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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE EX REL. WELCH,

Appellant,

-against-

NO. 53

MAGINLEY-LIDDIE,

Respondent.

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20 Eagle Street  
Albany, New York  
May 14, 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

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: The first case on today's  
2 calendar is People ex rel. Welch v. Maginley-Liddie.

3 Counsel.

4 MS. WELCH: For the appellant, Legal Aid Society  
5 by Danielle Welch. May it please the court.

6 The Appellate Division erred in two ways - - -

7 CHIEF JUDGE WILSON: Counsel, do you wish to save  
8 any time for rebuttal?

9 MS. WELCH: Oh, I'm so sorry. Yes, I would like  
10 to save two minutes for rebuttal, please.

11 CHIEF JUDGE WILSON: Sure.

12 MS. WELCH: Thank you.

13 The Appellate Division erred in two ways. First,  
14 by finding that out on bail was a qualifying status for the  
15 purposes of CPL 510.10(4)(t); and second, by finding that  
16 the requirements of that statute were otherwise met,  
17 particularly the requirement of demonstrating reasonable  
18 cause.

19 A case on which bail has been set and posted is  
20 not eligible as the basis for a (4)(t) application, simply  
21 because the legislature did not authorize that. The key -  
22 - -

23 JUDGE SINGAS: But the legislature put in  
24 nonmonetary to qualify conditions in (4)(t) toward the  
25 latter part of that. How do you reconcile that with your

1 position?

2 MS. WELCH: Well, Your Honor, the key question in  
3 interpreting the phrase is which omission matters because  
4 neither nonmonetary nor bail appears in the statute that is  
5 being interpreted today. In interpreting 510.10(4)(t), the  
6 prosecution and the Appellate Division focused on the  
7 omission of the word nonmonetary, but the crucial omission  
8 is the omission of the word bail. When the legislature  
9 wishes for bail to be included, they do so explicitly - - -

10 JUDGE CANNATARO: Is there a difference between a  
11 monetary condition and bail, or is there something that  
12 would be a monetary condition to release that's not bail?

13 MS. WELCH: I am not aware of any monetary  
14 conditions other than bail.

15 JUDGE CANNATARO: So wouldn't the absence of  
16 nonmonetary then imply that bail might be part of the - - -  
17 part of the consideration when you're talking about  
18 conditions?

19 MS. WELCH: If we were viewing this one line in a  
20 complete vacuum, that is a plausible reading. However, we  
21 have to construe statutes in the context of how they appear  
22 as a whole. When the legislature wants bail to be an  
23 included status, they say so explicitly. There are at  
24 least seven sections throughout the collected bail statutes  
25 where - - -

1           JUDGE GARCIA: But they could do it different  
2 ways, right? They don't always have to do it the same way.  
3 And this is kind of a unique statute, right? So here it's  
4 release. These are the various ways you were released.  
5 Nonmonetary, monetary conditions, it - - - you know,  
6 released on your own recognizance. So why isn't that a  
7 logical reading of the statute? Particularly, I think, as  
8 Judge Singas said, where they used nonmonetary where they  
9 want to use nonmonetary in this statute.

10           MS. WELCH: Because there are at least twenty  
11 other examples of conditions appearing without the  
12 modifier, nonmonetary, in context - - -

13           JUDGE GARCIA: I've looked at those, and they  
14 seem to all be an implied condition. So in the beginning,  
15 they mentioned nonmonetary, and then later in the statute  
16 or - - - it says nothing. It says no modifier. But the  
17 modifier is implied from the context there. But the  
18 opposite seems to be true here, where the lack of a  
19 modifier in the initial and the use of it later implies the  
20 opposite.

21           MS. WELCH: If the legislature wanted for bail to  
22 be included, as Your Honor suggested, there are certainly  
23 different ways to do it, and there are many different ways  
24 that the legislature did do that, including in language  
25 that preexisted at the time that this section was drafted.

1           What they have never done is unambiguously rolled that into  
2           the word conditions. They have done it in various ways.  
3           They have said when a person is at liberty as a result of a  
4           securing order, which unambiguously encompasses any  
5           securing order, they have included bail explicitly. What  
6           there is not an example of is conditions clearly,  
7           unambiguously, including out on bail. And there is not  
8           support, when you look at the statute as a whole, to read  
9           it this way, particularly given that that reading would  
10          render the majority of the phrase that it is found in  
11          superfluous.

12                   JUDGE SINGAS: So do you think there's no  
13          difference between nonmonetary conditions and conditions?

14                   MS. WELCH: I think that when the legislature is  
15          using the word conditions, and specifically in this  
16          section, under conditions, they are referring to  
17          nonmonetary conditions.

18                   JUDGE SINGAS: So in your view, it's the same  
19          thing. It has to be, right? Nonmonetary conditions and  
20          conditions. And can you point us to anywhere that the  
21          legislature meant that?

22                   MS. WELCH: Yes.

23                   JUDGE SINGAS: Otherwise, why would they include  
24          the words nonmonetary conditions if it's the same thing?

25                   MS. WELCH: I agree that it certainly would have

1           been more clear if they had included nonmonetary. However,  
 2           because of how it was drafted, the courts are required to  
 3           either read in nonmonetary or to read in bail, and it is  
 4           clear throughout the statute that when bail is intended, it  
 5           is done explicitly.

6                       As to your question about examples, there are, as  
 7           I mentioned, at least twenty, and most of those appear in  
 8           contexts that can only be understood to refer to  
 9           nonmonetary conditions. For example, in 510(3-a) and 300 -  
 10          - - or sorry - - - 510(3-b), conditions appears without the  
 11          modifier, nonmonetary, eight separate times, and those  
 12          provisions define - - -

13                      JUDGE TROUTMAN: Well, how about the fact that it  
 14          - - - it's not defined, the statutory definition, but  
 15          what's to prevent use of its ordinary meaning to include  
 16          bail.

17                      MS. WELCH: Certainly. What prevents that is how  
 18          this word is used throughout the statute. And although the  
 19          Appellate Division cited to the provision that defines cash  
 20          bail, the language there actually says that the person is  
 21          released upon the condition. And although I recognize that  
 22          that sounds incredibly nuanced, upon the condition is  
 23          clearly using the word - - -

24                      JUDGE TROUTMAN: So if you post a monetary bail -  
 25          - -

1 MS. WELCH: Yes.

2 JUDGE TROUTMAN: - - - doesn't matter what you do  
3 thereafter, you - - - it - - - you're not captured by the  
4 statute. Is - - - is - - - is that your - - - your view?

