for drugs.

Support for this construction of "continuing criminal business or enterprise" can be gleaned from the language of the Guidelines themselves. One of the main purposes of PTI is "[t]o provide a mechanism for [*11] permitting the least burdensome form of prosecution possible for defendants charged with 'victimless' offenses." Guideline 1(c). Clearly, this purpose would be entirely frustrated were persons who unlawfully consume controlled dangerous substances over a prolonged time span to be deemed engaged in a continuing criminal enterprise and hence "generally" to be rejected pursuant to Guideline 3(i)(2). Although in the present case defendant's crime was not truly "victimless" -- inasmuch as his cocaine diversions harmed his employer as well as himself -- the underlying rationale of Guideline 1(c) is nevertheless applicable. Defendant's later thefts, being precipitated in large part by his drug dependence, cannot be characterized as part of a continuing business or enterprise.

[*Id.* at 95-96, 402 A.2d 217.]

In a companion case, *State v. Sutton*, 80 N.J. 110, 402 A.2d 230 (1979), the defendant had obtained public assistance funds and food stamps over a four and one-half year period, while failing to report that she had obtained work as a part-time school bus driver. If the earnings had been reported, defendant's welfare benefits would have been reduced. *Id.* at 114, 402 A.2d 230. [*12] The Court held that defendant's PTI application was properly rejected because her conduct constituted a continuing criminal enterprise. *Id.* at 118, 402 A.2d 230. The Court stated:

Defendant did not merely fail to report one or a few sporadic accessions to her income. Rather, over a four and one half year period, she regularly received compensation deriving from her employment as a part-time school bus driver. She was thus guilty of a series of "fail[ures] to disclose a material fact which it [was her] duty to reveal," and these non-disclosures allowed her to "obtain * * * from [an] agency of the county * * * money, property, [and] other thing[s] of value * * *." N.J.S.A. 2A:111-2.

[*Ibid.*]

In *State v. Masucci*, 156 N.J. Super. 272, 383 A.2d 781 (Law Div. 1978), the defendant admitted that he sold marijuana "on the street," for profit. *Id.* at 276, 280, 383 A.2d 781. The judge upheld defendant's PTI rejection, stating:

It is everywhere recognized that the street sale of marijuana is part of a larger drug traffic which has its genesis outside of this country. His participation in this insidious venture is clear evidence of [*13]

his involvement in a continuing criminal business or enterprise.

[*Ibid.*]

In *State v. Barrett*, 157 N.J. Super. 96, 384 A.2d 558 (App. Div. 1978), defendant engaged in a scheme over a period of three years to sell unregistered securities to the public through a company of which he was President. *Id.* at 98-99, 384 A.2d 558. We reversed a Law Division order that had overturned the Attorney General's rejection of defendant's PTI application, on the basis that the activity fell within Guidelines 3(i)(1) and (2). *Id.* at 102, 384 A.2d 558. Defendant was "part of an organized and continuous criminal activity." *Id.* at 103, 384 A.2d 558.

Several of the other cases cited in *Marie* did not touch on Guideline 3(i)(2). Thus, *State v. Markt*, 156 N.J. Super. 486, 384 A.2d 162 (App. Div. 1978), turned on defendant, treasurer of the Joint Free Public Library of Morristown and Morris Township, having engaged in a breach of public trust by virtue of a series of six embezzlements and forgeries over a six-month period, *id.* at 489, 493, 384 A.2d 162, in violation of Guideline 3(i)(4). *Id.* at 492, 384 A.2d 162. And, in *State v. Smith*, 92 N.J. 143, 455 A.2d 1117 (1983), [*14] defendant's premises were allegedly being used for a large scale gambling operation which, based on records seized, had been ongoing for about eight years. *Id.* at 144, 455 A.2d 1117. The Court upheld the prosecutor's rejection of defendant's PTI application on the ground that his conduct was "part of organized criminal activity" in violation of Guideline 3(i)(1). *Id.* at 145-47, 455 A.2d 1117.

Subsequent to *Marie*, we confronted a single mother of three young children who wrongfully received public assistance benefits during four periods totaling twenty-seven months over a four-year time span. *State v. Mickens*, 236 N.J. Super. 272, 273, 565 A.2d

720 (App. Div. 1989). Defendant was rejected for PTI enrollment based on Guideline 3(i). *Id.* at 273, 565 A.2d 720. We assumed that the Guideline applied to her conduct, but nevertheless concluded that her reasons for committing the offense and her prospects for rehabilitation compelled her admission to the program. *Id.* at 278-80, 565 A.2d 720. Significantly, we made no mention of *State v. Sutton*, *supra*, a remarkably similar case with an opposite outcome. Indeed, the court in *Mickens*, *id.* at 279, 565 A.2d 720 [*15] made only passing reference to *State v. Burger*, 222 N.J. Super. 336, 536 A.2d 1295 (App. Div. 1988), in which we concluded that obtaining welfare benefits and food stamps over a six-year period while continuously - and falsely - certifying to no outside income, *id.* at 339, 536 A.2d 1295, "fell within the ambit of Guideline 3(i)(2) as a continuing criminal enterprise." *Id.* at 341, 536 A.2d 1295 (citing *Sutton*, *supra*, 80 N.J. at 117-18, 402 A.2d 230). n1 Finally, in *Imbriani*, *supra*, 280 N.J. Super. at 316, 318, 654 A.2d 1381, defendant, a Superior Court judge, diverted over \$ 173,000 to his own use over a period of five years from a private real estate partnership, using a variety of fraudulent schemes. It was in that context that the Law Division found defendant's offense to constitute a continuing criminal enterprise, applying the definition of that term in *State v. Marie*, quoted above. *Id.* at 317-18, 654 A.2d 1381. We agreed with that conclusion, noting that "the criminal activity here was not of such a nature that it had to continue except for defendant's intent and purpose to continue to offend." *Imbriani*, *supra*, 291 N.J. Super. at 182, 677 A.2d 211 [*16]

n1 Other cases cited by defendant in which PTI rejections have been overturned do not deal with the continuing criminal enterprise Guideline.

State v. DeMarco, supra; State v. Munos, 305 N.J. Super. 9, 701 A.2d 920 (App. Div.), certif. denied, 152 N.J. 186, 704 A.2d 16 (1997); State v. Fitzsimmons, 291 N.J. Super. 375, 677 A.2d 767 (App. Div.), certif. denied, 146 N.J. 568, 683 A.2d 1163 (1996); State v. Hoffman, 224 N.J. Super. 149, 539 A.2d 1254 (App. Div. 1988).

With this background, we return to the present case. To repeat, defendant received \$ 5670 in unemployment benefits in the form of nine checks over a four-month period; to continue receiving benefits, defendant was required to certify bi-weekly that he was unemployed. Defendant admitted that he knew of his obligation to report his renewed employment to the DOL. The question is whether his conduct constituted a continuing criminal enterprise, as that term is used in Guideline 3(i)(2). [*17] While one could parse the phrase into its components, i.e., "continuing," "criminal" and "enterprise," we believe a proper analysis requires the words to be read as a unit. Thus, while defendant's actions were certainly criminal, did they amount to a "continuing . . . enterprise"?

As noted earlier, *Bender, supra, 80 N.J. at 95, 402 A.2d 217*, held that the "course of conduct must ordinarily involve commercial overtones," although it is not necessary that there be third parties, such as buyers of illegally obtained goods, involved. Yet, the Court went on to clarify its statement by observing that the crimes "must be undertaken for the purpose of enriching the defendant in some material way." *Ibid.* If that statement were taken literally, defendant would clearly fit within the Guideline since he was enriched in a material way by receiving the checks to which he was not entitled. However, we believe that the Court's statement cannot be understood without reference to its factual context,

particularly the length of time involved - four years. In that case, of course, the Court ultimately held that the Guideline did not apply since defendant's thefts were for the sole purpose [*18] of supporting his addiction, and not for pecuniary gain. In *Sutton, supra*, the defendant's conduct, which was clearly undertaken for personal financial gain, took place over a four and one-half year period. *80 N.J. at 118, 402 A.2d 230.* Other cases discussed earlier have likewise involved criminality over an extended period of time. *Barrett, supra*, (three years); *Burger, supra*, (six years); *Imbriani, supra*, (five years).

The dictionary defines "enterprise" as *inter alia*, an undertaking of "great scope, complication or risk," a "business organization," or a "systematic and industrious activity." *Webster's II New College Dictionary* 375 (1995). n2 The reference to a "business organization" is significant because, in seeking the meaning to be accorded the term "enterprise" in Guideline 3(i)(2), we also note that the entire phrase speaks of a continuing "business or enterprise" (emphasis added). See *State v. Sisler, 177 N.J. 199, 206-07, 827 A.2d 274 (2003)* (quoting *Jersey Central Power & Light Co. v. State Bd. of Tax Appeals, 131 N.J.L. 565, 567, 37 A.2d 111 (E. & A. 1944)*) [*19] ("The coupling of words denotes an intention that they shall be understood in the same general sense"). "Continuing" is defined, insofar as relevant here, as existing "over an extended period." *Webster's Dictionary, supra*, at 244.

n2 When seeking the "ordinary and well-understood meanings" of words, courts frequently look to the dictionary definitions. *Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 384, 658 A.2d 1230 (1995).*



C-821 SEP 2006

A-118 SEP 2006

JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER

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FILED

MAR 02 2006

[Signature]
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February 23, 2007

Honorable Chief Justice
and Associate Justices
Supreme Court of New Jersey
CN 970
Trenton, New Jersey 08625

Re: State v. Charles A. Watkins
Docket No. A-3853-05T4

601753

Your Honors:

The Public Defender has received the Petition for Certification filed by the state in the above-captioned matter. The Public Defender opposes the granting of this petition and relies upon the opinion of the Appellate Division and the brief she submitted to the Appellate Division, nine copies of which are enclosed herewith.

The Public Defender urges the Court to deny the state's petition since no substantial question is raised therein.

Should the Court grant the petition, however, the Public Defender reserves the right to seek an order permitting the filing of a supplemental brief pursuant to R. 2:12-11.

Respectfully submitted,

YVONNE SMITH SEGARS
Public Defender

By: *[Signature]*
ABBY P. SCHWARTZ
Assistant Deputy Public Defender

Enc.
c: Leslie-Ann Justus, D.A.G.

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DOCKET NBR: A 003853 05
CASE TITLE: STATE OF NJ VS CHARLES WATKINS

HEARING SEL	DATE	VOL #	ORDERED DATE	DUE DATE	AP/ CRT	FILED DATE	TRN TYPE	# CPY	TRN FMT	IMP
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11 19 2004	001	04 04 2006	07 05 2006	C	04 20 2006	T01	004	V	N	
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MERCER COUNTY, NEW JERSEY
INDICTMENT NO. 04-01-0008
A.D. #

A-778 SEP 2006

STATE OF NEW JERSEY)

TRANSCRIPT

v.)

OF

CHARLES WATKINS III,)

HEARING

Defendant.)

Place: Mercer County Courthouse
209 South Broad Street
Trenton, NJ 08650

Date: September 24, 2004

BEFORE:

THE HON. MARIA M. SYPEK, P.J.S.C.

TRANSCRIPT ORDERED BY:

KELLY ANDERSON SMITH, ESQ. (Garces & Grabler, P.C.)

APPEARANCES:

DENISE L. GRUGAN, Deputy Attorney General
Attorney for the State

KELLY ANDERSON SMITH, ESQ. (Garces & Grabler, P.C.)
Attorney for the Defendant

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Video Recorded

Colloquy

4

1 to May. From my review of the discovery, we're talking
2 about nine checks:

3 During that interim, which is the key period
4 of time that's at issue for the complaint, Mr. Watkins
5 was rehired by the State, and he went back to work, yet
6 he still cashed those checks. This is not a crime of
7 violence, and the outpouring of support from not only
8 friends and family but employers, colleagues, and
9 people in the community has been just an amazing -- I
10 was impressed, and I do these all the time. And just
11 -- it was incredible the people that have stepped
12 forward.

13 This is exactly the type of individual that
14 PTI contemplates. If this man is given a probationary
15 sentence and has a conviction, he will lose his job,
16 which is pretty much everything he's worked for, which
17 seems to me incredibly unfair and unjust, given what
18 we're talking about. We're talking about a theft by
19 deception. We're not talking about a crime of violence
20 or selling drugs into the community. We're talking
21 about a mistake.

22 He's perfectly willing to take responsibility
23 for that mistake and is perfectly willing to make
24 payments to restore that amount. I think the exact
25 figure is approximately \$5,600. With taxes and

Colloquy

5

1 penalties it was, I think, an additional 2,000. I
2 don't have the exact figure in front of me, but we're
3 talking a total of about 7,500, \$7,600 in total. He's
4 willing to make that payment. He's willing to move
5 forward with his life.

6 Unfortunately, despite the fact that he's an
7 excellent candidate under the law and the purview of
8 all the elements that they lay out for PTI candidates,
9 and criminal case management, by the way, found him to
10 be a suitable candidate, the State has determined
11 pretty much that he's not. And what is that based on?
12 It's based on the fact, first of all, that he's a State
13 employee. He's being held to a higher standard which,
14 in my estimation, is -- that in and of itself is
15 arbitrary and capricious.

16 Secondly, they're looking at that 1990
17 conviction. That was 14 years ago, and it was a
18 municipal court conviction. I think that case is much
19 too old to be seriously contemplated.

20 And the other argument that the State's
21 making is the fact that this was ongoing, which was
22 four months of unemployment. I don't think that
23 constitutes a scheme against society. He made a
24 mistake, and he's willing to pay for it.

25 I think the case law completely supports his

1 admission in the PTI, given all the factors, and I
2 think that's another downfall of the State. They're
3 not looking at this particular individual as a whole,
4 what he's done for the community, what he's done for
5 his job, what he's done for his family. They're
6 looking at him in a vacuum, and you can't do that.
7 That's arbitrary.

8 But the fact that he's being held to a higher
9 standard because he's a State employee is completely
10 inappropriate for a PTI determination. If I had
11 committed the same offense, I'd be getting into PTI
12 because I work for a private employer. If I was still
13 working for the PD office which I had done many years,
14 I wouldn't get into PTI by virtue of the fact that I'm
15 a State employee, and that's not right. There's a bias
16 that's built in there that's completely capricious.

17 I can't think of a more suitable candidate.
18 The State has a remedy in the event that this is a
19 farce, which I can assure the Court it's not. But in
20 the event that this is a farce, then he's putting on a
21 hell of a show just to get into PTI. If he fails or he
22 fails to make one payment, he can be violated and we
23 could go right back to a guilty plea.

24 Mr. Watkins is even willing to plead guilty
25 as a condition of getting into PTI. That just goes to

1 show you his motivation and just not have it executed,
2 but he will lose his job. It seems to me under the
3 circumstances and the nature of this offense that the
4 appropriate remedy here is to commit this individual in
5 PTI. Not to make a sweeping generalization that all
6 theft by deceptions should be admitted, but this
7 individual, and it needs to be a case by case fact
8 sensitive analysis, and he's an excellent candidate.
9 He's the perfect candidate I would respectfully submit.

