

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT OF APPEALS

STATE OF NEW YORK

-----

PEOPLE ex rel. RYAN, o/b/o SHAVER,

Respondent,

-against-

No. 183

CHEVERKO,

Appellant.

-----

20 Eagle Street  
Albany, New York 12207  
October 9, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

LINDA M. TRENTACOSTE, ESQ.  
WESTCHESTER COUNTY ATTORNEY  
Attorneys for Appellant  
148 Martine Avenue  
6th Floor  
White Plains, NY 10601

ANNE BIANCHI, ESQ.  
LEGAL AID SOCIETY OF WESTCHESTER COUNTY  
Attorneys for Respondent  
One North Broadway  
9th Floor  
White Plains, NY 10601

Penina Wolicki  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 183, People, Ryan  
2 Shaver v. Cheverko?

3 Counselor, would you like any rebuttal  
4 time?

5 MS. TRENTACOSTE: Yes, Your Honor. One  
6 minute, please.

7 CHIEF JUDGE LIPPMAN: One minute, sure.  
8 Counsel, explain to us in layman's terms  
9 what the statute means.

10 MS. TRENTACOSTE: Just for the court, my  
11 name is Linda Trentacoste.

12 CHIEF JUDGE LIPPMAN: Go ahead.

13 MS. TRENTACOSTE: Yes, Your Honor. The  
14 County believes that the statute's actually quite  
15 clear, quite easy to apply.

16 CHIEF JUDGE LIPPMAN: What is - - - tell us  
17 exactly what it means, if it's quite clear?

18 MS. TRENTACOSTE: Well - - - well,  
19 apparently it's not quite clear, since we're here  
20 before the court.

21 CHIEF JUDGE LIPPMAN: Okay.

22 MS. TRENTACOSTE: But when - - - when the  
23 County was reviewing this section, we were seeing  
24 that there were two alternatives that needed to be  
25 applied, Your Honors. The first was that the terms

1 were to be added to arrive at the aggregate term and  
2 satisfied by a discharge of the aggregate term, and  
3 the second was two years of imprisonment. In fact,  
4 in the calculation sheets, I believe we have in A-70  
5 of our appendix, it actually shows how the correction  
6 officers calculate this term.

7 This particular individual, as you all  
8 know, was sentenced to four years - - - consecutive  
9 years - - - five years actually, four of which were  
10 to be served consecutively, and had a considerable  
11 amount of good-time credits and time served. That  
12 took - - - when the correction officers actually  
13 calculated the four years, subtracting the good - - -  
14 time served and subtracting the good-time credits,  
15 that arrived them to a date of March 2014.

16 Then on that same form, there's another sec  
17 - - - little line that just says "intervening  
18 statutory provision". So the officers looked at the  
19 intervening statutory provision and saw two years.  
20 Two years from the date of sentencing was October  
21 13th, 2013. So - - - or October 27th, I'm sorry.

22 JUDGE SMITH: 24th.

23 MS. TRENTACOSTE: Thank you. So when the  
24 officers see that, that - - - that's how they  
25 calculate it. It's, you know, not rocket science for

1 the off - - - for the officers - - -

2 JUDGE SMITH: Isn't it unfair not to give  
3 him credit for time served?

4 MS. TRENTACOSTE: Well, Your Honors, in a  
5 way they did give him credit for the time served.  
6 When they did the calculations, what they saw they -  
7 - -

8 JUDGE SMITH: But you didn't give him  
9 credit against the cap. You gave him credit off the  
10 top but not off the bottom.

11 MS. TRENTACOSTE: Well, they - - - well,  
12 they were looking - - - since the statute, as it  
13 reads, talks about the lesser of the two, that's how  
14 they calculated. The second provision doesn't talk  
15 about an aggregate term. It doesn't clar - - -  
16 classify it - - -

17 CHIEF JUDGE LIPPMAN: But the defendant - -  
18 -

19 MS. TRENTACOSTE: - - - as a - - -

20 CHIEF JUDGE LIPPMAN: - - - shouldn't be  
21 penalized for not having - - - not being able to make  
22 bail, right?

23 MS. TRENTACOSTE: Well, no, Your Honor. I  
24 mean, we're not saying that he is being penalized for  
25 that. What we're saying is that unfortunately, the

