

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,

Respondent,

-against-

No. 41

WILLIAM MONROE,

Appellant.

20 Eagle Street
Albany, New York 12207
February 07, 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.

Appearances:

CLAUDIA S. TRUPP, ESQ.
CENTER FOR APPELLATE LITIGATION
Attorneys for Appellant
74 Trinity Place
11th Floor
New York, NY 10006

FRANK GLASER, ADA
NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorneys for Respondent
One Hogan Place
New York, NY 10013

David Rutt
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 41, People versus
2 William Monroe.

3 Counselor, do you want any rebuttal time?

4 MS. TRUPP: Two minutes, please.

5 CHIEF JUDGE LIPPMAN: How much?

6 MS. TRUPP: Two minutes, please.

7 CHIEF JUDGE LIPPMAN: Two, sure. You got
8 it.

9 MS. TRUPP: Good afternoon, Your Honors.
10 Claudia Trupp on behalf of William Monroe.

11 Your Honors, in this case, Mr. Monroe
12 pleaded guilty to conspiracy in the second degree and
13 agreed to a six- to twelve-year sentence due to the
14 express promise that that sentence would run
15 concurrently with previously - - -

16 CHIEF JUDGE LIPPMAN: Counselor, what's the
17 difference between this case and Rowland and
18 Pichardo?

19 MS. TRUPP: There's no difference between
20 this case and Rowland and Pichardo that is
21 determinative of the outcome here. What Rowland and
22 Pichardo stated - - -

23 CHIEF JUDGE LIPPMAN: The same exact
24 situation?

25 MS. TRUPP: The only difference here is the

1 nature and the reason why the lower courts didn't
2 vacate the guilty plea is because in Rowland and
3 Pichardo they said there had been a vacatur of the
4 actual underlying convictions, and here, all we had
5 was an ameliorative sentence reduction relating to -
6 - -

7 CHIEF JUDGE LIPPMAN: Well, isn't that a
8 different situation or is it?

9 MS. TRUPP: It is a distinction without an
10 operative difference in this case.

11 JUDGE PIGOTT: Well, one of the things that
12 occurs to me, obviously in the - - - whichever one
13 was the murder case that got - - - where he ended up
14 getting acquitted, and the other one is that - - - I
15 mean, happenstances occur, would - - - which makes me
16 wonder if, in this case, would it be - - - would it
17 be - - - would Monroe be required to say, and by the
18 way, if you give me this DLRA break, I fully intend
19 to go and seek a change with respect to the other
20 sentences upon which this DLRA decision may be made?

21 MS. TRUPP: Well, there was no - - - there
22 was no hiding the ball here as far as that this
23 conspiracy conviction was in place.

24 JUDGE PIGOTT: I guess that's what I was
25 asking.

1 MS. TRUPP: Yeah. There was no - - - I
2 mean, in terms of coming to a determinative sentence
3 in a DLRA application, the DLRA court has to
4 absolutely consider the criminal history, and this
5 conspiracy conviction was part of Mr. Monroe's
6 criminal history and - - -

7 JUDGE PIGOTT: Does that become part of the
8 argument, assuming that people oppose the DLRA change
9 so they say, by the way, Judge, you know, one of the
10 things that happened here was what happened here, and
11 so when you make this change, you may be affecting
12 another sentence?

13 MS. TRUPP: The People certainly could make
14 that argument so that the DLRA court could come to
15 that determination and consider the impact of the
16 reduced DLRA sentence on the subsequent case,
17 certainly. But here, the court looked at the DLRA
18 application, deemed that Mr. Monroe was eligible and
19 reduced the sentence accordingly in light of his good
20 disciplinary history, the nature of his - - -

21 JUDGE SMITH: In both - - - in both
22 Pichardo and Rowland, we said that if the - - - if
23 this is a problem, the way to solve the problem is to
24 put it in the plea bargain.

