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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

BAASIL REYNOLDS,

No. 78
(Papers sealed)

Appellant.

20 Eagle Street
Albany, New York 12207
April 27, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Number 78 on the
2 calendar, People v. Baasil Reynolds.

3 MR. WOODRUFF: Good afternoon, Your Honors;
4 Michael Woodruff for Mr. Baasil Reynolds. I
5 respectfully request two minutes. Your Honors, this
6 court should vacate Baasil Reynolds' plea because the
7 trial court imposed an illegal presentencing
8 condition when it required Mr. Reynolds to serve a
9 hard year imprisonment before he was sentenced.
10 Imprisonment - - -

11 CHIEF JUDGE DIFIORE: I thought it - - -

12 JUDGE FAHEY: Was it an illegal sentencing
13 condition or was it an illegal sentence?

14 MR. WOODRUFF: Illegal sentencing
15 condition, presentencing condition.

16 JUDGE FAHEY: I see.

17 MR. WOODRUFF: Okay, imprisonment is only
18 authorized as a sentence. And this court has held
19 that presentencing conditions cannot violate statute
20 and they cannot contravene public policy, and here,
21 in this case, the arrangement that was made did both
22 of those things, and the case I'm referring to there
23 is People v. Avery where the court laid that rule.
24 And the way it violated statute is that the governing
25 mechanism that dealt with this procedural move doing

1 - - - adjourning the case for six months, an
2 additional six months, because Mr. Reynolds had
3 already served six months, to constitute a hard year.
4 The - - - the Criminal Procedure Law Section
5 400.10(4) is what gave the court the authority to do
6 this, to adjourn - - -

7 JUDGE STEIN: Does - - - does your argument
8 require preservation?

9 MR. WOODRUFF: Preservation is not required
10 in this case.

11 JUDGE STEIN: Why not? Is there - - - are
12 you familiar with our recent decision in People v.
13 Williams?

14 MR. WOODRUFF: I am, Your Honor.

15 JUDGE STEIN: Okay, and where does that - -
16 -

17 MR. WOODRUFF: And that's a different - - -

18 JUDGE STEIN: - - - how does that - - -

19 MR. WOODRUFF: - - - class of cases.

20 JUDGE STEIN: Um-hum.

21 MR. WOODRUFF: This court has explicitly
22 held that in this cas - - - these - - - this type of
23 case - - -

24 JUDGE STEIN: What - - - this type of case
25 meaning an illegal - - -

1 MR. WOODRUFF: Presentencing condition.

2 JUDGE STEIN: - - - presentence condition?

3 MR. WOODRUFF: Yeah, and the case I'm
4 referring to is People v. Avery, and there this court
5 explicitly held that the Appellate Division
6 erroneously held that a challenge of a trial court's
7 authority to unlawfully condition and defer
8 sentencing was unpreserved, and then the court - - -
9 this court cited People v. Rodney E. And People v.
10 Rodney E. is the controlling case and - - -

11 JUDGE STEIN: Does Rodney E. talk about
12 preservation?

13 MR. WOODRUFF: It didn't, Your Honor, and I
14 - - - I - - - and I didn't - - - and I don't think
15 the court thought it was an issue because of the
16 nature of the claim that was being made. And I
17 believe that this is a separate issue than People v.
18 Williams because it's very distinguishable for a
19 number of reasons. I think, most importantly, People
20 v. Williams involved the voluntariness of the plea.
21 Also, another major factor is that in that case what
22 the judge had told the defendant, Williams, was that
23 you're going to receive a sentence of three years,
24 and that was unlawful. The judge didn't have his
25 sentencing guidelines with him.

1 JUDGE STEIN: Well, - - -

2 MR. WOODRUFF: But he never received
3 anything unlawful there.

4 JUDGE STEIN: Getting - - -

5 MR. WOODRUFF: Here - - -

6 JUDGE STEIN: Getting back to - - -

7 MR. WOODRUFF: Yeah.

8 JUDGE STEIN: - - - Rodney and Avery,
9 though, in those cases wasn't what was violated the
10 exact precon - - - the presentence condition that was
11 at issue?