1 way the calculation works - - -

2 JUDGE SMITH: If he'd made - - -

3 MS. TRENTACOSTE: - - - he wasn't - - -

4 JUDGE SMITH: - - - if he'd made bail, he'd  
5 be doing significantly less time.

6 MS. TRENTACOSTE: If he had made bail.

7 Your Honors, unfortunately our system isn't a hundred  
8 percent. A person can be incarcerated and be not  
9 found guilty and - - -

10 JUDGE RIVERA: Okay, but - - -

11 MS. TRENTACOSTE: - - - let off, and that  
12 person - - -

13 JUDGE RIVERA: - - - but this is an  
14 interpret - - -

15 MS. TRENTACOSTE: - - - has served.

16 JUDGE RIVERA: - - - yeah, but this is the  
17 interpretation of this statute. Or we can avoid  
18 exactly what you're saying we can't avoid.

19 MS. TRENTACOSTE: Well, Your Honors, and  
20 then - - - and that's one of the reasons why we're  
21 here. We - - - we want clarification from the  
22 courts. We disagree with - - - that that is actually  
23 a misservice of justice - - -

24 JUDGE GRAFFEO: Shouldn't those two  
25 categories of accused be treated the same, those that

1 can afford to pay bail and those that end up  
2 incarcerated because they can't?

3 MS. TRENTACOSTE: Well, but I don't - - - I  
4 don't think it's - - - it's just that, Your Honor. I  
5 think, you know, unfortunat - - -

6 JUDGE GRAFFEO: I mean, there's nothing in  
7 the legislative history that would show they intended  
8 to make that - - -

9 MS. TRENTACOSTE: No, and I - - -

10 JUDGE GRAFFEO: - - - distinction.

11 MS. TRENTACOSTE: - - - I would agree with  
12 Your Honor. What I think the statute was trying to  
13 do was really trying to - - - trying to affect all  
14 these different periods of incarcerations. There  
15 were some individuals whose sentences went five, six,  
16 seven years, periods of incarceration. And, you know  
17 - - - and they were trying to reduce that. It's not  
18 because they were poor. And that's - - - that's kind  
19 of the way that they would like you to - - -

20 JUDGE ABDUS-SALAAM: But what about - - -  
21 excuse me - - -

22 MS. TRENTACOSTE: - - - think about this.

23 JUDGE ABDUS-SALAAM: - - - what about those  
24 - - - the part of the statute that we're talking  
25 about now is for inmates who serve their time in a

1 single institution.

2 MS. TRENTACOSTE: Yes.

3 JUDGE ABDUS-SALAAM: And then there's  
4 another part of the statute that says that if you  
5 serve your time in different institutions, the  
6 aggregate time is, you know, reduced to two years,  
7 and your incarceration will not exceed two years.

8 MS. TRENTACOSTE: Yes.

9 JUDGE ABDUS-SALAAM: So that already states  
10 very clearly for people who move around to different  
11 institutions, that they are not going to be serving  
12 more than two years.

13 MS. TRENTACOSTE: But - - - but, Your  
14 Honor, that actually goes from the date of the  
15 sentence, which is exactly what we did here. We  
16 calculated the two-year period, that October date,  
17 from the date of the - - -

18 JUDGE ABDUS-SALAAM: So you're saying - - -

19 MS. TRENTACOSTE: - - - sentence.

20 JUDGE ABDUS-SALAAM: - - - that people - -  
21 - people who move around to different institutions,  
22 if they have time served, they're not going to have  
23 that time - - -

24 MS. TRENTACOSTE: It's - - -

25 JUDGE ABDUS-SALAAM: - - - reduced from - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-

MS. TRENTACOSTE: - - - it's from - - -

JUDGE ABDUS-SALAAM: - - - the two years?

MS. TRENTACOSTE: - - - it's from the date of the sentence. They're going - - - they're still going to be calculated in the same way as here. In other words, the two years will be calculated from the date of the sentence. And the aggregate time will be - - - will be calculated in the same way. So I'm - - - I'm not seeing - - -

JUDGE SMITH: So you're saying that if this guy had been serving in two different - - - his sentences had been in two different county jails, it would - - - he would still do - - - that would not affect the total time he would serve?

MS. TRENTACOSTE: That's correct.

JUDGE SMITH: In your view, it would be the same?

MS. TRENTACOSTE: That's correct, Your Honor.

JUDGE ABDUS-SALAAM: But what - - - but why does that mean - - - if that person has time served, then they're going to exceed the two-year maximum under that portion of the statute.