5 MS. WELCH: Yes. That is my - - -

6 CHIEF JUDGE WILSON: And so could - - - could - -  
7 -

8 JUDGE TROUTMAN: And so you're only - - - so you  
9 don't have conditions because you posted monetary, but if  
10 you have a nonmonetary, then you're covered.

11 MS. WELCH: Right. Because this gets at the two  
12 separate definitions of conditions, which I believe the  
13 Appellate Division improperly conflated when they cited to  
14 the definition of cash bail. It - - -

15 CHIEF JUDGE WILSON: Can I ask you a - - - sorry  
16 here - - - a practical question?

17 MS. WELCH: Sure.

18 CHIEF JUDGE WILSON: So Mr. Ortiz is out on bail  
19 in the Bronx.

20 MS. WELCH: Yes.

21 CHIEF JUDGE WILSON: He then goes and allegedly  
22 uses a credit card and is charged with things in Queens, if  
23 I have that right. Why couldn't the People go back to the  
24 court in the Bronx and say, pull his bail or increase it?

25 MS. WELCH: They can do that. And I believe that

1 that is what the legislature was actually intending to set  
2 up when they excluded bail from 510.10(4)(t).

3 JUDGE GARCIA: But let's say - - - and the  
4 statute clearly applies to - - - by its terms, it applies  
5 to underlying crimes that are both bail eligible and not  
6 bail eligible, right?

7 MS. WELCH: Yes.

8 JUDGE GARCIA: It does - - - it - - - it says it  
9 does. So why wouldn't that also be true in the case where  
10 in the Bronx, let's say, a person has a bail eligible  
11 offense, but the judge exercises the judge's discretion and  
12 says, I'm not going to set bail; I'm going to release you  
13 on conditions. Now, they're arrested in Queens on a  
14 qualifying charge under (t). Why couldn't the same thing  
15 be said? Why don't you just go back to the judge in the  
16 Bronx and say, it's a bail qualifying offense; why don't  
17 you set bail now?

18 MS. WELCH: Certainly.

19 JUDGE GARCIA: You could do that, right?

20 MS. WELCH: You could set bail if cash bail had  
21 not been set - - -

22 JUDGE GARCIA: Right.

23 MS. WELCH: - - - even though it was a qualified  
24 offense - - -

25 JUDGE GARCIA: So - - - but in your view of the

1 statute, you could also go in the other district, let's say  
2 Queens, and fall under (t) because the person is in bail.

3 MS. WELCH: Yes.

4 JUDGE GARCIA: So doesn't that somewhat undercut  
5 that the theory of this is you can just go to the first  
6 court and ask for bail or bail to be revoked when you could  
7 kind of do the same thing as long as it's a qualifying  
8 offense, right?

9 MS. WELCH: What the legislature did by omitting  
10 bail from (4) (t) is they actually set up a thoughtful  
11 system in which the discretion to impose additional cash  
12 bail goes to the judge, who is in a better position to  
13 judge whether or not the rearrest impacts the risk of  
14 flight.

15 In this example, Mr. Ortiz's Bronx case was  
16 undeniably more serious than the one in Queens, and the  
17 judge who was presiding over that matter has been on this  
18 case, is aware of those facts, and - - -

19 JUDGE GARCIA: And that is all relevant to the  
20 Bronx charge.

21 MS. WELCH: Yes.

22 JUDGE GARCIA: But this applies to the new  
23 charge. So you're giving discretion to the judge facing  
24 this defendant in a new charge to make that assessment with  
25 respect to what is now a bail-eligible crime, which

1 wouldn't otherwise be, except for (t). It's a different  
2 calculation, right? It's are you going to appear for this  
3 charge, not are you going to appear in the Bronx, right?

4 MS. WELCH: It is, but it's also a securing order  
5 that doesn't exist in a vacuum, because the judge is, by  
6 virtue of the wording of this exception, considering both  
7 cases. Now, when the legislature was enacting (4)(t), the  
8 legislate - - -

9 JUDGE TROUTMAN: But when you have the new  
10 charge, the person gets separately arraigned, and that  
11 judge, who the accused is brought before, has to determine  
12 a status of release, correct?

13 MS. WELCH: Yes.

14 JUDGE TROUTMAN: And we would agree that if the  
15 charge standing alone is not bailable, the judge can't set  
16 bail, correct?

17 MS. WELCH: Yes.

18 JUDGE TROUTMAN: However, what prevent - - -  
19 where is it noted in the statute that that judge, on that  
20 new charge, because of the other offense, what prevents  
21 that judge from now exercising the ability to set bail  
22 pursuant to the statute?

23 MS. WELCH: What would prevent them from  
24 exercising discretion is if the individual had already  
25 posted cash bail on another matter. If you look at the

1 purpose of this amendment and go back to the legislative  
2 history - - -

3 JUDGE TROUTMAN: So but for the cash component,  
4 that's what you're saying prevents the new judge from use -  
5 - - utilizing the statute.

6 MS. WELCH: Very simply, what the legislator had  
7 - - - legislature has set up is a thoughtful system in  
8 which if additional cash bail is going to be imposed, then  
9 that decision must be made by the court that has more  
10 information - - -

11 JUDGE TROUTMAN: But why wouldn't an argument be  
12 had, I have a new charge. I otherwise don't have the  
13 ability to set bail because it's not an aailable offense.  
14 But now, I have information; this person has a charge  
15 pending. There is a statute that says I get to consider  
16 that in conjunction with this case that is my case and the  
17 circumstances under which it is alleged. Why is that  
18 offensive to what the legislature was doing?

19 And in other words, they're just simply providing  
20 two different avenues. One, you could go back to the  
21 original judge, get bail revoked under that jurisdiction.  
22 But two, the new judge now has the ability to set bail  
23 because of the fact of the statute allows them to consider  
24 the first offense.

25 MS. WELCH: Because the purpose was to close a

1           loophole that, under the original reforms, a person could  
2           be arrested an unlimited number of times on nonqualifying  
3           offenses and never be eligible for bail. However, when the  
4           legislature was doing these amendments, they were not  
5           seeking to radically expand the number of people who were  
6           incarcerated pre-trial. And so what they landed on was a  
7           system that balances not imposing additional cash bail on  
8           the basis of a charge that is not qualifying. And let's be  
9           clear, it is not qualifying because these are the sorts of  
10          crimes that rarely result in jail time even if convicted.