10 And again, the -- I've spelled out the case
11 law in support of my position, and I know the Court is
12 well read in that regard. So I won't belabor the
13 point. I just wanted to hit the highlights. But it's
14 just this is one of those cases where policy should be
15 thrown in the wind, and the individual should be taken
16 at face value.

17 THE COURT: All right, the State's position?
18 MS. GRUGAN: Your Honor, indeed it is the
19 policy of the State of my office that we do not grant
20 PTI to State workers. It's not arbitrary and
21 capricious. We hold workers to a higher standard, and
22 one of it is a preservation of our pension fund.

23 Also because we're dealing with State
24 workers, we -- at certain times, and this happened at
25 the time when this matter arose with Mr. Watkins, they

1 will do what's called a quarterly cross-match, where
2 they will look at employees -- employer's records, and
3 cross them with recipients of UI benefits, and they did
4 a clean sweep for all State workers. And this is
5 justified because we want to make sure that we don't
6 have people that are working for the system and also
7 taking advantage of the system.

8 Mr. Watkins -- when they determined what your
9 monetary benefits are, it's set up in a reserve, \$6,000
10 approximately, in this matter. His benefits -- he
11 depleted those benefits, and they were even extended
12 further, given a whole new time frame for him to extend
13 his benefits.

14 So he got the benefit of more unemployment
15 insurance benefits, but he also got the benefit of
16 getting an education while he was collecting those
17 benefits and still working. So he was getting a lot of
18 assistance from the State, and he took advantage of
19 that assistance that's being afforded to him, something
20 that is very gratuitous and generous, I think, by the
21 State.

22 This isn't just one bad instance. He cashed
23 nine checks consecutively, over and over and over
24 again. And attached to each of those checks is a claim
25 form where he fills out and says if he's working or not

1 working, and in this instance he returned those claim
2 forms stating over and over and over again I'm
3 unemployed and therefore entitled to these benefits.

4 And on the back of each of these checks when he
5 endorses these checks there's a certification where the
6 claimant has to state I'm entitled to these benefits, I
7 am unemployed, and I reported to the State all of my
8 wages and earnings during this time. So they're given
9 every opportunity and notified you can't cash these
10 checks unless you're entitled to them.

11 And also with regard to, you know, to the
12 context of being a State worker, Mr. Watkins was
13 employed as a human services technician. From what
14 I've been told by his employer, he is responsible for
15 handling a lot of patients' monies and valuables, and I
16 guess that that's what's being considered. If he does
17 have a conviction on his record, there's nothing
18 precluding him from going to another job and getting a
19 position, and they can take that responsibility of
20 knowing that they've hired someone who has a conviction
21 on his record.

22 But he's had every opportunity to change his
23 course of action. Not only that, but even before these
24 matters were transferred over to our office for
25 criminal prosecution, they notify defendants or

1 claimants and say, let's come and negotiate this. And
2 that matter wasn't pursued here. It was largely
3 ignored by the defendant which is why it comes over to
4 our office for prosecution. That's all.

5 THE COURT: Do you have any of those
6 documents that you're referencing?

7 MS. GRUGAN: Yes, Your Honor.

8 THE COURT: Anything in response while she's
9 looking?

10 MS. SMITH: Judge, I can't -- Mr. Watkins has
11 informed me they did reach out to him to make payment.
12 He went down to the office in order to do that. He
13 tried to make payment. It was -- it never came about,
14 but I don't think it was on his shoulders. They never
15 re-contacted him. He didn't know.

16 Now, you can easily say well, it's still your
17 responsibility, but he was willing at that time. He
18 has never not been willing. And the fact of the matter
19 is not withstanding this -- the nature of this charge,
20 it's mandated that he lose his job. So it's not really
21 discretionary on the employer. If in fact this goes
22 down as a conviction, that's it. He will lose his job.
23 That's a double punishment.

24 It's, you know, the -- with all the due
25 respect to my adversary, it's a lot easier said than

1 done to go out and find a decent paying job with decent
2 benefits when you have a conviction on your record.
3 And not to say well, he shouldn't take responsibility
4 for his actions. He has taken responsibility for his
5 actions. He knows he made a mistake. He regrets it
6 greatly because his whole future -- and he's sorry
7 about it.

8 But it was a mistake. And that's what PTI is
9 for. It's for that person that makes a mistake.
10 Again, this is not a crime of violence. It's not a
11 crime of selling drugs. He's willing to make the
12 restitution. Why not give him that opportunity? He is
13 paying his taxes. He's given back to the community.

14 He has just had a plethora of community support,
15 many of which are employers and colleagues and patients
16 at this job. So obviously he's doing his job well. If
17 his employer has the discretion, if they wanted to,
18 they could fire him right now pending the outcome of
19 this. They haven't done that. So he must be doing
20 something right.

21 Why not give him that opportunity and just --
22 again, not to belabor the point, but whether it's a
23 policy throughout the office or not, the policy is
24 flawed. You cannot hold someone to a higher standard
25 just by virtue of the fact that they're a State

1 employee. That's not for the Attorney General's Office
2 to do. Who died and made them the king that says well,
3 we're going to hold New Jersey employees to that higher
4 standard? Where's the justification for that? Where
5 in the law does it say that they have that ability?

6 There is a law that says that he will lose his job
7 if he has a conviction. But there's nowhere in the
8 law, and certainly nowhere in the cases and its progeny
9 of PTI cases where it says the State of New Jersey has
10 the ability and the authority to say okay, you're a New
11 Jersey State employee so we're going to hold you to a
12 higher standard. Therefore, that's the reason you
13 can't get into PTI. There's no foundation for it.
14 That's what makes it arbitrary.

15 So whether it's an office-wide policy or not,
16 it's a wrong policy. And I will bet you dollars to
17 doughnuts that if this case went up to the Supreme
18 Court, the Supreme Court would agree on it. There is
19 no authority for that basis. That's what makes it
20 capricious.

21 THE COURT: So you're suggesting this is a
22 policy of the Attorney General's Office, the State of
23 New Jersey, that no one who is an employee of the State
24 of New Jersey can receive PTI from -- at any time?

25 MS. GRUGAN: I was told by my office that

1 this is their position, that because he's a State
2 worker, they would not give him -- they would not allow
3 him into PTI. They would not take that position. That
4 policy aside, Your Honor, I just wanted to point out
5 what's in front of you, the mail claim benefit forms
6 and Question 7. On that mail claim benefit form, he is
7 asked were you working? If yes, fill out the back and
8 tell us when you worked and what hours you worked and
9 take it to your employer and make sure your employer
10 certifies that these were your earnings.

11 He did this over and over and over again, and
12 I would argue he knew exactly what he was -- for
13 example, on the front of that claim form he has to
14 sign, date and mail it by a specific date. And they
15 are --

16 THE COURT: Well, I'm sure that there's no
17 doubt that, you know -- we don't make things a crime
18 that aren't somewhat, you know, intentional. So
19 obviously if he had just made an error in it, you
20 wouldn't be charging him with a crime. So I understand
21 what you're saying in terms of what's required to be
22 done here, and I don't think he is now denying that.

23 The issue only becomes, at this time, you
24 know, whether or not the State has taken a position
25 that's arbitrary and capricious, excuse me. Whether it

1 is a statewide policy which I'm actually hearing for
2 the first time that there's a policy that no one who is
3 a State employee would be entitled to PTI; I can't
4 imagine that that's true.

5 MS. GRUGAN: I was just told in this case.
6 This is one of the first State workers that I've had,
7 and I have gone back to my supervisors, and they've all
8 told me we will not allow PTI or endorse a candidate
9 for PTI who is a State worker.

10 THE COURT: Well, you know, that is fraught
11 with some difficulty in terms of the application. It
12 just flies in the face of PTI and what the analysis is
13 supposed to be in terms of case by case. You look at
14 the individual, you look at the ability to
15 rehabilitate, and so that policy gives me concern.

16 The municipal matter is, you know, one that
17 if I were making the decision, I would not consider in
18 terms of an old municipal conviction. But then again,
19 that's not the standard. What I would do is of no
20 moment. It's what the State does and whether the State
21 is acting arbitrarily and capriciously.

22 The third one, as I understand it, is the
23 fact that this was alleged to be an ongoing crime, that
24 it happened nine times over the course of what I
25 believe, four months. And as a result of that, he can

1 be excluded for the reasons that this was not just a
2 one time crime. I don't know whether logically Mr.
3 Watkins, if he were to be indicted on this charge,
4 would -- oh, he is indicted. How was it indicted? Was
5 it indicted with nine counts?

6 MS. GRUGAN: No, it was just one count of
7 theft by deception.

8 THE COURT: I wouldn't think it would have
9 been. So, you know, that's the other, I guess, the
10 other factor that was being considered. It's a
11 legitimate factor, and the defendant finds himself in a
12 position where the State has the power, essentially, as
13 long as they don't abuse it, as long as they're not
14 arbitrary, as long as they're not capricious in their
15 analysis, whether it be just on one of the factors. It
16 would have to be on all three.

17 So in my view, without more analysis and
18 without more information, because I don't know whether
19 it actually can be represented today by -- on behalf of
20 the Attorney General's Office, if there's just a
21 blanket policy that no State employee is ever afforded
22 the opportunity to enter into PTI. I'm not sure if
23 that's accurate. I'm not sure if you're comfortable
24 saying that today. I don't know --

25 MS. GRUGAN: I don't know too much about the

1 policy other than I have gone back to my supervisors
2 over --

3 THE COURT: So the crux of the issue is this
4 nine times that it was done, in my view because the
5 other two -- I think there's an argument that can be
6 made that if that be the case, that there is this
7 blanket policy, that that may be a decision that the
8 State has made that flies in the face of what PTI is
9 intended to do.

10 But the question is whether or not, looking
11 at the nine times that this was done, is sufficient
12 basis to have Mr. Watkins excluded from PTI.

13 MS. SMITH: Judge, if I may respond? I can't
14 tell you the countless theft by deception, specifically
15 welfare fraud or --

16 THE COURT: You don't have to tell me about
17 that. I see it every day. But that's not the
18 standard. I mean, if the standard is whether or not
19 the action under this circumstance is arbitrary.

20 MS. SMITH: I understand that. But if -- how
21 can you reconcile where welfare fraud with they're
22 receiving -- which is a similar, you know, mirror image
23 of this case, where they are receiving benefits
24 repeatedly over a course of time, which I would submit
25 to you four months is not that long, but over a course

1 of time -- or whether it be unemployment benefits or
2 whatever benefits they're not entitled to, given the
3 circumstances, that how can you reconcile the fact that
4 those individuals are in PTI? And I can think of one
5 right off the top of my head where it was a ten year
6 period.

7 How can you reconcile that and not
8 acknowledge the fact that you have the Deputy Attorney
9 General telling you right now that she was advised by
10 her supervisors that he's being held to a higher
11 standard, and that's how the DAG opened her remarks to
12 the Court?

13 THE COURT: That's true.

14 MS. SMITH: We're holding this individual as
15 a State employee to a higher standard because of, you
16 know, the benefits and the State was generous with him
17 and all this other -- but the fact of the matter is, he
18 is being held to a higher standard. That's what's
19 arbitrary. So it's convenient that this happened over
20 a four month period of time and involves nine checks.

21 But the fact of the matter is we do have one
22 indictment, and the Court itself has acknowledged the
23 fact that these types of cases on a routine basis get
24 into PTI. So you can't disregard this higher standard.
25 That's what's arbitrary here. I guarantee you that if

1 policy other than I have gone back to my supervisors
2 over --

3 THE COURT: So the crux of the issue is this
4 nine times that it was done, in my view because the
5 other two -- I think there's an argument that can be
6 made that if that be the case, that there is this
7 blanket policy, that that may be a decision that the
8 State has made that flies in the face of what PTI is
9 intended to do.

10 But the question is whether or not, looking
11 at the nine times that this was done, is sufficient
12 basis to have Mr. Watkins excluded from PTI.

13 MS. SMITH: Judge, if I may respond? I can't
14 tell you the countless theft by deception, specifically
15 welfare fraud or --

16 THE COURT: You don't have to tell me about
17 that. I see it every day. But that's not the
18 standard. I mean, if the standard is whether or not
19 the action under this circumstance is arbitrary.

20 MS. SMITH: I understand that. But if -- how
21 can you reconcile where welfare fraud with they're
22 receiving -- which is a similar, you know, mirror image
23 of this case, where they are receiving benefits
24 repeatedly over a course of time, which I would submit
25 to you four months is not that long, but over a course

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22 indictment, and the Court itself has acknowledged the
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24 into PTI. So you can't disregard this higher standard.
25 That's what's arbitrary here. I guarantee you that if

1 he was not a State employee, this would not be an
2 issue. He would already be in PTI. And that's the
3 problem.

4 And I don't think the Attorney General's
5 Office is going to issue to the Court a written
6 proclamation stating its policy. The fact of the
7 matter is that's their policy, and that's certainly
8 being -- that's the policy that's being applied here by
9 the very candor of the Deputy Attorney General.

10 THE COURT: Is this -- do you know if there
11 is such a policy? Let me just ask today, does any --

12 MS. GRUGAN: I'm really not sure. I was just
13 told by -- since I indicted this case, I've had two
14 supervisors and I went back to both -- to each of them,
15 and I've asked them both for their consideration. They
16 said no. We do not allow it. And I was never given
17 any better explanation than that.

18 MS. SMITH: Your Honor, you know, just for
19 the record, this is no fault of this particular Deputy
20 Attorney General. She's getting her marching orders
21 from the superiors in her office, but it's very clear
22 that that's the -- whether this policy is applied
23 uniformly throughout all defendant cases or not, the
24 thing applied to this individual, and that's unfair.
25 That's arbitrary.

1 MS. GRUGAN: Now, it is applied to all other
2 public employees as well. See, we deal with this also
3 at the municipal level, and I know that that's always
4 been the position, that they're probation cases. I
5 also just want to point out that when Mr. Watkins
6 received the benefits under the extended program --
7 it's called ABT Program, what they do is they figure
8 out a monetary reserve. He depleted his monetary
9 reserve under the initial time he was given --

10 THE COURT: And they extended it.

11 MS. GRUGAN: -- unemployment benefits. Then
12 they give him a whole new set of second monetary
13 reserve --

14 THE COURT: You told me that.

15 MS. GRUGAN: -- of 6,000. And the reason he
16 depleted almost all of that -- \$5,061 is the total
17 theft, falling just short of the 6,000 reserve. So,
18 you know, but for this quarterly cross-match, you know,
19 he got caught. You know, he never came forward. You
20 know, this isn't Mr. Good Samaritan and said oh, you
21 know --

22 THE COURT: No, this is being handled as a
23 crime. I understand that, you know, and he's
24 apparently willing to even plead to it. So I
25 understand that. You know, most of the times we don't

1 look for Good Samaritans when we're dealing with, you
2 know, these issues.