12 MR. WOODRUFF: Well, here there's no way
13 for Mr. Reynolds to violate the first condition.
14 There were two conditions that he had to satisfy.
15 The first one was six months of incarceration.
16 There's no way that he could violate that.

17 JUDGE STEIN: But would he have violated it
18 if he had made a bail application? Would that be a
19 violation?

20 MR. WOODRUFF: He could have made the bail
21 application, but the judge would never have granted
22 it because he had agreed to do an additional six
23 months. I don't - - -

24 JUDGE PIGOTT: You say an additional six
25 months, I - - - I kind of lost track of this. When

1 he was arrested, was he - - - was he incarcerated
2 pending trial for six - - -

3 MR. WOODRUFF: That is correct, Your Honor.

4 JUDGE PIGOTT: - - - for six months?

5 MR. WOODRUFF: That's correct.

6 JUDGE PIGOTT: So then the judge says,
7 well, you're already in for six. If you do another
8 six - - -

9 MR. WOODRUFF: Yes.

10 JUDGE PIGOTT: - - - then - - - then you
11 can do this deal? Well, then we can let you out.

12 MR. WOODRUFF: Well, the - - - well, the
13 arrangement was they - - - they were scheduled for
14 trial six months in. They answered ready, here's the
15 offer, do an additional six mon - - - months to
16 constitute a year, be released, adjourn the case for
17 a year, have no new arrests for a year, and after
18 that period of time, then you can take your plea back
19 and get a misdemeanor.

20 JUDGE PIGOTT: Yeah, so - - - so wasn't the
21 sentence, the year sentence, based upon the fact that
22 he - - - you know, the charges that were pending?

23 MR. WOODRUFF: I don't know what it was
24 based on.

25 JUDGE PIGOTT: Because there had been no -

1 - - there - - - they obviously didn't end, right?

2 MR. WOODRUFF: Well, from the record, all
3 that I can glean from that is that that's what the
4 prosecutor's office felt was appropriate and - - - a
5 hard year and then stay out of trouble for another
6 year and then if you do that, then we think you could
7 - - - you've earned the misdemeanor.

8 JUDGE PIGOTT: But did he plead before?
9 Did he plead before - - - when - - - before when he
10 went in for the second six?

11 MR. WOODRUFF: He pled at the six-month
12 point of being in custody, and so he entered the plea
13 and the - - - and then the case was adjourned for
14 sentencing. Sentencing didn't occur until two years
15 after he was arrested and put in custody.

16 JUDGE PIGOTT: But he pled to a felony,
17 right?

18 MR. WOODRUFF: That's correct.

19 JUDGE PIGOTT: And at that point the judge
20 said you've already been in six, I'm putting you back
21 for six.

22 MR. WOODRUFF: Um-hum.

23 JUDGE PIGOTT: And then I'm going to let
24 you out, and if you're okay for a year, if you don't
25 - - - you know, then we'll take it down to a

1 misdemeanor.

2 MR. WOODRUFF: Well, what I think is really
3 important to focus on is the procedural mechanism
4 that was done and what allowed for this. So that's
5 400.10(4), and it refers to and cross-references
6 Penal Law 65.10 which outlines a list of conditions
7 that courts are allowed to impose. And those
8 conditions are essen - - - all rehabilitative in
9 nature, and this court has analyzed those conditions
10 in People v. Letterlough.

11 JUDGE PIGOTT: Are these - - -

12 MR. WOODRUFF: And - - -

13 JUDGE PIGOTT: - - - the ACD conditions
14 that you're talking about?

15 MR. WOODRUFF: Well, no, these are just the
16 list of conditions. They range from mental health
17 treatment to substance abuse - - -

18 JUDGE PIGOTT: Okay.

19 MR. WOODRUFF: - - - treatment to not
20 having relationships with disreputable persons. But
21 there's a catch-all - - -

22 JUDGE FAHEY: You're talking about
23 probation conditions or conditional discharge
24 conditions? Is that what you're talking about?