MS. TRENTACOSTE: But it's - - - it's not



1 really - - - it's not exceeding the two-year maximum,  
2 because again, the two-year maximum commences from  
3 the date of the sentencing. That's how - - - that's  
4 how the officers were calculating it. So in - - - I  
5 guess to - - - to make it more like here's an  
6 aggregate time is the pie, and under all  
7 circumstances, this is what the aggregate time is.  
8 If - - - but if you - - - if your aggre - - - if the  
9 pie is more than two years, you'll just serve that  
10 two years. But it starts from the date of the - - -

11 JUDGE PIGOTT: I think that's - - -

12 MS. TRENTACOSTE: - - - the commitment.

13 JUDGE PIGOTT: - - - that's one of the  
14 issues. You're dealing in dates.

15 MS. TRENTACOSTE: Yes.

16 JUDGE PIGOTT: If we dealt in the abstract  
17 and we said, if - - - if someone's got thirty-five  
18 consecutive one-year sentences - - - and that  
19 actually happened up in my neck of the woods one time  
20 - - -

21 MS. TRENTACOSTE: Yes.

22 JUDGE PIGOTT: - - - he's going to - - -  
23 the max he's going to do is two years.

24 MS. TRENTACOSTE: Exactly.

25 JUDGE PIGOTT: So you got the two years,

1 and you say so no matter what, he's doing two.  
2 What's happened in between? And they say well, he  
3 spent - - - he spent thirty days trying to make bail.  
4 All right. We're going to take that thirty days off  
5 the two years. But you wouldn't do that. You - - -

6 MS. TRENTACOSTE: We wouldn't do that.

7 JUDGE PIGOTT: You would say, well, you got  
8 sentenced on July 1st, and we're going two years from  
9 July 1st, and whatever happens in there happens. But  
10 anything that predates that doesn't count.

11 MS. TRENTACOSTE: Well, no, it depends on  
12 how - - - it depends on how - - -

13 JUDGE SMITH: You - - -

14 MS. TRENTACOSTE: - - - it works.

15 JUDGE SMITH: - - - you'd take the thirty  
16 days off the thirty-six years?

17 MS. TRENTACOSTE: Exa - - - well, yeah.

18 And in a situation - - - say Mr. Shaver had only been  
19 ser - - - I think I give this example in the brief -  
20 - - if he had only been sentenced for three years,  
21 actually, if you had reduced his time from three  
22 aggregate years, and reduced the time served and all  
23 the credit, that would have actually gave him time  
24 less than the two years. That would - - - that would  
25 have been his release date. He would've - - -

1 JUDGE SMITH: Well - - -

2 MS. TRENTACOSTE: - - - been released

3 before - - -

4 JUDGE SMITH: - - - you're - - - that's if

5 you give him the good - - - and can we distinguish

6 between the time served and the good behavior time?

7 MS. TRENTACOSTE: Yes. And - - - and there

8 is - - - both of them seem - - - both good jail time

9 and good behavior time seem to use the same language

10 of having them separated from the aggregate term. So

11 the good time, though, can only be - - -

12 JUDGE SMITH: But - - - but the - - - the

13 time served uses the - - - some term like minimum

14 term of imprisonment?

15 MS. TRENTACOSTE: The time served - - - I

16 believe - - -

17 JUDGE SMITH: The minimum aggregate term of

18 - - -

19 MS. TRENTACOSTE: The min - - -

20 JUDGE SMITH: - - - the word minimum is in

21 there.

22 MS. TRENTACOSTE: - - - minimum aggregate,

23 right.

24 JUDGE SMITH: Yeah. Yeah.

25 MS. TRENTACOSTE: But with respect to the

1 good time, though, we had another - - - there's  
2 another question there, because that cannot exceed  
3 one third. In this situation, given the way that the  
4 respondents want to apply this, the actual  
5 individuals ended up serving, I believe, seventy  
6 percent less of the four years - - -

7 JUDGE SMITH: Well, they - - - you read  
8 them as asking for credit for one-third of the four  
9 years?

10 MS. TRENTACOSTE: No. They wanted one  
11 third - - - oh, the one-third of the - - - because it  
12 was the aggregate term. Yes, Your Honor.

13 JUDGE SMITH: Yeah, that - - - and that's -  
14 - - I can see, that's - - - that's a little  
15 overreaching. You'd wind up owing them time under  
16 some circumstances.