25 MS. TRUPP: Absolutely, Your Honor.

1 JUDGE SMITH: But - - - but is it - - - but
2 could they - - - can you really expect people to put
3 in the plea bargain, well, if the legislature should
4 change the law and reduce your sentence - - -

5 MS. TRUPP: No - - -

6 JUDGE SMITH: - - - on Count I - - -

7 MS. TRUPP: - - - it doesn't have to be
8 that specific. All you would have to say is that the
9 intention of the parties here is that any change or
10 modification of the preexisting sentence is not going
11 to modify - - -

12 JUDGE SMITH: Well, okay, but I mean - - -
13 yeah, it may be - - - it - - - you know, but maybe
14 that's not the deal in the - - - you can understand
15 why in the Rowland and Pichardo situation the deal
16 might reasonably be, okay, if - - - if this
17 concurrent time turns out not to have anything to be
18 concurrent with or not that much to be concurrent
19 with, then I don't want the deal anymore. It's - - -
20 but who's going to - - - who's going to say oh yeah,
21 I'll take concurrent time but if, God forbid, my
22 other sentence gets reduced by legislative act, then
23 I want this one - - - then I want this one off, too.
24 Doesn't - - -

25 MS. TRUPP: But the way - - - the way that

1 this court put forth the test in Rowland and
2 Pichardo, how it was formulated, is whether there's
3 been a change in fact - - - and I'll quote you from
4 Rowland - - - the critical question is whether the
5 removal or reduction of the preexisting sentence
6 nullified the benefit that was expressly provided and
7 was a material inducement to the guilty plea. And
8 that's what we have here. There can be no question
9 on this record that the promise of concurrent time
10 was the material inducement. It - - -

11 JUDGE SMITH: I mean, I - - - I don't find
12 this easy, but let me try this a different way.

13 MS. TRUPP: Okay.

14 JUDGE SMITH: In - - - in Rowland and
15 Pichardo, the problem - - - the unforeseen event - -
16 - the event that made the second sentence no longer
17 concurrent was that an injustice was corrected, that
18 is that the - - - the defendant had been given a - -
19 - had been convicted and later turned out that he was
20 not lawfully convicted and they tossed it out, and
21 you can see the argument that he should - - - yeah,
22 he should be entitled to do that and that should not
23 prejudice him. Here, the defendant has done nothing
24 except take advantage of legislative grace. Why
25 should - - - why should he become - - - why should he

1 be allowed to complain because he - - - he got an
2 unforeseen and, as saying, perhaps undeserved
3 windfall later - - - later on after he'd taken his
4 pleas?

5 MS. TRUPP: Okay. Well, I have two parts
6 of an answer to that - - -

7 JUDGE SMITH: At least two.

8 MS. TRUPP: - - - question.

9 JUDGE SMITH: Go ahead, yeah.

10 MS. TRUPP: The first part is that the DLRA
11 is not a windfall. The DLRA is a legislative
12 recognition that the preexisting sentencing scheme
13 under which Mr. Monroe was sentenced was Draconian
14 and unfairly harsh. So it's no windfall that he now
15 can take advantage of that.

16 JUDGE SMITH: Now, you say a legislative
17 reversal of policy. Isn't that different from an
18 appellate court's reversal of a conviction?

19 MS. TRUPP: No, it's not, because the
20 operative facts are whether the facts have changed
21 that were a material inducement to the plea bargain.

22 JUDGE GRAFFEO: In Rowland and Pichardo,
23 there were invalid - - - invalidated sentences. So
24 you're saying - - -

25 MS. TRUPP: Well, actually if you - - -

1 JUDGE GRAFFEO: - - - what - - - what goes
2 on in the - - - in the Drug Law Reform Act is
3 equivalent to a declaration that there was an invalid
4 sentence?

