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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Appellant,

-against-

NO. 46

BRENDA W.W.,

Respondent.

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20 Eagle Street  
Albany, New York  
April 9, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Good afternoon. The first  
2 case on today's calendar is People v. Brenda W.W.

3 Counsel?

4 MR. RODGERS: Good afternoon, Chief Judge Wilson,  
5 fellow judges, opposing counsel Reed. My name is Sam  
6 Rodgers from Madison County, representing the People of New  
7 York. May it please the court.

8 If I could please reserve two minutes for  
9 rebuttal?

10 CHIEF JUDGE WILSON: Yes.

11 MR. RODGERS: This case is about the standard of  
12 review for DVSJA eligibility hearings and the required  
13 post-release supervision for those granted relief.

14 I'm not here to attack the law, but instead to  
15 give it structure to do what's intended, which as a  
16 threshold matter, is to determine which criminal defendants  
17 merit relief based on their status as domestic violence  
18 survivors.

19 JUDGE RIVERA: So - - - so Counsel, in your view,  
20 what, if any, are the limits on the Appellate Division's  
21 review of the court's decision below?

22 MR. RODGERS: So the limits would be the  
23 Appellate Division has to apply an abuse of discretion  
24 analysis to the DVSJA eligibility determination.

25 JUDGE CANNATARO: Why is that?



1 MR. RODGERS: Because the eligibility  
2 determination is not a sentence. It's a threshold - - -

3 JUDGE CANNATARO: No. Why do they have to apply  
4 an abuse of discretion standard, as opposed to some more de  
5 novo review power?

6 MR. RODGERS: So as the court wrote three months  
7 ago in Brisman, a abuse of discretion analysis is for those  
8 questions that are so inherently unsusceptible to broad  
9 generalized rules that it would not make sense to give the  
10 lower courts - - -

11 CHIEF JUDGE WILSON: The - - - the Appellate  
12 Division - - -

13 MR. RODGERS: - - - a clear - - -

14 CHIEF JUDGE WILSON: - - - the Appellate Division  
15 has fact-finding power, no?

16 MR. RODGERS: The Appellate Division does have  
17 fact-finding power depending on the type of review that  
18 they're doing. So my argument is that when it's conducting  
19 an abuse of discretion review, which - - -

20 CHIEF JUDGE WILSON: But that sort of has the  
21 cart in front of the horse. Why is it - - - why here, is  
22 it not just ordinary fact-finding power?

23 MR. RODGERS: Because here it's not a sentencing  
24 proceeding that invokes the plenary sentencing, broad  
25 review power of the Appellate Division. It's one that's

1 being reviewed for abuse of discretion where, to substitute  
2 the legal or factual matters of the lower court, the  
3 Appellate Division - - -

4 JUDGE CANNATARO: Is the Appellate Division's  
5 factual review power limited only to sentencing? I feel  
6 like it applies in a whole range of contexts. In fact, I  
7 think the number of cases where they have to apply a  
8 deferential standard is probably far fewer than the ones  
9 where they have plenary factual review power. Would you  
10 not agree with that?

11 MR. RODGERS: So I would agree that the Appellate  
12 Division has fact-finding power. But how they utilize that  
13 power and then the framework in which they apply that power  
14 - - -

15 JUDGE TROUTMAN: And can they substitute their  
16 own judgment for that of the trial court?

17 MR. RODGERS: In which scenario, Your Honor?

18 JUDGE TROUTMAN: The Appellate Division. Do they  
19 not have the power to decide to utilize their discretion  
20 and substitute the - - - their judgment for that of the  
21 trial court?

22 MR. RODGERS: They can substitute their judgment  
23 for that of the trial court, which I would argue is when an  
24 abuse has - - - has occurred. Which, again, going back to  
25 abuse of discretion, it's not just whether the Appellate

1 Division disagrees, or another outcome would be reasonable,  
2 it's whether the - - - the lower court in this - - - in  
3 this instant, abused its discretion, which - - -

4 JUDGE SINGAS: And where are you finding that  
5 standard? What's your authority for that? And - - - and  
6 is there anything in the DVSJA that the - - - that suggests  
7 that the legislature was looking to curtail the Appellate  
8 Division's factual finding review powers in any way?

9 MR. RODGERS: So the DVSJA in the legislative  
10 history and the - - - the plain language of the law,  
11 clearly commits this power to the hearing court. That it -  
12 - - there's specific writings which - - - so under  
13 440.47(2)(g) and (f), that's where the lower court is  
14 making its decision whether this applicant warrants relief  
15 or doesn't. It says, "If the court determines". So it's  
16 giving explicit discretionary power to that county court.  
17 It's not - - -

18 JUDGE TROUTMAN: And you're saying with - - -  
19 with respect to the Appellate Division, their fact  
20 reviewing power is somehow limited? Is - - - is that what  
21 you're suggesting?