25 MR. WOODRUFF: Yeah, they are. Yes.

1 JUDGE FAHEY: Those are - - - those are
2 statutory conditions.

3 MR. WOODRUFF: That's correct.

4 JUDGE FAHEY: The problem I'm having here,
5 though, is with - - - if you didn't like it, wouldn't
6 you have to move to vacate the plea?

7 MR. WOODRUFF: No, because preservation is
8 just not a requirement in this type of case.

9 JUDGE FAHEY: It wouldn't be a requirement
10 if it was an illegal sentence I understand that.

11 MR. WOODRUFF: Um-hum.

12 JUDGE FAHEY: But this is a condition to a
13 - - - to a presentence report almost. So - - -

14 MR. WOODRUFF: Well - - -

15 JUDGE FAHEY: - - - that's not the same.
16 It's not the same - - -

17 MR. WOODRUFF: Well, Your Honor, so - - -

18 JUDGE FAHEY: It would be easy I think if
19 this was an illegal sentence. It would be illegal,
20 but that's not what we have here.

21 MR. WOODRUFF: Well, this court held in - -
22 -

23 JUDGE FAHEY: The second part of that
24 question, just to be fair to you, is - - - is that
25 the People argue that any presentencing detention

1 isn't reviewable on appeal. I suppose you could have
2 brought an interlocutory appeal before the
3 sentencing, but after the sentencing has taken place
4 you can't challenge the presentencing detention.

5 MR. WOODRUFF: Well, that's not what
6 happened here. This was explicitly explained as a
7 presentencing condition.

8 JUDGE FAHEY: Right.

9 MR. WOODRUFF: It was on an adjournment.

10 JUDGE FAHEY: But he has subsequently been
11 sentenced, and the challenge is after the sentence.
12 He got the two to four after the enhancement, which
13 is a separate issue, right?

14 MR. WOODRUFF: Well, this was clearly a
15 condition, and I believe that People v. Avery and
16 People v. Letterlough control, and the reason why is
17 this court held that a - - - a condition that the
18 court imposed that you put a convicted DWI sign on
19 your plate was not a condition that the trial court
20 was authorized to impose because it wasn't enumerated
21 in 65.10(2).

22 JUDGE ABDUS-SALAAM: Counsel, even if the
23 sentence - - -

24 MR. WOODRUFF: And that said it wasn't re -
25 - - sorry.

1 JUDGE ABDUS-SALAAM: I'm sorry, go. I want
2 you to finish this.

3 MR. WOODRUFF: Well, I just - - - there
4 this court said here's a condition that the
5 legislature didn't think of, but it was punitive and
6 it wasn't rehabilitative. Incarceration cannot get
7 more punitive. If - - - if this court felt a DWI
8 conviction sign was contrary to 65.10(2), I don't see
9 how this court could see - - - or - - - or reason
10 that incarceration isn't punitive.

11 JUDGE ABDUS-SALAAM: And based on that
12 argument you would say that defendant couldn't
13 consent to a condition which would incarcerate him?

14 MR. WOODRUFF: Well, essentially.

15 JUDGE ABDUS-SALAAM: So even if he wanted
16 to stay in prison and do that extra six months, that
17 would be illegal as well?

18 MR. WOODRUFF: That's correct.

19 JUDGE ABDUS-SALAAM: He couldn't consent to
20 it.

21 MR. WOODRUFF: That's correct. Well, and
22 that - - - this doesn't - - - this arrangement, the
23 way it was done, was illegal. But there are other
24 mechanisms available to have this type of flexibility
25 so you have to look at split sentences.

1 JUDGE FAHEY: Yeah, but it wasn't available
2 for him. That's - - -

3 MR. WOODRUFF: That's - - -

4 JUDGE FAHEY: In fairness to the court, I
5 think what the court was trying to do here is he was
6 trying to give a man who committed a relatively minor
7 crime but because of his criminal history, he
8 couldn't get misdemeanor time. He was trying to give
9 somebody misdemeanor time who was stuck, because of
10 his criminal history, with felony time.