5 MS. TRUPP: Yes.

6 JUDGE GRAFFEO: Because that's the
7 distinction that's - - -

8 MS. TRUPP: That's the dis - - -

9 JUDGE GRAFFEO: - - - bothering me.

10 MS. TRUPP: That's the distinction that was
11 drawn.

12 JUDGE GRAFFEO: Why is it the equivalent?

13 MS. TRUPP: Because, as I was saying, the
14 legislature determined that the sentencing scheme
15 that induced this plea bargain was unduly harsh; that
16 would mean - - -

17 JUDGE GRAFFEO: But not everyone's sentence
18 has to be altered.

19 MS. TRUPP: Right. And if Mr. Monroe's
20 sentence had not been altered here, he would not be
21 entitled to this relief if he were still serving the
22 four and a half to nine. But if you do a close read
23 of Rowland as well, in that case what happened is
24 that there were two convictions in place, a VOP
25 conviction of one to three and a possession of stolen

1 property conviction of two to four. The VOP
2 conviction was never vacated, and by the time that he
3 moved for vacatur of his murder-related conviction,
4 the possession of stolen property had also been put
5 back in place; he had pled guilty to one year. So
6 there were in place two valid convictions that had
7 been previously - - - one - - - only one of which had
8 been vacated. So it wasn't the fact of the - - -
9 that there wasn't a preexisting legitimate sentence;
10 it was the impact of the resentencing on the
11 bargained-for benefit. And that's exactly what we
12 have here.

13 If you look at the record in this case, Mr.
14 Monroe was very specific. During this plea bargain,
15 he stopped the proceedings before the plea bargain
16 was entered and said, I just want to make clear that
17 this is going to run concurrent to the four and a
18 half to nine. The court went over it again
19 specifically, expressly stated the impact of this
20 conviction will mean that you have an additional year
21 and a half before you're eligible for parole. It was
22 that inducement that resulted in this guilty plea.
23 Those conditions were set forth - - -

24 JUDGE PIGOTT: Do you want to vacate the
25 plea?

1 MS. TRUPP: You know, Your Honor, what
2 we've always been looking for in this case is
3 specific performance, and that is an option that the
4 prosecution has consented to in the event that you
5 remand the case. We would look for a four-and-a-
6 half- to nine-year sentence on the conspiracy so that
7 - - -

8 JUDGE PIGOTT: Could they - - -

9 MS. TRUPP: - - - we would get that same -
10 - -

11 JUDGE PIGOTT: Could the judge say you're
12 right, you know, you - - - you get a right to go to
13 trial on the conspiracy?

14 MS. TRUPP: We have always been asking for
15 specific performance on all - - -

16 JUDGE SMITH: But you're not - - - you
17 don't - - - you said they've agreed to it in this
18 case, but you don't claim you're entitled to it. The
19 remedy you're entitled to is to vacate the plea?

20 MS. TRUPP: Whenever a plea bargain cannot
21 be enforced, the remedy is either vacatur or specific
22 performance. So here specific performance would be
23 possible.

24 JUDGE SMITH: But absent the People's
25 agreement, you - - - you would have no complaint if

1 the judge said, okay, you don't like it, take it
2 back?

3 MS. TRUPP: Yes, we would have no
4 complaint.

5 JUDGE PIGOTT: Because the other - - - the
6 flip side of that, I would think, is the judge is
7 saying I'm going to let you do this concurrently
8 because I know that concurrence at least - - -
9 whatever it was, four-and-a-half years or whatever,
10 had the judge known that the concurrent was going to
11 be with two years or whatever the new one is, he may
12 not have consented, right, or the People may not have
13 consented to the plea?

14 MS. TRUPP: The People may not have
15 consented originally to the plea?

16 JUDGE SMITH: Right. In other words, they
17 - - - they said concurrent, knowing that he had a - -
18 - whatever that first sentence was, four and a half
19 to whatever - - -

20 MS. TRUPP: They say concurrent, right. So
21 - - -

22 JUDGE PIGOTT: Good. And the judge said,
23 you know, this means you're going to get - - - and
24 they actually almost mathematically laid it out.