17 MS. TRENTACOSTE: But even - - - but even  
18 looking at what actually was served, Your Honor, if  
19 you only look at the two years, he ended up only - -  
20 -

21 JUDGE SMITH: Well, why does it make - - -  
22 well, why can't - - - I mean, I - - - should we read  
23 the statute to mean that he gets one-third off the  
24 two years for good behavior, that is, he gets two-  
25 thirds of a year off, eight months, for good

1 behavior?

2 MS. TRENTACOSTE: And minus also the good  
3 time. That would have - - - that would have taken  
4 him further down, Your Honor.

5 JUDGE ABDUS-SALAAM: Well, couldn't that be  
6 solved by capping the good time - - - the good  
7 behavior credit?

8 MS. TRENTACOSTE: And then you - - - good  
9 behavior credit is not required either, Your Honor.  
10 It's the - - -

11 JUDGE ABDUS-SALAAM: That's discretionary -  
12 - -

13 MS. TRENTACOSTE: - - - statute says "may",  
14 you know - - -

15 JUDGE ABDUS-SALAAM: - - - it's  
16 discretionary.

17 MS. TRENTACOSTE: - - - yes. Absolutely.  
18 So - - -

19 JUDGE ABDUS-SALAAM: But the problem that  
20 you raise could be solved by capping the good  
21 behavior credits.

22 MS. TRENTACOSTE: Yeah, it - - - as much  
23 clarification from this court would help our  
24 officers, correction officers who are going to be the  
25 ones actually doing these calculations, would be very

1 helpful.

2 JUDGE READ: You just want a rule - - - a  
3 certain rule.

4 MS. TRENTACOSTE: Absolutely, Your Honor.

5 JUDGE READ: Okay.

6 MS. TRENTACOSTE: Thank you.

7 CHIEF JUDGE LIPPMAN: Okay, counsel, thank  
8 you.

9 MS. BIANCHI: May it please the court, good  
10 afternoon. My name is Anne Bianchi. I'm  
11 representing Richard Shaver in this matter.

12 CHIEF JUDGE LIPPMAN: Counsel, what's the  
13 rule? Your adversary wants a rule. What's the rule?

14 MS. BIANCHI: The rule is the effective  
15 aggregate is two, under 70.30(2)(b) and 70.30(2)(d).  
16 That's the rule.

17 JUDGE SMITH: So you get credit for your -  
18 - - you get credit for your jail time against the two  
19 years?

20 MS. BIANCHI: Yes.

21 JUDGE SMITH: And you also get one-third -  
22 - - assuming good behavior, you get one-third of what  
23 number against the two years?

24 MS. BIANCHI: Two is the - - -

25 JUDGE SMITH: One-third of two years.

1 MS. BIANCHI: - - - effective aggregate.

2 JUDGE SMITH: Eight months, in other words?

3 MS. BIANCHI: Correct. No matter - - -

4 JUDGE SMITH: You're not asking for one  
5 third of the four years?

6 MS. BIANCHI: No, Your Honor. That's an  
7 artificial aggregate. I think the commission staff  
8 notes clearly reflect the legislative intent in this  
9 case. The legislature considered - - - actually  
10 considered making the effective aggregate one year,  
11 but compromised and settled on two years as being a  
12 reasonable number, adding the language "plus any term  
13 imposed for a new offense."

14 JUDGE SMITH: But did - - - I guess I'll  
15 ask the same question I asked your adversary. Can we  
16 distinguish between the good time - - - on the jail  
17 time, I think everyone can at least see the equitable  
18 appeal of your argument. It doesn't seem fair to  
19 give him no credit for time he actually served in  
20 jail. But when the legislature said "minimum of two  
21 years", maybe it meant minimum of two years, not two  
22 years less good behavior.

23 MS. BIANCHI: I disagree. I think that the  
24 good-time credit and the jail time credit are both  
25 earned credits in their own ways and should be - - -

1 under this particular fact pattern, in this  
2 situation, should be treated the same. Just as you  
3 earn jail time credit by sitting in a cell for a  
4 number of days - - - good-time credit is not a gift  
5 by the Department of Corrections. It's earned by  
6 obeying the rules of the facility, and by - - -

7 JUDGE SMITH: Okay, but you wouldn't - - -

8 JUDGE ABDUS-SALAAM: It is discretionary -

9 - -

10 JUDGE SMITH: - - - and you're theory then

11 - - -

12 MS. BIANCHI: It's discretionary.

13 JUDGE SMITH: - - - anyone who does - - -  
14 everyone who does behave well, gets a year and four  
15 months, maximum?