11 MR. WOODRUFF: Well, probation, the maximum
12 sentence there on a felony, class D is, six months,
13 you know. And that's - - - you know, so - - -

14 JUDGE FAHEY: Right.

15 MR. WOODRUFF: - - - they definitely could
16 have done something similar if the - - - the sentence
17 - - -

18 JUDGE FAHEY: Well, that - - - that wasn't
19 going to happen here. So - - - but he was trying to
20 give him misdemeanor time. I think that's - - - was
21 the real effort here.

22 MR. WOODRUFF: Well - - -

23 JUDGE FAHEY: You can't really fault the
24 court for the effort.

25 MR. WOODRUFF: Your Honor, if I may, if he

1 was trying to give him a misdemeanor time, that
2 contravenes good time credits because if you're
3 sentenced to a year on a misdemeanor with - - -

4 JUDGE FAHEY: Right.

5 MR. WOODRUFF: - - - good time credit, you
6 can only do - - -

7 JUDGE FAHEY: The People were pushing for a
8 hard year on this. That was - - - might - - - might
9 have been the hard - - -

10 MR. WOODRUFF: I agree, and they were. But
11 it wasn't - - - it was - - - the way it was done was
12 unlawful. The law, the statutes didn't authorize it.

13 JUDGE FAHEY: I see.

14 MR. WOODRUFF: And for those reasons, I
15 believe this court should vacate Mr. Reynolds' plea.
16 Thank you.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.
18 Counsel.

19 MR. RIVELLESE: Good afternoon; Vincent
20 Rivellese for the People. I think the thing to
21 remember first here is that the defendant pleaded
22 guilty factually and legally to the felony for which
23 the minimum sentence was two to four years. The
24 judge was very clear that this was the sentence that
25 he would get unless he met the conditions. The

1 conditions here were for the defendant's benefit, to
2 get a result that he would not have been able to get
3 without the People's consent and the court's consent
4 bec - - -

5 JUDGE STEIN: Well, maybe he wouldn't have
6 pled to that felony if this whole deal hadn't been
7 worked out, right?

8 MR. RIVELLESE: True, he could have gone to
9 trial. He wanted to get a better deal than the
10 People were willing to consent to. If he had gone to
11 trial, he - - - he'd been rolling the dice on the
12 felony.

13 JUDGE RIVERA: Did he - - - did he plea to
14 what he was charged with or - - -

15 MR. RIVELLESE: He pleaded to the top
16 charge, correct.

17 JUDGE RIVERA: The top charge?

18 MR. RIVELLESE: Yes, and so that - - - the
19 minimum was two to four because of his predicate
20 status. The People and the court, I would say, bent
21 over backwards to try to give him a chance to do
22 better than that and to get the misdemeanor sentence,
23 but the People were not willing to give him less than
24 a year. So he pleaded guilty to the felony for which
25 two to four was the minimum, and he did a year of

1 that before he was allowed to be released and see if
2 he could do one year without getting in trouble.

3 JUDGE STEIN: Are you - - - are you arguing
4 that - - - that this is not reviewable on direct
5 appeal?

6 MR. RIVELLESE: Well, the - - - the actual
7 securing order is not reviewable. That's correct.

8 JUDGE STEIN: Well, how - - - I - - - the -
9 - - the court said - - - the Appellate Division said
10 - - - I believe it was the Appellate Division said
11 that it would have had to be brought as a habeas
12 corpus or something, right?

