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No. 183  
The People &c. ex rel. John F.  
Ryan, on Behalf of Richard  
Shaver,  
                    Respondent,  
                    v.  
Kevin Cheverko, &c., et al.,  
                    Appellants.

Linda M. Trentacoste, for appellants.  
Anne Bianchi, for respondent.  
New York State Defenders Association et al.; New York  
State Sheriffs' Association, amici curiae.

ABDUS-SALAAM, J.:

We hold that, when Penal Law § 70.30 (2) (b) limits  
consecutive definite sentences to an aggregate term of two years  
imprisonment, jail time credit and good time credit should be  
deducted from that two-year aggregate term rather than the

aggregate term imposed by the sentencing court.

On October 24, 2011, petitioner Richard Shaver was convicted of two counts of petit larceny and one count of criminal possession of stolen property in the fifth degree. He was sentenced to a one-year definite term of imprisonment for each of his petit larceny convictions, imposed to run concurrently, plus a third one-year definite term of imprisonment for his stolen property conviction, imposed to run consecutively to his other sentences. On June 12, 2012, petitioner was convicted of one count of escape in the second degree and one count of grand larceny in the fourth degree for incidents that occurred prior to his October 2011 convictions. He was sentenced to a one-year term of imprisonment for each conviction, imposed to run consecutively with each other and with the prior sentences. In all, petitioner was sentenced to five definite one-year terms of imprisonment, four of which were imposed to run consecutively. All sentences were to be served at the Westchester County Jail.

To calculate petitioner's consecutive definite sentences, respondents Commissioner of the Westchester County Department of Correction and the Warden of Westchester County Jail employed Penal Law § 70.30 (2) (b), which states in pertinent part:

"If the sentences run consecutively and are to be served in a single institution, the terms are added to arrive at an aggregate term and are satisfied by discharge of such

aggregate term, or by service of two years imprisonment plus any term imposed for an offense committed while the person is under the sentences, whichever is less."

Pursuant to this statute, respondents added petitioner's definite sentences to arrive at an aggregate term of four years, or 1,460 days. Respondents awarded petitioner 106 days of jail time credit (for time served prior to the commencement of his October 2011 sentences) as well as 486 days of good time credit. They then applied these credits against petitioner's court-imposed aggregate term of imprisonment, reducing it from 1,460 days to 868 days. Because this 868-day term was longer than "two years imprisonment" (Penal Law § 70.30 [2] [b]), respondents adjusted petitioner's discharge date to October 24, 2013 -- exactly two years from the date his sentences commenced.

Petitioner filed an article 78 petition seeking to compel respondents to recalculate his sentence by applying his jail time and good time credits against the two-year term imposed under Penal Law § 70.30 (2) (b). Supreme Court denied the petition and dismissed the proceeding, stating that petitioner's proposed recalculation was not supported by the "plain language" of section 70.30 (2) (b) or any other authority.

The Appellate Division, among other things, reversed the Supreme Court judgment and ordered petitioner's immediate release from Westchester County Jail. Relying on its decision in Matter of Serfaty v Jablonsky (236 AD2d 413, 414 [2d Dept 1997]), the court held that, "when the two-year limit on the aggregate

term of consecutive definite sentences provided by [Penal Law § 70.30 (2) (b)] applies, a person's release date must be calculated based on a two-year aggregate term of incarceration," and any jail time or good time credits must therefore "be applied against this two-year aggregate term" (102 AD3d 990, 991 [2d Dept 2013] [internal quotation marks omitted]). We agree and we now affirm.

Penal Law § 70.30 (2) governs the calculation of multiple definite sentences. The statute "does not affect the authority of the courts to impose multiple sentences or govern the lengths of individual sentences" but instead it provides "direction to the correctional authorities as to how to compute the time which must be served under the sentences" (People v Teti, 41 AD2d 841, 841 [2d Dept 1973] [citation omitted]; see also People v Moore, 61 NY2d 575, 578 [1983]; Donnino, Practice Commentary, McKinney's Cons Laws of NY, Book 39, Penal Law Art 70, at 245).

Section 70.30 (2) (b) places a two-year limit on the term of consecutive definite sentences served at a single institution by a person who has committed no offense while under the sentences.<sup>1</sup> The Temporary Commission on Revision of the Penal Law and Criminal Code, which drafted identical language for a predecessor statute, indicated that the two-year limit was

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<sup>1</sup> Penal Law § 70.30 (2) (d) similarly limits consecutive definite sentence served in multiple institutions to an "aggregate" term that "shall not exceed two years."

intended as an "aggregate term" that effectively replaces a court-imposed aggregate term exceeding two years (see Commission Staff Notes on Proposed Penal Law art 30.30 [renum art 70.30], reprinted in 1982-1983 Gilbert Criminal Law and Procedure, at 2A-30 [stating that "(p)aragraph (b) provides a limitation upon the aggregate term of consecutive definite sentence" and that "(t)he proposed law limits the aggregate term to two years"]]). Thus, the statute does not require that a prisoner serve exactly "two years imprisonment" whenever the two-year limit applies (Penal Law § 70.30 [2] [b]), as respondents contend. Rather, it directs correctional authorities to calculate the sentences "based on a two-year aggregate term of incarceration" (Matter of Serfaty, 236 AD2d at 414; see also Teti, 41 AD2d at 841; People v Matthews, 73 Misc 2d 643, 644-645 [NY City Crim Ct 1973]).