16 MS. BIANCHI: Yes. Any - - - if they get  
17 sentenced to anything over two years, correct.

18 JUDGE PIGOTT: How does - - - how is good  
19 time calculated - - - good behavior?

20 MS. BIANCHI: It's one-third off the - - -  
21 under 70.30(4)(b), good time is one-third of the term  
22 or the effective aggregate.

23 JUDGE PIGOTT: Do you - - - is there any  
24 possibili - - - let's assume that, you know, he's  
25 sitting in jail for nine months and now you end up in



1 one of these two-year situations. He gets credit for  
2 the nine months. Does he get credit for another  
3 three months for good behavior while he was in for  
4 nine?

5 MS. BIANCHI: If he obeyed the rules of the  
6 facility and he earned that good time, yes.

7 JUDGE READ: I assume this problem doesn't  
8 just come up in Westchester County?

9 MS. BIANCHI: Well, Your Honor, we don't  
10 know that, because neither the County nor the  
11 Sheriff's Association provided any data to this court  
12 to determine - - -

13 JUDGE READ: Well, that's what I was going  
14 to ask. Do we know if it's uniform across the state,  
15 even, the way it's calculated?

16 MS. BIANCHI: We know that Nassau County  
17 does not calculate their time the way that the County  
18 would like to, because they follow Serfaty v.  
19 Jablonsky. But other than that, I don't know.

20 JUDGE ABDUS-SALAAM: And by that you mean  
21 it's a two-year aggregate - - -

22 MS. BIANCHI: Yes.

23 JUDGE ABDUS-SALAAM: - - - and they take  
24 jail time and good time credits off of the two years?

25 MS. BIANCHI: Yes. There's also - - - I

1 believe that there are public policy considerations  
2 in making good-time credit and jail time credit  
3 accessible to the defendants. These facilities just  
4 a practicality, they were never intended as long-term  
5 facilities. They're simply for people who cannot  
6 post bail, who are awaiting trial, and for those  
7 individuals who are convicted of misdemeanors or low-  
8 level felonies, usually nonviolent felonies, who get  
9 short-term sentences.

10 So you want to encourage people who are in  
11 these facilities to participate in programs and abide  
12 by the rules. If a defendant knows that no matter  
13 what he does there's no way he's going to get his  
14 good-time credit and he's not going to get his jail  
15 time credit, there's no incentive for him to give his  
16 best efforts to abide by the rules of the facility.

17 JUDGE ABDUS-SALAAM: But would there be a  
18 problem in capping the good-time credits if they - -  
19 - if they would reduce the number of days served or  
20 amount of time served - - - if they conflicted with  
21 the two-thirds provision under subdivision (4)?

22 MS. BIANCHI: I believe - - - well,  
23 subdivision (4) just says that the cap is - - - the  
24 good-time cap is one-third of the term, assuming you  
25 get less than two years, so you get six months - - -

1           that's the term - - - or the aggregate, the effective  
2           aggregate, which we know from the legislative  
3           history, is two.

4                         JUDGE ABDUS-SALAAM:   But isn't there  
5           something about seventy percent of - - -

6                         MS. BIANCHI:   That was, I believe, the  
7           County's mathematical assertion in their reply brief.  
8           And I would just note in response to that, their  
9           example of a defendant who receives three consecutive  
10          one-year terms, that's *Serfaty v. Jablonsky*.  And  
11          that decision clearly says the aggregate is two.

12                        CHIEF JUDGE LIPPMAN:  Okay.  Anything else,  
13          counsel?

14                        MS. BIANCHI:  Yes, Your Honor.  I believe  
15          Your Honor did bring up the issue of the disparity -  
16          - - the way that the County wishes to calculate good-  
17          time and jail time credit, presents an issue of a  
18          violation of equal protection and discrimination  
19          against poor defendants.

20                        And we see that very clearly here in the  
21          Shaver case where because he could not post bail and  
22          sat in jail for 106 days, accumulating jail time  
23          credit, the way that the County calculates the time,  
24          subtracting his good-time credit and jail time credit  
25          from this artificial number, four, he ends up serving

1           2 years plus 106 days, whereas a bail posting  
2           defendant with the exact same charges would only end  
3           up doing 2 years - - -

4                   JUDGE SMITH:   Some inequities like that are  
5           unavoidable, of course.  If he serves thirty days in  
6           jail and then he gets probation, you can't give him  
7           his thirty days back.

