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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 118

COLLIER (RODERICK),

Appellant.

20 Eagle Street
Albany, New York
November 20, 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:

LILY M. GOETZ, ESQ.
THE LEGAL AID SOCIETY
Attorney for Appellant
100 Water Street
New York, NY 10038

LARRY A. GLASSER, ESQ.
BRONX COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondents
198 East 161st Street
Bronx, NY 10451

Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Collier.

3 MS. GOETZ: Good afternoon.

4 CHIEF JUDGE WILSON: Afternoon.

5 MS. GOETZ: The Legal Aid Society by Lily Goetz
6 on behalf of Mr. Collier.

7 In the context of a nearly - - -

8 CHIEF JUDGE WILSON: Do you wish to save any time
9 for rebuttal?

10 MS. GOETZ: Oh. I'm sorry. Thank you. Four
11 minutes, please?

12 CHIEF JUDGE WILSON: Four?

13 MS. GOETZ: Yeah.

14 In the context of a nearly six year delay, all of
15 it completely unexplained and entirely caused by the
16 government - - -

17 JUDGE RIVERA: Counsel, in your proposed
18 multifactor test, there's a prejudice element. Yes?

19 MS. GOETZ: There is.

20 JUDGE RIVERA: Okay. What's the prejudice here?

21 MS. GOETZ: The prejudice here is a person ending
22 their criminal case, living their life for six years - - -

23 JUDGE RIVERA: Right.

24 MS. GOETZ: - - - with no further contact with
25 the criminal legal system, with a reasonable and

1 understandable belief that they had completely served their
2 entire sentence, and that they had satisfied all the
3 responsibilities attendant to that sentence.

4 JUDGE HALLIGAN: But the designation was
5 backdated, wasn't it?

6 MS. GOETZ: The period of registration - - -

7 JUDGE HALLIGAN: Yes.

8 MS. GOETZ: - - - ultimately was backdated to the
9 period of time when it should have occurred - - -

10 JUDGE HALLIGAN: So - - -

11 MS. GOETZ: - - - when the registration
12 requirements - - -

13 JUDGE HALLIGAN: - - - it seems to me that you
14 might have a better argument for prejudice if that had not
15 happened. But why do you have an argument for prejudice,
16 given that it did?

17 MS. GOETZ: Because the prejudice, it - - - we
18 can't measure prejudice simply by looking at the outcome of
19 the hearing itself, which we're contesting should never
20 have even occurred. Prejudice has to be viewed with a wide
21 lens here. And prejudice for this person specifically,
22 included not just the - - -

23 JUDGE HALLIGAN: So it's just the lack of
24 certainty? What if you have a defendant who waits for six
25 years, you know, or however long it is, and then receives a

1 downward departure, and that downward departure, whatever
2 the resulting designation is, level 1, level 2, is
3 backdated as - - - as took place here, would there still be
4 prejudice in your view?

5 MS. GOETZ: Well, I think prejudice here really
6 connects very closely with the notice factor that, also,
7 we're advocating should be part of the consideration.

8 JUDGE HALLIGAN: I'm just asking, is the waiting
9 itself prejudice, regardless of the outcome or the
10 backdating in your view?

11 MS. GOETZ: The waiting - - - if waiting had
12 occurred. I'm not trying to avoid your question, but if
13 waiting had occurred and the person knew this was part of
14 their - - - this was going to be part of their life and
15 they were just waiting for it to happen, that would be
16 different than the situation here.

17 JUDGE CANNATARO: Arguably even more prejudicial
18 in the sense - - - or maybe not prejudicial, but injurious
19 in the sense that they've got this anxiety about, you know,
20 they're waiting for their hearing, they're not getting
21 their hearing, they don't know what their status is. But
22 where no one is talking about it or thinking about it, you
23 know, that kind of injury is not present.

24 And I'm having trouble understanding what's the
25 prejudice if - - - given the result here. Do you

1 understand my question?

2 MS. GOETZ: I think so. I mean, if you were
3 looking just at the outcome of the hearing, which it sounds
4 like you're doing. Certainly, a level 1 is better than a
5 level 2. I'm not arguing with you about that.