22 MR. RODGERS: So I would suggest that their - - -  
23 they can still review the facts, but as they apply those  
24 facts, they have to apply it and give some discretion.

25 JUDGE TROUTMAN: Okay. Do they not have the

1 right to find their own facts at the Appellate Division?

2 MR. RODGERS: When there - - - so I - - - I would  
3 separate that into two different camps. So if they're  
4 doing their interest of justice review, which I don't  
5 believe is proper here, they can - - - they can find the  
6 facts without any discretion to the lower court's  
7 determination.

8 If they're doing an abuse of discretion review,  
9 when they're reviewing those facts, they're looking for  
10 whether the lower court was reasonable in their  
11 determination of the facts. And if the Appellate Division  
12 finds its own facts, it's still applying it to a heightened  
13 standard of review. Because here, in the law, it was given  
14 to those hearing court judges very explicitly.

15 JUDGE SINGAS: In People v. Rickert we said that  
16 "The Appellate Division has the power to make new findings  
17 of fact and substitute its discretion for that of nisi  
18 prius, even in the absence of abuse."

19 MR. RODGERS: So in that case, I would argue that  
20 the finding of facts that the appellant - - - or that the  
21 Appellate Division does still has to apply to a heightened  
22 standard of review based on the law and how DVSJA creates  
23 the complete discretion of this lower court. And - - -

24 JUDGE RIVERA: And just to be clear, what's the  
25 heightened standard of review?

1 MR. RODGERS: So it would be the abuse of  
2 discretion review.

3 JUDGE RIVERA: I see.

4 MR. RODGERS: And what - - - what's clear in this  
5 case - - -

6 JUDGE GARCIA: But I - - - I - - - I guess I'm  
7 having some trouble understanding how that layers over  
8 their fact-finding authority? So if they have fact-finding  
9 authority, to me this seems much like a YO determination.  
10 Right? And - - - and I think we affirmed the case where  
11 the Appellate Division said, "We've weighed all the  
12 factors, and we don't feel the trial court abused its  
13 discretion in denying YO treatment. But we choose to  
14 exercise our discretion and do it."

15 And we said that was okay. We - - - we affirmed  
16 that case. So why isn't this like that?

17 MR. RODGERS: So I think it is similar to a YO  
18 determination. And the difference being in this case, the  
19 court explicitly wrote it's invoking and making its  
20 decision based on 470.15(6)(b) sentencing - - - plenary  
21 sentencing review. When you review YO cases, it's  
22 reviewed. If it's overturned, it's remitted back to the  
23 trial court to then impose a sentence. That's what should  
24 have happened in these cases - - - in DVSJA cases.

25 JUDGE TROUTMAN: Well, in - - -

1 MR. RODGERS: Because again, these - - -

2 JUDGE TROUTMAN: - - - in YO cases the Appellate  
3 Division doesn't have to remit back, they can substitute  
4 and grant YO if it was denied.

5 MR. RODGERS: Well, yes. So Your Honor, I would  
6 say that the Appellate Division can grant YO if it was  
7 denied. But then the remedy in that scenario is to remit  
8 back to the local court. And that's what the court did in  
9 the case People v. Z.H., which was cited in Brisman, where  
10 the Appellate Division explicitly said this is not an abuse  
11 of discretion. We're going to - - -

12 JUDGE TROUTMAN: Correct.

13 MR. RODGERS: - - - we're going to invoke our  
14 interest of justice. We're going to grant YO, remit back  
15 to the county court for sentencing. Because then that case  
16 goes back, there's a sentence imposed - - -

17 JUDGE TROUTMAN: But it's - - -

18 MR. RODGERS: - - - and then that - - -

19 JUDGE TROUTMAN: - - - it's consistent with the  
20 determination of the Appellate Division.

21 MR. RODGERS: Correct. But the - - -

22 JUDGE TROUTMAN: And in this particular instance,  
23 are you suggesting somehow that the trial court's decision  
24 is not reviewable?

25 MR. RODGERS: No. So I'm suggesting that the

1 trial court's decision is - - - is definitely reviewable  
2 under an abuse of discretion standard. And if the  
3 Appellate Division finds that an abuse of discretion took  
4 place, it can reverse that DVSJA determination, remit it  
5 back to the county court in the same way that it would in a  
6 youthful offender. And then, the county court gets its  
7 first - - - its first turn at imposing a sentence. And  
8 then, even if a sentence is imposed under DVSJA standards,  
9 then it can be reviewed based on 440.47(3)(b) as unduly  
10 harsh or severe or illegally authorized.

11 So in this case, what should have happened is the  
12 Third Department erroneously used plenary sentencing power  
13 when that power was not invoked. This court has written  
14 recently and pretty extensively on how to apply sentencing  
15 power. I think this case demands clarification on when to  
16 apply it. Because it was clear that the court invoked  
17 under 470.15(6)(b) the sentencing power, where it wasn't a  
18 sentencing question before the court.