3 So the concern that I have is -- you've
4 placed in this case the fact that he is a State
5 employee and therefore not entitled to PTI. So I think
6 I need something -- if there's a policy, do you have
7 any case law because you didn't cite any then --

8 MS. GRUGAN: No.

9 THE COURT: -- to suggest that that's an
10 appropriate --

11 MS. GRUGAN: No, I just know that this is the

12 --
13 THE COURT: -- factor to consider? And why
14 would that be appropriate?

15 MS. GRUGAN: I can't give you an answer to
16 that right now.

17 THE COURT: Well, I'll give you an
18 opportunity to supplement the record with something
19 that would argue that State employees are not entitled
20 to PTI, or this particular person, being a State
21 employee under these circumstances, is not allowed
22 entry into PTI, but for some reason. Give me some
23 reason why it is that a State employee would be barred,
24 if it's a general policy. Or if it's specific to this
25 individual, then why this specific individual?

1 MS. GRUGAN: Your Honor, the State -- the
2 fact that he's a State employee, putting that aside, we
3 do have enough here that merits his disqualification
4 from the program.

5 THE COURT: Oh, I still want to hear this.
6 This is the first time I'm ever hearing that no State
7 employee can be given PTI.

8 MS. GRUGAN: But I believe that the thrust of
9 the PTI program is to give prosecutors substantial
10 discretion into who gets into the diversionary program.

11 THE COURT: Oh, it gives case management and
12 the prosecutor's office -- absolutely true. But it
13 can't be arbitrary. It can't be capricious. And if
14 there's a blanket policy that excludes a large portion
15 of the population, then there should be some reasonable
16 basis for that exclusion. I just want to hear what it
17 is. You haven't submitted it in writing, and you don't
18 feel that you can do it today to tell me about that.

19 And if that's the umbrella under which all the
20 other aspects of this case are being evaluated, then I
21 think the argument is well placed by the defense that
22 anybody else, other than Mr. Watkins, who would not be
23 a State employee rather, I should say -- anybody else
24 not being a State employee would have otherwise been
25 given this opportunity.

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instead of the Tuesday after Columbus Day would be that Friday?

THE COURT: You're talking about October. I said November 12th, but you want October 15th? Is that what you're saying?

MS. SMITH: Yes, okay. I'm sorry. November

THE COURT: I'm just giving the State some time to submit something, so --

MS. SMITH: Judge, would you mind making it the 19th, November 19th? I'm still in two counties.

THE COURT: November 19th.

MS. SMITH: Thank you so much. Would that be at nine or 1:30?

THE COURT: 1:30.

* * * * *

CERTIFICATION

I, BETH ANNE PRUNCHAK, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on videotape B, index number 02:01:26 to 02:21:55, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

Beth Anne Prunchak
BETH ANNE PRUNCHAK

Approved by:

Johanna Limato
JOHANNA LIMATO AOC # 179

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Date: *November 9, 2004*

1 THE COURT: All right, State versus Charles
2 Watkins III, Indictment 04-01-0008. This is a State
3 Grand Jury matter, 04-0398 is the Prosecutor File
4 Number. We're here for the hearing on the PTI appeal.
5 Counsel, if you'll place your appearance on the record?

6 MS. SMITH: Good afternoon, Your Honor.
7 Kelly Smith, Garces and Grabler, on behalf of Mr.
8 Watkins.

9 MS. GRUGAN: Denise Grugan, Deputy Attorney
10 General.

11 THE COURT: All right, and you can all be
12 seated. Thank you very much. All right, I have
13 received the appeal and the submission from the State.
14 I think there were two. I'm not sure if there were
15 two. There's a -- yes, there were two responses from
16 the State.

17 MS. GRUGAN: There was an earlier one that I
18 sent to Janet Vonfossen (phonetic), and then I
19 responded to my adversary's brief.

20 THE COURT: You replied, a letter, right,
21 okay. All right. Counsel?

22 MS. SMITH: Thank you, Your Honor. Your
23 Honor, I know I gave you a lengthy brief and several

1 submissions that were somewhat piecemeal. But the
2 bottom line is that this is an individual who has a
3 prior municipal court record dating back to 1990. It
4 was a municipal court charge of receiving stolen
5 property, downgraded. Other than that, his record has
6 been meticulously clean.

7 This is an individual that has suffered great
8 heartache from home. He has taken care of both his
9 parents who died from terminal diseases as well as his
10 brother. He's put another brother through a drug
11 rehab, and while he was going through that drug rehab,
12 took in his brother's children.

13 This is the same individual that has had a
14 very consistent work history while putting himself
15 through school when money was not at an abundance. He
16 has given back to his community. He's had a State job
17 for 14 years plus working for Trenton State Hospital.

18 This is -- he's led an extraordinary life.
19 In 1998 after approximately ten years of service with
20 Trenton State Hospital, there was a massive downsizing.
21 At that time, Mr. Watkins was temporarily let go, and
22 he pursued unemployment benefits. Unemployment sent
23 him to school and simultaneously was sending him an
24 amount of money each month which he signed for. We're
25 talking about a four month period. It was from January

1 to May. From my review of the discovery, we're talking
2 about nine checks.

3 During that interim, which is the key period
4 of time that's at issue for the complaint, Mr. Watkins
5 was rehired by the State, and he went back to work, yet
6 he still cashed those checks. This is not a crime of
7 violence, and the outpouring of support from not only
8 friends and family but employers, colleagues, and
9 people in the community has been just an amazing -- I
10 was impressed, and I do these all the time. And just
11 -- it was incredible the people that have stepped
12 forward.

13 This is exactly the type of individual that
14 PTI contemplates. If this man is given a probationary
15 sentence and has a conviction, he will lose his job,
16 which is pretty much everything he's worked for, which
17 seems to me incredibly unfair and unjust, given what
18 we're talking about. We're talking about a theft by
19 deception. We're not talking about a crime of violence
20 or selling drugs into the community. We're talking
21 about a mistake.

22 He's perfectly willing to take responsibility
23 for that mistake and is perfectly willing to make
24 payments to restore that amount. I think the exact
25 figure is approximately \$5,600. With taxes and

1 penalties it was, I think, an additional 2,000. I
2 don't have the exact figure in front of me, but we're
3 talking a total of about 7,500, \$7,600 in total. He's
4 willing to make that payment. He's willing to move
5 forward with his life.

6 Unfortunately, despite the fact that he's an
7 excellent candidate under the law and the purview of
8 all the elements that they lay out for PTI candidates,
9 and criminal case management, by the way, found him to
10 be a suitable candidate, the State has determined
11 pretty much that he's not. And what is that based on?
12 It's based on the fact, first of all, that he's a State
13 employee. He's being held to a higher standard which,
14 in my estimation, is -- that in and of itself is
15 arbitrary and capricious.

16 Secondly, they're looking at that 1990
17 conviction. That was 14 years ago, and it was a
18 municipal court conviction. I think that case is much
19 too old to be seriously contemplated.

20 And the other argument that the State's
21 making is the fact that this was ongoing, which was
22 four months of unemployment. I don't think that
23 constitutes a scheme against society. He made a
24 mistake, and he's willing to pay for it.

25 I think the case law completely supports his

1 admission in the PTI, given all the factors, and I
2 think that's another downfall of the State. They're
3 not looking at this particular individual as a whole,
4 what he's done for the community, what he's done for
5 his job, what he's done for his family. They're
6 looking at him in a vacuum, and you can't do that.
7 That's arbitrary.

8 But the fact that he's being held to a higher
9 standard because he's a State employee is completely
10 inappropriate for a PTI determination. If I had
11 committed the same offense, I'd be getting into PTI
12 because I work for a private employer. If I was still
13 working for the PD office which I had done many years,
14 I wouldn't get into PTI by virtue of the fact that I'm
15 a State employee, and that's not right. There's a bias
16 that's built in there that's completely capricious.

17 I can't think of a more suitable candidate.
18 The State has a remedy in the event that this is a
19 farce, which I can assure the Court it's not. But in
20 the event that this is a farce, then he's putting on a
21 hell of a show just to get into PTI. If he fails or he
22 fails to make one payment, he can be violated and we
23 could go right back to a guilty plea.

24 Mr. Watkins is even willing to plead guilty
25 as a condition of getting into PTI. That just goes to

1 show you his motivation and just not have it executed,
2 but he will lose his job. It seems to me under the
3 circumstances and the nature of this offense that the
4 appropriate remedy here is to commit this individual in
5 PTI. Not to make a sweeping generalization that all
6 theft by deceptions should be admitted, but this
7 individual, and it needs to be a case by case fact
8 sensitive analysis, and he's an excellent candidate.
9 He's the perfect candidate I would respectfully submit.

10 And again, the -- I've spelled out the case
11 law in support of my position, and I know the Court is
12 well read in that regard. So I won't belabor the
13 point. I just wanted to hit the highlights. But it's
14 just this is one of those cases where policy should be
15 thrown in the wind, and the individual should be taken
16 at face value.

17 THE COURT: All right, the State's position?

18 MS. GRUGAN: Your Honor, indeed it is the
19 policy of the State of my office that we do not grant
20 PTI to State workers. It's not arbitrary and
21 capricious. We hold workers to a higher standard, and
22 one of it is a preservation of our pension fund.

23 Also because we're dealing with State
24 workers, we -- at certain times, and this happened at
25 the time when this matter arose with Mr. Watkins, they

Colloquy

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1 will do what's called a quarterly cross-match, where
2 they will look at employees -- employer's records, and
3 cross them with recipients of UI benefits, and they did
4 a clean sweep for all State workers. And this is
5 justified because we want to make sure that we don't
6 have people that are working for the system and also
7 taking advantage of the system.

8 Mr. Watkins -- when they determined what your
9 monetary benefits are, it's set up in a reserve, \$6,000
10 approximately, in this matter. His benefits -- he
11 depleted those benefits, and they were even extended
12 further, given a whole new time frame for him to extend
13 his benefits.

14 So he got the benefit of more unemployment
15 insurance benefits, but he also got the benefit of
16 getting an education while he was collecting those
17 benefits and still working. So he was getting a lot of
18 assistance from the State, and he took advantage of
19 that assistance that's being afforded to him, something
20 that is very gratuitous and generous, I think, by the
21 State.

22 This isn't just one bad instance. He cashed
23 nine checks consecutively, over and over and over
24 again. And attached to each of those checks is a claim
25 form where he fills out and says if he's working or not

Colloquy

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1 working, and in this instance he returned those claim
2 forms stating over and over and over again I'm
3 unemployed and therefore entitled to these benefits.

4 And on the back of each of these checks when he
5 endorses these checks there's a certification where the
6 claimant has to state I'm entitled to these benefits, I
7 am unemployed, and I reported to the State all of my
8 wages and earnings during this time. So they're given
9 every opportunity and notified you can't cash these
10 checks unless you're entitled to them.

11 And also with regard to, you know, to the
12 context of being a State worker, Mr. Watkins was
13 employed as a human services technician. From what
14 I've been told by his employer, he is responsible for
15 handling a lot of patients' monies and valuables, and I
16 guess that that's what's being considered. If he does
17 have a conviction on his record, there's nothing
18 precluding him from going to another job and getting a
19 position, and they can take that responsibility of
20 knowing that they've hired someone who has a conviction
21 on his record.

22 But he's had every opportunity to change his
23 course of action. Not only that, but even before these
24 matters were transferred over to our office for
25 criminal prosecution, they notify defendants or

1 employee. That's not for the Attorney General's Office
2 to do. Who died and made them the king that says well,
3 we're going to hold New Jersey employees to that higher
4 standard? Where's the justification for that? Where
5 in the law does it say that they have that ability?

6 There is a law that says that he will lose his job
7 if he has a conviction. But there's nowhere in the
8 law, and certainly nowhere in the cases and its progeny
9 of PTI cases where it says the State of New Jersey has
10 the ability and the authority to say okay, you're a New
11 Jersey State employee so we're going to hold you to a
12 higher standard. Therefore, that's the reason you
13 can't get into PTI. There's no foundation for it.
14 That's what makes it arbitrary.

15 So whether it's an office-wide policy or not,
16 it's a wrong policy. And I will bet you dollars to
17 doughnuts that if this case went up to the Supreme
18 Court, the Supreme Court would agree on it. There is
19 no authority for that basis. That's what makes it
20 capricious.

21 THE COURT: So you're suggesting this is a
22 policy of the Attorney General's Office, the State of
23 New Jersey, that no one who is an employee of the State
24 of New Jersey can receive PTI from -- at any time?

25 MS. GRUGAN: I was told by my office that

1 this is their position, that because he's a State
2 worker, they would not give him -- they would not allow
3 him into PTI. They would not take that position. That
4 policy aside, Your Honor, I just wanted to point out
5 what's in front of you, the mail claim benefit forms
6 and Question 7. On that mail claim benefit form, he is
7 asked were you working? If yes, fill out the back and
8 tell us when you worked and what hours you worked and
9 take it to your employer and make sure your employer
10 certifies that these were your earnings.

11 He did this over and over and over again, and
12 I would argue he knew exactly what he was -- for
13 example, on the front of that claim form he has to
14 sign, date and mail it by a specific date. And they
15 are --

16 THE COURT: Well, I'm sure that there's no
17 doubt that, you know -- we don't make things a crime
18 that aren't somewhat, you know, intentional. So
19 obviously if he had just made an error in it, you
20 wouldn't be charging him with a crime. So I understand
21 what you're saying in terms of what's required to be
22 done here, and I don't think he is now denying that.

23 The issue only becomes, at this time, you
24 know, whether or not the State has taken a position
25 that's arbitrary and capricious, excuse me. Whether it

1 is a statewide policy which I'm actually hearing for
2 the first time that there's a policy that no one who is
3 a State employee would be entitled to PTI; I can't
4 imagine that that's true.

5 MS. GRUGAN: I was just told in this case.
6 This is one of the first State workers that I've had,
7 and I have gone back to my supervisors, and they've all
8 told me we will not allow PTI or endorse a candidate
9 for PTI who is a State worker.

10 THE COURT: Well, you know, that is fraught
11 with some difficulty in terms of the application. It
12 just flies in the face of PTI and what the analysis is
13 supposed to be in terms of case by case. You look at
14 the individual, you look at the ability to
15 rehabilitate, and so that policy gives me concern.

16 The municipal matter is, you know, one that
17 if I were making the decision, I would not consider in
18 terms of an old municipal conviction. But then again,
19 that's not the standard. What I would do is of no
20 moment. It's what the State does and whether the State
21 is acting arbitrarily and capriciously.

22 The third one, as I understand it, is the
23 fact that this was alleged to be an ongoing crime, that
24 it happened nine times over the course of what I
25 believe, four months. And as a result of that, he can

1 be excluded for the reasons that this was not just a
2 one time crime. I don't know whether logically Mr.
3 Watkins, if he were to be indicted on this charge,
4 would -- oh, he is indicted. How was it indicted? Was
5 it indicted with nine counts?

6 MS. GRUGAN: No, it was just one count of
7 theft by deception.

8 THE COURT: I wouldn't think it would have
9 been. So, you know, that's the other, I guess, the
10 other factor that was being considered. It's a
11 legitimate factor, and the defendant finds himself in a
12 position where the State has the power, essentially, as
13 long as they don't abuse it, as long as they're not
14 arbitrary, as long as they're not capricious in their
15 analysis, whether it be just on one of the factors. It
16 would have to be on all three.