6 JUDGE CANNATARO: Right. So if prejudice is
7 something that affects the weighing of the merits in the
8 proceeding, that's sort of my two-cent definition of
9 prejudice. Everything worked out great here for your
10 client because they got a level 1 when they were a
11 presumptive level 2.

12 JUDGE GARCIA: And nunc pro tunc.

13 JUDGE CANNATARO: And nunc pro tunc.

14 JUDGE RIVERA: And in part because of that delay,
15 because he had lived his life in a particular way, and the
16 court took that into consideration.

17 MS. GOETZ: That's all true, Judge. But the
18 question here is not whether the hearing that actually
19 occurred was problematic. Because the outcome was as good
20 as it possibly could have been at that hearing itself,
21 because he got a level 1 and not a level 2. Level 2 would
22 have required lifetime registration. Clearly, he's in a
23 better position at - - - as a level 1 than a level 2.

24 But the question really is prejudice - - -
25 prejudice-wise, the question is, what impact did it have on

1 his life as a person who had a reasonable - - -

2 JUDGE TROUTMAN: But what about fact that if he
3 had been - - - if his hearing had occurred when it was
4 supposed to, he would have been deemed - - - arguably, he
5 would have been deemed a level 2 unless there was evidence
6 to the contrary, and he would have had lifetime. But for
7 the delay, he got the benefit of the level 1 and therefore
8 not the requirement of the lifetime registration.

9 MS. GOETZ: That's absolutely true, that it looks
10 like on the risk assessment instrument, he would have been
11 graded points sufficient to make him a level 2. We could
12 have - - - I mean, we don't know what the outcome would
13 have been at that point in time. But again, that's really
14 not the question here. The question - - -

15 JUDGE GARCIA: But Counsel, we do have a case.
16 Sorry. And I think it's Knox. But where we said there is
17 a substantive due process interest in this type of
18 proceeding and it's in mislabeling or mis-designating
19 someone. And I think that was involving a out-of-
20 jurisdiction conviction or one that arguably didn't fit the
21 scheme. And I understand that substantive due process
22 interest.

23 What is the liberty interest you're arguing for
24 here? That for those six years where he was supposed to
25 register, automatically had to register as something, level

1 1, level 2, or level 3, he had no idea he was supposed to
2 register?

3 MS. GOETZ: The liberty - - -

4 JUDGE GARCIA: And what's the liberty interest?

5 MS. GOETZ: - - - the liberty interest is the
6 liberty interest in living one's life as a free person,
7 unrestricted by - - -

8 JUDGE TROUTMAN: But he did.

9 MS. GOETZ: - - - governmental intrusion.

10 JUDGE CANNATARO: But isn't that exactly - - -

11 JUDGE TROUTMAN: He did - - -

12 JUDGE CANNATARO: - - - what he did?

13 MS. GOETZ: That is. But the question here that
14 I'm asking the court to consider is not whether - - -
15 again, whether the outcome of that hearing was fair and
16 whether he did better than he would have done if the
17 hearing had occurred - - -

18 JUDGE GARCIA: What's the harm to his interest in
19 living his life as a free person, and - - - especially for
20 six years when he - - - mandatory had to register, at least
21 as a level 1? And now what's the harm? That he has an
22 expectation he should just continue?

23 MS. GOETZ: But Judge, the harm - - -

24 JUDGE RIVERA: And for those six - - - he's
25 getting credit for those six years, even though he wasn't

1 registered?

2 MS. GOETZ: That's true. But the question here,
3 again, is really balancing - - - the question is whether it
4 violates fundamental fairness, our idea of fundamental
5 fairness, for the government to, without explanation,
6 without justification, wait six years to do something that
7 it should have done. Whether the combination of these four
8 factors - - -

9 JUDGE CANNATARO: Well, isn't - - -

10 JUDGE TROUTMAN: But I think - - -

11 JUDGE CANNATARO: Isn't the justification that
12 all registered sex offenders get a risk level assessment
13 after they serve their period of incarceration?

14 MS. GOETZ: I don't see how that justifies their
15 failure to do any of the things they were supposed to do
16 here, including providing him with notice and be able to
17 justify - - -

18 JUDGE CANNATARO: Well, you said without
19 justification. And I'm just saying one possible
20 justification is that's what the law requires.