25 MS. TRUPP: Right.

1 JUDGE PIGOTT: If they knew that it was
2 what the - - - what the new sentence was, they may
3 have said, absolutely not, we're - - - you know,
4 we're trying this thing, right?

5 MS. TRUPP: It's possible - - -

6 JUDGE PIGOTT: Yeah.

7 MS. TRUPP: - - - which is why plea vacatur
8 would be the fair option in that case. But here, the
9 - - - what the People are saying is specific
10 performance would be appropriate, and so we don't
11 oppose that.

12 JUDGE PIGOTT: Okay, counselor.

13 MS. TRUPP: Thank you.

14 CHIEF JUDGE LIPPMAN: Thanks.

15 Counselor.

16 MR. GLASER: May it please the court, I'm
17 Frank Glaser and I represent the respondent.

18 This case illustrates an attempt to twist
19 the DLRA - - - the 2009 DLRA into something that it
20 was never intended to be, namely, you make a motion -
21 - -

22 CHIEF JUDGE LIPPMAN: How do you get around
23 Rowland and Pichardo?

24 MR. GLASER: In Rowland and Pichardo, both
25 of those cases, the conviction - - - the underlying

1 conviction of the concurrent case was overturned. It
2 was - - - the - - - in one case, it was a 440.10
3 motion for - - -

4 CHIEF JUDGE LIPPMAN: Yeah, I understand
5 the facts, but in both, the basis of the plea was
6 this understanding, and now in both situations - - -
7 this case and those two cases, it doesn't exist - - -
8 that premise doesn't exist anymore, right?

9 MR. GLASER: I'm afraid I don't understand.
10 What premise?

11 CHIEF JUDGE LIPPMAN: The premise of why
12 the plea was agreed to.

13 MR. GLASER: Well - - -

14 CHIEF JUDGE LIPPMAN: Do you know what I'm
15 saying? It's the same situation.

16 MR. GLASER: Yeah, but in this case the
17 defendant - - -

18 CHIEF JUDGE LIPPMAN: They can't be
19 fulfilled; let me put it that way.

20 MR. GLASER: In this case, the defendant,
21 you know, engineered it that way. He decided I'm
22 going to make a 2009 DLRA motion; do I care about
23 getting a lesser sentence? No, because I'm going to
24 face the six to twelve on the conspiracy anyway. Any
25 reduc - - - no reduction is going to help me. On the

1 other hand, it will help me because I can maneuver
2 around to make a 440.10 motion and claim that I
3 didn't get what I was - - -

4 JUDGE SMITH: Suppose - - -

5 MR. GLASER: - - - what I bargained for.

6 JUDGE SMITH: Suppose he had taken a - - -
7 there's no DLRA. There's not a drug case. A guy
8 gets a sentence and then pleads to something else
9 that's concurrent. On the second one, there's a - -
10 - forget about the second one. The first one he
11 takes an appeal and the Appellate Division says
12 sentence is excessive, we're cutting it down; is he
13 entitled to relief on the other sentence under
14 Rowland and Pichardo?

15 MR. GLASER: Well, I believe he would be
16 because under - - -

17 JUDGE SMITH: Okay. Okay.

18 MR. GLASER: - - - 470.15(1) - - -

19 JUDGE SMITH: So now - - - now it's nothing
20 - - -

21 MR. GLASER: No, I have to point out, Judge
22 - - -

23 JUDGE SMITH: Okay. Okay.

24 MR. GLASER: - - - it's not just the
25 sentence - - - excuse me. It's not just the sentence

1 that's defective there. The Appellate Division can
2 only act upon an error. That's what - - - that's
3 what the statute says. So when it determines that
4 the sentence was excessive - - -