19 JUDGE GARCIA: So your view would be, even if  
20 they had this authority, which is very limited in review to  
21 this court, the proper remedy here was remittal for  
22 sentencing under the statute? And then they could review  
23 that for unduly harsh and excessive?

24 MR. RODGERS: I would say, yes, that's the only  
25 remedy that's available is to remit it to the local court.

1 But again, I would say under the abuse of discretion  
2 standard versus - - - so the court deployed interest of  
3 justice standard. That's very clear in what they wrote and  
4 how they conducted it.

5 CHIEF JUDGE WILSON: But why - - -

6 JUDGE TROUTMAN: Can we review interests of  
7 justice?

8 MR. RODGERS: You may review whether it is the  
9 correct standard to apply. And I believe the cases,  
10 starting as early as I've seen with Thompson in '83, then  
11 Delgado in '92, up until Brisman in January, the court will  
12 - - - even if the Appellate Division says it's interest of  
13 justice, the court will zoom in, double-click, see what  
14 review was actually done and whether it was done correctly.

15 CHIEF JUDGE WILSON: Why do - - - where - - -  
16 where is it in the Appellate Division you would point me  
17 to, to - - - to demonstrate conclusively that the Appellate  
18 Division thought it was exercising its interest of justice  
19 jurisdiction to decide this?

20 MR. RODGERS: So in this case, it would be the  
21 majority in footnote 2. And then - - -

22 CHIEF JUDGE WILSON: But - - - so that footnote  
23 seems to me to say, we - - - we, the Appellate Division,  
24 previously decided this sentence wasn't harsh and  
25 excessive, but we're not constrained when we're acting

1 under the statute by our prior determination on a - - - on  
2 prior appeal that it was not harsh and excessive. It  
3 actually seems to me the opposite of what you're saying.

4 MR. RODGERS: So I don't know if I understand  
5 your question, but I would - - - I would agree with the  
6 Appellate Division that they are not restrained to then  
7 review a DVSJA eligibility determination based on their  
8 prior direct review of an unduly harsh and severe sentence.  
9 Because it's two completely different questions, right?

10 CHIEF JUDGE WILSON: Right. And it seems what  
11 they're pointing to is that the statute gives them  
12 authority to do this, despite their prior interest of  
13 justice determination on harsh and excessive. It - - - it  
14 seems to me they're not saying they're relying on the  
15 interest of justice jurisdiction in the footnote.

16 MR. RODGERS: I would disagree with that, Your  
17 Honor. And I think with what they said, and then the  
18 dissent clarifies in its footnote 5, where it says I agree  
19 with the majority based on our broad plenary sentencing  
20 470.15(6)(b) we do not have to find an abuse of discretion.

21 I would actually argue that the majority and the  
22 dissent in that vein are wrong. They do have to find an  
23 abuse of discretion because, again, it's not a specific  
24 sentencing question that they're reviewing. And that can  
25 be seen based on what the respondent in this case appealed.

1           The respondent appealed an order denying  
2           resentencing, not the sentence itself. So there was no  
3           sentence before the court to invoke unduly harsh or severe  
4           review. What it had to do was analyze the - - - the  
5           findings of the lower court for an abuse of discretion.  
6           And if it does that, there's certain facts that it just  
7           completely overturns and then applies to this interest of  
8           justice broad sentencing and reverses. So - - -

9           JUDGE SINGAS: I think the court was actually  
10          invoking another standard, and they said they were looking  
11          at the record and using a preponderance of the evidence  
12          standard. So I - - - I don't know where you're getting an  
13          interest of justice standard. They explicitly say, "We  
14          find defendant established by a preponderance of the  
15          evidence," et cetera.

16          MR. RODGERS: So preponderance of the evidence is  
17          how the Appellate Divisions have determined that an  
18          applicant must show each of the DVSJA prongs. That is  
19          their burden of proof. The Appellate Division invoked its  
20          standard of review, which I argue was interest of justice.

21          I'll pivot now to my second point that post-  
22          release supervision in DVSJA is required. And I would  
23          somewhat amend my brief where it was not completely  
24          eliminated in this case. What the court did was credit the  
25          time that this respondent spent in prison towards the post-

1 release supervision.

2 JUDGE SINGAS: And what's your response to the  
3 AG's letter?

4 MR. RODGERS: My response to the AG's letter is  
5 that I believe the AG agrees that there's no statutory  
6 authority for this. And the argument was, it's just how  
7 we've always done it, which to me, is an argument. I don't  
8 think it's the strongest one where there's no statutory  
9 authority in DVSJA for that. There's also, notably, DVSJA  
10 amends the Penal Law Article 70 and 70.06 to amend post-  
11 release supervision. And also gives time credit for time  
12 spent in jail but doesn't give any time credit for post-  
13 release supervision.