17 So in my view, without more analysis and
18 without more information, because I don't know whether
19 it actually can be represented today by -- on behalf of
20 the Attorney General's Office, if there's just a
21 blanket policy that no State employee is ever afforded
22 the opportunity to enter into PTI. I'm not sure if
23 that's accurate. I'm not sure if you're comfortable
24 saying that today. I don't know --

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16 depleted almost all of that -- \$5,061 is the total
17 theft, falling just short of the 6,000 reserve. So,
18 you know, but for this quarterly cross-match, you know,
19 he got caught. You know, he never came forward. You
20 know, this isn't Mr. Good Samaritan and said oh, you
21 know --

22 THE COURT: No, this is being handled as a
23 crime. I understand that, you know, and he's
24 apparently willing to even plead to it. So I
25 understand that. You know, most of the times we don't

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instead of the Tuesday after Columbus Day would be that Friday?

THE COURT: You're talking about October. I said November 12th, but you want October 15th? Is that what you're saying?

MS. SMITH: Yes, okay. I'm sorry. November

THE COURT: I'm just giving the State some time to submit something, so --

MS. SMITH: Judge, would you mind making it the 19th, November 19th? I'm still in two counties.

THE COURT: November 19th.

MS. SMITH: Thank you so much. Would that be at nine or 1:30?

THE COURT: 1:30.

* * * * *

CERTIFICATION

I, BETH ANNE PRUNCHAK, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on videotape B, index number 02:01:26 to 02:21:55, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

Beth Anne Prunchak

BETH ANNE PRUNCHAK

Approved by:

Johanna Limato

JOHANNA LIMATO

AOC # 179

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Date: *November 9, 2004*

4-7-06
18 SEP 2006
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MERCER COUNTY, NEW JERSEY
INDICTMENT NO. 04-01-00000
A.D. # _____

STATE OF NEW JERSEY)
)
) TRANSCRIPT
)
) OF
 v.)
) HEARING
 CHARLES WATKINS III,)
)
 Defendant.)

Place: Mercer County Courthouse
209 South Broad Street
Trenton, NJ 08650

Date: September 24, 2004

BEFORE:

THE HON. MARIA M. SYPEK, P.J.S.C.

TRANSCRIPT ORDERED BY:

KELLY ANDERSON SMITH, ESQ. (Garces & Grabler, P.C.)

APPEARANCES:

DENISE L. GRUGAN, Deputy Attorney General
Attorney for the State

KELLY ANDERSON SMITH, ESQ. (Garces & Grabler, P.C.)
Attorney for the Defendant

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Video Recorded

1 THE COURT: All right, State versus Charles
2 Watkins III, Indictment 04-01-0008. This is a State
3 Grand Jury matter, 04-0398 is the Prosecutor File
4 Number. We're here for the hearing on the PTI appeal.
5 Counsel, if you'll place your appearance on the record?

6 MS. SMITH: Good afternoon, Your Honor.
7 Kelly Smith, Garces and Grabler, on behalf of Mr.
8 Watkins.

9 MS. GRUGAN: Denise Grugan, Deputy Attorney
10 General.

11 THE COURT: All right, and you can all be
12 seated. Thank you very much. All right, I have
13 received the appeal and the submission from the State.
14 I think there were two. I'm not sure if there were
15 two. There's a -- yes, there were two responses from
16 the State.

17 MS. GRUGAN: There was an earlier one that I
18 sent to Janet Vonfossen (phonetic), and then I
19 responded to my adversary's brief.

20 THE COURT: You replied, a letter, right,
21 okay. All right. Counsel?

22 MS. SMITH: Thank you, Your Honor. Your
23 Honor, I know I gave you a lengthy brief and several

1 submissions that were somewhat piecemeal. But the
2 bottom line is that this is an individual who has a
3 prior municipal court record dating back to 1990. It
4 was a municipal court charge of receiving stolen
5 property, downgraded. Other than that, his record has
6 been meticulously clean.

7 This is an individual that has suffered great
8 heartache from home. He has taken care of both his
9 parents who died from terminal diseases as well as his
10 brother. He's put another brother through a drug
11 rehab, and while he was going through that drug rehab,
12 took in his brother's children.

13 This is the same individual that has had a
14 very consistent work history while putting himself
15 through school when money was not at an abundance. He
16 has given back to his community. He's had a State job
17 for 14 years plus working for Trenton State Hospital.

18 This is -- he's led an extraordinary life.
19 In 1998 after approximately ten years of service with
20 Trenton State Hospital, there was a massive downsizing.
21 At that time, Mr. Watkins was temporarily let go, and
22 he pursued unemployment benefits. Unemployment sent
23 him to school and simultaneously was sending him an
24 amount of money each month which he signed for. We're
25 talking about a four month period. It was from January

1 to May. From my review of the discovery, we're talking
2 about nine checks.

3 During that interim, which is the key period
4 of time that's at issue for the complaint, Mr. Watkins
5 was rehired by the State, and he went back to work, yet
6 he still cashed those checks. This is not a crime of
7 violence, and the outpouring of support from not only
8 friends and family but employers, colleagues, and
9 people in the community has been just an amazing -- I
10 was impressed, and I do these all the time. And just
11 -- it was incredible the people that have stepped
12 forward.

13 This is exactly the type of individual that
14 PTI contemplates. If this man is given a probationary
15 sentence and has a conviction, he will lose his job,
16 which is pretty much everything he's worked for, which
17 seems to me incredibly unfair and unjust, given what
18 we're talking about. We're talking about a theft by
19 deception. We're not talking about a crime of violence
20 or selling drugs into the community. We're talking
21 about a mistake.

22 He's perfectly willing to take responsibility
23 for that mistake and is perfectly willing to make
24 payments to restore that amount. I think the exact
25 figure is approximately \$5,600. With taxes and

1 penalties it was, I think, an additional 2,000. I
2 don't have the exact figure in front of me, but we're
3 talking a total of about 7,500, \$7,600 in total. He's
4 willing to make that payment. He's willing to move
5 forward with his life.

6 Unfortunately, despite the fact that he's an
7 excellent candidate under the law and the purview of
8 all the elements that they lay out for PTI candidates,
9 and criminal case management, by the way, found him to
10 be a suitable candidate, the State has determined
11 pretty much that he's not. And what is that based on?
12 It's based on the fact, first of all, that he's a State
13 employee. He's being held to a higher standard which,
14 in my estimation, is -- that in and of itself is
15 arbitrary and capricious.

16 Secondly, they're looking at that 1990
17 conviction. That was 14 years ago, and it was a
18 municipal court conviction. I think that case is much
19 too old to be seriously contemplated.

20 And the other argument that the State's
21 making is the fact that this was ongoing, which was
22 four months of unemployment. I don't think that
23 constitutes a scheme against society. He made a
24 mistake, and he's willing to pay for it.

25 I think the case law completely supports his

1 admission in the PTI, given all the factors, and I
2 think that's another downfall of the State. They're
3 not looking at this particular individual as a whole,
4 what he's done for the community, what he's done for
5 his job, what he's done for his family. They're
6 looking at him in a vacuum, and you can't do that.
7 That's arbitrary.

8 But the fact that he's being held to a higher
9 standard because he's a State employee is completely
10 inappropriate for a PTI determination. If I had
11 committed the same offense, I'd be getting into PTI
12 because I work for a private employer. If I was still
13 working for the PD office which I had done many years,
14 I wouldn't get into PTI by virtue of the fact that I'm
15 a State employee, and that's not right. There's a bias
16 that's built in there that's completely capricious.

17 I can't think of a more suitable candidate.
18 The State has a remedy in the event that this is a
19 farce, which I can assure the Court it's not. But in
20 the event that this is a farce, then he's putting on a
21 hell of a show just to get into PTI. If he fails or he
22 fails to make one payment, he can be violated and we
23 could go right back to a guilty plea.

24 Mr. Watkins is even willing to plead guilty
25 as a condition of getting into PTI. That just goes to

1 show you his motivation and just not have it executed,
2 but he will lose his job. It seems to me under the
3 circumstances and the nature of this offense that the
4 appropriate remedy here is to commit this individual in
5 PTI. Not to make a sweeping generalization that all
6 theft by deceptions should be admitted, but this
7 individual, and it needs to be a case by case fact
8 sensitive analysis, and he's an excellent candidate.
9 He's the perfect candidate I would respectfully submit.

10 And again, the -- I've spelled out the case
11 law in support of my position, and I know the Court is
12 well read in that regard. So I won't belabor the
13 point. I just wanted to hit the highlights. But it's
14 just this is one of those cases where policy should be
15 thrown in the wind, and the individual should be taken
16 at face value.

17 THE COURT: All right, the State's position?

18 MS. GRUGAN: Your Honor, indeed it is the
19 policy of the State of my office that we do not grant
20 PTI to State workers. It's not arbitrary and
21 capricious. We hold workers to a higher standard, and
22 one of it is a preservation of our pension fund.

23 Also because we're dealing with State
24 workers, we -- at certain times, and this happened at
25 the time when this matter arose with Mr. Watkins, they

1 will do what's called a quarterly cross-match, where
2 they will look at employees -- employer's records, and
3 cross them with recipients of UI benefits, and they did
4 a clean sweep for all State workers. And this is
5 justified because we want to make sure that we don't
6 have people that are working for the system and also
7 taking advantage of the system.

8 Mr. Watkins -- when they determined what your
9 monetary benefits are, it's set up in a reserve, \$6,000
10 approximately, in this matter. His benefits -- he
11 depleted those benefits, and they were even extended
12 further, given a whole new time frame for him to extend
13 his benefits.

14 So he got the benefit of more unemployment
15 insurance benefits, but he also got the benefit of
16 getting an education while he was collecting those
17 benefits and still working. So he was getting a lot of
18 assistance from the State, and he took advantage of
19 that assistance that's being afforded to him, something
20 that is very gratuitous and generous, I think, by the
21 State.

22 This isn't just one bad instance. He cashed
23 nine checks consecutively, over and over and over
24 again. And attached to each of those checks is a claim
25 form where he fills out and says if he's working or not

1 working, and in this instance he returned those claim
2 forms stating over and over and over again I'm
3 unemployed and therefore entitled to these benefits.

4 And on the back of each of these checks when he
5 endorses these checks there's a certification where the
6 claimant has to state I'm entitled to these benefits, I
7 am unemployed, and I reported to the State all of my
8 wages and earnings during this time. So they're given
9 every opportunity and notified you can't cash these
10 checks unless you're entitled to them.

11 And also with regard to, you know, to the
12 context of being a State worker, Mr. Watkins was
13 employed as a human services technician. From what
14 I've been told by his employer, he is responsible for
15 handling a lot of patients' monies and valuables, and I
16 guess that that's what's being considered. If he does
17 have a conviction on his record, there's nothing
18 precluding him from going to another job and getting a
19 position, and they can take that responsibility of
20 knowing that they've hired someone who has a conviction
21 on his record.

22 But he's had every opportunity to change his
23 course of action. Not only that, but even before these
24 matters were transferred over to our office for
25 criminal prosecution, they notify defendants or

1 claimants and say, let's come and negotiate this. And
2 that matter wasn't pursued here. It was largely
3 ignored by the defendant which is why it comes over to
4 our office for prosecution. That's all.

5 THE COURT: Do you have any of those
6 documents that you're referencing?

7 MS. GRUGAN: Yes, Your Honor.

8 THE COURT: Anything in response while she's
9 looking?

10 MS. SMITH: Judge, I can't -- Mr. Watkins has
11 informed me they did reach out to him to make payment.
12 He went down to the office in order to do that. He
13 tried to make payment. It was -- it never came about,
14 but I don't think it was on his shoulders. They never
15 re-contacted him. He didn't know.

16 Now, you can easily say well, it's still your
17 responsibility, but he was willing at that time. He
18 has never not been willing. And the fact of the matter
19 is not withstanding this -- the nature of this charge,
20 it's mandated that he lose his job. So it's not really
21 discretionary on the employer. If in fact this goes
22 down as a conviction, that's it. He will lose his job.
23 That's a double punishment.

24 It's, you know, the -- with all the due
25 respect to my adversary, it's a lot easier said than

1 done to go out and find a decent paying job with decent
2 benefits when you have a conviction on your record.
3 And not to say well, he shouldn't take responsibility
4 for his actions. He has taken responsibility for his
5 actions. He knows he made a mistake. He regrets it
6 greatly because his whole future -- and he's sorry
7 about it.

8 But it was a mistake. And that's what PTI is
9 for. It's for that person that makes a mistake.
10 Again, this is not a crime of violence. It's not a
11 crime of selling drugs. He's willing to make the
12 restitution. Why not give him that opportunity? He is
13 paying his taxes. He's given back to the community.

14 He has just had a plethora of community support,
15 many of which are employers and colleagues and patients
16 at this job. So obviously he's doing his job well. If
17 his employer has the discretion, if they wanted to,
18 they could fire him right now pending the outcome of
19 this. They haven't done that. So he must be doing
20 something right.

21 Why not give him that opportunity and just --
22 again, not to belabor the point, but whether it's a
23 policy throughout the office or not, the policy is
24 flawed. You cannot hold someone to a higher standard
25 just by virtue of the fact that they're a State

1 claimants and say, let's come and negotiate this. And
2 that matter wasn't pursued here. It was largely
3 ignored by the defendant which is why it comes over to
4 our office for prosecution. That's all.

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19 this. They haven't done that. So he must be doing
20 something right.

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22 again, not to belabor the point, but whether it's a
23 policy throughout the office or not, the policy is
24 flawed. You cannot hold someone to a higher standard
25 just by virtue of the fact that they're a State

1 employee. That's not for the Attorney General's Office
2 to do. Who died and made them the king that says well,
3 we're going to hold New Jersey employees to that higher
4 standard? Where's the justification for that? Where
5 in the law does it say that they have that ability?

6 There is a law that says that he will lose his job
7 if he has a conviction. But there's nowhere in the
8 law, and certainly nowhere in the cases and its progeny
9 of PTI cases where it says the State of New Jersey has
10 the ability and the authority to say okay, you're a New
11 Jersey State employee so we're going to hold you to a
12 higher standard. Therefore, that's the reason you
13 can't get into PTI. There's no foundation for it.
14 That's what makes it arbitrary.

15 So whether it's an office-wide policy or not,
16 it's a wrong policy. And I will bet you dollars to
17 doughnuts that if this case went up to the Supreme
18 Court, the Supreme Court would agree on it. There is
19 no authority for that basis. That's what makes it
20 capricious.

21 THE COURT: So you're suggesting this is a
22 policy of the Attorney General's Office, the State of
23 New Jersey, that no one who is an employee of the State
24 of New Jersey can receive PTI from -- at any time?