11                   JUDGE HALLIGAN: So it - - - it seems to me that  
12          - - - that there are textual arguments on both sides here -  
13          - -

14                   MS. WELCH: Yes.

15                   JUDGE HALLIGAN: - - - right. So why is it that  
16          we should read the text as you say? I think each side has  
17          some challenges with their interpretation. Is there  
18          something about the legislative history or the practical  
19          workings of - - - of the scheme? What, in your view,  
20          weighs more heavily in your favor?

21                   MS. WELCH: Both of those things weigh in my  
22          favor. The legislative history is clear that they were  
23          trying to close that specific loophole. Senator Palumbo,  
24          during the debates, specifically raised the question of  
25          somebody who is never eligible for cash bail, no matter how

1           - - - I believe she phrased it as if they pick up a  
2 nonqualifying offense every single day of the year, they  
3 cannot have bail set.

4           And so that reading is consistent with excluding  
5 bail because the person already has bail, and there are  
6 systems in place to modify it that provide greater due  
7 process and put the judge in the better position to assess  
8 the impact of this less serious nonqualifying offense on  
9 the existing flight risk.

10           JUDGE SINGAS: But that - - - but that loophole  
11 is not entirely closed, right? Because under 530.60, you  
12 can only modify the bail if it's a certain type of bail,  
13 like if you're intimidate - - - a certain type of crime, if  
14 you're intimidating a witness. There will still be crimes  
15 that will not be eligible for modification. So your theory  
16 that they did it just to close this loophole has a hole in  
17 it, right, because it doesn't cover everything.

18           MS. WELCH: Respectfully, no. Only 530.60(2) has  
19 those specific restrictions.

20           JUDGE SINGAS: Okay.

21           MS. WELCH: The judge can go under 530.60(1) to  
22 specifically assess whether there is good cause based on  
23 this rearrest.

24           And just, if I may briefly address reasonable  
25 cause, because I think it is connected.

1 CHIEF JUDGE WILSON: Okay.

2 MS. WELCH: When the judge is evaluating a  
3 modification, they are considering everything. They know  
4 how many times a person has come to court. They know the  
5 details of what's going on in that first case. A judge  
6 sitting in arraignments has almost no information about  
7 that case, and that is especially true here where they had  
8 literally not even a complaint. And so putting the burden  
9 on the judge in arraignments, who has nothing outside of  
10 the complaint, to assess this flight risk and evaluate what  
11 this actually means, is not the best placement of  
12 discretion for evaluating that person's risk of flight.

13 CHIEF JUDGE WILSON: Thank you.

14 MS. WELCH: Thank you.

15 MR. BRANIGAN: Good morning, Your Honors.  
16 William Branigan, for the office of District Attorney Katz.  
17 May it please the court.

18 Your Honors, the arraignment judge properly set  
19 bail on the defendant in this case under section  
20 510.10(4)(t) because the defendant had been released on a  
21 condition. That condition being bail.

22 JUDGE RIVERA: But it does - - - Counsel, it does  
23 seem odd that - - - the legislature knows that bail is  
24 different - - - uses that phrase to - - - for it to be  
25 absolutely absent from this section.

1 MR. BRANIGAN: I - - - Your Honor, bail is absent  
2 from the section, but so is - - - is nonmonetary. So  
3 conditions is a broad word. And bail is used in  
4 conjunction with the conditions including in the - - - in  
5 the section - - - I think it's - - -

6 CHIEF JUDGE WILSON: But - - -

7 MR. BRANIGAN: - - - 510.10(4)(t) - - - that  
8 lists conditions as - - - oh - - -

9 CHIEF JUDGE WILSON: But I think you're reading  
10 conditions out of the - - - out of the statute entirely.  
11 That is, at least as I understood the argument you started  
12 to make, if we struck the word released on condition - - -  
13 keep "release" and struck "on conditions," your argument  
14 would still be the same. That is, if an - - - a defendant  
15 is released, then the subsequent court can set bail.

16 MR. BRANIGAN: Well, I agree with Your Honor. If  
17 you - - - if you had no conditions and it just said,  
18 "released," then yes.

19 CHIEF JUDGE WILSON: It'd be the same as your  
20 interpretation.

21 MR. BRANIGAN: Yes.

22 CHIEF JUDGE WILSON: So you're reading on  
23 conditions out of the statute? It's superfluous.

24 MR. BRANIGAN: Your Honor, I can - - -

25 CHIEF JUDGE WILSON: Well, the statute would mean

1 the same thing whether we had those words or didn't.

2 MR. BRANIGAN: Well, I - - - Your Honor, I'd - -  
3 - I'd put it this way. I - - - I can't think right now of  
4 a - - - if it's recognizance conditions or - - -  
5 recognizance conditions or something else. I don't know  
6 what else - - -

7 CHIEF JUDGE WILSON: Well, it couldn't be escape,  
8 presumably. We wouldn't count that as released.

9 MR. BRANIGAN: No. No, Your Honor. So I - - -  
10 but I - - - I - - - I - - - I agree - - -

11 CHIEF JUDGE WILSON: Is there some other way to  
12 get out?

13 MR. BRANIGAN: - - - I agree. If they had just  
14 had released, it would essentially be - - - it would  
15 essentially be the same. You could say - - - you could say  
16 just release.

17 But Your Honor, "conditions" here, is used alone.  
18 It should be given its plain meaning. And I'd note that  
19 nonmonetary conditions actually has a meaning. It's  
20 defined in the statute; whereas, conditions is not defined  
21 in the statute. So where we have - - - where we have only  
22 conditions, we should start out by giving conditions its  
23 plain meaning.

24 JUDGE RIVERA: Why - - - why isn't it based on  
25 the structure of the bail reform? That when - - - when the

1 legislature means bail, it says bail, and conditions  
2 usually means these nonmonetary conditions.

3 MR. BRANIGAN: First, Your Honor, I'd say this  
4 was a - - - this was a reformed -- reform. And here, they  
5 - - - they chose to - - - to use this word. The word has -  
6 - - has a plain meaning, which goes to a requirement on the  
7 release. And here, bail is both a requirement in the sense  
8 that they have to post bail and that they forfeit that  
9 money should they violate the - - - the court order - - -

10 JUDGE RIVERA: So -- - I'm sorry - - - so - - -  
11 that's good. I want to ask you too. So the condition is  
12 both the posting of the bail as well as the potential to  
13 forfeit the funds?