5 JUDGE SMITH: The - - - the - - -

6 MR. GLASER: - - - it has - - - it has - -
7 -

8 JUDGE SMITH: The Appellate Division says
9 the judge made a limit in error.

10 MR. GLASER: The judge - - - there was an
11 error.

12 JUDGE SMITH: Okay. Now - - - now - - -
13 now - - - okay.

14 JUDGE PIGOTT: It's not an error - - -

15 JUDGE SMITH: Now can I ask my question?

16 JUDGE PIGOTT: - - - excessive. That mean
17 it's interest of justice. I'm sorry.

18 MR. GLASER: Well, that's - - - no, Judge,
19 that's not what the statute says. The statute - - -

20 JUDGE PIGOTT: Well, I'm telling you that
21 the Appellate Division says you gave him seven years
22 and we think he only deserves five and so in the
23 interests of justice we're reducing it to five. Now,
24 if I'd been doing that for eight years incorrectly,
25 I'm surprised because that's what Appellate Divisions

1 all do.

2 MR. GLASER: The - - - the statute says
3 that the Appellate Division is authorized to do that
4 if it finds an error in the judgment. And it goes on
5 to say - - -

6 JUDGE SMITH: And harsh - - -

7 MR. GLASER: - - - one of the things that -
8 - -

9 JUDGE SMITH: - - - harsh - - - you say
10 that harsh and excessive sentence is a form of error?

11 MR. GLASER: Yes.

12 JUDGE SMITH: Okay. Let - - - no - - -

13 JUDGE PIGOTT: Okay. We're not arguing - -
14 -

15 JUDGE SMITH: Okay. But let's - - - I
16 accept that. Now switch the facts. The lower court
17 did an error and the Appellate Division didn't
18 correct it. The legislature decided that it erred
19 back in 1973 when it passed the law - - - the
20 Rockefeller Drug Law and says we're correcting it;
21 we're going to put in lesser sentences. What's the
22 difference? Why should he get an advantage from one
23 and not the other?

24 MR. GLASER: Well, because it's - - - there
25 - - - because, as I said earlier, there is no - - -

1 there's no defect in the underlying conviction.

2 JUDGE SMITH: Let's - - - well, no, there's
3 a - - - there's a defect - - - there's a defect in
4 the sentence - - - the legislature thinks there's a
5 defect in the sentence. That's why it authorized the
6 correction.

7 MR. GLASER: No, the legislature didn't
8 authorize corrections in every instance. The
9 legislature set up the 2009 DLRA so that the
10 resentencing judge would have the discretion - - -

11 CHIEF JUDGE LIPPMAN: But why did - - - why
12 did - - -

13 MR. GLASER: - - - whether or not to grant
14 the motion.

15 CHIEF JUDGE LIPPMAN: But why does it
16 matter? Isn't the principle the same that the
17 benefit of guilt - - - of the guilty plea is
18 nullified?

19 MR. GLASER: No.

20 CHIEF JUDGE LIPPMAN: In either
21 circumstance, why is not, conceptually, it exactly
22 the same situation? Isn't it the benefit of a guilty
23 plea is nullified whether - - -

24 MR. GLASER: No. There's - - -

25 CHIEF JUDGE LIPPMAN: - - - it's the DLRA

1 or - - - no? Why not?

2 MR. GLASER: No. In this case, as I said
3 earlier, the defend - - -

4 CHIEF JUDGE LIPPMAN: Take the DLRA - - - a
5 DLRA case, why is the benefit of a guilty plea not
6 nullified?

7 MR. GLASER: In - - - in every - - - I'm
8 sorry. In this case or in - - -

9 CHIEF JUDGE LIPPMAN: In a DLRA case, why -
10 - - any DLRI (sic) case - - - DLRA case, why isn't it
11 the same principle as Rowland and Pichardo?

12 MR. GLASER: Well, for one thing, Pichardo
13 clearly states that the defect - - - there has to be
14 a defect in the underlying conviction. The only - -
15 - the only reason that - - -

16 CHIEF JUDGE LIPPMAN: Yeah, but I'm talking
17 about a broader principle that's the same.

18 MR. GLASER: Well - - -

19 CHIEF JUDGE LIPPMAN: I understand - - -

20 MR. GLASER: - - - because it's an unforced
21 - - -

22 CHIEF JUDGE LIPPMAN: I understand that the
23 situations are different.

24 MR. GLASER: Yes.

25 CHIEF JUDGE LIPPMAN: I'm saying why isn't

1 the principle the same.