25 MS. GRUGAN: I was told by my office that

1 this is their position, that because he's a State
2 worker, they would not give him -- they would not allow
3 him into PTI. They would not take that position. That
4 policy aside, Your Honor, I just wanted to point out
5 what's in front of you, the mail claim benefit forms
6 and Question 7. On that mail claim benefit form, he is
7 asked were you working? If yes, fill out the back and
8 tell us when you worked and what hours you worked and
9 take it to your employer and make sure your employer
10 certifies that these were your earnings.

11 He did this over and over and over again, and
12 I would argue he knew exactly what he was -- for
13 example, on the front of that claim form he has to
14 sign, date and mail it by a specific date. And they
15 are --

16 THE COURT: Well, I'm sure that there's no
17 doubt that, you know -- we don't make things a crime
18 that aren't somewhat, you know, intentional. So
19 obviously if he had just made an error in it, you
20 wouldn't be charging him with a crime. So I understand
21 what you're saying in terms of what's required to be
22 done here, and I don't think he is now denying that.

23 The issue only becomes, at this time, you
24 know, whether or not the State has taken a position
25 that's arbitrary and capricious, excuse me. Whether it

1 is a statewide policy which I'm actually hearing for
2 the first time that there's a policy that no one who is
3 a State employee would be entitled to PTI; I can't
4 imagine that that's true.

5 MS. GRUGAN: I was just told in this case.
6 This is one of the first State workers that I've had,
7 and I have gone back to my supervisors, and they've all
8 told me we will not allow PTI or endorse a candidate
9 for PTI who is a State worker.

10 THE COURT: Well, you know, that is fraught
11 with some difficulty in terms of the application. It
12 just flies in the face of PTI and what the analysis is
13 supposed to be in terms of case by case. You look at
14 the individual, you look at the ability to
15 rehabilitate, and so that policy gives me concern.

16 The municipal matter is, you know, one that
17 if I were making the decision, I would not consider in
18 terms of an old municipal conviction. But then again,
19 that's not the standard. What I would do is of no
20 moment. It's what the State does and whether the State
21 is acting arbitrarily and capriciously.

22 The third one, as I understand it, is the
23 fact that this was alleged to be an ongoing crime, that
24 it happened nine times over the course of what I
25 believe, four months. And as a result of that, he can

1 be excluded for the reasons that this was not just a
2 one time crime. I don't know whether logically Mr.
3 Watkins, if he were to be indicted on this charge,
4 would -- oh, he is indicted. How was it indicted? Was
5 it indicted with nine counts?

6 MS. GRUGAN: No, it was just one count of
7 theft by deception.

8 THE COURT: I wouldn't think it would have
9 been. So, you know, that's the other, I guess, the
10 other factor that was being considered. It's a
11 legitimate factor, and the defendant finds himself in a
12 position where the State has the power, essentially, as
13 long as they don't abuse it, as long as they're not
14 arbitrary, as long as they're not capricious in their
15 analysis, whether it be just on one of the factors. It
16 would have to be on all three.

17 So in my view, without more analysis and
18 without more information, because I don't know whether
19 it actually can be represented today by -- on behalf of
20 the Attorney General's Office, if there's just a
21 blanket policy that no State employee is ever afforded
22 the opportunity to enter into PTI. I'm not sure if
23 that's accurate. I'm not sure if you're comfortable
24 saying that today. I don't know --

25 MS. GRUGAN: I don't know too much about the

1 policy other than I have gone back to my supervisors
2 over --

3 THE COURT: So the crux of the issue is this
4 nine times that it was done, in my view because the
5 other two -- I think there's an argument that can be
6 made that if that be the case, that there is this
7 blanket policy, that that may be a decision that the
8 State has made that flies in the face of what PTI is
9 intended to do.

10 But the question is whether or not, looking
11 at the nine times that this was done, is sufficient
12 basis to have Mr. Watkins excluded from PTI.

13 MS. SMITH: Judge, if I may respond? I can't
14 tell you the countless theft by deception, specifically
15 welfare fraud or --

16 THE COURT: You don't have to tell me about
17 that. I see it every day. But that's not the
18 standard. I mean, if the standard is whether or not
19 the action under this circumstance is arbitrary.

20 MS. SMITH: I understand that. But if -- how
21 can you reconcile where welfare fraud with they're
22 receiving -- which is a similar, you know, mirror image
23 of this case, where they are receiving benefits
24 repeatedly over a course of time, which I would submit
25 to you four months is not that long, but over a course

1 of time -- or whether it be unemployment benefits or
2 whatever benefits they're not entitled to, given the
3 circumstances, that how can you reconcile the fact that
4 those individuals are in PTI? And I can think of one
5 right off the top of my head where it was a ten year
6 period.

7 How can you reconcile that and not
8 acknowledge the fact that you have the Deputy Attorney
9 General telling you right now that she was advised by
10 her supervisors that he's being held to a higher
11 standard, and that's how the DAG opened her remarks to
12 the Court?

13 THE COURT: That's true.

14 MS. SMITH: We're holding this individual as
15 a State employee to a higher standard because of, you
16 know, the benefits and the State was generous with him
17 and all this other -- but the fact of the matter is, he
18 is being held to a higher standard. That's what's
19 arbitrary. So it's convenient that this happened over
20 a four month period of time and involves nine checks.

21 But the fact of the matter is we do have one
22 indictment, and the Court itself has acknowledged the
23 fact that these types of cases on a routine basis get
24 into PTI. So you can't disregard this higher standard.
25 That's what's arbitrary here. I guarantee you that if

1 he was not a State employee, this would not be an
2 issue. He would already be in PTI. And that's the
3 problem.

4 And I don't think the Attorney General's
5 Office is going to issue to the Court a written
6 proclamation stating its policy. The fact of the
7 matter is that's their policy, and that's certainly
8 being -- that's the policy that's being applied here by
9 the very candor of the Deputy Attorney General.

10 THE COURT: Is this -- do you know if there
11 is such a policy? Let me just ask today, does any --

12 MS. GRUGAN: I'm really not sure. I was just
13 told by -- since I indicted this case, I've had two
14 supervisors and I went back to both -- to each of them,
15 and I've asked them both for their consideration. They
16 said no. We do not allow it. And I was never given
17 any better explanation than that.

18 MS. SMITH: Your Honor, you know, just for
19 the record, this is no fault of this particular Deputy
20 Attorney General. She's getting her marching orders
21 from the superiors in her office, but it's very clear
22 that that's the -- whether this policy is applied
23 uniformly throughout all defendant cases or not, the
24 thing applied to this individual, and that's unfair.
25 That's arbitrary.

1 MS. GRUGAN: Now, it is applied to all other
2 public employees as well. See, we deal with this also
3 at the municipal level, and I know that that's always
4 been the position, that they're probation cases. I
5 also just want to point out that when Mr. Watkins
6 received the benefits under the extended program --
7 it's called ABT Program, what they do is they figure
8 out a monetary reserve. He depleted his monetary
9 reserve under the initial time he was given --

10 THE COURT: And they extended it.

11 MS. GRUGAN: -- unemployment benefits. Then
12 they give him a whole new set of second monetary
13 reserve --

14 THE COURT: You told me that.

15 MS. GRUGAN: -- of 6,000. And the reason he
16 depleted almost all of that -- \$5,061 is the total
17 theft, falling just short of the 6,000 reserve. So,
18 you know, but for this quarterly cross-match, you know,
19 he got caught. You know, he never came forward. You
20 know, this isn't Mr. Good Samaritan and said oh, you
21 know --

22 THE COURT: No, this is being handled as a
23 crime. I understand that, you know, and he's
24 apparently willing to even plead to it. So I
25 understand that. You know, most of the times we don't

1 look for Good Samaritans when we're dealing with, you
2 know, these issues.

3 So the concern that I have is -- you've
4 placed in this case the fact that he is a State
5 employee and therefore not entitled to PTI. So I think
6 I need something -- if there's a policy, do you have
7 any case law because you didn't cite any then --

8 MS. GRUGAN: No.

9 THE COURT: -- to suggest that that's an
10 appropriate --

11 MS. GRUGAN: No, I just know that this is the
12 --

13 THE COURT: -- factor to consider? And why
14 would that be appropriate?

15 MS. GRUGAN: I can't give you an answer to
16 that right now.

17 THE COURT: Well, I'll give you an
18 opportunity to supplement the record with something
19 that would argue that State employees are not entitled
20 to PTI, or this particular person, being a State
21 employee under these circumstances, is not allowed
22 entry into PTI, but for some reason. Give me some
23 reason why it is that a State employee would be barred,
24 if it's a general policy. Or if it's specific to this
25 individual, then why this specific individual?

1 MS. GRUGAN: Your Honor, the State -- the
2 fact that he's a State employee, putting that aside, we
3 do have enough here that merits his disqualification
4 from the program.

5 THE COURT: Oh, I still want to hear this.
6 This is the first time I'm ever hearing that no State
7 employee can be given PTI.

8 MS. GRUGAN: But I believe that the thrust of
9 the PTI program is to give prosecutors substantial
10 discretion into who gets into the diversionary program.

11 THE COURT: Oh, it gives case management and
12 the prosecutor's office -- absolutely true. But it
13 can't be arbitrary. It can't be capricious. And if
14 there's a blanket policy that excludes a large portion
15 of the population, then there should be some reasonable
16 basis for that exclusion. I just want to hear what it
17 is. You haven't submitted it in writing, and you don't
18 feel that you can do it today to tell me about that.

19 And if that's the umbrella under which all the
20 other aspects of this case are being evaluated, then I
21 think the argument is well placed by the defense that
22 anybody else, other than Mr. Watkins, who would not be
23 a State employee rather, I should say -- anybody else
24 not being a State employee would have otherwise been
25 given this opportunity.

1 MS. GRUGAN: Well, Your Honor, you know, to
2 call this a single mistake -- this isn't a single
3 mistake. This is a --

4 THE COURT: You've made your point about
5 that.

6 MS. GRUGAN: And he's made a mistake before.

7 THE COURT: I need further information, and
8 I'm asking you to submit something further on the issue
9 of the policy. The fact of the matter is that -- and
10 maybe it's because your office does something
11 different. But most of the prosecutions occur within
12 the County itself. And so I don't have a great wealth
13 of information from the Attorney General's Office and
14 admissions into PTI. So I'm at a loss.

15 But I can tell you that routinely, welfare
16 fraud with five, eight, ten, eleven thousand dollars --
17 there are some monetary guidelines that have been
18 developed within case management that if it's, you
19 know, \$75,000 or \$25,000, the problem is that that
20 probably cannot be paid off in the three year time
21 period that PTI usually covers. So it would be
22 impossible for restitution to be paid. And under those
23 guidelines, then PTI is not an appropriate way to deal
24 with the given case. That's the only time the money
25 issue comes in. But they're often on a repeated basis.

1 It's an ongoing issue.

2 So in and of itself, though you may consider
3 that, and that's what I said before, my concern is that
4 others of similar offenses would be allowed into PTI
5 except for this policy that the State has. Now, you
6 may find out more information about that. You may not.
7 And then I'm going to be required then to make a
8 decision based upon what I have here before me. But it
9 does give me concern. I've never heard this before,
10 where State employees are not entitled to PTI. I'm a
11 State employee, and I'd like to know whether I'd be
12 entitled to PTI.

13 MS. GRUGAN: I wouldn't say State employees.
14 I'd say public employees.

15 THE COURT: God forbid I ever did anything.
16 Pardon?

17 MS. GRUGAN: Public employees.

18 THE COURT: Public employees. Well, now,
19 that's a redefinition as opposed to any State employee?

20 MS. GRUGAN: Well, yes, I mean, public
21 employees could be someone who's working for the County
22 or the, you know, another agency of this -- within this
23 State but -- versus a State. I'm employed by the State
24 versus someone who is employed by the County.

25 THE COURT: So now you're saying anyone

1 Psychiatric Hospital as well as their personal property
2 and possessions. There's a nexus between his position
3 and the responsibility of taking care of personal
4 property and a crime involving dishonesty.

5 Finally, there's, you know, I mentioned also
6 in my first brief that this is a continuing course of
7 conduct. And I know I brought this up earlier. You
8 know, Unemployment, when they look at an application --
9 and they're only allowed to file one unemployment claim
10 per year. This defendant filed a claim. He was given
11 a monetary reserve. He depleted that claim and then a
12 whole new reserve was extended to him. As a result of
13 that extension, he was given a whole new set of
14 unemployment claims. Those claims were fully depleted
15 by the defendant. If it had been 10,000, 15 - 20,000
16 that had been put in reserve for the defendant, that's
17 how much he would have stolen from the State. The
18 integrity of the Unemployment Insurance Fund has to be
19 preserved. It's there for the citizens of this state
20 who pay into it and at times need it. It's to bridge
21 that gap. This defendant exploited it. He took
22 advantage of it and he abused it. And he's been
23 afforded a lot of opportunity prior to indictment to
24 handle this matter with the State.

25 You know, and I know Your Honor said that you

1 weren't going to consider his 1990 Municipal Court
2 conviction. You know, we do look at that. We look at
3 a lot of factors and that was one that came up on his
4 criminal rap sheet that we also take into account.

5 And for those reasons, Your Honor, the State
6 respectfully requests that his admission into PTI be
7 denied.

8 MS. SMITH: Your Honor, the Deputy Attorney
9 General has now just indicated that they don't have a
10 policy, but I provided Your Honor with a transcript of
11 the proceeding and let's very briefly just refer to
12 Page 7. And I'm going to quote, "Your Honor, indeed it
13 is the policy of the State of my office that we do not
14 grant PTI to State workers. It is not arbitrary and
15 capricious. We hold workers to a higher standard and
16 one of it is a preservation of our pension fund."

17 Now whether the DAG misspoke at that hearing
18 or not, it would seem to me that there is a policy just
19 by virtue of what's been argued now. She is holding
20 her -- excuse me, her office is holding a State
21 employee to a higher standard. That's the real issue.
22 It's not really about the 1990 conviction. It's not
23 really about this continuing course of conduct. It's
24 the fact that he is a State employee.

25 I would submit to Your Honor if he was

A-3853-0574

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MERCER COUNTY, NEW JERSEY
INDICTMENT NO. 04-01-0008
A.D. # H-003852 0574

RECEIVED
APPELLATE DIVISION
APR 20 2006
SUPERIOR COURT
OF NEW JERSEY

STATE OF NEW JERSEY)
)
 v.)
)
 CHARLES WATKINS,)
)
 Defendant.)

TRANSCRIPT
OF
HEARING

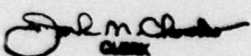
FILED
APPELLATE DIVISION

APR 20 2006

Place: Mercer County Courthouse
209 South Broad Street
Trenton, NJ 08650

Date: November 19, 2004

BEFORE:



THE HON. MARIA M. SYPEK, P.J.Cr.P.