14 I think post-release supervision is not just  
15 punitive, there are rehabilitation aspects to it. A lot of  
16 services that somebody could benefit from, especially DVSJA  
17 candidates.

18 So with that, I will see the cede of my time for  
19 rebuttal. Thank you.

20 CHIEF JUDGE WILSON: Thank you.

21 MS. REED: Good afternoon. May it please the  
22 court. Veronica Reed for Brenda W.W.

23 A showing of an abuse of discretion - - -

24 JUDGE RIVERA: What - - - what's the standard,  
25 and is it different at each of the prongs? The - - -



1 MS. REED: Okay.

2 JUDGE RIVERA: - - - three prongs?

3 MS. REED: Your Honor, the standard for an  
4 inquiry into whether a sentence was unduly harsh, is the  
5 Appellate Division's - - - Appellate Division's  
6 jurisdiction, which is to have original fact-finding  
7 jurisdiction and also to not have to defer to the lower  
8 court, the sentencing court's determination.

9 It's established by the Constitution. It was  
10 codified in the CPL. And that in Brenda W.W., both the  
11 majority and the dissent were both specific in stating that  
12 they were exercising their broad interest of justice  
13 jurisdiction in reviewing the sentence. And that  
14 notwithstanding the discretion afforded the hearing court,  
15 they did not need - - -

16 JUDGE RIVERA: So - - -

17 MS. REED: - - - to find.

18 JUDGE RIVERA: - - - so at the last step, if they  
19 get that far, it's interest of justice? What about the  
20 first two?

21 MS. REED: So the - - - the - - - structurally  
22 the people are arguing that because there are these prongs  
23 to the DVSJA, that somehow an abuse of discretion standard  
24 gets triggered. In - - - that's not the case. The DVSJA  
25 is a sentencing statute. It - - - it is not structurally

1 the same as a statute where the abuse of discretion  
2 standard would apply. This was one of the things in the  
3 Brisman - - -

4 JUDGE RIVERA: So I'm sorry. What is the  
5 standard? From your - - - from your vantage point?

6 MS. REED: The standard for the DVSJA?

7 JUDGE RIVERA: For the first two prongs? You  
8 told me the third one is the interests of justice - - -

9 MS. REED: Oh.

10 JUDGE RIVERA: So are the other two also  
11 interests of justice or something else?

12 MS. REED: Yes. Because the prongs are connected  
13 with "ands". So Subsection 1 has an (a), a (b), and a (c).  
14 Those aren't connected with a "then", which the people are  
15 arguing that there's a "then". That you have to find the  
16 (a), and then you have to find the (b).

17 JUDGE GARCIA: Let me ask it this way. So (a)  
18 is, at the time of the offense, the defendant was a victim  
19 of domestic violence, subjected to substantial physical, et  
20 cetera.

21 MS. REED: Uh-hum.

22 JUDGE GARCIA: County court looks at the record,  
23 hears the testimony, says no. They make a factual finding  
24 that at the time of the instant offense, the defendant was  
25 not a victim of domestic violence. Goes to the Appellate

1 Division. They have a record. They have the county  
2 court's finding on just (a). Let's stick with (a) - - -

3 MS. REED: Uh-hmm.

4 JUDGE GARCIA: - - - victim of domestic - - -  
5 what standard do they apply? What standard does the  
6 Appellate Division apply in reviewing county court's  
7 finding as to (a); victim of domestic violence, which seems  
8 to me a factual finding?

9 MS. REED: It's an interest of justice because  
10 the prongs aren't separate. The prongs are similar - - -  
11 the statute is similar to the YO statute. Now, in the YO  
12 statute - - -

13 CHIEF JUDGE WILSON: But - - - but if you think  
14 that - - -

15 MS. REED: Right.

16 CHIEF JUDGE WILSON: - - - then we can't review  
17 this at all.

18 MS. REED: Yes, Judge. And - - -

19 CHIEF JUDGE WILSON: And that's your position?

20 MS. REED: Well, we - - - we've - - - we made our  
21 jurisdictional argument, and - - - and we do maintain our  
22 jurisdictional argument that - - - that this court doesn't  
23 have jurisdiction to review Brenda W.W.

24 JUDGE GARCIA: Well, we have the power to review  
25 whether or not they applied the right standard, right?

1 MS. REED: Right. Correct. Correct.

2 JUDGE GARCIA: So your view is, all of the fact-  
3 finding by county court is interest of justice when it goes  
4 to the Appellate Division. They look at it, they can do  
5 essentially - - - I think what you're saying, is a de novo  
6 review using their fact-finding power - - -

7 MS. REED: Yes, Judge.

8 JUDGE GARCIA: - - - and make a determination  
9 whether the burden was met for each prong?

10 MS. REED: Yes, Judge.

11 JUDGE GARCIA: And then, it seems to me that  
12 final step where, even if you meet the three prongs, you  
13 can do this or not do it, is a pure discretionary exercise.  
14 Right?