21 MS. GOETZ: That's absolutely not a justification
22 for their failure to do anything here. No one mentioned
23 SORA at any point in time.

24 JUDGE GARCIA: No. We've said that if you don't
25 mention SORA at your sentencing, it - - - it's not like

1 supervised release. It doesn't matter. You still have to
2 register. Right?

3 MS. GOETZ: I don't know any case where the court
4 has said that the failure to mention SORA - - -

5 JUDGE GARCIA: So in - - -

6 MS. GOETZ: I mean, the statute - - -

7 JUDGE GARCIA: - - - in supervised release,
8 where, in many cases we had, where there's a failure to
9 mention that part of your sentence is going to be
10 supervised release, we've said no good. Not a valid
11 sentence. Right? With SORA registration, we've said
12 failure to mention the fact that you are going to have to
13 register for the rest of your life as - - - at the
14 sentencing, doesn't have any effect on your - - - the
15 mandatory nature of your registration.

16 MS. GOETZ: The statute does purport to impose
17 this mandatory registration requirement on anyone who's
18 convicted of a certain list of enumerated offenses. That's
19 not on - - - in dispute here.

20 JUDGE GARCIA: And if I'm the judge and I don't
21 tell you, you have to register. You serve your five years,
22 and you get out. I believe there have been cases where
23 someone has tried to say you didn't tell me I had to
24 register, and that's just like supervised release, it's
25 part of my sentence. And we've said, no, you still have to

1 register even though you weren't told at your sentencing
2 hearing that you needed to register under SORA given the
3 conviction that you had.

4 MS. GOETZ: I'm not sure that I know of any such
5 cases. I'm not arguing here that the sentence - - - that
6 this is actually part of the sentence. It's is a separate
7 proceeding that flows a civil proceeding.

8 JUDGE GARCIA: Would that be a due process - - -
9 potential due process violation, then? Because I had
10 served my five year sentence and no one told me I was going
11 to have to register when I got out?

12 MS. GOETZ: The due - - - I don't know if that
13 would be a separate due process issue. I mean, the
14 question here is what - - - and in a - - - in that, I think
15 you're talking about a five-year prison sentence?

16 JUDGE GARCIA: Yeah. Let's say I served my five
17 years, but the judge never told me that I would have to
18 register for SORA. And we've said that's okay. But then
19 can the defendant get out and say, you never told me I had
20 to register at sentencing, and I did my five years, and I
21 thought I was free and clear. And now you're telling me
22 I'm a lifetime sexually violent predator, level 3?

23 MS. GOETZ: I don't think so. Because the
24 statute actually makes very clear that the - - - the
25 proceeding for SORA is supposed to occur shortly before

1 that person's released. Let's say, for example, in your -
2 - -

3 JUDGE GARCIA: I did four years and nine months,
4 without knowing that I had to register.

5 MS. GOETZ: That's a totally different situation
6 than we're dealing with here. And I understand it's a
7 hypothetical - - -

8 JUDGE GARCIA: Yes, I know it's different. But
9 why - - - you know, why wouldn't that be a due process
10 violation somehow?

11 MS. GOETZ: I think it could be because the
12 person doesn't have knowledge. Maybe it's a basis to
13 vacate their plea because they didn't have knowledge about
14 what the entirety of the plea - - -

15 JUDGE GARCIA: Well, we've said no to that.
16 We've said - - - let's assume we've said no to that.
17 That's not a basis to vacate your plea.

18 MS. GOETZ: I'm not sure I'm getting where - - -

19 JUDGE GARCIA: So we've said, no, it's not a
20 basis to vacate your plea. Judge never tells you you have
21 to register for SORA. You go through four years, eleven
22 months, and two weeks, and all of a sudden they come in and
23 tell me I'm a level 3 sexually violent offender who has to
24 register as many - - - you know, make many reporting
25 requirements. And I say, I lived my life for four years

1 eleven months and two weeks, and you never told me I had to
2 register for SORA.

3 MS. GOETZ: I think that's just too different
4 from the situation we're presented with here. But I think
5 you could still analogize - - - you could still analyze
6 that situation using the multifactor test that we're
7 suggesting here.