14 MR. BRANIGAN: Your Honor, I'd say that in - - -  
15 in two different parts of the statute - - - so in - - - in  
16 510.10(4)(t), we can - - - we can look at - - -

17 JUDGE RIVERA: Uh-huh.

18 MR. BRANIGAN: - - - the posting of the bail as a  
19 condition for release. And in a separate section, the - -  
20 - I think it's 510.10(10) - - - it talks about the - - - it  
21 talks about the about the forfeiture as a condition to the  
22 bail. So I'd - - - I'd say yes, Your Honor. Posting the  
23 bail and then maintaining those conditions in - - - with  
24 the unique idea that you'll lose your money should you - -  
25 - should you violate those conditions. I - - -

1 JUDGE RIVERA: Is that a condition or a  
2 consequence?

3 MR. BRANIGAN: Well, it's - - - I - - - I guess  
4 the - - - the losing the money is - - - is a consequence,  
5 Your Honor. So the bail itself is a condition. Losing the  
6 money is a - - -

7 JUDGE RIVERA: So the condition is you'll be at  
8 liberty if you can find this amount of money that you would  
9 forfeit - - - that would be the consequence - - - if you  
10 don't show up.

11 MR. BRANIGAN: Well, I'd say yes. Posting the  
12 bail - - - I'd say that the release is on the condition  
13 that you post bail, and that bail - - - and I - - - but it  
14 - - - it is a condition because the bail - - - you do risk  
15 forfeiture beforehand, and so that is - - - that - - - that  
16 is essentially part of the - - - part of a bail condition,  
17 yes.

18 JUDGE HALLIGAN: What is your - - -

19 JUDGE RIVERA: Let me ask you this about another  
20 part of (t), which I will also ask on rebuttal of - - - of  
21 your friend on the other side. Later in - - - in - - - in  
22 (t) it says, provided, however, that the prosecutor must  
23 show reasonable cause - - - I'm sorry. Not about  
24 reasonable cause - - - I'm sorry - - - for - - - for the  
25 purposes of this paragraph - - - that's (t) - - - any of

1 the underlying crimes need not be a qualifying offense as  
2 define - - - as defined in this subdivision. Does that in  
3 any way inform the fact that bail is not expressly referred  
4 to earlier in the subparagraph?

5 MR. BRANIGAN: Well, I - - - I'd say that it - -  
6 - it need - - - I'd say that's an expansive term. It - - -  
7 it does not have to be a - - - it's saying it does not have  
8 to be one of those qualifying offenses. So it - - - it  
9 could be - - - it could be a qualifying or not qualifying  
10 offense to - - - to begin with.

11 JUDGE RIVERA: But - - - okay - - - but - - - let  
12 me put it another way. What is the point of that? Why  
13 include that?

14 MR. BRANIGAN: I - - - I think the language is  
15 included to be - - - to be more expansive, to - - - to  
16 include crimes and not - - - and not to exclude crimes.

17 JUDGE RIVERA: Uh-huh.

18 MR. BRANIGAN: And expansive to the sense - - -  
19 in the - - - in the sense that if somebody is a repeat  
20 offender, there isn't a - - - a particular - - - you know,  
21 there's not a particular loophole where they - - - they  
22 cannot have - - - where they cannot have bail set. So I  
23 think that language is meant to be more expansive and not  
24 more restrictive.

25 JUDGE HALLIGAN: What is your response to your

1 adversary's argument about the legislative history here?

2 MR. BRANIGAN: Your Honor, the - - - the - - - as  
3 far as the original legislation, it - - - it was certainly  
4 meant to reduce the people who could be in - - - in - - -  
5 incarcerated on bail or - - - or - - - or held - - - held  
6 for other reason be - - - before trial. The - - - the - -  
7 -

8 JUDGE HALLIGAN: And I think she argues that your  
9 reading would not serve that end - - -

10 MR. BRANIGAN: Well, it - - -

11 JUDGE HALLIGAN: - - - or would undermine it.

12 MR. BRANIGAN: Right, Your Honor. But that was  
13 the purpose of the reformed - - - the reform where they  
14 were responding to too many people being - - - being  
15 released and then - - - and then rearrested. So that - - -  
16 that was the - - - that was the reason for the - - - the  
17 addition of (t). So this is a reform to those original  
18 reforms, which is meant in - - - meant to tighten the - - -  
19 the - - - the statute, meant to expand the number - - - the  
20 category of people who are eligible for - - - for bail  
21 under the statute. And that - - -

22 CHIEF JUDGE WILSON: Well, was it meant - - - was  
23 it meant to deal specifically with the case that Senator  
24 Palumbo - - - the type of case that he referred to? That  
25 is, a whole string of non-bail-eligible offenses where



1           there's no basis to put some - - - no ability to put  
2           somebody in, no matter how long they continue that. Is  
3           that what it was targeted at?

4                   MR. BRANIGAN: Yes, Your Honor, but it - - - it's  
5           - - - I - - - I would say first, yes, that's the common - -  
6           - that's the common situation - - - or a number of say  
7           petty larcenies in a row, which clearly wouldn't - - -  
8           wouldn't qualify but would now qualify under this statute.

9                   But here, just looking at the facts of this case,  
10          you have a defendant who committed a violent crime. He  
11          posted bail and was released. During that time, he  
12          committed - - - he committed a - - - a new offense - - -

13                   CHIEF JUDGE WILSON: Right. Right. But go - - -  
14          that goes right back to the first question I asked, which  
15          is, to deal with that, you wouldn't actually need this  
16          amendment, right? You could have dealt with that under  
17          preexisting law. It's just a question about which court  
18          would have dealt with it.

19                   MR. BRANIGAN: Well, it's - - - I think there's  
20          two questions, Your Honor. The - - - the first question is  
21          the - - - the - - - the court, and it's - - - it's not just  
22          a matter of - - - of a particular courtroom. That - - -  
23          that can be a different county, as here - - -

24                   CHIEF JUDGE WILSON: Sure.

25                   MR. BRANIGAN: - - - we have Queens - - -

1 CHIEF JUDGE WILSON: True.

2 MR. BRANIGAN: - - - to the - - - to the Bronx,  
3 and that becomes an impossibility for the new court to - -  
4 - to set that - - - to set that bail. But second, the - -  
5 -

6 CHIEF JUDGE WILSON: Wait, let me stop you there.  
7 I'm not sure I understood - - - oh, for the new court.

8 MR. BRANIGAN: The new court cannot - - - cannot  
9 set - - -

10 CHIEF JUDGE WILSON: That is, the Queen - - - the  
11 Queens' court can - - - right.

12 MR. BRANIGAN: Right. But - - -

13 CHIEF JUDGE WILSON: So that's my question about  
14 isn't this just a question of which court, not whether you  
15 could hold this defendant based on the conduct.