15 MS. REED: Right.

16 JUDGE GARCIA: You can say, yeah, they met the  
17 three prongs, but I still don't think you should get this  
18 relief. Or you can say, yes, you should. What's the  
19 standard if county court says no? Yes, you met the three  
20 prongs, but I'm still - - - it's a discretionary call at  
21 the end, I'm going to say no. What's the Appellate  
22 Division authority to review that ultimate decision?

23 MS. REED: It's - - - it's the same authority,  
24 Judge, it's the same original interest of justice  
25 jurisdiction. And in fact, that's what happened in - - -

1 that's what happened in Brenda W.W. between the majority  
2 and the dissent. So they're - - - they're exercising their  
3 same fact-finding ability as the sentencing court judge.  
4 They - - - both - - - all - - - the entire bench actually  
5 agrees all the way through, until you get to do the facts  
6 support finding that the sentence is unjust.

7 The majority decision says it's a close call.  
8 But based on the history of the violent relationships that  
9 they're going to find, based on the totality of  
10 circumstances, that the sentence is unjust. The dissent  
11 says they wanted to see remorse, and they didn't feel the  
12 factual record supported remorse sufficient to reduce the  
13 sentence.

14 JUDGE CANNATARO: So I just want to be clear in  
15 your response to the question Judge Garcia argued. Even  
16 that determination would be beyond our review, if the  
17 appropriate standard is interests of justice; is that  
18 right?

19 MS. REED: Yeah. Well, our argument is that  
20 Brenda W.W. didn't raise an issue of law. And so ergo, no  
21 jurisdiction for the Court of Appeals. Further, it was a  
22 mixed issue of fact and law. And that the - - -

23 CHIEF JUDGE WILSON: I think Judge Cannataro was  
24 trying to get something a little different.

25 MS. REED: Okay.

1 CHIEF JUDGE WILSON: So suppose we settle - - -  
2 suppose we agree with you, right? That the - - - that  
3 everything here that the Appellate Division is doing in  
4 reviewing the DVSJA applications is review is on abuse - -  
5 - sorry, it's on interest of justice. Right? Once that  
6 standard is - - - is determined, then none of these will  
7 ever be reviewable by the Court of Appeals for anything; is  
8 that right? As long as you're using the - - - that  
9 standard?

10 MS. REED: Yes.

11 CHIEF JUDGE WILSON: So your interpretation of  
12 the statute is it's meant - - - it's meant really not to  
13 have any review by the Court of Appeals, once the correct  
14 standard is determined?

15 MS. REED: Yes. And unless there's - - -

16 CHIEF JUDGE WILSON: If the standard is the one  
17 you're advocating?

18 MS. REED: Yes. Unless there's an error of law.  
19 Similar to - - -

20 CHIEF JUDGE WILSON: Well, the error - - - what  
21 could the error of law be?

22 JUDGE CANNATARO: What would be the error?

23 MS. REED: I - - - as a defense counsel, I always  
24 want to leave that opening. But it's very similar to if -  
25 - -

1 CHIEF JUDGE WILSON: But what could an example of  
2 an error of law be?

3 MS. REED: Well, if - - - I would say the - - -  
4 the - - - the DVSJA interest of justice finding, if - - -  
5 if the Appellate Division finds, yes, sentence unjust; no,  
6 sentence unjust, then it's the same conundrum as if I had  
7 done a harsh and excessive - - -

8 CHIEF JUDGE WILSON: No, no. But let's take the  
9 first prong, for example.

10 MS. REED: Right.

11 CHIEF JUDGE WILSON: That is, there's absolutely  
12 no record evidence of any domestic violence and the  
13 Appellate Division says we find record - - - you know, this  
14 first prong satisfied, right?

15 MS. REED: Right.

16 CHIEF JUDGE WILSON: Under your view, because  
17 that was done under interest of justice jurisdiction, we  
18 can't review that at all, even if there's no evidence.

19 MS. REED: Because the prongs are criteria  
20 similar to the YO criteria. So - - - so it's - - -

21 JUDGE GARCIA: So it seems - - - to - - - to  
22 follow up on the Chief Judge's - - - what I was trying to  
23 get at earlier. Those first three prongs, at least the  
24 first two, seem like - - -

25 JUDGE CANNATARO: Factual.

1 JUDGE GARCIA: - - - factual determinations.

2 MS. REED: Right.

3 JUDGE GARCIA: And usually if that happens - - -  
4 we don't have fact-finding power here, obviously.

5 MS. REED: Right.

6 JUDGE GARCIA: But as the Chief Judge was saying,  
7 we do have the authority to look and say you made a factual  
8 finding and there is absolutely no support for that in the  
9 record. Would we have that authority here under your  
10 review standard?

