

# Sexual Assault Survivor Protection Act Not Applied Retroactively

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December 19, 2018 | by Matthew Troiano

On December 4, 2018, the Appellate Division issued a decision approved for publication in R.L.U. v. J.P., (A-4823-16T1) wherein the court addressed the retroactivity of the Sexual Assault Survivor Protection Act (SASPA). The Appellate Division reversed the decision of a Family Part judge, and held that a SASPA order was not appropriate in this case, as that law was not meant to be applied retroactively.

SASPA, which is codified in N.J.S.A. 2C:14-13 - 21, permits victims of unwanted sexual penetration, contact or lewd acts, or attempts to commit such conduct, to obtain an order of protection from a Superior Court Judge. SASPA was signed into law in November 2015. It was intended to expand the remedies available to victims of sexual violence who may not have qualified for such protections through other laws.

Prior to the enactment of the SASPA, victims of sexual violence may have been eligible to obtain a domestic violence (DV) restraining order, pursuant to the Prevention of Domestic Violence Act of 1991 (PDVA), but only if the victim was considered to be a protected person under that law. The PDVA defined “victim of domestic violence” as a spouse, former spouse, a person with whom the defendant had a child in common, or a person with whom the defendant had a dating relationship. Because of this definition, certain people fell outside the protections of that law. For instance, a person subjected to sexual violence in a random encounter or in less than a dating relationship were not statutorily eligible to obtain a DV restraining order. The SASPA was enacted to fill that void.

In this particular case, the victim, R.L.U., obtained an order of protection against the Defendant, J.P., pursuant to the SASPA. The SASPA order protected the victim based on conduct committed by the Defendant in 2005. The Defendant appealed to the Appellate Division, challenging the validity of the SASPA order.

The relevant facts are as follows: In 2005, Defendant pled guilty to Endangering the Welfare of a Child. At the time of the incident, the victim was an eleven-year-old female. Between 2005 and March 2017, the victim and Defendant had no contact with one another. However, in March 2017, while the victim was working at a convenience store, the Defendant entered the store and the two encountered each other. Defendant yelled at the victim and indicated that he knew the owner of the store and would get her fired. The Defendant returned ten days later, approached a glass door, and stared at the victim for five seconds before leaving.

On March 27, 2017, the victim was granted a SASPA temporary order of protection. Thereafter, a Family Part judge conducted a testimonial hearing regarding the issuance of the final order of protective. The judge determined that the victim and defendant had sexual intercourse in 2005, which was a sufficient predicate act that triggered SASPA. As a result, the Family Part judge issued a final order of protection.

The Defendant appealed the decision to the Appellate Division. The Defendant argued that the imposition of the final order of protection pursuant to SASPA was an error because the predicate act – the 2005 sexual assault of the victim – occurred before the enactment of SASPA in 2015. The Defendant claimed that his constitutional rights were violated as this was an ex post facto violation.

The Appellate Division agreed with the Defendant, but not based on his constitutional argument. The Appellate Division stated that applying the SASPA to conduct that occurred prior to the effective date would mean that the law would be applied retroactively. The Appellate Division held that the SASPA was not meant to be applied retroactively, and thus, could only apply to conduct that occurred after the date that the law went into effect. Although the Appellate Division didn't fault the "good intentions" of the Family Part Judge, it nevertheless reversed its order. The Appellate Division determined that the 2017 encounter between the victim and Defendant did not qualify the victim for protection under SASPA because there was no allegation that the conduct involved "nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct" as required by the statute. In short, the only qualifying conduct would have been the 2005 crime.

Because the only qualifying act occurred in 2005, the Appellate Division had to determine if the 2015 SASPA statute was meant to be applied retroactively. Retroactive application means that the law will apply to conduct that occurs before the law's effective date. It is rare to find a law that is applied retroactively. Most are applied prospectively, which means from the effective date on into the future. If a law is to be applied retroactively, there is usually evidence that the Legislature intended such application.

Here, the Appellate Division analyzed the retroactivity of the SASPA by looking at three different factors. First, the Appellate Division determined that there was no indication by the Legislature that they intended the law to be applied retroactively. Second, the court determined that SASPA was not curative in nature, as it was enacted to expand remedies, and not to correct defects. Last, the court determined that there was nothing in the record to suggest that the parties expected the SASPA to apply retroactively. As a result, the Appellate Division ruled that the SASPA should not be applied retroactively, and that it was an error for the Family Part judge to do so. As such, the Appellate Division reversed the Family Part judge's final order of protection.