16 MR. BRANIGAN: Well, I - - - I accept that, yes,  
17 it - - - it is which court, but it is important which court  
18 because it's important that the court who has the new case  
19 in front of it is able to - - - to impose the bail. The  
20 other - - -

21 CHIEF JUDGE WILSON: Why?

22 MR. BRANIGAN: Well, for - - - for two reasons.  
23 First, the reasons I - - - I just suggested, which is that  
24 - - - which is the difficulty of going back to the original  
25 court to have bail set. But the second and probably - - -

1 JUDGE RIVERA: I'm sorry. What was the  
2 difficulty there?

3 JUDGE CANNATARO: What's the difficulty?

4 JUDGE RIVERA: I missed that.

5 MR. BRANIGAN: The difficulty - - - the  
6 difficulty of bringing the defendant back to the original  
7 court - - -

8 JUDGE HALLIGAN: Do you mean logistical  
9 difficulty?

10 MR. BRANIGAN: Well, that's - - - that could be  
11 mainly a logistical difficulty. But the - - - the - - -  
12 the new offense - - - but just going to the - - - to the  
13 second reason, Your Honor, the - - - the new offense - - -  
14 the - - - the new - - - the new offense will not have a  
15 separate hold, so the defendant could have any number of -  
16 - - of prior offenses. Once those offenses become  
17 resolved, the - - - the new offense would immediately - - -  
18 the - - - the - - - the - - - the bail would - - - would  
19 not be there. There would be no hold on the new case. So  
20 it is a matter of - - - of keeping a hold on the new case  
21 where you have a - - - a reoffender. So it's important in  
22 this case, one say the original case pleaded out, to still  
23 have hold on a person who, during his time out, committed a  
24 new offense.

25 JUDGE RIVERA: So that he spends no time out. Is

1 that what you mean?

2 MR. BRANIGAN: Well, so - - - so that it - - -

3 JUDGE RIVERA: Because it - - - because you could  
4 issue a warrant for his arrest.

5 MR. BRANIGAN: Right, Your Honor. But - - - but  
6 the existence of - - - but again, the - - - the existence  
7 of - - - of the reasonable cause for the new offense on the  
8 - - - the original offense shows and provides reasonable  
9 cause to the court that this person cannot be - - - cannot  
10 be trusted during his - - - his release. And that gives  
11 reason for the court to set - - - to set bail on the new  
12 offense and not simply rely on the original offense.

13 CHIEF JUDGE WILSON: Okay.

14 JUDGE TROUTMAN: So are you saying there are two  
15 separate avenues for addressing the defendant's bail  
16 status? The original court on the attempted murder charge  
17 has the ability to have him brought in upon an application  
18 of a bail revocation, but the new charge, the judge  
19 assigned there has a separate ability to assess bail status  
20 because of the first charge.

21 MR. BRANIGAN: That's correct, Your Honor.

22 JUDGE TROUTMAN: Otherwise - - - if the first  
23 charge didn't exist, it would not be aailable offense.

24 MR. BRANIGAN: It would not beailable. And if  
25 the first case is resolved, there would be no - - - would



1 be no hold on him, and the new offense, despite the fact  
2 that that defendant had - - - had reoffended.

3 CHIEF JUDGE WILSON: Well, if the first came - -  
4 -

5 JUDGE TROUTMAN: So they're separate - - -

6 CHIEF JUDGE WILSON: Sorry. Go ahead.

7 JUDGE TROUTMAN: So they're - - - so charge  
8 number one, he has bail that he posted. And until or  
9 unless he goes back to that court, that bail stays in  
10 place. The new judge sets bail on the second charge  
11 because the court can take into consideration the first.  
12 But - - - so - - - and if that judge - - - the second judge  
13 sets bail, he has two holds, but depending on how they're  
14 resolved, they don't - - - he doesn't necessarily have to  
15 be held on both cases at one time, correct?

16 MR. BRANIGAN: That's correct, Your Honor,  
17 because one of the cases could resolve and then he would  
18 not have a hold.

19 CHIEF JUDGE WILSON: Yeah. But the case we're  
20 talking about resolving is the - - - in this case, the  
21 murder case. And presumably, that could be resolved in one  
22 of two ways. It could be resolved by a plea, likely, right  
23 - - - or I suppose, a trial - - - but that something that  
24 would result in a judgment of conviction on a fairly  
25 serious set of charges, which then the person is



1           incarcerated, right?

2                       MR. BRANIGAN: Right.

3                       CHIEF JUDGE WILSON: Or it could be resolved by  
4 an acquittal or a dismissal of the charges, because the  
5 People decide this is not worth prosecuting or he's not  
6 guilty or whatever, in which - - - and in that second  
7 circumstance, then what you'd be doing if you had a hold in  
8 the second case is holding somebody on something the  
9 legislature has determined is not bail eligible?

10                      MR. BRANIGAN: No, Your - - - Your Honor, in the  
11 - - - in the second case, should the - - - the case be  
12 dismissed - - -

13                      CHIEF JUDGE WILSON: Uh-huh.

14                      MR. BRANIGAN: - - - the defendant can always go  
15 back to - - - to court and make an application for his  
16 release. He can go to court and say, I should be released  
17 because my case was dismissed. But if he - - - he, for  
18 instance, pleaded guilty, received probation on - - - on  
19 whatever the original case was on condition discharge - - -

20                      CHIEF JUDGE WILSON: On - - - on a murder charge?

21                      MR. BRANIGAN: - - - the - - - the defendant  
22 could - - - the - - - the defendant could still say, I  
23 should be released, and the People could say, no, he has -  
24 - - you know, he has a conviction and there's nothing here  
25 in - - - in the facts of this case that permit his release.

1 CHIEF JUDGE WILSON: And why would the fact of a  
2 conviction affect his flight risk?

3 MR. BRANIGAN: The - - - Your Honor, I - - - my -  
4 - - my argument is that the - - - that the fact - - - so -  
5 - - so to start with of the fact that there was reasonable  
6 cause that he had reoffended during his time out is what  
7 provides the discretion under the statute for - - - for the  
8 new hold. The - - - the conviction, I - - - I mean, in  
9 theory at least, it - - - it could demonstrate an elevated  
10 - - -

11 CHIEF JUDGE WILSON: Yeah. But of course, the  
12 original court - - - the original court, right, in this  
13 case - - -

14 MR. BRANIGAN: Right.

15 CHIEF JUDGE WILSON: - - - the Bronx court had  
16 that discretion with or without the statute?

17 MR. BRANIGAN: That's correct, Your Honor.

18 CHIEF JUDGE WILSON: Right. So all we're talking  
19 about is whether the second court might have discretion in  
20 what you - - - we've now sort of played out as a  
21 circumstance where the first charge is dismissed.