11 MS. REED: No. Because they're not threshold  
12 questions. You don't - - - the - - -

13 JUDGE RIVERA: So if they're not threshold  
14 questions, what are they? You cannot get to the third  
15 prong if you haven't walked through the first two. Or do  
16 you think they can always jump to the third prong; don't  
17 even waste their time on the first two, if their ultimate  
18 conclusion is going to be it's not unduly harsh?

19 MS. REED: They have to get to all three. There  
20 - - - there're "ands" between. The - - - the statute is  
21 actually written with an "and" between (a) - - -

22 JUDGE RIVERA: Well, okay. But if - - - if - - -

23 MS. REED: Right.

24 JUDGE RIVERA: - - - taking the hypothetical.

25 MS. REED: Right.

1 JUDGE RIVERA: If - - - if at the first - - -

2 MS. REED: Right.

3 JUDGE RIVERA: - - - prong they don't find that  
4 she's a victim of domestic violence - - -

5 MS. REED: Right.

6 JUDGE RIVERA: - - - why are they going about the  
7 business of considering the next two?

8 MS. REED: They - - - they're going to look at -  
9 - - they're going to look at all three. If you don't get  
10 all three, if you don't achieve in (a) - - -

11 JUDGE RIVERA: But - - - but - - -

12 MS. REED: - - - or you don't - - - you - - -

13 JUDGE RIVERA: - - - the point is - - -

14 MS. REED: - - - then you don't - - -

15 JUDGE RIVERA: - - - if you haven't gotten past  
16 (a) - - -

17 MS. REED: Right.

18 JUDGE RIVERA: - - - why are you looking at (b)  
19 and (c)?

20 MS. REED: You're going to look at (a), (b), and  
21 (c), and if you don't get any of those - - - if you don't  
22 get one of those - - -

23 JUDGE RIVERA: I understand.

24 MS. REED: - - - you don't get that.

25 JUDGE RIVERA: Your point is you got to have all

1 three for a resentencing under the statute.

2 MS. REED: Yes.

3 JUDGE RIVERA: My point is, since you have to  
4 have all three - - -

5 MS. REED: Right?

6 JUDGE RIVERA: If you don't have the first one,  
7 why are you even looking at the other two?

8 MS. REED: You - - - well, you - - - so - - -

9 JUDGE RIVERA: It's not - - - I - - - I don't  
10 view it as a holistic analysis other than the third prong  
11 in the same way - - -

12 MS. REED: Oh.

13 JUDGE RIVERA: - - - like you do. Each one seems  
14 to have particular, using your word "criteria" - - -

15 MS. REED: Right.

16 JUDGE RIVERA: - - - that the court has to  
17 consider in making its determination.

18 MS. REED: Right. I see them as holistic. That  
19 you have to have the three to reduce the sentence. Because  
20 the DVSJA - - -

21 JUDGE SINGAS: So if it's your position that if  
22 they fail at one and they fail at two, does - - - does - -  
23 - they - - -

24 MS. REED: Not - - -

25 JUDGE SINGAS: - - - cannot, in their interest of



1 justice, reduce the defendant's sentence?

2 MS. REED: Not under the DVSJA. Right?

3 JUDGE HALLIGAN: So in that regard, it's not like  
4 - - - you know, sometimes one will see a multifactor  
5 balancing test. There might be three factors. They weigh  
6 in different - - - in different directions. And so you  
7 might not do well on factor 1. But if you do great on  
8 factors 2 and 3, you might still get the result that you  
9 want. But I take it you agree that if you don't satisfy  
10 step one, there's no need to go any further. And the same  
11 with step two; there's no need to go any further.

12 MS. REED: Because the resentencing is under this  
13 particular statute, the application - - -

14 JUDGE HALLIGAN: Under this statute - - -

15 MS. REED: Right.

16 JUDGE HALLIGAN: - - - that's what I mean.

17 MS. REED: Right. And - - - and the idea it's a  
18 - - - it's a domestic violence statute, so the legislature  
19 wrote it to say, if we're going to give compassionate  
20 relief to a domestic violence survivor, you have to be a  
21 domestic violence survivor.

22 JUDGE HALLIGAN: So - - - so you start with the  
23 first step and only if you satisfy that, do you go to the  
24 second, and then, the same with the third?

25 MS. REED: No. I think (a) and (b) have to be

1 looked at together. I - - - I - - - I think you - - - you  
2 - - -

3 JUDGE RIVERA: Let's say we disagree with you.

4 MS. REED: Okay.

5 JUDGE RIVERA: Let's say we don't read it that  
6 way.

7 MS. REED: Okay.

8 JUDGE RIVERA: Okay.

9 MS. REED: Right.

10 JUDGE RIVERA: If we disagree with you - - -

11 MS. REED: Right.

12 JUDGE RIVERA: - - - what is your position  
13 regarding the standard?

14 MS. REED: It doesn't change the - - -

15 JUDGE RIVERA: It is still - - -

16 MS. REED: - - - interests of justice.

17 JUDGE RIVERA: - - - interests of justice, even  
18 if we disagree with you that this is not looking at all  
19 three simultaneously, but rather walking through them in a  
20 particular order?