TRANSCRIPT ORDERED BY:

STEPHAN MARTINEZ, Office of the Public Defender

APPEARANCES:

DENISE L. GRUGAN, Deputy Attorney General
Attorney for the State

KELLY SMITH, ESQ. (Garces and Grabler)

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Video Recorded
Video Operator, Sue Hamer

1 Department of Labor.

2 Shortly thereafter, the investigator assigned
3 to this case called the phone number that was listed on
4 Mr. Watkins' UI claim form, when he filed that claim
5 for application. The number is 609-656-1064, and this
6 was in the report that I gave my adversary. And she
7 wrote in her report, the person (sounded like a young
8 man) that answered the telephone stated that Mr.
9 Watkins was not at home. I then told this person that
10 I wished to speak with Mr. Charles Watkins, III. This
11 person then stated that Mr. Watkins, III was not at
12 home. I then asked if Mr. Charles Watkins resided at
13 67 General Green Avenue and this person said yes. It
14 is noted that this person refused to identify himself.
15 It is further noted that I asked this person to have
16 Mr. Watkins, III contact me at the Trenton Regional
17 Investigation Office to arrange an appointment.
18 Complainant has not responded. As a result, this
19 matter was referred to the Division of Criminal
20 Justice. It is also important to point out that no
21 voluntary payments have been made by the defendant
22 towards the State's allegation and on this claim. Yet
23 the defendant comes here now, now that he's been
24 indicted saying please disregard the State's charges.
25 He's had every opportunity pre indictment to handle

1 this. This is indicative of someone whose character is
2 not amenable to rehabilitation and should go through
3 the ordinary criminal process.

4 Yes, we wanted to handle this pre indictment.
5 Now he's asking the State to dismiss its charges
6 through letting him in the PTI. Tangential to the
7 defendant's argument is he wants us to take into
8 account challenging family situations. And I am indeed
9 sympathetic towards those family situations that were
10 outlined in the letters. However, I have seen, as a
11 prosecutor and I'm sure Your Honor has also seen, that
12 every defendant that comes before Your Honor has
13 similar types of family challenges. And this in no way
14 should be taken into account by the Court. He should
15 be allowed to confront the charges that the State has
16 presented.

17 Now the guideline that I discussed in my
18 brief, Guideline 3, talks about where there's a breach
19 of the public trust, where admission into PTI would
20 deprecate the seriousness of the defendant's crime and
21 the defendant's application should generally be
22 rejected. This is where the State looks at this
23 statute when it applies within the context of a public
24 employee. Here we have a defendant who is responsible
25 for taking care of mental patients at Trenton

1 Psychiatric Hospital as well as their personal property
2 and possessions. There's a nexus between his position
3 and the responsibility of taking care of personal
4 property and a crime involving dishonesty.

5 Finally, there's, you know, I mentioned also
6 in my first brief that this is a continuing course of
7 conduct. And I know I brought this up earlier. You
8 know, Unemployment, when they look at an application --
9 and they're only allowed to file one unemployment claim
10 per year. This defendant filed a claim. He was given
11 a monetary reserve. He depleted that claim and then a
12 whole new reserve was extended to him. As a result of
13 that extension, he was given a whole new set of
14 unemployment claims. Those claims were fully depleted
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17 how much he would have stolen from the State. The
18 integrity of the Unemployment Insurance Fund has to be
19 preserved. It's there for the citizens of this state
20 who pay into it and at times need it. It's to bridge
21 that gap. This defendant exploited it. He took
22 advantage of it and he abused it. And he's been
23 afforded a lot of opportunity prior to indictment to
24 handle this matter with the State.

25 You know, and I know Your Honor said that you

1 weren't going to consider his 1990 Municipal Court
2 conviction. You know, we do look at that. We look at
3 a lot of factors and that was one that came up on his
4 criminal rap sheet that we also take into account.

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6 respectfully requests that his admission into PTI be
7 denied.

8 MS. SMITH: Your Honor, the Deputy Attorney
9 General has now just indicated that they don't have a
10 policy, but I provided Your Honor with a transcript of
11 the proceeding and let's very briefly just refer to
12 Page 7. And I'm going to quote, "Your Honor, indeed it
13 is the policy of the State of my office that we do not
14 grant PTI to State workers. It is not arbitrary and
15 capricious. We hold workers to a higher standard and
16 one of it is a preservation of our pension fund."

17 Now whether the DAG misspoke at that hearing
18 or not, it would seem to me that there is a policy just
19 by virtue of what's been argued now. She is holding
20 her -- excuse me, her office is holding a State
21 employee to a higher standard. That's the real issue.
22 It's not really about the 1990 conviction. It's not
23 really about this continuing course of conduct. It's
24 the fact that he is a State employee.

25 I would submit to Your Honor if he was

1 employed by a private hospital with those same
2 obligations and responsibilities of caring for the
3 patient, caring for their property, that trust issue,
4 we would not be here today. But because he's employed
5 by the State, and quite frankly I don't see the nexus
6 at all. He has not been charged with any sort of
7 inappropriate behavior on the confines of his
8 employment. This was unemployment benefits. He made a
9 mistake. We're not contesting that. He is guilty of
10 receiving unemployment benefits when he wasn't supposed
11 to. It's a third degree crime. He is willing to pay
12 the money back. It's completely irrelevant what has
13 occurred with respect to the State's investigation by
14 the Unemployment Office as far as his repayment prior
15 to him being charged. Because if that matters, they
16 can't prove or disprove whether or not he received
17 messages, whether or not he was informed. I think
18 that's completely irrelevant and I don't think it's
19 appropriate to be argued here.

20 The fact of the matter is whether it's a
21 written policy, whether it's a known policy that's put
22 under the rug, the DAG right now right here is saying
23 that he's being held to a higher standard because he's
24 a State employee. You can't do that under the law. I
25 don't see a shred of case law binding that policy. You

1 can't do it.

2 So I would ask Your Honor, since that's the
3 real issue here and beyond his family circumstances,
4 he's an excellent PTI candidate. I can't see how Your
5 Honor cannot acknowledge the fact that whether it's
6 spoken or not, there is a policy in this office with
7 regard to State workers and that's what's arbitrary and
8 capricious.

9 I don't know if you want me to address any of
10 the other points raised. I think that this was --

11 THE COURT: It's up to you if you wish to --

12 MS. SMITH: I pretty much exhausted them last
13 time we were here so I don't want to belabor the point.
14 But I believe that was the point of coming back today
15 to address that issue. So unless Your Honor has
16 specific questions, I'll submit on whatever I argued.

17 THE COURT: All right, thank you. Anything
18 else in response?

19 MS. GRUGAN: No, Your Honor.

20 THE COURT: All right, well, I'm going to
21 take some time to think on this one because as I
22 indicated the last time I was here and we were
23 altogether, I liken this case to others that I see on a
24 routine basis of where welfare benefits are taken when
25 people are not entitled to them. And one of the things

1 that I see very often being offered is PTI. No, these
2 people, I could tell you, often don't have a job. I
3 don't know whether they work for the State, they work
4 for private industry. I don't know, but it's certainly
5 something that is often extended to an individual.

6 And perhaps I'll hear that it's tied to the
7 amount of money that is involved because there might be
8 a more significant meaning to that for a number of
9 reasons or it might have something specifically to do
10 with the ability to pay restitution and it just may not
11 be able to do something like that over the course of a
12 three-year PTI period.

13 But in any event, you know, I see this in a
14 very similar way and what I need to now analyze since I
15 have really received nothing further than -- no further
16 real direct proof that there is some policy by the
17 State that anyone who is employed by the State in a
18 similar situation would be denied admittance into PTI
19 because of the status of being a State employee.
20 That's what I expected to explore today.

21 I'm being told that, you know, that doesn't
22 exist, but rather there's a different analysis going
23 on. And I frankly have to look at this carefully to
24 see if I accept your argument that, in fact, it is
25 universal application essentially made by the Attorney

1 General's Office under these circumstances. I'm not
2 sure whether I can agree with that or not. But I have
3 this discomfort with the fact that for all other
4 purposes except for the issues raised today that there
5 are opportunities allowed for Mr. Watkins to have
6 availed himself to civil remedies, failing to go to
7 those remedies means that he is someone who disregards
8 paying back the money and therefore disregards and
9 perhaps is not rehabilitatable. That may be one way to
10 look at that.

11 On the other hand, it continues to be
12 unsettling to me that if the State affords that
13 opportunity to resolve these matters in a civil way --
14 under the civil proceedings with a fact finding hearing
15 and perhaps a payment schedule being worked out, once
16 it's referred to the State, presumably similar people
17 who have resolved it without a criminal consequence and
18 admittedly those people responded in that civil
19 context.

20 Nonetheless, those that don't, they are now
21 not afforded an opportunity for PTI because they didn't
22 do well in the civil portion, they didn't respond, I
23 don't know.

24 So there are a number of layers here that I
25 have to really sort out. I also understand that the

1 Court has very limited authority to overturn a
2 prosecutor's decision. It is given great deference
3 unless the prosecutor in this case, the State Attorney
4 General's Office, has grossly abused their discretion,
5 acted arbitrarily. Then I, of course, cannot adjust it
6 and I need to digest what has happened here and what
7 the circumstances are. I think the State certainly can
8 make a cogent argument that they have considered Mr.
9 Watkins as an individual and considered all the
10 relevant factors and nonetheless find him that he
11 should not be allowed the opportunities of PTI.

12 But in the unusual circumstances I have here
13 with the prior argument having been made, I believe I
14 need to digest this a bit further and I will issue a
15 written decision, okay? Let me give myself a short, as
16 short as I can, date so that the next time -- I guess I
17 should give it at least a tracking date so I don't lose
18 this case. This is now -- it's actually indicted. Is
19 it on a track anywhere? Did you appear before Judge
20 Bielamowicz?

21 MS. GRUGAN: (Indiscernible) Judge
22 Bielamowicz, but I think it's been kind of put on hold
23 til this matter is resolved.

24 THE COURT: Yes, because of me. Okay, so if
25 my decision is to deny the appeal, the case would go

1 back before Judge Bielamowicz for further disposition.
2 If I grant the appeal, then it would be up to the State
3 to either appeal that decision or, you know, allow the
4 admission. So I'm just trying to factor in where I --
5 let me place it for January 10th. That would be before
6 Judge Bielamowicz unless you hear from me otherwise and
7 then we'll have to do the necessary -- each one of us,
8 okay? All right, thank you.

9 MS. SMITH: Thank you, Your Honor.

10 MS. GRUGAN: Thank you, Your Honor.

11 * * * * *

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1 THE COURT: Are you ready.
 2 MS. GRUGAN: Yes.
 3 THE COURT: Okay.
 4 MS. GRUGAN: Denise Grugan, G-R-U-G-A-N,
 5 Deputy Attorney General.
 6 MR. CARUSO: I am John D. Caruso,
 7 C-A-R-U-S-O, law firm of Garces and Grabler on behalf
 8 of Mr. Watkins.
 9 THE COURT: Thank you. You're before the
 10 Court for a status conference on Indictment 04-01-0008.
 11 I don't have the file unfortunately. Are there any
 12 counts in there other than the theft by deception? Is
 13 it a single count?
 14 MS. GRUGAN: The second count is unsworn
 15 falsification to authorities.
 16 THE COURT: And, Mr. Watkins, I understand
 17 you're prepared to enter a guilty plea today to Count 1
 18 of this indictment which charges you with theft by
 19 deception; is that correct, sir?
 20 THE DEFENDANT: Yes.
 21 THE COURT: Did you have enough time to
 22 discuss this matter with counsel?
 23 THE DEFENDANT: Yes.
 24 THE COURT: And has your attorney answered
 25 all of your questions to your satisfaction?

1 THE DEFENDANT: Yes.
 2 THE COURT: Before we continue then, I'll
 3 ask that you be sworn. Would you please produce the
 4 Bible from the podium. Place your left hand on the
 5 Bible, raise your right hand, and the court clerk will
 6 administer an oath.
 7 C H A R L E S A L O N D O W A T K I N S, III,
 8 DEFENDANT, SWORN.
 9 THE CLERK: State your full name for the
 10 record.
 11 THE DEFENDANT: Charles Alondo
 12 Watkins, III.
 13 THE COURT: According to the plea form,
 14 Mr. Watkins, if you enter this guilty plea, the state
 15 will recommend that you be placed on probation for a
 16 term of two years. There will be no probation
 17 supervision fees, but there will be a consent judgment,
 18 and you're preserving the right to appeal the denial of
 19 your PTI application. Count 2 will be dismissed.
 20 THE DEFENDANT: Yes.
 21 THE COURT: That is your understanding of
 22 the plea?
 23 THE DEFENDANT: Yes.
 24 THE COURT: I did read that correctly?
 25 MS. GRUGAN: Yes. I just wanted to explain

1 we were going to ask the Court to waive any probation
2 fee because the consent judgment is not just -- it is
3 principal plus penalty and interest, and it is
4 substantial.

5 THE COURT: Okay. I have no problem at all
6 with that. And what is the amount, have you agreed on
7 it?

8 MS. GRUGAN: Yes. The total principal,
9 penalty, and interest is \$7,610.78. Do you want a
10 break-out of that, what is principal?

11 THE COURT: No, as long as Mr. Watkins has
12 an understanding of the amount of restitution that he
13 will be required to pay as a condition of probation.
14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Is it realistic to expect that
17 he will be able to do this in two years?

18 MR. CARUSO: To answer that question,
19 Judge, he is currently collecting disability for a
20 work-related injury. I'm not entirely optimistic it
21 will be paid within the two years. I told him to make
22 a good-faith effort at paying it, given the fact right
23 now he has a limited income.

24 THE COURT: The other thing we could do is
25 to make the period of probation three years, but if he

1 is able to complete payment before then, then probation
2 can be terminated after two.

3 MR. CARUSO: That would be preferable.

4 THE COURT: Is that agreeable?

5 MR. CARUSO: That would be preferable.

6 THE COURT: All right. Then I'll make that
7 adjustment on my copy.

8 MS. GRUGAN: I do have a signed consent
9 judgment that needs your signature. May I approach
10 your law clerk?

11 THE COURT: Yes.

12 MR. CARUSO: Just so Mr. Watkins
13 understands, if he pays it earlier and complies with
14 probation, he wouldn't be precluded from early
15 termination below the two-year mark?

16 THE COURT: You agree to that?

17 MS. GRUGAN: Yes.

18 THE COURT: Okay. All right. Were there
19 any other promises or statements of any type that were
20 made to you to convince you to plead guilty other than
21 what I placed on the record, sir?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: For the record, what is your
24 date of birth?

25 THE DEFENDANT: March 19th, 1966.

1 THE COURT: Do you read and write the
2 English language?

3 THE DEFENDANT: Yes.

4 THE COURT: And what is the highest level
5 of education you've completed?

6 THE DEFENDANT: College. College for like
7 two years. I received culinary certificates,
8 clerical/secretarial, computers.

9 THE COURT: All right. And are you under
10 the influence today of any substance including
11 medication that could affect your ability to think
12 clearly and understand these proceedings?

13 THE DEFENDANT: No.

14 THE COURT: Do you have a copy of the plea
15 form there?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Now, this plea form
18 consists of three pages. Did you review the questions
19 on all three pages with your attorney?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: Did he read the questions to
22 you, did you read them to yourself, or did both take
23 place?

24 THE DEFENDANT: Both took place.

25 THE COURT: Did you sign the back page,

1 sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Would you take a look at it and
4 confirm that that is your signature.

