

## SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

### **State of New Jersey v. Abdul Webster (A-37-06)**

**(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in the written opinion below.)**

**Argued March 19, 2007 -- Decided April 25, 2007**

#### **PER CURIAM**

Following a plea of guilty to second-degree aggravated assault, Abdul Webster was sentenced to six years imprisonment with an eighty-five percent period of parole ineligibility, imposed pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2, (NERA). The issue before the Court is whether NERA permits commutation and work credits to lessen a defendant's period of parole ineligibility under the Act.

NERA is interpreted by the Parole Board to preclude application of commutation and work credits to the "front end" of a sentence subject to NERA in order to lessen the period of parole ineligibility. Rather, the Parole Board recognizes those credits as applicable only to the remaining base term or "back end" of a sentence. As a result of the operation of the statutory sentence minimums, which effectively require a period of custody that is less than the custodial term handed down by the sentencing court, the credits become of little or no substantive use to an inmate, since the end of the period of parole ineligibility imposed under NERA will usually be co-terminus with the maximum sentence pursuant to statute.

Webster appealed his sentence to the Appellate Division, arguing that the Parole Board's interpretation of NERA: 1) results in a denial of the benefit of credits to which the Parole Act, N.J.S.A. 30:4-123.51a, entitles him; 2) is not required by NERA, which does not prohibit the application of commutation and work credits to reduce a period of parole ineligibility imposed pursuant to the statute; 3) is not required by the Parole Act; 4) is contrary to law; and 5) as a result, entitles him to either the elimination of his period of parole ineligibility under NERA or to a declaration that commutation and work credits are applicable to reduce his parole disqualifier.

Webster's challenge to the parole ineligibility calculation was not raised before the Parole Board as required according to administrative law. Nonetheless, because the Parole Board filed an answering brief, the Appellate Division considered the substance of Webster's challenge in order to again clarify the interrelationship between NERA and the Parole Act. In so doing, the panel affirmed Webster's sentence, finding that the actions of the Parole Board were consistent with the provisions of NERA and the Parole Act. The Appellate Division noted that, although the Parole Act provides for an award of progressive time or commutation credits for continuous orderly behavior in custody and for an award of work credits as compensation for an inmate's employment in "productive occupations" during that period of incarceration, it precludes the use of such credits to reduce any judicial or statutory minimum. The court also cited a similar prohibition in the Administrative Code.

In its decision, the Appellate Division cited prior case law holding that the use of the term "not eligible for parole" in a sentencing statute unquestionably denotes a mandatory minimum sentence and that a defendant does not have a constitutionally protected liberty interest under the Due Process Clause of the Fourteenth Amendment in the reduction of his or her sentence by application of commutation and work credits. The panel also cited another related decision where it was determined that gap-time credit could not be utilized to reduce a period of parole ineligibility imposed pursuant to NERA, noting the Legislature's clear and unambiguous language providing that a person convicted of a NERA offense must serve eighty-five percent of the sentence imposed before becoming eligible for release.

The Appellate Division found no reason to diverge from the above referenced precedent in this case, finding evidence of the Legislature's clear intent when enacting NERA in 1997; therefore, the panel upheld

Webster's sentence, unable to find any evidence in the statutory history of NERA or its language to support his arguments. The Appellate Division also determined that if any conflict were to exist between NERA and the Parole Act, NERA would prevail.

The Supreme Court granted certification.

**HELD:** Judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in Judge Payne's written opinion in the Appellate Division. If a sentence is subject to the No Early Release Act's mandatory- minimum-sentence provision, making Webster ineligible for parole during the first eighty-five percent of his sentence, then commutation and work credits cannot be used to reduce that eighty-five percent parole disqualifier.

**CHIEF JUSTICE ZAZZALI and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this PER CURIAM opinion.**

SUPREME COURT OF NEW JERSEY  
A-37 September Term 2006

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ABDUL WEBSTER,

Defendant-Appellant.

Argued March 19, 2007 - Decided April 25, 2007

On certification to the Superior Court,  
Appellate Division, whose opinion is  
reported at 383 N.J. Super. 432 (2006).

Ruth Bove Carlucci, Assistant Deputy Public  
Defender, argued the cause for appellant  
(Yvonne Smith Segars, Public Defender,  
attorney; Barbara A. Hedeem, Assistant  
Deputy Public Defender, on the letter  
brief).

Lisa A. Puglisi, Deputy Attorney General,  
argued the cause for respondent (Stuart  
Rabner, Attorney General of New Jersey,  
attorney).

Peter J. Gallagher submitted a brief on  
behalf of amicus curiae, Association of  
Criminal Defense Lawyers of New Jersey  
(Greenberg Traurig, attorneys).

PER CURIAM

The judgment is affirmed, substantially for the  
reasons expressed in Judge Payne's opinion of the Appellate  
Division, reported at 383 N.J. Super. 432 (2006).

CHIEF JUSTICE ZAZZALI and JUSTICES LONG, LaVECCHIA,  
ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this  
opinion.

SUPREME COURT OF NEW JERSEY

NO. A-37

SEPTEMBER TERM 2006

ON CERTIFICATION TO Appellate Division, Superior Court

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ABDUL WEBSTER,

Defendant-Appellant.

DECIDED April 25, 2007  
Chief Justice Zazzali PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY \_\_\_\_\_

DISSENTING OPINION BY \_\_\_\_\_

CHECKLIST	AFFIRM	
CHIEF JUSTICE ZAZZALI	X	
JUSTICE LONG	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE WALLACE	X	
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
TOTALS	7	