13 MR. RIVELLESE: Right.

14 JUDGE STEIN: Well, how - - - how would
15 that happen because he's not challenging the denial
16 over excessive bail?

17 MR. RIVELLESE: Right, well, I guess what
18 it is is that it's not an illegal thing to - - - to
19 set the bail where it was but if there were a problem
20 with the bail and that he were remanded as opposed to
21 being able to make bail, you would have to challenge
22 that on a habeas proceeding. Where at this point now
23 - - -

24 JUDGE STEIN: But that's not the challenge.

25 MR. RIVELLESE: Well - - -

1 JUDGE STEIN: It's not about his ability to
2 make bail. It - - - it's about this condition that
3 was placed on him.

4 MR. RIVELLESE: Right, but with all
5 defendants that serve some time before they plead
6 guilty, there's a certain amount of jail that's going
7 to be credited against their sentences, and to be
8 arguing now that well, he's - - - he did this year,
9 his sentence is two to four. It - - - it's not the
10 one year, right now it's two to four. But I - - - I
11 guess there's another component of preservation
12 besides the securing order here, which is that he
13 could have argued at any time before his appeal that
14 what was promised to him was illegal, that he wasn't
15 - - - that he shouldn't have been able to accept this
16 condition because that's plain on the record and
17 that's, I think, what you were saying about the
18 Williams case before, this is something he easily
19 could have said was wrong with the deal and didn't
20 say so.

21 JUDGE STEIN: What - - - what about how - -
22 - how do we get around Rodney and Avery?

23 MR. RIVELLESE: Well, Rodney was the court
24 ordering a probation department to take actions that
25 there was no authority statutorily for them to take,

1 and in Avery, the court explained that one of the
2 reasons that Rodney held as it did was because the
3 court was trying to impose probation when the
4 probation department could not be ordered to do this.
5 And I think in Avery what the court said was that
6 Rodney E. was not intended to prevent the result of
7 presentence supervision if the court could arrange in
8 it, but just - - - I'm not quoting by the way, this
9 is paraphrased, but that it could - - - it had no
10 statutory power to order the probation. It still has
11 the power to oversee plea bargains tailored to
12 individual circumstances.

13 And in Avery, the court was - - - was doing
14 a drug program. There was nothing that it had to
15 order anybody to do outside of their - - - their
16 statutory power, so that was permissible. And in
17 Rodney E., the court was creating something that
18 didn't exist, and that was not permissible. So the
19 difference here is that nothing that the court did
20 along the way was an illegal action. Everything that
21 was agreed to here, the court had the power to do.

22 JUDGE STEIN: Wouldn't - - - wouldn't this
23 open the door to getting around all sorts of
24 sentencing requirements like, you know, if you - - -
25 if you agree to spend a certain period of time in - -

1 - in jail, we won't - - - you know, we'll - - - we'll
2 give you this charge and then we won't give you post-
3 release supervision or something like that?

4 MR. RIVELLESE: Well, if he had pleaded
5 guilty initially to the misdemeanor but you wanted to
6 give him more than the misdemeanor sentence or avoid
7 good time and so you said you stay in jail and do a
8 year and then we'll actually formally impose the
9 sentence so that way you do a full year, that could
10 be a problem. But if you're pleading guilty to a
11 felony where you have to do two to four and the - - -
12 the prosecutor and the court say but we'll consent to
13 give you a better deal and re-plead and get less,
14 that's different because you haven't done more than
15 the sentence that's authorized for what you've
16 actually admitted doing, what you're actually guilty
17 of. You're just getting a break later, so it's
18 really not an enhancement that took place here. It
19 was the avoiding of - - - or - - - or it was the
20 imposition of the actual sentence that he was trying
21 to avoid. It would be different, perhaps, if he had
22 pleaded guilty to something and got a longer term
23 because of - - -

24 JUDGE FAHEY: But you don't see the - - -
25 it seems to me that there was a - - - an enormous

1 range of statutes that you've gotten around. Guy's
2 in jail for a year, the - - - there's been no trial,
3 it's not been called ready, he's not meeting the
4 probation standard, he's not meeting the conditional
5 dismissal statute, there's a series of conditions
6 that they have to meet. The judge has no statutory
7 authority to do this. He's created his authority to
8 do this. The People are going along with it, not on
9 bad desires, I don't think there's bad motives here
10 or anything, but I - - - I can't find the authority
11 for - - - for what you're claiming the court did
12 here.