2 MR. GLASER: Well, in both Rowland - - -

3 CHIEF JUDGE LIPPMAN: It - - -

4 MR. GLASER: In both Rowland and Pichardo,
5 Judge, the court - - - this court said that what
6 should be done is the parties should make an express
7 agreement about what happens if the - - - the first
8 conviction is overturned, and the problem with that,
9 Judge, is that in the DLRA context it doesn't make
10 sense to - - -

11 JUDGE PIGOTT: Well, you're arguing - - -

12 MR. GLASER: - - - to say that because
13 there's - - - it's totally unforeseeable.

14 JUDGE PIGOTT: If I understand you, it's
15 sort of like you're arguing, and I don't necessarily
16 say this is - - - that I agree or disagree, that
17 there's a double windfall. I mean, it's one thing to
18 say that by the grace of the legislature you're
19 getting a break. It's another thing to say by the -
20 - - by the grace of that break you get another break
21 because of the initial plea. That certainly didn't
22 seem to be within the contemplation.

23 And if I understand the 440.10 motion, it's
24 that the judgment was obtained in violation of a
25 right of the defendant under the Constitution of this

1 state or the United States, and I don't think that it
2 happened here. There was no violation of his rights
3 when he decided that he wanted to take this plea
4 based upon a sentence that was - - - then existed.

5 MR. GLASER: Absolutely.

6 JUDGE PIGOTT: Would that make sense?

7 MR. GLASER: Absolutely, Judge, except that
8 I wouldn't - - - I wouldn't call the DLRA reduction a
9 windfall. I mean, the legislature is entitled to do
10 that. Let's not - - - you know, let's not deprecate
11 it by calling it a windfall but - - -

12 JUDGE GRAFFEO: The fact there's judicial
13 discretion as to whether or not to apply the leniency
14 provided by the legislature?

15 MR. GLASER: Does that make a difference?
16 I think it does.

17 JUDGE GRAFFEO: That's my question to you.

18 MR. GLASER: Yes, it does, because - - -

19 CHIEF JUDGE LIPPMAN: Does that - - - does
20 that - - - I'm trying to understand your posture.

21 MR. GLASER: If the - - - if the - - -

22 JUDGE GRAFFEO: Is that what you're trying
23 to argue?

24 MR. GLASER: If the legislature had
25 intended for all of those Rock - - - B-felony level

1 Rockefeller drug convictions to be invalid, it could
2 have enacted a statute that said that. But the fact
3 that there's judicial discretion involved means that
4 they are not invalid, that they can only come under
5 consideration. And the judge then has the
6 opportunity to - - - to grant you the - - - the
7 motion based on all kinds of factors. Now, what'll
8 happen - - - you have a rule - - -

9 CHIEF JUDGE LIPPMAN: Yeah, but what is the
10 judge doing when - - - when they - - - under the
11 statute when they - - - when they reduce or go from
12 the indepen - - - what's he doing when, under the
13 statute, he finds that it merits a reduction? What
14 is the judge doing?

15 MR. GLASER: The judge is changing the
16 sentence from - - -

17 CHIEF JUDGE LIPPMAN: Why? Why is the
18 judge changing the sentence?

19 MR. GLASER: Because substantial justice
20 does not dictate otherwise. That's what the statute
21 says.

22 JUDGE PIGOTT: I asked Ms. Trupp and I'll
23 ask you, did you have the opportunity at the time of
24 the motion to say, by the way, Judge, if you do this,
25 there's another plea out there that was conditioned

1 upon - - - you know, this plea was conditioned upon a
2 prior sentence and that one may be unstable as well?