22 MR. BRANIGAN: That's right. But - - -

23 CHIEF JUDGE WILSON: This is the serious charge.  
24 So they're - - - all he's really been - - - and he's  
25 innocent till proven guilty, so all that's left is a charge

1 that is not bail eligible. So we'd have to find some - - -  
2 I guess, since we seem maybe to think that the statute has  
3 some ambiguity in it and the legislative history might have  
4 some import, we have to find something in the legislative  
5 history to suggest that's a desired result. Is there  
6 something?

7 MR. BRANIGAN: First, Your Honor, I - - - I just  
8 say, regardless of whether there - - - you could have that  
9 situation, regardless of whether he was - - - he was bailed  
10 in - - - in the first offense.

11 And - - - and I - - - and I just - - - and I - -  
12 - I - - - I'd say also that the - - - it's - - - it's not  
13 just a matter that the - - - the first offense might be a  
14 bail-eligible offense, that the reading here would be that  
15 if he was released on - - - on particular con - - -  
16 nonmonetary conditions, like, you know, seeing a social  
17 worker or whatever the - - - the different conditions are,  
18 that that would - - - that would have made him eligible.  
19 So you'd have the same situation where that original case  
20 can be dismissed. And then they would have to - - - they  
21 would have to review the - - - the bail under - - - under  
22 that - - -

23 CHIEF JUDGE WILSON: But I think there's - - -

24 MR. BRANIGAN: - - - under that condition.

25 CHIEF JUDGE WILSON: - - - I don't - - - unless

1 I'm misunderstanding you, if it's a - - - if the first one  
2 is a bail-eligible crime, right - - - first convict - - -  
3 first - - - first indictment, right, as we have here - - -

4 MR. BRANIGAN: Yes.

5 CHIEF JUDGE WILSON: - - - and the - - - he's not  
6 bailed, instead, he's given nonmonetary conditions, then I  
7 think even your adversary here would say that subsection  
8 (t) applies.

9 MR. BRANIGAN: Correct, Your Honor.

10 CHIEF JUDGE WILSON: Okay.

11 MR. BRANIGAN: And - - - and that is - - - and  
12 that in itself is inconsistent.

13 CHIEF JUDGE WILSON: Why is that?

14 MR. BRANIGAN: It's inconsistent because all  
15 these - - - all the arguments being made, meaning the - - -  
16 the defendant can still go back - - - or the People rather  
17 can still go back and apply for - - - for a new bail  
18 condition, there'd still be potential bail on that original  
19 case. So if - - - if you were to - - - to consider it that  
20 way, if you - - - you have a case where the bail could be  
21 potentially placed, but isn't, he would still qualify under  
22 (t) but for the same offense because the court considered  
23 it, you know, this a more serious - - - a more serious case  
24 or a flight risk that the - - - that the defendant - - -  
25 that the court sets bail, now he could not be - - - he

1           could not have - - - have bail set on him in the new case,  
2           even though the same thing essentially transpired, which is  
3           that there's reasonable cause that he committed a new  
4           offense under - - - under the statute.

5                   CHIEF JUDGE WILSON:   So you're saying this - - -  
6           the legislature could have written the statute better?

7                   MR. BRANIGAN:   Well, I - - -

8                   CHIEF JUDGE WILSON:   If - - - if it had the  
9           objective that counsel wants?

10                   MR. BRANIGAN:   Your Honor, yes.  If that was the  
11           objective, yes.  Otherwise, you - - - you - - - you create  
12           these - - - these inconsistencies where people in  
13           essentially the same place who have committed essentially  
14           the same crimes would not be eligible under the new statute  
15           where - - - where they would be or - - - or they would not  
16           be had - - - had bail been set.  So you create those  
17           inconsistencies with that reading.  And I think if you stay  
18           with the - - - with the plain reading of the statute, if  
19           you stay with the plain reading of - - - of the word  
20           condition and the way that it's normally used in this  
21           statute, bail is a condition, and the defendant can have  
22           bail set in - - - in this case.

23                   CHIEF JUDGE WILSON:   Thank you.

24                   MR. BRANIGAN:   Thank you, Your Honors.

25                   MS. WELCH:   I'd first like to address the idea

1 that it is a problem that bail would not be eligible if the  
2 first case were resolved. That in the example provided by  
3 Mr. Branigan, if bail were set on case A and not on case B  
4 because of this reading, that there would be no way to  
5 detain him on case B if case A were resolved. That is  
6 absolutely not an inconsistency; that is codified in this  
7 statute.

8 In CPL 510.20(3), the court is required to issue  
9 a new securing order if a case is resolved in a way that it  
10 would not be eligible for (4)(t) at that time. And so the  
11 idea that the legislature did not intend for someone to be  
12 released on the first case if the first case went away is  
13 plainly incorrect. I - - -

14 JUDGE GARCIA: Counsel, just to go back to this  
15 last point that your adversary was making here.

16 MS. WELCH: Yes.

17 JUDGE GARCIA: If the purpose of this statute is  
18 to provide a way to set bail when that wasn't possible  
19 before, meaning you couldn't go to - - - we'll use the  
20 Bronx example again - - - the Bronx and have, you know,  
21 bail was not able to be set there, why would they put the  
22 language that Judge Rivera cited to, the underlying crime  
23 need not be a qualifying offense, which we seem to all  
24 agree on. So where you - - - and I think this is the point  
25 your adversary was trying to get at - - - where your

1 underlying crime in the Bronx is a qualifying offense, you  
2 can always go back there and deal with bail then. Why  
3 wouldn't this statute only apply where the underlying crime  
4 is a nonqualifying offense?

5 MS. WELCH: Because the court does - - - or  
6 apologies - - - because the legislature decided to provide  
7 more discretion to judges than simply allowing to set bail  
8 on multiple nonqualifying offenses. The problem they  
9 wanted to avoid was a nonqualifying offense being the basis  
10 for a second order of cash bail. And so the inconsistency  
11 that it would still be possible for a person to have two  
12 securing orders, as was raised, is not actually an  
13 inconsistency because the nonqualifying offense would not  
14 be the basis for the second order. The problem is that - -  
15 -

16 JUDGE GARCIA: Well, let's say they did go back  
17 and they did both, there's conditions set in - - - in Queen  
18 - - - in the Bronx; now Queens comes up. They go in  
19 Queens. There's conditions - - - under your  
20 interpretation. They can set bail in Queens. Can they  
21 also go back to the Bronx and say, you know, if there's a  
22 violation of your conditions here in the Bronx, why don't  
23 you set bail here? Couldn't the judge in the Bronx do  
24 that, too, and wouldn't you have the same result?