5 THE DEFENDANT: Yes.

6 THE COURT: And did you sign this plea form
7 of your own free will?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you do so after reviewing
10 the questions on all three pages?

11 THE DEFENDANT: Yes.

12 THE COURT: Did you answer all of the
13 questions?

14 THE DEFENDANT: Yes.

15 THE COURT: Are all of the answers that are
16 circled or filled-in your answers?

17 THE DEFENDANT: Yes.

18 THE COURT: And are they truthful?

19 THE DEFENDANT: Yes.

20 THE COURT: By reviewing the information on
21 this plea form, sir, do you understand that you would
22 be required to pay a number of mandatory penalties?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I'm going to review these with
25 you. \$50 Violent Crimes Compensation Board penalty.

1 THE DEFENDANT: Yes.
 2 THE COURT: \$75 Safe Neighborhood Services
 3 Fund.
 4 THE DEFENDANT: Yes.
 5 THE COURT: And \$30 Law Enforcement
 6 Officer's Training Fund.
 7 THE DEFENDANT: Correct.
 8 THE COURT: And you'll also have to provide
 9 a DNA sample, and the results of that analysis will be
 10 maintained in a data bank similar to fingerprints. Are
 11 you aware of that?
 12 THE DEFENDANT: Yes.
 13 THE COURT: Now, the offense to which
 14 you're pleading guilty, sir, is a crime of the third
 15 degree and under our law it carries a maximum sentence
 16 of five years. Now, in the event that you don't comply
 17 with some of the conditions of probation which I
 18 impose, or that are part of this agreement, you can be
 19 charged with a violation, and if you're found guilty,
 20 then you do face jail time of up to five years, do you
 21 understand that?
 22 THE DEFENDANT: Yes.
 23 THE COURT: Are you also aware I can impose
 24 other conditions of probation, other than those to
 25 which you agreed with the state?

1 THE DEFENDANT: Yes.
 2 THE COURT: For instance, community
 3 service?
 4 THE DEFENDANT: Yes.
 5 THE COURT: All right. Mr. Watkins, are
 6 you also aware instead of entering a guilty plea today,
 7 you have a right to a trial by jury?
 8 THE DEFENDANT: Yes.
 9 THE COURT: Do you understand if you went
 10 to trial, you would be presumed innocent unless and
 11 until the state proved that you were guilty beyond a
 12 reasonable doubt?
 13 THE DEFENDANT: Yes.
 14 THE COURT: Do you also understand that at
 15 trial you would have had the right, through your
 16 attorney, to cross-examine or ask questions of all of
 17 the state's witnesses?
 18 THE DEFENDANT: Yes.
 19 THE COURT: And you also could have called
 20 witnesses to testify on your behalf, are you aware of
 21 that?
 22 THE DEFENDANT: Right. Yes.
 23 THE COURT: Do you have any questions so
 24 far?
 25 THE DEFENDANT: No.

1 THE DEFENDANT: Yes.
2 THE COURT: -- and it continue until
3 May 22nd --
4 THE DEFENDANT: Yes.
5 THE COURT: -- in 1999?
6 THE DEFENDANT: Yes.
7 THE COURT: And what happened in May of
8 1999 that changed the situation?
9 THE DEFENDANT: Actually, I got a phone
10 call from, I guess it was the --
11 MR. CARUSO: Prosecutor's office.
12 THE DEFENDANT: -- attorney general's
13 office, and I had spoken with a man, I think his name
14 was David, in regards to that it needs to be paid back.
15 At that point in time I did let him know that I was in
16 the process of seeking to start paying it back. And he
17 asked me have I ever been on a payment plan with them
18 before and I said no. And, he said, well, I'll call
19 you back. He never called me back. The next thing I
20 knew I got a letter in the mail stating they were
21 pressing charges.
22 THE COURT: And how do you plead to theft
23 by deception?
24 THE DEFENDANT: Guilty.
25 THE COURT: And are you entering this

1 guilty plea of your own free will?
2 THE DEFENDANT: Yes.
3 THE COURT: Counsel, do you have any
4 supplementary questions you would like to ask
5 Mr. Watkins for the record?
6 MS. GRUGAN: No questions, but I can
7 clarify though because we have the evidence. It was
8 through a mail certification that he would receive in
9 the mail, he has to certify that he was unemployed for
10 a two-week period. If he sends in those mail
11 certificates by a certain date, the Department of Labor
12 holds them for two or three days, and then a check is
13 cut, so that is how.
14 THE COURT: That is pretty consistent with
15 what he indicated.
16 MS. GRUGAN: As far as the unemployment
17 period, I think it's just important to point out he was
18 eligible to collect, he did indeed collect, and then
19 his benefits were extended, again, on a special program
20 that they -- the state offers where you can work if
21 you're going to college. So his benefits were extended
22 for a whole second term as long as he continued his
23 education. However, he did not notify the state that
24 he was still employed, and that is what happened.
25 THE COURT: Okay.

PLEA

18

1 MR. CARUSO: Make sure you go down there.
2 THE DEFENDANT: Yes, I will.
3 THE COURT: All right. Thank you.
4 MR. CARUSO: Your Honor, thank you.
5 THE COURT: Thank you, counsel.
6 (Plea is concluded.)
7
8
9

10 CERTIFICATION

11 I, ROSEMARIE LEVANDOWSKI, C.S.R., C.R.R.,
12 License Number 994, an Official Court Reporter and
13 Notary Public in and for the State of New Jersey, do
14 hereby certify the foregoing to be prepared in full
15 compliance with the current Transcript Format for
16 Judicial Proceedings and is a true and accurate
17 compressed transcript to the best of my knowledge and
18 ability.
19

20
21 *Rosemarie Levandowski*
22 _____

23 Official Court Reporter
24 Mercer County Courthouse
25

6/1/06

Date

A-3853-0574

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
IND. NO. 04-01-0008
APP. DIV. NO. A-3853-05 T4

THE STATE OF NEW JERSEY,)
)
)
vs.)
)
CHARLES WATKINS,)
)
Defendant.)

STENOGRAPHIC TRANSCRIPT
OF
PLEA

PLACE: Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey
DATE: February 7, 2005

B E F O R E:

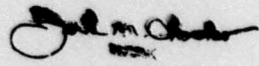
HONORABLE MARYANN K. BIELAMOWICZ, J.S.C.

Transcript Ordered By:

OFFICE OF THE PUBLIC DEFENDER

FILED
APPELLATE DIVISION

JUN 05 2006



A P P E A R A N C E S:

PETER C. HARVEY, ATTORNEY GENERAL
BY: DIANE L. GRUGAN, DEPUTY ATTORNEY GENERAL
For the State of New Jersey

JOHN D. CARUSO, ESQUIRE
(Garces & Grabler)
For the Defendant

RECEIVED
APPELLATE DIVISION
JUN 05 2006
SUPERIOR COURT
OF NEW JERSEY

* * * * *
ROSEMARIE LEVANDOWSKI, C.S.R., C.R.R.
Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey 08650

PLEA

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1 we were going to ask the court to waive any probation
2 fee because the consent judgment is not just -- it is
3 principal plus penalty and interest, and it is
4 substantial.

5 THE COURT: Okay. I have no problem at all
6 with that. And what is the amount, have you agreed on
7 it?

8 MS. GRUGAN: Yes. The total principal,
9 penalty, and interest is \$7,610.78. Do you want a
10 break-out of that, what is principal?

11 THE COURT: No, as long as Mr. Watkins has
12 an understanding of the amount of restitution that he
13 will be required to pay as a condition of probation.
14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Is it realistic to expect that
17 he will be able to do this in two years?

18 MR. CARUSO: To answer that question,
19 Judge, he is currently collecting disability for a
20 work-related injury. I'm not entirely optimistic it
21 will be paid within the two years. I told him to make
22 a good-faith effort at paying it, given the fact right
23 now he has a limited income.

24 THE COURT: The other thing we could do is
25 to make the period of probation three years, but if he

PLEA

5

1 is able to complete payment before then, then probation
2 can be terminated after two.

3 MR. CARUSO: That would be preferable.

4 THE COURT: Is that agreeable?

5 MR. CARUSO: That would be preferable.

6 THE COURT: All right. Then I'll make that
7 adjustment on my copy.

8 MS. GRUGAN: I do have a signed consent
9 judgment that needs your signature. May I approach
10 your law clerk?

11 THE COURT: Yes.

12 MR. CARUSO: Just so Mr. Watkins
13 understands, if he pays it earlier and complies with
14 probation, he wouldn't be precluded from early
15 termination below the two-year mark?

16 THE COURT: You agree to that?

17 MS. GRUGAN: Yes.

18 THE COURT: Okay. All right. Were there
19 any other promises or statements of any type that were
20 made to you to convince you to plead guilty other than
21 what I placed on the record, sir?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: For the record, what is your
24 date of birth?

25 THE DEFENDANT: March 19th, 1966.

1 THE COURT: Do you read and write the
 2 English language?
 3 THE DEFENDANT: Yes.
 4 THE COURT: And what is the highest level
 5 of education you've completed?
 6 THE DEFENDANT: College. College for like
 7 two years. I received culinary certificates,
 8 clerical/secretarial, computers.
 9 THE COURT: All right. And are you under
 10 the influence today of any substance including
 11 medication that could affect your ability to think
 12 clearly and understand these proceedings?
 13 THE DEFENDANT: No.
 14 THE COURT: Do you have a copy of the plea
 15 form there?
 16 THE DEFENDANT: Yes.
 17 THE COURT: All right. Now, this plea form
 18 consists of three pages. Did you review the questions
 19 on all three pages with your attorney?
 20 THE DEFENDANT: Yes, I did.
 21 THE COURT: Did he read the questions to
 22 you, did you read them to yourself, or did both take
 23 place?
 24 THE DEFENDANT: Both took place.
 25 THE COURT: Did you sign the back page,

1 sir?
 2 THE DEFENDANT: Yes.
 3 THE COURT: Would you take a look at it and
 4 confirm that that is your signature.
 5 THE DEFENDANT: Yes.
 6 THE COURT: And did you sign this plea form
 7 of your own free will?
 8 THE DEFENDANT: Yes, your Honor.
 9 THE COURT: Did you do so after reviewing
 10 the questions on all three pages?
 11 THE DEFENDANT: Yes.
 12 THE COURT: Did you answer all of the
 13 questions?
 14 THE DEFENDANT: Yes.
 15 THE COURT: Are all of the answers that are
 16 circled or filled-in your answers?
 17 THE DEFENDANT: Yes.
 18 THE COURT: And are they truthful?
 19 THE DEFENDANT: Yes.
 20 THE COURT: By reviewing the information on
 21 this plea form, sir, do you understand that you would
 22 be required to pay a number of mandatory penalties?
 23 THE DEFENDANT: Yes, sir.
 24 THE COURT: I'm going to review these with
 25 you. \$50 Violent Crimes Compensation Board penalty.

1 unemployment.

2 THE COURT: In '98?

3 THE DEFENDANT: '98, yes. I am sorry. And
4 I was eligible for unemployment benefits and I was
5 receiving them, and at the same time they offered to
6 allow us to go to school if we wanted to get another
7 degree or anything and I went, took them up on that
8 offer and was going to school. And I think like
9 towards the end of '98 or either the beginning of '99,
10 I was called back to my job, but I wasn't finished
11 school yet and I kept going to school. As long as I
12 was going to school they were sending me the
13 unemployment checks, and I was working and receiving
14 unemployment at the time.

15 THE COURT: You were going to school and
16 working?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you understand you were
19 obligated to report any income?

20 THE DEFENDANT: Yes.

21 THE COURT: And how did you -- did you have
22 to go to the office periodically or did you have to
23 call in and report?

24 THE DEFENDANT: To be honest, I don't quite
25 remember how. I think it was as long as I was in

1 school and my attendance stayed above average, they
2 send me the checks.

3 THE COURT: Did you understand once you
4 began working and getting a paycheck you had the
5 obligation to report that income?

6 THE DEFENDANT: Yes.

7 THE COURT: Wasn't there a periodic
8 reporting that you had to make to ensure that no
9 circumstances had changed?

10 THE DEFENDANT: Yes. Yes. Yes.

11 THE COURT: And how did you do that, in
12 writing? By phone? In person?

13 THE DEFENDANT: To be honest, I don't
14 remember. I think it was by writing. If I'm not
15 mistaken, it was by writing or call in, it was one of
16 the two.

17 THE COURT: And did you know you should
18 have reported the income?

19 THE DEFENDANT: Yes.

20 THE COURT: And you didn't do that?

21 THE DEFENDANT: Correct.

22 THE COURT: And do you agree during the
23 time period in which you were receiving a paycheck and
24 were receiving unemployment it began on May 24th, 1998,
25 on or about --

1 THE DEFENDANT: Yes.
2 THE COURT: -- and it continue until
3 May 22nd --
4 THE DEFENDANT: Yes.
5 THE COURT: -- in 1999?
6 THE DEFENDANT: Yes.
7 THE COURT: And what happened in May of
8 1999 that changed the situation?
9 THE DEFENDANT: Actually, I got a phone
10 call from, I guess it was the --
11 MR. CARUSO: Prosecutor's office.
12 THE DEFENDANT: -- attorney general's
13 office, and I had spoken with a man, I think his name
14 was David, in regards to that it needs to be paid back.
15 At that point in time I did let him know that I was in
16 the process of seeking to start paying it back. And he
17 asked me have I ever been on a payment plan with them
18 before and I said no. And, he said, well, I'll call
19 you back. He never called me back. The next thing I
20 knew I got a letter in the mail stating they were
21 pressing charges.
22 THE COURT: And how do you plead to theft
23 by deception?
24 THE DEFENDANT: Guilty.
25 THE COURT: And are you entering this

1 guilty plea of your own free will?
2 THE DEFENDANT: Yes.
3 THE COURT: Counsel, do you have any
4 supplementary questions you would like to ask
5 Mr. Watkins for the record?
6 MS. GRUGAN: No questions, but I can
7 clarify though because we have the evidence. It was
8 through a mail certification that he would receive in
9 the mail, he has to certify that he was unemployed for
10 a two-week period. If he sends in those mail
11 certificates by a certain date, the Department of Labor
12 holds them for two or three days, and then a check is
13 cut, so that is how.
14 THE COURT: That is pretty consistent with
15 what he indicated.
16 MS. GRUGAN: As far as the unemployment
17 period, I think it's just important to point out he was
18 eligible to collect, he did indeed collect, and then
19 his benefits were extended, again, on a special program
20 that they -- the state offers where you can work if
21 you're going to college. So his benefits were extended
22 for a whole second term as long as he continued his
23 education. However, he did not notify the state that
24 he was still employed, and that is what happened.
25 THE COURT: Okay.

PLEA

16

1 MR. CARUSO: My only supplemental comment
 2 is that we litigated before Judge Sypek at great length
 3 his amenability to PTI, and I still maintain before
 4 this honorable court he should have gotten PTI and that
 5 is why this is a conditional plea of guilty, reserving
 6 his rights to appeal to the appellate tribunal the
 7 decision on the prosecutor's discretion and
 8 Judge Sypek.