3 MR. GLASER: Well, Judge, who would have
4 thought that?

5 JUDGE PIGOTT: I don't - - - that's why I'm
6 asking. I don't know.

7 MR. GLASER: Who would have thought to do
8 that? Just like they wouldn't have thought to
9 include that kind of condition when the original
10 conspiracy plea was entered. I mean, nobody
11 envisioned that the defendant would turn around and
12 file a 440.10 motion - - -

13 JUDGE SMITH: I thought you - - -

14 MR. GLASER: - - - in order to - - - in
15 order to, you know, essentially take advantage of the
16 2009 DLRA - - -

17 JUDGE SMITH: Well, I thought - - - I
18 thought - - - I thought you said that was the whole
19 point. That was the only reason he went for the DLRA
20 resentencing was to provide a predicate to get rid of
21 the other pleas.

22 MR. GLASER: Well, yes, but - - -

23 JUDGE SMITH: So how come you didn't
24 foresee it?

25 MR. GLASER: Because it's a - - - it's a

1 rather - - - I mean, it's a - - - it's an extreme
2 position. It's ridiculous to take this position that
3 this is something that I am entitled to. Now that
4 I've gotten my reduction, I'm enti - - - which I
5 engineered - - -

6 JUDGE PIGOTT: But it's - - -

7 MR. GLASER: - - - now I'm going to say
8 there was no more benefit to the sentence - - -

9 JUDGE PIGOTT: It was pretty imaginative -
10 - -

11 MR. GLASER: - - - that I agreed to.

12 JUDGE PIGOTT: - - - is what it is. I
13 mean, it - - -

14 MR. GLASER: It's what?

15 JUDGE PIGOTT: - - - it sounds like good
16 lawyering. But I was just curious, would the DA know
17 or would the People know at the time that the motion
18 was filed that he's in on X, Y and Z charges and that
19 the Z charge was conditioned upon the plea that he
20 took on the X, Y charges so that when you reduce Z
21 he's going after X, Y?

22 JUDGE READ: Like, would you know it in the
23 future if that - - -

24 MR. GLASER: Well, you would sure know it
25 in the future if you come down with a decision in

1 this case that set - - - that sanctions this kind of
2 maneuvering, then essentially DLRA not - - - 2009
3 discretionary sentencing will become a very, very
4 rare thing - - -

5 JUDGE PIGOTT: No, it might - - -

6 MR. GLASER: - - - because every judge - -
7 -

8 JUDGE PIGOTT: - - - be the judge - - - the
9 judge, then, has the full panoply of what's going on.
10 In other words - - -

11 MR. GLASER: Yes.

12 JUDGE PIGOTT: - - - if he had known this
13 he might have said, fine, that's all right with me,
14 or he might have said, well, if that's the case, you
15 know, because that - - - the conspiracy that he plead
16 to later was more serious than the DLRA that would -
17 - - that he's getting the break on - - -

18 MR. GLASER: Sure.

19 JUDGE PIGOTT: - - - I'm not giving him the
20 break.

21 MR. GLASER: Or it could be a homicide. I
22 mean - - -

23 JUDGE PIGOTT: But all - - - all the cards
24 are face up, and, apparently, in this one there's one
25 card that hadn't gotten out of the deck.

1 MR. GLASER: Well, that doesn't - - - the
2 People - - - the People shouldn't have the - - - have
3 the - - - you know, bear the burden of foreseeing
4 every conceivable defense tactical move. And this
5 one - - - you know, the enactment of the DLRA was not
6 conceivable and it's - - - the perversion of the DLRA
7 in the manner that it was used in this case was not
8 foreseeable either.

9 CHIEF JUDGE LIPPMAN: Okay, counselor.
10 Thanks, counselor.

11 Let's hear your - - - the rebuttal from
12 your adversary.

13 MS. TRUPP: There was really nothing
14 nefarious here about Mr. Monroe taking advantage and
15 amening (sic) himself to a legislative enactment that
16 he was entitled to. The notion that there was
17 somehow a ball hidden here or that this was
18 maneuvering - - -

19 CHIEF JUDGE LIPPMAN: Why from a policy's
20 perspective is this a good result? Your adversary
21 says it's going to be a really bad thing if we find
22 in your favor. Why is it a good policy?