13 MR. RIVELLESE: Well, the - - - the
14 authority is that each step of the way the actions
15 that the court took were legal and - - -

16 JUDGE FAHEY: No, let me take a step - - -

17 MR. RIVELLESE: Okay.

18 JUDGE FAHEY: - - - back just - - - just on
19 that second and then you can respond to it. We can't
20 make up sentences. If you're pleading to a crime, I
21 can't, as a judge, go in and say, yeah, but I don't
22 like that sentence, so you're going to plead to this
23 crime but you get - - - you get a different kind of
24 sentence that I've concocted unless it's statutorily
25 created. This is something that's outside the

1 statutory construct. I think everyone would admit
2 that, so I - - - I just don't see where the authority
3 is for - - - for the court to do this.

4 MR. RIVELLESE: It's actually not outside
5 the statutory construct because he was pleading
6 guilty to the felony, and he was being promised two
7 to four and offered a chance to have a better result.
8 So the two to four was the promise.

9 JUDGE FAHEY: The court can't give him less
10 than two to four.

11 MR. RIVELLESE: Right.

12 JUDGE FAHEY: By law, he's got to give him
13 two to four if he pleads to that crime.

14 MR. RIVELLESE: And what they were doing is
15 giving him a chance to withdraw his plea, which he
16 would have been allowed to do had he not violated - -
17 - which is the separate point in the brief, but
18 violated the condition and then he'd have withdrawn
19 the plea. And at that point, he would have served
20 more time than he could have gotten on a misdemeanor,
21 yes, but less than the two to four.

22 JUDGE FAHEY: I see.

23 MR. RIVELLESE: So if - - - if he had
24 pleaded to the misdemeanor first, what you're saying
25 would be exactly right because then he'd be getting a

1 longer sentence on an agreement to do a year before
2 he got sentenced. But because he - - -

3 JUDGE FAHEY: The sentence - - - kind of
4 what I'm saying, really, is - - - is that the court
5 is constrained, whatever its desires, to what the
6 statute allows it to sentence somebody to, and here
7 this - - - this construct is outside of any
8 statutorily imposed sentencing powers that the court
9 has. So the question is does it have an inherent
10 discretion authority - - - discretionary authority to
11 do that because you certainly couldn't set the bail
12 on him and leave him in jail for a year. They'd have
13 to call a readiness or a whole other series of
14 things, so there had to be a plea. There was a plea.
15 So we're post-plea now. The - - - I have never seen
16 anything like this, I - - - I - - - at my end of the
17 state, it may be more common down in the City but - -
18 -

19 MR. RIVELLESE: Well, and it was certainly
20 creative, and I think they realized that it was
21 creative and the judge called it unorthodox.

22 JUDGE FAHEY: Um-hum.

23 MR. RIVELLESE: But it was something
24 everyone agreed to. It was something that was done
25 for the benefit of the defendant. It didn't turn out

1 because of the violation that it was to his benefit.
2 And that was something that did not involve any
3 specific illegal actions, and - - - which makes it
4 different from Avery and Rodney.

5 JUDGE FAHEY: But you understand the
6 principle? The principle is is that in this instance
7 the court's trying to cut the defendant a break, but
8 what if the court was going the other way and was
9 making up sentencing guidelines that were, say, you
10 know, in this instance I - - - I don't think I have
11 to follow the statute or for personal reasons, I
12 think that this crime deserves a different kind of
13 sentence and is outside the statutory construct, and
14 - - - and I'm going to give it here, and - - - and
15 I'm going to impose conditions that are outside the
16 statutorily authorized conditions because I think in
17 fairness to the victim I'm going to do that.
18 Couldn't do that, right? That would be self-evident.

19 MR. RIVELLESE: Probably not, but then it
20 would be preserved because the defendant wouldn't
21 accept it, you know, and so it probably wouldn't have
22 happened.

23 JUDGE FAHEY: Um-hum.

24 MR. RIVELLESE: But in this case I think
25 everything that was done was agreed to which, again,

1 is a reason to require preservation here.