25 MS. WELCH: They absolutely could, but it is not

1 the same result because the case that is imposing the  
2 second securing order, imposing cash bail, is a qualifying  
3 offense, and that decision is being made by a judge who is  
4 familiar - - -

5 JUDGE GARCIA: So it's just the order? You still  
6 have - - -

7 MS. WELCH: No.

8 JUDGE GARCIA: - - - two bail orders, right?  
9 It's just the sequence of how you do it?

10 MS. WELCH: I apologize. I didn't mean to  
11 interrupt - - -

12 JUDGE GARCIA: Oh, no. No. I think I  
13 interrupted you - - -

14 MS. WELCH: - - - but no, it's not the order that  
15 matters. It is the fact that the judge sitting in the  
16 first case has more information. What happens in  
17 arraignments happens - - -

18 JUDGE GARCIA: Yeah. But in my hypothetical,  
19 they go to the Queens judge first - - -

20 MS. WELCH: Uh-huh.

21 JUDGE GARCIA: - - - and they get a securing  
22 order. They get bail set. Then they go back to the Bronx,  
23 and they say, you had released this person on conditions.  
24 Now, we want bail set because they were arrested in Queens.  
25 Wouldn't you have two securing orders? And wouldn't you

1 have the same sequence you're worried about?

2 MS. WELCH: You would have to securing orders,  
3 but it is not the same problem, because the problem that  
4 exists with reading (4) (t) to apply when bail has been set  
5 is specifically that an otherwise nonqualifying offense,  
6 something that the legislature has found should not be the  
7 basis for cash bail except for in particular circumstances,  
8 should not be the basis for you spending time in jail.

9 JUDGE GARCIA: But isn't that same in my  
10 hypothetical? Why is that different in my hypothetical?

11 MS. WELCH: It's different in your hypothetical  
12 because then the second decision is being made both on a  
13 more serious matter and with more information as - - - than  
14 is generally going - - -

15 JUDGE GARCIA: Bail is still being set on a  
16 nonqualifying offense in Queens, even though there was a  
17 qualifying offense in the Bronx, and it's being set first  
18 in Queens by a judge that is not as familiar with the Bronx  
19 case as the Bronx judge.

20 MS. WELCH: Yes. Respectfully, I think it would  
21 be very odd in practice for somebody who was released on a  
22 qualifying offense to have bail set then on a nonqualifying  
23 offense, because the analysis by the first court was that  
24 they did not pose a risk of flight that - - -

25 JUDGE GARCIA: That was before the second arrest.

1 MS. WELCH: Yes. But the purpose of bail is not  
2 to ensure that people do not commit new offenses. And I  
3 think the heart of many - - -

4 JUDGE GARCIA: The risk - - - theory being the  
5 risk of flight is greater, right, when you have another  
6 crime in the case - - -

7 MS. WELCH: Yes, but a new nonqualifying offense  
8 does not generally increase risk of flight. The - - -

9 JUDGE GARCIA: But isn't that the whole purpose  
10 of this statute? I mean, harm on harm. You're increasing  
11 risk of flight by harm on harm; otherwise, why would we  
12 have this? So you have to find that, right, to - - - to -  
13 - - to - - - to set bail.

14 MS. WELCH: The purpose of the statute is that so  
15 individuals who are arrested on numerous nonqualifying  
16 offenses have a mechanism - - -

17 JUDGE GARCIA: Does it say numerous, or I - - -  
18 could it be one?

19 MS. WELCH: Well, the example that was given in  
20 the Senate debates when this was being drafted is numerous  
21 - - -

22 JUDGE GARCIA: Right. But the statute itself, it  
23 can be one, right?

24 MS. WELCH: That is correct.

25 JUDGE GARCIA: It can be one additional offense,

1 right?

2 MS. WELCH: Certainly, if the required findings  
3 are made - - -

4 JUDGE GARCIA: Right.

5 MS. WELCH: - - - and the risk of flight  
6 justifies that. At the heart of all of the arguments to  
7 the contrary is the idea that somebody is eligible for bail  
8 because they cannot be, I believe the words used were,  
9 trusted during release.

10 Bail is not a preventative mechanism. It is only  
11 about return to court. And returning someone to court  
12 after a new arrest is not actually a difficult thing. They  
13 are at liberty. They can go to court. They have been  
14 released after posting bail, which is already ensuring  
15 their return to court. We know this because the bail  
16 hasn't been modified after it's been posted.

17 And so it isn't as if somebody is being released  
18 with nothing holding them at all. They have already posted  
19 significant, often, resources, and the reality is that most  
20 people are - - -

21 JUDGE GARCIA: And I think if they went back and  
22 got bail posted in an original count in the Bronx that was  
23 bail eligible but was set on conditions, then you wouldn't  
24 have - - - then you could go into the Queens court and say,  
25 you can't post bail anymore, because now the statute is

1 satisfied because you have bail posted in - - - in the  
2 Bronx now.

3 MS. WELCH: I - - -

4 JUDGE GARCIA: In my hypothetical, no bail in the  
5 Bronx. Now you get arrested, you get bail in Queens. You  
6 go back to the Bronx; you get bail in the Bronx. Why  
7 couldn't the Queens person go in - - - the - - - the  
8 defendant in Queens go in and say, you know, now there's no  
9 reason for this bail anymore because I have bail in the  
10 Bronx.

11 MS. WELCH: Well, they can argue that - - -

12 JUDGE GARCIA: The statute doesn't apply anymore.

13 MS. WELCH: Well, 510.10(4)(t) is always an  
14 arraignment only statute. But what happens in your  
15 hypothetical - - - if I am understanding it correctly, and  
16 please cut me off if I'm not - - - but - - -

17 JUDGE GARCIA: I may not be articulating in any  
18 way that's understandable, so - - -

19 MS. WELCH: But if I am understanding correctly,  
20 in your hypothetical, the reason that it is different and  
21 the reason this is a thoughtfully designed system is that  
22 in your hypothetical, the person is going back to the judge  
23 who has more information. There has been more opportunity  
24 for both sides to collect information. It - - -

25 JUDGE SINGAS: Wait. Can I interrupt you on that

1 - - -

2 MS. WELCH: Yes.

3 JUDGE SINGAS: - - - point, please? Because in  
4 the '22 amendment - - - I'm looking at the words of Senator  
5 Bailey. I don't know if he's the one who introduced it.  
6 But he said, I want to make sure the statute was clear and  
7 easier for judges to be able to interpret in determining  
8 their decisions when there is a matter before them. So it  
9 sounds that he's talking about the arraignment judges here,  
10 not about the judges who may have the most information in  
11 the Bronx. He's saying we need this because we need to  
12 make it simple for the judges when these cases are before  
13 them at arraignment, because we're talking about 510 at  
14 arraignment.