23 MS. TRUPP: It's a good policy because it's
24 consistent - - -

25 CHIEF JUDGE LIPPMAN: What's going to be

1 the consequence if we find in your favor?

2 MS. TRUPP: Well, the consequences will be
3 somewhat limited. This isn't a situation that is
4 going to upset every DLRA case that's in existence.
5 Most of the time, DLRA applications are all brought
6 before the same judge.

7 CHIEF JUDGE LIPPMAN: Um-hum.

8 MS TRUPP: The judge can always consider
9 the entire criminal history. In this case, the
10 entire criminal history was before the judge and the
11 prosecution.

12 JUDGE PIGOTT: I thought about, you know,
13 if - - - if that previous charge, not in your case,
14 but in another case, was ten years old and was a
15 murder and he took a plea of some sort - - - well, in
16 the one case, there was an alpha plea in the middle
17 of a trial, but if it's ten years later when you got
18 - - - your witnesses may be gone or things may
19 happen, this could have a serious effect on that
20 previous - - - in other words, moving to vacate would
21 be to plea because you know they can't try you.

22 MS. TRUPP: Right. But that was also the
23 situation in Pichardo and Rowland. Those were both
24 homicide cases and what - - -

25 JUDGE PIGOTT: They were close.

1 MS. TRUPP: This was close, as well. But
2 in terms - - -

3 JUDGE PIGOTT: I was looking at - - -

4 CHIEF JUDGE LIPPMAN: Yeah, but you - - -
5 you acknowledged that - - - to Judge Piggott's
6 question that that's a practical consequence that is
7 sometimes going to happen.

8 MS. TRUPP: It is a practical consequence;
9 I would argue a rare practical consequence and not
10 worth uprooting established precedent that has been
11 working throughout New York state for many, many
12 years. And here, where Mr. Monroe demonstrated his
13 eligibility and his entitlement to DLRA relief, there
14 was nothing wrong with him then saying, under the
15 facts of this case where the conspiracy plea was
16 based on the concurrency, that he was entitled to
17 vacatur. As far as - - -

18 JUDGE SMITH: Is your adversary right in
19 saying there was no point in your doing this at all
20 but for - - - but for the later 440 application?

21 MS. TRUPP: Well, DLRA resentencing can
22 help a defendant as he faces the parole board, the
23 fact that a judge has looked at a DLRA application
24 and said that four and a half to nine is too harsh.
25 So there is a residual benefit to doing a DLRA

1 application even in the absence of the 440.10 in this
2 case, but, certainly, that was also - - -

3 JUDGE SMITH: You - - - you don't dispute
4 that step 2 is in your - - - not necessarily your
5 mind but in Mr. Monroe's lawyer's mind when this was
6 done?

7 MS. TRUPP: I was Mr. Monroe's lawyer.

8 JUDGE SMITH: I see. And you actually had
9 thought of this?

10 MS. TRUPP: I had. And I've - - -

11 JUDGE SMITH: And you did not actually
12 announce it when you made the application?

13 MS. TRUPP: We didn't announce it to the
14 DLRA 3 court.

15 JUDGE SMITH: Or to - - - or to the DA?

16 MS. TRUPP: I don't remember what came up
17 in the course of plea negotiation. I actually wasn't
18 the DLRA 3 attorney; I was the 440.10 attorney.

19 Okay. Thank you, Your Honor.

20 CHIEF JUDGE LIPPMAN: Okay. Thank you.

21 Thank you both. Appreciate it.

22 (Court is adjourned)

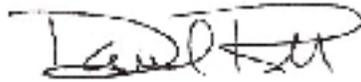
23

24

25

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

I, David Rutt, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. William Monroe, No. 41 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

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

Date: February 12, 2013