2 JUDGE FAHEY: Well, then we're down to can
3 you agree to the illegal sentence if it's an illegal
4 sentence?

5 MR. RIVELLESE: Well, and - - - and of
6 course, we're going to say it wasn't illegal only
7 because he's getting two to four, that's what the
8 real sentence is. This was all just a chance to not
9 get the two to four.

10 JUDGE FAHEY: Okay. Thank you.

11 MR. RIVELLESE: Unless there are any other
12 questions, I'll rest on the rest of the brief.

13 CHIEF JUDGE DIFIORE: Thank you, counsel.

14 MR. RIVELLESE: Thank you.

15 MR. WOODRUFF: So, Your Honors, this is a
16 question of Criminal Procedure Law, and there's
17 statutory law that explicitly governs this procedure,
18 what took place here, and that's 400.10(4),
19 specifically, but 400.10 is about presentencing
20 conferences. The purpose for that is for a judge
21 when imposing sentence to glean more inf - - -
22 information about the defendant and what would be an
23 appropriate sentence, and that's why subsection 4
24 then refers to 65.10 because policy in the
25 legislature has determined that. We want

1 rehabilitation to be an important component when a
2 judge is evaluating what's an appropriate sentence.
3 Have we addressed the underlying root cause of why
4 somebody is in the criminal justice system to begin
5 with, and that's why - - -

6 JUDGE PIGOTT: If he had - - - if he had -
7 - - if everything had happened here the way it
8 happened - - -

9 MR. WOODRUFF: Um-hum.

10 JUDGE PIGOTT: - - - only he - - - he
11 wasn't put in jail, he was just released OR, would
12 that be any problem, adjourning sentencing for a
13 year?

14 MR. WOODRUFF: Let me see if I understand,
15 so incarceration was off the table?

16 JUDGE PIGOTT: Right.

17 MR. WOODRUFF: That would be a completely
18 separate issue. We - - - when - - - that would be -
19 - - because it wouldn't be punitive. Right here
20 we're looking - - -

21 JUDGE PIGOTT: So it's not the procedure
22 you're worried about, it's the fact that it's
23 punitive as opposed to rehabilitative?

24 MR. WOODRUFF: Well, it is the procedure
25 insofar as that 400.10(4) says that a - - - it can

1 only - - - presentencing conditions can only be
2 rehabilitative.

3 JUDGE PIGOTT: I - - - I guess I'm looking
4 at it - - - you're right, it's presentence. This
5 isn't a sentence. He wasn't sentenced to a year.

6 MR. WOODRUFF: That's correct.

7 JUDGE PIGOTT: And - - - and - - -

8 MR. WOODRUFF: That was a condition.
9 Correct.

10 JUDGE PIGOTT: - - - and he had already
11 done six, and the judge said, you know, I'm going to
12 adjourn the sentencing. Now if - - - if he couldn't
13 make bail, he'd be in jail for a year while they
14 adjourn sentencing, right?

15 MR. WOODRUFF: So the condition was just
16 stay out of trouble for - - -

17 JUDGE PIGOTT: No, just, you know, I'm
18 going to adjourn sentencing.

19 MR. WOODRUFF: Oh, we could make the same
20 argument that's being made today because no services
21 were being provided that were rehabilitative in
22 nature.

23 JUDGE PIGOTT: But are you entitled to
24 rehabilitative services post-plea but pre - - -
25 presentence?

1 MR. WOODRUFF: That's what 65.10 being
2 referenced by 400.10 is for. It's for - - - for you
3 to do a drug treatment program and if you complete
4 the drug treatment program, then you're entitled to
5 the reduced sentence.