9 THE COURT: I understand. That is
 10 understood. I know from the history of this case that
 11 the PTI decision was made by Judge Sypek following your
 12 client's application.

13 MR. CARUSO: Judge Sypek never made a
 14 decision on the record.

15 THE COURT: No, I was advised it was a
 16 denial.

17 MR. CARUSO: It was a denial. She never
 18 made her findings of fact or conclusions of law, but
 19 I'm told a written opinion is forthcoming.

20 THE COURT: Right, that is my understanding
 21 as well.

22 The Court accepts Mr. Watkins' guilty plea.
 23 I'll order a presentence report, and schedule
 24 sentencing for Friday, April 1st.

25 Before you leave here today, sir, you need

PLEA

17

1 to report to Room 105 in this building on the first
 2 floor. There, you will be interviewed by a probation
 3 officer who will obtain some background information
 4 from you that will be incorporated in a presentence
 5 report. You'll get a copy of that report before the
 6 date of sentence, you should review it before you come
 7 to court. If there is anything in there that you don't
 8 agree with, you can bring it to my attention on the
 9 date of sentencing.

10 THE DEFENDANT: Okay.

11 THE COURT: If you don't show up, a bench
 12 warrant will be issued. This is the only notice you'll
 13 receive of your sentencing date.

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Any questions, sir?

16 THE DEFENDANT: Do you know how long it
 17 takes in the Room 105 room?

18 THE COURT: Do you, Sandy?

19 THE CLERK: Probably a half-hour.

20 THE COURT: If it is a problem today, make
 21 an appointment.

22 THE DEFENDANT: I am supposed to be at the
 23 doctor's at 3:30 for an MRI.

24 THE COURT: All right. Just make an
 25 appointment, you can come back tomorrow and do it.

PLEA

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MR. CARUSO: Make sure you go down there.
THE DEFENDANT: Yes, I will.
THE COURT: All right. Thank you.
MR. CARUSO: Your Honor, thank you.
THE COURT: Thank you, counsel.
(Plea is concluded.)

CERTIFICATION

I, ROSEMARIE LEVANDOWSKI, C.S.R., C.R.R.,
License Number 994, an Official Court Reporter and
Notary Public in and for the State of New Jersey, do
hereby certify the foregoing to be prepared in full
compliance with the current Transcript Format for
Judicial Proceedings and is a true and accurate
compressed transcript to the best of my knowledge and
ability.

Rosemarie Levandowski

Official Court Reporter
Mercer County Courthouse

6/1/06

Date

A-3853-05T4

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MERCER COUNTY
Ind. No. 04-01-0008
App. Div. No. A-3853-05T4

FILED
APPELLATE DIVISION

JUN 28 2006

THE STATE OF NEW JERSEY

vs.

CHARLES WATKINS,

Defendant.

A-718
18 SEP 2006
) STENOGRAPHIC TRANSCRIPT
)
)
)
)
)
)

SENTENCE RECEIVED
APPELLATE DIVISION

JUN 28 2006

PLACE: Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey
DATE: April 15, 2005
SUPERIOR COURT
OF NEW JERSEY

B E F O R E :

THE HONORABLE MARYANN K. BEILAMOWICZ, J.S.C.

Transcript Ordered By:

LOUIS G. GONNELLA, A.D.P.D.
(Office of the Public Defender)

A P P E A R A N C E S :

PETER C. HARVEY, NEW JERSEY ATTORNEY GENERAL
By: DENISE L. GRUGAN, DEPUTY ATTORNEY GENERAL
Attorney for the State

JONATHAN A. KESSOUS, ESQUIRE
(Garces and Grabler)
Attorney for the Defendant

* * * * *

CATHERINE M. HICKS, CSR, CRR
Official Court Reporter
209 South Broad Street
Trenton, NJ 08650

2

1 THE COURT: Good morning, please be seated.
2 I understand that state versus Watkins is ready?
3 MS. GRUGAN: Yes, your Honor.
4 MR. KESSOUS: Yes, your Honor.
5 THE COURT: Mr. Watkins, do you want to
6 stand in back of the podium, please, sir?
7 Okay, sir, you're before the Court today
8 for sentencing on Indictment 04-01-0008. You entered a
9 guilty plea on February 7th of 2005 to a third degree
10 theft by deception. The state is recommending that
11 you be placed on probation conditioned upon restitution
12 which, unless any payments have been made, is an amount
13 of \$7,619.78.
14 Appearances of counsel, please.
15 MS. GRUGAN: Denise Grugan, Deputy Attorney
16 General.
17 MR. KESSOUS: Jonathan Kessous, law offices
18 of Garces and Grabler, New Brunswick, New Jersey,
19 representing the defendant.
20 THE COURT: Anything on behalf of the
21 state?
22 MS. GRUGAN: No, your Honor. We move that
23 you sentence in accordance with the negotiated plea
24 agreement.
25 THE COURT: Okay.

1 MR. KESSOUS: Thank you, your Honor. The
2 Court should note that my client today has signed the
3 consent order for the civil judgment.
4 THE COURT: Yes.
5 MR. KESSOUS: My client, therefore, has
6 elected to pay full restitution regardless of the
7 outcome of any PTI appeal, which the Court is aware he
8 has reserved his right to appeal within 45 days of
9 today's Court sentencing.
10 With that being said, your Honor, I also
11 point the Court's attention to the numerous
12 certifications and community support letters that have
13 been attached to the PSIR. Under those circumstances,
14 your Honor, the Court can see that this was to a
15 certain degree an isolated incident, one that my client
16 will be paying for in the long run because his job for
17 15 years is in jeopardy, which as the Court is aware,
18 was the true engine behind the PTI appeal. Under those
19 circumstances, your Honor, I respectfully submit that
20 he is being punished for the present offense
21 accordingly, and therefore, I respectfully request that
22 the plea agreement with the reservation, initial guilty
23 plea reservation be entered and the sentence go on.
24 THE COURT: You got your PTI decision?
25 MR. KESSOUS: Actually, Judge, I did not

1 which is what I was going to ask the Court.
2 THE COURT: That was not my decision.
3 MS. GRUGAN: It was Judge Sypek.
4 MR. KESSOUS: I understand.
5 THE COURT: You'll need to contact her
6 chambers.
7 MR. KESSOUS: I'll be going up there now.
8 THE COURT: All right, Mr. Watkins, first
9 of all, did you have an opportunity to review your
10 presentence report?
11 THE DEFENDANT: Yes.
12 THE COURT: Is there any information in
13 your report that you don't agree with or that you would
14 like to comment on?
15 THE DEFENDANT: No, ma'am.
16 THE COURT: Is there anything you would
17 like to say before I sentence you, sir?
18 THE DEFENDANT: Only that I -- no.
19 THE COURT: Okay. All right, I've reviewed
20 your presentence report, sir. You're 38 years of age.
21 You have two disorderly person's convictions in your
22 background, but no prior indictable convictions.
23 The heart of this offense is that you
24 collected unemployment benefits while you were working
25 for Trenton Psychiatric Hospital for a period of five

1 months, and I've indicated what that total amount is,
2 including penalties and fines.
3 It is recommended that the period of
4 probation be three years, but that it be terminated
5 earlier in the event that you're able to pay
6 restitution by that time. You're currently on
7 worker's comp for an injury sustained at your job.
8 You've worked at Trenton Psychiatric for 15 years, but
9 as your attorney indicated, you've been suspended
10 without pay as a result of this incident.
11 You are single, have no children. In '90,
12 you may have a municipal court conviction for receiving
13 stolen property, and in 2004, for interfering with the
14 police. It is noted that you have strong community
15 ties. You received your GED in 1986 and have attended
16 some other classes beyond that, including classes at
17 the Art and Fashion Institute of Philadelphia and
18 Mercer County Community College, and those certificates
19 as well as letters are attached.
20 In reviewing the aggravating and mitigating
21 factors, I find the following apply: Of course,
22 there's a need to deter you and others from violating
23 the law, and I also find aggravating factor ten, that
24 the offense involved deceptive practices against a
25 division of state government.

Sentence

6

1 On the mitigating side, I have considered
2 that you have no prior indictable convictions, and that
3 you are particularly likely to respond affirmatively to
4 probationary treatment and that you will compensate the
5 unemployment fund for this offense.

6 Under those circumstances, I find that the
7 mitigating factors outweigh the aggravating, and it's
8 unfortunate that this occurred, because you do have a
9 rather positive background, all of which I have
10 considered. I certainly conclude under all of these
11 circumstances that probation is an appropriate
12 disposition, and I sentence you accordingly. And we'll
13 just have to wait and see what the Appellate Division
14 does with respect to PTI.

15 On Indictment 04-01-0008, it is the
16 sentence of this Court that you be placed on probation
17 for a term of three years. In the event that
18 restitution is paid in advance of the conclusion of
19 three years, then the Court will concur with the early
20 termination of probation.

21 Probation is conditioned upon restitution
22 in the full amount that I have indicated, \$7,619.78
23 minus any credits that you might be due. In light of
24 the amount of restitution and the fact that you're on
25 worker's comp, I'm not going to impose any other

Sentence

7

1 conditions. I don't know they're really necessary.
2 I don't have a concern that you will violate the law
3 again, frankly.

4 I will require that you pay the mandatory
5 penalties, however, a \$50 Violent Crimes Compensation
6 Board penalty, \$75 Safe Neighborhoods Services Fund
7 assessment, \$30 Law Enforcement Officers Equipment and
8 Training Fund penalty, and of course, you are obligated
9 to provide a DNA sample.

10 Probation recommended against a probation
11 servicing fee. I will agree with that and will impose
12 none.

13 If you violate the condition of probation,
14 that is the regular payment of restitution, of course,
15 you can be charged with a violation of probation,
16 although we have the civil judgment, so. I'm not so
17 sure what probation will do with that. In any event,
18 if you do violate probation, I'm obligated to tell you
19 that you do face up to five years in prison as a
20 result. You have no jail credits.

21 Finally, sir, you have 45 days to appeal
22 this sentence. If you have any questions about the
23 process of filing appeal, I'm sure your attorney can
24 answer them for you.

25 And did you, in fact, sign this civil

A-3853-05T4

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MERCER COUNTY
Ind. No. 04-01-0008
App. Div. No. A-3853-05T4

FILED
APPELLATE DIVISION

JUN 28 2006

THE STATE OF NEW JERSEY,)

vs.)

CHARLES WATKINS,)

Defendant.)

STENOGRAPHIC TRANSCRIPT

OF

SENTENCE

RECEIVED
APPELLATE DIVISION

JUN 28 2006

PLACE: Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey

SUPERIOR COURT
OF NEW JERSEY

DATE: April 15, 2005

B E F O R E:

THE HONORABLE MARYANN K. BEILAMOWICZ, J.S.C.

Transcript Ordered By:

LOUIS G. GONNELLA, A.D.P.D.
(Office of the Public Defender)

A P P E A R A N C E S:

PETER C. HARVEY, NEW JERSEY ATTORNEY GENERAL
By: DENISE L. GRUGAN, DEPUTY ATTORNEY GENERAL
Attorney for the State

JONATHAN A. KESSOUS, ESQUIRE
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Attorney for the Defendant

* * * * *

CATHERINE M. HICKS, CSR, CRR
Official Court Reporter
209 South Broad Street
Trenton, NJ 08650

2

Sentence

2

1 THE COURT: Good morning, please be seated.
2 I understand that State versus Watkins is ready?
3 MS. GRUGAN: Yes, your Honor.
4 MR. KESSOUS: Yes, your Honor.
5 THE COURT: Mr. Watkins, do you want to
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7 Okay, sir, you're before the Court today
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Sentence

5

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11 You are single, have no children. In '90,
12 you may have a municipal court conviction for receiving
13 stolen property, and in 2004, for interfering with the
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21 factors, I find the following apply: Of course,
22 there's a need to deter you and others from violating
23 the law, and I also find aggravating factor ten, that
24 the offense involved deceptive practices against a
25 division of state government.

1 On the mitigating side, I have considered
2 that you have no prior indictable convictions, and that
3 you are particularly likely to respond affirmatively to
4 probationary treatment and that you will compensate the
5 unemployment fund for this offense.

6 Under those circumstances, I find that the
7 mitigating factors outweigh the aggravating, and it's
8 unfortunate that this occurred, because you do have a
9 rather positive background, all of which I have
10 considered. I certainly conclude under all of these
11 circumstances that probation is an appropriate
12 disposition, and I sentence you accordingly. And we'll
13 just have to wait and see what the Appellate Division
14 does with respect to PTI.

15 On Indictment 04-01-0008, it is the
16 sentence of this Court that you be placed on probation
17 for a term of three years. In the event that
18 restitution is paid in advance of the conclusion of
19 three years, then the Court will concur with the early
20 termination of probation.

21 Probation is conditioned upon restitution
22 in the full amount that I have indicated, \$7,619.78
23 minus any credits that you might be due. In light of
24 the amount of restitution and the fact that you're on
25 worker's comp, I'm not going to impose any other

1 conditions. I don't know they're really necessary.
2 I don't have a concern that you will violate the law
3 again, frankly.

4 I will require that you pay the mandatory
5 penalties, however, a \$50 Violent Crimes Compensation
6 Board penalty, \$75 Safe Neighborhoods Services Fund
7 assessment, \$30 Law Enforcement Officers Equipment and
8 Training Fund penalty, and of course, you are obligated
9 to provide a DNA sample.

10 Probation recommended against a probation
11 servicing fee. I will agree with that and will impose
12 none.

13 If you violate the condition of probation,
14 that is the regular payment of restitution, of course,
15 you can be charged with a violation of probation,
16 although we have the civil judgment, so. I'm not so
17 sure what probation will do with that. In any event,
18 if you do violate probation, I'm obligated to tell you
19 that you do face up to five years in prison as a
20 result. You have no jail credits.

21 Finally, sir, you have 45 days to appeal
22 this sentence. If you have any questions about the
23 process of filing appeal, I'm sure your attorney can
24 answer them for you.

25 And did you, in fact, sign this civil

1 consent judgment?
2 THE DEFENDANT: Yes.
3 THE COURT: Did you review it with your
4 attorney before you signed it?
5 THE DEFENDANT: Yes, ma'am.
6 THE COURT: Did you sign it of your own
7 free will?
8 THE DEFENDANT: Yes.
9 THE COURT: All right, thank you, counsel.
10 Good luck.
11 (At which time, the matter was concluded.)
12
13

14 CERTIFICATE

15 I, CATHERINE M. HICKS, C.S.R., License Number
16 949, an Official Court Reporter and Notary Public in
17 and for the State of New Jersey, do hereby certify the
18 foregoing to be prepared in full compliance with the
19 current Transcript Format for Judicial Proceedings and
20 is a true and accurate compressed transcript of my
21 stenographic notes taken in the above matter to the
22 best of my knowledge and ability.

23 Catherine M. Hicks, CSR
24 CATHERINE M. HICKS, CSR, CRR
25 209 South Broad Street
Mercer County Courthouse
Trenton, New Jersey

Date: 6-22-06

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