15 So I - - - I - - - don't think that what you're  
16 saying is actually what they meant, that they're looking to  
17 get it to the person with the most information because he's  
18 clearly saying, here, we need to get it - - - we need to  
19 make it simpler for the person who it's before at  
20 arraignment. Am I wrong about that?

21 MS. WELCH: I certainly would not say that, but  
22 this was not the only amendment in the 2022 arraignments  
23 (sic). There were many things, most of which do clarify  
24 what is happening at arraignments. But what (4)(t) does is  
25 it's simply providing a mechanism to set bail on

1 nonqualifying offenses or qualifying offenses if somebody  
2 is released. But it was closing that loophole. And the  
3 most specific probative information in the entire  
4 legislative history on that point is the debate that I  
5 referred to previously, where the specific example given  
6 was closing that loophole.

7 And the goal remained limiting pre-trial  
8 detention. Nothing about the amendments changed that. And  
9 as Your Honor has just pointed out, the goal was  
10 clarifications. It was not a radical expansion of the pre-  
11 trial population. And so it is - - -

12 JUDGE SINGAS: I guess my - - - my - - - my  
13 concern is that I - - - I don't see that it was  
14 clarification or that the clarifying fact would be whether  
15 someone posted bail or whether there was an ROR.

16 So two similarly situated people commit the same  
17 crime, and one of them in your - - - in your reading of the  
18 statute, the one who posted bail, would be treated very  
19 differently than the one who was ROR'd, and I just don't  
20 see anything in the legislative structure that would  
21 support that.

22 MS. WELCH: Well, the - - -

23 JUDGE SINGAS: I don't want to belabor it, but  
24 that's just - - -

25 MS. WELCH: Well, the issue is - - - and this

1 gets back to which omission matters - - - when the  
2 legislature wants bail included, they have always done so  
3 explicitly, and they have also consistently used conditions  
4 without the nonmodifier of - - - without the modifier of  
5 nonmonetary throughout the statute in contexts that can  
6 only be understood to apply to nonmonetary conditions.

7 JUDGE RIVERA: So then let me - - - I promised  
8 that I would ask about section (t) and this particular  
9 language when you got up on rebuttal. So why doesn't the  
10 language - - - any of the underlying crimes need not be  
11 qualifying offenses; doesn't that suggest that this also  
12 applies to offenses that qualify for bail? Otherwise, why  
13 would you need that?

14 MS. WELCH: I am absolutely not arguing that it  
15 does not apply to qualifying offenses.

16 JUDGE RIVERA: Okay.

17 MS. WELCH: The distinction is whether bail was  
18 actually set and posted.

19 JUDGE RIVERA: I see.

20 MS. WELCH: And the issue here is ultimately that  
21 bail is not a condition; it is a contingency. And you see  
22 that in the syntax of how it is worded. It is "upon the  
23 condition," not "under conditions" - - -

24 JUDGE GARCIA: That's a slightly different  
25 argument, though. That's even if it's conditions, this

1 doesn't fall as a condition, right?

2 MS. WELCH: Yes. Sorry.

3 JUDGE GARCIA: Just - - - go ahead.

4 MS. WELCH: But it - - - it is - - - I believe  
5 the question that was asked earlier that I didn't have a  
6 chance to respond to was whether conditions is actually  
7 defined anywhere. And in the definition of nonmonetary  
8 conditions itself, the word appears without the modifier of  
9 nonmonetary eight times. And more probatively, I think, in  
10 510.40(5), which is discussing exclusively nonmonetary  
11 conditions, there is a requirement that judges notify  
12 individuals of any conditions to which the principal is  
13 subject to serve as a guide for the principal's conduct.  
14 And bail - - -

15 JUDGE GARCIA: But that - - - again, I think the  
16 first part of your sentence is that whole section refers to  
17 refers to nonmonetary conditions, right?

18 MS. WELCH: Yes.

19 JUDGE GARCIA: So when you're just shorthanding  
20 conditions, it's an implied modifier. And I think that's  
21 the same with the other (3-c) section that you cited, which  
22 cites back to (2-c) (sic) - - - (3-b) - - - I'm sorry - - -  
23 510 (3-b), which uses it without the modifier, but it cites  
24 back to (3-a), and (3-a) says nonmonetary conditions. So  
25 there's always, it seems to me, in those statutes, an

1 implied modifier.

2 MS. WELCH: That's not true in every example.

3 There - - -

4 JUDGE GARCIA: So which is the one where it  
5 isn't? Because those two - - -

6 MS. WELCH: Sure.

7 JUDGE GARCIA: - - - that's how I read them.

8 MS. WELCH: Just one second, please. That is  
9 also true in 510.45(5), which describes what needs to be  
10 reported by pre-trial services monitoring individuals  
11 released under nonmonetary conditions. The reporting  
12 requirements are described as conditions in - - -

13 JUDGE GARCIA: But that's nonmonetary conditions.  
14 That was the first part of your sentence. Those are  
15 nonmonetary conditions, right?

16 MS. WELCH: Yes. Regardless, the statute is  
17 always clear when bail is content - - - intended to be  
18 considered. There is not a clear example to the contrary.  
19 And because the overall purpose of this statute was to  
20 reduce incarceration - - - and this reading achieves the  
21 effect of limiting how much money an indigent individual -  
22 - - and let's be clear, most people in criminal court are  
23 indigent and represented by public defenders - - - it  
24 limits the ability to set additional secondary cash bail on  
25 very limited arraignment information.

1                   And this example - - - or this case is the  
2 perfect example of why this is a problem because the judge  
3 had no information whatsoever. It should not have been  
4 granted based purely on their failure to establish  
5 reasonable cause. But the fact of the matter is, if this  
6 had instead been handled by going to the Bronx and asking  
7 for an increase, both sides would have had a lot more time  
8 to get the relevant information instead of asking to take  
9 somebody's liberty based on no information at all. And - -  
10 -

11                   CHIEF JUDGE WILSON: Thank you, Counsel.

12                   MS. WELCH: Yes. Thank you.

13                   (Court is adjourned)

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

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People ex rel. Welch v. Maginley-Liddie, No. 53 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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