6 JUDGE ABDUS-SALAAM: I see your light is on
7 but I - - - I do have a question that relates to a
8 second point that you were arguing, the Outley
9 hearing about the re-arrest or the arrest that - - -
10 and - - - and you seem to be suggesting that
11 conditioning this sentence on not getting into
12 trouble, meaning not getting arrested, would be okay.
13 Is that - - - is that basically your point that's - -
14 -

15 MR. WOODRUFF: No.

16 JUDGE ABDUS-SALAAM: Okay.

17 MR. WOODRUFF: No, Your Honor. It's this
18 very narrow issue, and it's a - - - it's a little
19 difficult to thread, but the - - - the argument very
20 narrowly is that the - - - the trial court didn't
21 decide Outley correct - - - or didn't apply Outley
22 correctly in that it confused the legitimate basis
23 standard with probable cause. And so due process is
24 in play here, and it's a spectrum on due - - - of how
25 much process is due. Now we're not challenging the

1 amount - - - the form of the evidentiary hearing.
2 All the evidence was there. What the problem is is
3 that the judge didn't decide the matter, that the - -
4 - the comp - - - Mr. Reynolds was challenging the
5 motivations of the complainant. He was - - -

6 JUDGE STEIN: Well, so are you saying that
7 - - - that at the Outley hearing, a determination had
8 to be made as to the merit of his alleged offense?

9 MR. WOODRUFF: Yes.

10 JUDGE STEIN: Isn't that exactly what we
11 said isn't required?

12 MR. WOODRUFF: No. Well, this court has
13 said that an enhanced sentence can only be imposed on
14 a violation of a no arrest condition when it's not
15 malicious or baseless. There are no underlying - - -

16 JUDGE STEIN: Well, here - - - here there's
17 a - - - there's a credibility determination, right?

18 MR. WOODRUFF: Exactly.

19 JUDGE STEIN: And so - - -

20 MR. WOODRUFF: Exactly.

21 JUDGE STEIN: - - - so it seems to me what
22 - - - that the effect of what you're arguing is that
23 the court - - - if - - - then the court has to make
24 that credibility determination - - -

25 MR. WOODRUFF: That's - - -

1 JUDGE STEIN: - - - which is deciding the
2 merits.

3 MR. WOODRUFF: That - - - it - - - well,
4 no, it needed to decide who it believed was more
5 credible because it had the two individuals in the
6 court - - -

7 JUDGE STEIN: So what - - - so if the court
8 did decide, which it seems to me prob - - - happened
9 here that - - - that the complainant was more
10 credible and - - - and therefore that gave the police
11 - - -

12 MR. WOODRUFF: Well - - -

13 JUDGE STEIN: - - - you know, a sufficient
14 basis to make an arrest and - - -

15 MR. WOODRUFF: Well, we - - -

16 JUDGE STEIN: - - - does that take care of
17 it? Is it just how - - - how it was articulated that
18 you're concerned with or - - - or is - - -

19 MR. WOODRUFF: Well, by reading the - - -
20 the court's findings it say - - - it relied
21 exclusively on the information available to the
22 police officer that the police officer made a valid
23 arrest. But was it was a legitimate arrest, and
24 that's what Mr. Reynolds was challenging. And so - -
25 -

1 JUDGE PIGOTT: Right, you're saying - - -
2 you're saying she said well, the cop had a good
3 reason to arrest.

4 MR. WOODRUFF: Yes.

5 JUDGE PIGOTT: And you're saying what she
6 should have said is, if it was true - - -

7 MR. WOODRUFF: Yes.

8 JUDGE PIGOTT: - - - Mr. Glover (ph.), you
9 know, made sufficient allegations to - - - to support
10 the - - - the arrest.

11 MR. WOODRUFF: I find Glover's testimony
12 credible. I find Reynolds testimony incredible.
13 Therefore, this was a legitimate basis for this
14 arrest. That's - - - that's what should have
15 happened. That's not what happened. And we have a
16 cold record here, so we don't know what the
17 determination would be there, so for the relief for
18 that is to remit the matter for further factual
19 findings.

20 CHIEF JUDGE DIFIORE: Thank you, counsel.

21 MR. WOODRUFF: Thank you.

22 (Court is adjourned)

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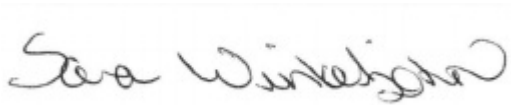
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I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Baasil Reynolds, No. 78 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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