21 MS. REED: Right. Because it's still an "and"  
22 that connects them. It's not - - - it does not stru - - -

23 JUDGE RIVERA: And - - - and why does the "and"  
24 justify the use of interest of justice jurisdiction?

25 MS. REED: It's - - - it doesn't structurally - - -

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JUDGE RIVERA: Because the last step, in your view, is so clearly about interest of justice jurisdiction, so the other two must, of course, be about interests of justice jurisdiction as a standard?

MS. REED: Yes. It doesn't structurally - - -

JUDGE RIVERA: If we disagree with you about that, what is your default as to what would be the standard for steps one and two?

MS. REED: I still would maintain that it's interest of justice, and I would refer back to the discussion that - - - that happens in Addimando for that. Right? Because when you look at the Addimando decision and the court is walking through - - - the Second Department is walking through the - - - the factual - - - the facts of the Addimando decision is all about the facts. And as the court is walking through the facts in the Addimando decision, it specifically says that the review of those facts, the review of (a) and the review of (b), is going to lead the court to an interest of justice determination. They cite to Delgado. Right? And - - - and the Second Department says regardless of what the sentencing court did, or the trial court did, in our jurisdiction, as the Appellate Division, we're going to review the facts anew and we're going to make our determination on whether the -

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JUDGE TROUTMAN: So your position is that regardless if there is a case - - - not your case, another case - - - there is clearly a record of domestic violence, yet the court says there's none the - - - it will never get to the Court of Appeals?

MS. REED: So if the - - -

JUDGE TROUTMAN: You - - - you said everything is interests of justice.

MS. REED: Right. In - - -

JUDGE TROUTMAN: So it never gets to the Court of Appeals, correct?

MS. REED: It would not get to the Court of Appeals, and - - -

JUDGE TROUTMAN: And so that person would have no relief?

MS. REED: The - - - the person has relief in the Appellate Court which - - -

JUDGE TROUTMAN: The Appellate Division says no.

MS. REED: In - - - in their - - -

JUDGE TROUTMAN: But the record says the opposite. You're saying that record cannot be reviewed?

MS. REED: There are going to be times when the review of the record is done with an error as a matter of law. For example, if the Appellate Court, in its record



1 review, relies on a report or evidence or an interpretation  
2 of evidence that isn't correct as a matter of law, right?

3 Then - - -

4 JUDGE HALLIGAN: But what does that mean,  
5 exactly? That they rely on evidence that is incorrect as a  
6 matter of law?

7 MS. REED: What if they substituted their  
8 judgment for that of the psychologist?

9 JUDGE HALLIGAN: Well, to - - - to take what I  
10 believe Judge Troutman's hypothetical to be, if there - - -  
11 I'm not sure exactly what you mean by an error of law. But  
12 if there is not what one might call an error of law, I take  
13 it your position is that there is no review by this court,  
14 even if the record completely belies whatever the Appellate  
15 Division says it does.

16 MS. REED: If the - - - if the record belied what  
17 the - - - if the record belied what the Appellate Division  
18 said it does, I would think that there would be errors of  
19 law in - - - in that. Right? Because - - - because errors  
20 of law - - -

21 JUDGE HALLIGAN: Well, it depends on what that  
22 means, I guess. I'm - - - I'm not sure.

23 MS. REED: But an error of law can come about  
24 through evidentiary errors.

25 JUDGE CANNATARO: Counsel, can I just go back one



1 second to your question about how you analyze the prongs in  
2 the DVSJA? I'm looking at it now, and - - - and you seem  
3 to put a lot of weight on the - - - on the word "and" and  
4 how it joins the provisions. And I don't see an "and"  
5 anywhere in the statute.

6 MS. REED: It - - - the "and" is in between 1 sub  
7 (b) and 1 sub (c). It says 1 sub - - - sub - - -  
8 subdivision (a)1.

9 JUDGE CANNATARO: (b), as in, "Such abuse was a  
10 significant contributing factor to the defendant's criminal  
11 behavior."

12 MS. REED: And then, it goes to (c).

13 JUDGE CANNATARO: I don't - - - I don't see that  
14 "and".

15 MS. REED: Oh.

16 JUDGE CANNATARO: Are you sure it's there?

17 MS. REED: I am not now, Judge. I apologize.

18 CHIEF JUDGE WILSON: Your red light is on, but  
19 could I ask you to spend a minute on the PRS question?

20 MS. REED: Yes.

21 CHIEF JUDGE WILSON: Because the statute does  
22 seem on its face to say that there's a mandatory term of  
23 PRS following a resentencing under the act?