Having determined that Penal Law § 70.30 (2) (b) imposes a two-year aggregate term of imprisonment, we turn to whether this two-year aggregate term may be reduced by jail time and good time credit a prisoner has earned while incarcerated.<sup>2</sup> Penal Law § 70.30 (3) (b) and (4) (b) provide that, where a prisoner is serving consecutive definite sentences, jail time and

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<sup>2</sup> Jail time credit accounts for the time the prisoner was incarcerated prior to commencement of the sentence or sentences by "diminish[ing]" the remaining time to be served under that sentence (Penal Law § 70.30 [3]), while good time credit reflects any "discretionary reductions" in term awarded for a prisoner's "good behavior and efficient and willing performance of duties" while incarcerated (Correction Law § 804 [1]).

good time credit must be applied against the prisoner's aggregate term of imprisonment (see Penal Law § 70.30 [3] [b]; [4] [b] [emphasis added]), although good time credit may not exceed one-third of that aggregate term (see id. at [4] [b]; Correction Law § 804 [1]).

Considering these directives together with section 70.30 (2) (b), it follows that, in cases where the two-year limit on consecutive definite sentences applies, jail time and good time credit must be applied against the two-year aggregate term rather than the aggregate term imposed by the sentencing court. Under such circumstances, correctional authorities should calculate the time to be served under the sentences by reducing the two-year aggregate term by the available jail time credit and any good time credit that does not exceed 243 days (or one-third of the two-year aggregate term) (see Penal Law § 70.30 [3] [b]; [4] [b]). Applying this rule here, respondents should have subtracted petitioner's 106 days of jail time credit and 243 days of usable good time credit from the two-year aggregate term to arrive at a total prison term of 381 days.

Respondents argue that prisoners will receive a windfall if their consecutive definite sentences, already capped at two years, are further reduced by the application of jail time and good time credit. Respondents claim that the Legislature did not desire this result. Yet, the legislative history of Penal Law § 70.30 (2) (b) indicates that the statute was intended to

impose a two-year aggregate term (see Commission Staff Notes, 1982-1983 Gilbert Criminal Law and Procedure, at 2A-30), which may be diminished to reflect a prisoner's jail time and good time credit (see Penal Law § 70.30 [3] [b], [4] [b]). This rule aligns with the computation rules for consecutive indeterminate and determinate sentences, which impose statutory caps on a prisoner's aggregate maximum term (see Penal Law § 70.30 [1] [b], [c], [d], [e], [f]) and require that jail time and good time credit be applied against that aggregate maximum term (see id. at [3] [b], [4] [b]; Correction Law § 803 [2] [b], [d], [f]). Nothing in Penal Law § 70.30 (2) (b) indicates that the two-year aggregate term should be exempt from these deductions.

Respondents also fail to recognize that their method of calculating sentences under section 70.30 (2) (b) creates unnecessary disparities among prisoners. Respondents claim that jail time and good time credit should be withheld whenever the statute's two-year aggregate term applies. Such a rule would unfairly disadvantage pre-trial detainees by causing them to serve longer terms of imprisonment than otherwise identically-situated inmates who were released pre-trial. While the detainees must serve pre-sentence jail time in addition to the two-year aggregate term of imprisonment, persons who are able to make bail or otherwise avoid pre-trial detention would serve only the two-year term and nothing more. We decline to interpret Penal Law § 70.30 (2) (b) as creating this disparity when the

statute may be applied evenhandedly by deducting jail time credit from the two-year aggregate term.

With respect to good time credit, Correction Law § 804 (1) provides that "[e]very person confined in an institution serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of his sentence" ([emphasis added]). Although not every prisoner will earn good time credit -- which, unlike jail time credit, is awarded on a discretionary basis -- every prisoner who earns the credit is entitled to benefit from it (see id.), even a prisoner serving a two-year aggregate term under Penal Law § 70.30 (2) (b). The Legislature already limited good time credit to one-third of the aggregate term (see id.; Penal Law § 70.30 [4] [b]), and we need not overextend that limitation by completely denying good time credit to a certain category of prisoners, as respondents invite us to do.

Finally, good time credit offers the prospect of a shorter sentence and, thus, serves as an incentive for prisoners not just to behave according to the rules of the correctional facility, but to excel in its rehabilitative programs and meaningfully prepare to reenter society (see e.g. Correction Law § 804 [1]). We reject respondents' erroneous interpretation of Penal Law § 70.30 (2) (b) because it would remove this incentive.

Accordingly, the order of the Appellate Division should

be affirmed without costs.<sup>3</sup>

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Order affirmed, without costs. Opinion by Judge Abdus-Salaam. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

Decided November 21, 2013

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<sup>3</sup> In so holding, we do not imply that respondents may be held civilly liable for detaining petitioner beyond the expiration of his sentence. A false imprisonment claim raises a number of issues that are not before us.