8                   MS. BIANCHI:   That's correct, Your Honor.

9                   JUDGE SMITH:   But you're saying that when  
10          it can be avoided it has to be, Constitutionally?

11                   MS. BIANCHI:   Yeah.  And I think it's quite  
12          avoidable here.  And just on this issue of fairness,  
13          I just want to point out, Mr. Shaver was convicted of  
14          two felonies here.  So the Supreme Court judge was  
15          not limited in imposing definite terms of  
16          incarceration.  The judge could have imposed state  
17          prison consecutively if he felt that that was the  
18          appropriate sentence or the fair sentence to impose  
19          in this case.

20                   JUDGE SMITH:   So what - - - after he'd  
21          already given - - - given the guy - - - he gave him a  
22          total of two years consecutive on the first three - -  
23          - on the October 24th sentence - - -

24                   MS. BIANCHI:   Correct.

25                   JUDGE SMITH:   - - - what was the point of

1 making the other two consecutive? Doesn't add to his  
2 time.

3 MS. BIANCHI: The court realized that. But  
4 I believe that they felt state prison was not the  
5 appropriate term here. But they simply didn't want  
6 to say one year concurrent, so they said one year  
7 consecutive.

8 JUDGE SMITH: If they'd said one year  
9 concurrent, it would have made no difference at all,  
10 right?

11 MS. BIANCHI: Well, I think he would have  
12 ended up in the same position, because the County  
13 would have still subtracted his good-time and his  
14 jail time credit, then, from the aggregate of three.

15 Just the very last thing that I just want  
16 to mention, because - - - only because the County  
17 made reference to it in their papers regarding the -  
18 - - the perceived financial implications here or  
19 financial liability. As I indicated earlier, we  
20 don't have any data indicating what other counties  
21 are doing this or not doing this. And that question  
22 of financial liability really should not play into  
23 the court's decision here. That's a question for  
24 another day. We're here to - - - not to talk about  
25 money, but to talk about Mr. Shaver's liberty.

1                   And with reference to the equal protection  
2 matter, if this court declines to uphold the  
3 Appellate Division in this case, I would respectfully  
4 ask that the matter be returned to the Appellate  
5 Division to consider the Constitutional issue,  
6 because they did not reach that question.

7                   CHIEF JUDGE LIPPMAN: Okay, counsel.  
8 Thanks, counsel.

9                   MS. BIANCHI: Thank you.

10                  CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

11                  MS. TRENTACOSTE: Yes. A couple of things,  
12 Your Honor. I know the four years, counsel said was  
13 - - - the County's calculations were fathomable. But  
14 those were based on the fact that the judges had  
15 ordered four years of confinement. So it was not  
16 that we just came up with the number. We had - - -  
17 the correction officer had a real basis for that.

18                  As for the statistics, I don't know about  
19 statistics of the other counties. However, I can  
20 tell you that I have gotten calls from other county  
21 jurisdictions since this Shaver case is being  
22 circulated among the inmates now. So I'm not so sure  
23 that that - - - this rule of law has been applied  
24 previously. Because now the inmates seem to be aware  
25 of it.

1                   And then, again, aside from the calculation  
2                   issue, it is respectfully submitted that the Second  
3                   Department erred when it stated that he was being  
4                   illegally detained. The phrase "illegally detained"  
5                   implies that the County falsely imprisoned Mr.  
6                   Shaver. And to establish a cau - - - a claim of  
7                   false imprisonment, they must establish, among other  
8                   things, that confinement was not otherwise  
9                   privileged.

10                   Here again, we had the five certifica - - -  
11                   five certificates of incarceration for four  
12                   consecutive years. We had the Supreme Court, who  
13                   agreed with our calculation - - -

14                   JUDGE SMITH: You would be happier if it  
15                   were clear that when they said "illegally detained",  
16                   it didn't mean that he necessarily wins his false  
17                   imprisonment case?

18                   MS. TRENTACOSTE: Thank you, Your Honor.  
19                   Absolutely. And well - - -

20                   CHIEF JUDGE LIPPMAN: Okay.

21                   MS. TRENTACOSTE: - - - if the Court has  
22                   further questions - - -

23                   CHIEF JUDGE LIPPMAN: Thanks, counselor.

24                   (Court is adjourned)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of eople ex rel. Ryan, o/b/o Shaver v. Cheverko, No. 183 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Penina Wolicki*

Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 700 West 192nd Street  
Suite # 607  
New York, NY 10040

Date: October 16, 2013