24 MS. REED: Right. And in this case I went back  
25 and looked, in addition to the statute, but looked to the

1 actual dates of things. So in a determinate sentence, PRS  
2 is a required sentencing piece. And that PRS period is  
3 actually - - - so if you're sentenced to twenty years  
4 determinate plus five years post-release supervision, the  
5 statute says that your sentence is the twenty-five years.  
6 And in fact, when you have that release at the twenty years  
7 to go serve your PRS, it doesn't work like parole. There's  
8 no technical or nontechnical violation. If there's a  
9 violation during your PRS, you're immediately remanded back  
10 to finish your period of incarceration.

11 So for all intents and purposes, PRS is  
12 incarceration just not within the four walls of DOCCS. In  
13 here, when the Appellate Division calculated Brenda's  
14 sentence reduction, the number of years she had actually  
15 served when she was released was fifteen. When we had the  
16 order for her release - - - we obtained that on December  
17 22nd, 2023, Brenda's earliest release date would have been  
18 January 26th.

19 JUDGE RIVERA: Well, it's certainly - - - yes.  
20 The - - - the - - - the new sentence on the resentencing;  
21 she's already served that time.

22 MS. REED: Right.

23 JUDGE RIVERA: But wouldn't that seem that the  
24 legislature would have been aware, once it passed this  
25 statute, that there would be individuals like the defendant

1 who would indeed have served so many years already in the  
2 past - - - right? That they will have exceeded the time -  
3 - - the incarceratory time under the resentence? One would  
4 think then they would indicate that PRS would not apply to  
5 such an individual.

6 MS. REED: It's my assumption that when the  
7 statute was drafted, that they were relying on statutory  
8 language for PRS that was already written.

9 JUDGE RIVERA: But they made other amendments;  
10 you heard counsel. They made other amendments that would  
11 suggest that - - -

12 MS. REED: Right.

13 JUDGE RIVERA: - - - this was either not an error  
14 or this is not - - - what you're arguing is not what they  
15 intended.

16 MS. REED: Oh, I see, Judge. So why - - - the  
17 question really is fundamentally, why didn't they just make  
18 an amendment to PRS to clarify?

19 JUDGE RIVERA: Yes.

20 MS. REED: Correct? I - - - I - - - I don't  
21 know. I think they were - - - I think that they would have  
22 been relying on the PRS statute, which would have said it's  
23 part of the determinate sentencing; ergo, it's really a  
24 twenty-five-year sentence as opposed to a twenty-year  
25 sentence. And so if you're released - - - if your

1 resentencing is for eight years and you've already served  
2 twenty-five, we're going to calculate that five - - - PRS  
3 isn't - - - PRS in its practical stance is supervisory in  
4 nature, but it's a period of - - - it is a period of  
5 sentencing. So - - - so I don't think that we should turn  
6 it into something it's not.

7 CHIEF JUDGE WILSON: Thank you.

8 MS. REED: Thank you. Sorry.

9 JUDGE GARCIA: Counsel - - -

10 MR. RODGERS: The Domestic Violence Survivor - -  
11 -

12 JUDGE GARCIA: - - - I'm sorry, Counsel, just to  
13 quickly ask you. If - - - assume for the moment, that this  
14 is some type of fact-finding authority in at least the  
15 first two prongs, and that comes to us - - - in this case,  
16 right? And our standard of review is limited to is there  
17 support in the record or is there no support in the - - -  
18 can you point to anything that the majority in the  
19 Appellate Division found, that is unsupported by the record  
20 under that standard of review?

21 MR. RODGERS: I think the Appellate Division  
22 found and gave credit to a lot of discredited testimony in  
23 this case. Whereas they relied many times on the  
24 defendant's trial testimony, which was rejected by the  
25 jury. Or that the defendant had remorse, which was



1 rejected by the sentencing judge. So I think there's  
2 plenty of facts in this case.

3 I would also note that the last concrete spoken-  
4 to domestic violent incident happened a year and a half  
5 before the crime in this case. All the other instances of  
6 domestic violence came from statements from the respondent,  
7 or they were spoken into the record from people who heard  
8 about it from the respondent. When you look at DVSJA, it  
9 was intended to give - - - empower local court judges to  
10 have discretion. That's highlighted in the statutory  
11 history, in the conversations where almost every question  
12 was met with a hedge of, yes, but of course, we're giving  
13 the discretion to the county court judge.

14 I also want to highlight that it gives it back to  
15 the original judge who heard the initial proceedings, and  
16 that's about as far away from an Appellate Division court  
17 on the papers, as one can get. When the Appellate Division  
18 here, reviewed this case, they did so with the wrong  
19 standard of review. It should be an abuse of discretion.

20 I would ask this court, under its power under  
21 470.40 subdivision 1(a), to remit it to the county court to  
22 impose the original sentence. In the alternative, if you  
23 believe the facts have not been established, you can remit  
24 it to the Appellate Division to make a decision consistent  
25 with your finding. Thank you very much.

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CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Brenda W.W., No. 46 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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