8 JUDGE HALLIGAN: I think it seems to me, that - -
9 - if I'm understanding your concept of prejudice, what
10 you're saying is that learning about the registration
11 requirement six years in, is somehow more harmful than
12 learning about the registration requirement in a timely
13 manner, even if it turns out that that lapse of time may
14 have benefits with respect to the designation? Do I have
15 that right?

16 MS. GOETZ: I think that's true.

17 JUDGE HALLIGAN: Why is that exactly? Why is
18 learning, you know, close to or upon release in a timely
19 way that you have to register, not as significant or - - -
20 or whatever word you want to use - - - difficult as
21 learning about it six years down the road?

22 MS. GOETZ: I think it has to do with the concept
23 of fairness about the procedures that occur during a
24 criminal case. Like the statute itself imposes all of
25 these different responsibilities on various government

1 actors to notify the person that their - - - that is going
2 to be responsible for these registration requirements.

3 JUDGE HALLIGAN: I'm not asking, I guess, whether
4 it's okay to delay for six years. I'm asking specifically
5 about your concept of prejudiced, and why it is that
6 learning six years in that you have an obligation that you
7 didn't know about at the time of release, is meaningfully
8 different?

9 MS. GOETZ: Because our kind of criminal legal
10 system is built upon the idea that when someone is finished
11 with their sentence and it's over, that they have a
12 reasonable expectation of finality of that sentence.

13 JUDGE HALLIGAN: So it's their sense of finality?

14 MS. GOETZ: It - - - yeah. I think that's a big
15 part of it. And the sense of finality means that you have
16 the right, as a free person, to know that you've served
17 your sentence - - -

18 JUDGE SINGAS: Can I just ask - - -

19 MS. GOETZ: - - - that you've completed what you
20 owe.

21 JUDGE SINGAS: Can I ask a question?

22 I'm wondering why your definition of prejudice is
23 so broad. Like you have a right to live this life.
24 Usually we look at prejudice specifically, like, was the
25 defendant prejudiced in terms of trying to prepare for a

1 hearing, or maybe witnesses were gone. Like, we very
2 narrowly look at prejudice, and it's tied to what it is
3 that the defendant - - - you know, is seeking to have
4 accomplished and how he was injured by that. Like, this
5 broad sense of prejudice, I was living my life and I - - -
6 you know, now you're bothering me because I have to
7 register, even though I'm a - - - I'm required to register.
8 Like, do you have any authority for that? That sort of
9 broad reading of prejudice?

10 MS. GOETZ: I mean, I don't think this court - -
11 - you know, in the cases that we talk about in our briefs,
12 the constitutional speedy trial cases, prejudice is often
13 measured in terms of the difficulty of preparing for a
14 trial when there's been a lengthy delay.

15 But the - - - this court has held that prejudice
16 isn't necessarily something that you can always point to.
17 That sometimes it's difficult to really put your finger on
18 what prejudice is. That's why I think a multifactor test
19 is so valuable here. This is not just about prejudice to
20 him - - -

21 JUDGE TROUTMAN: But you agree that prejudice is
22 required?

23 MS. GOETZ: In evaluating?

24 JUDGE TROUTMAN: In this - - - yes, in eval - - -

25 MS. GOETZ: I think it should be. I don't think

1 there's any harm in using it as a factor. But I think the
2 problem with what the Appellate Division here did - - - and
3 I see that my red light is on, but I'm just going to wrap
4 this up.

5 The problem with what the Appellate Division did
6 here is that it weighted that factor above all others.
7 That's not a balancing test.

8 JUDGE TROUTMAN: So consider a number of factors
9 - - -

10 MS. GOETZ: And - - - and - - -

11 JUDGE TROUTMAN: - - - and give them appropriate
12 weight?

13 MS. GOETZ: Right. And that's the point of a
14 balancing test, is to weigh those factors to figure out on
15 - - - in on balance what the result should be. And in this
16 case, the Appellate Division actually found that all of the
17 other factors weighed in favor of Mr. Collier.

18 And I think there's a - - - there's an argument
19 to be made that the factors weighed in his favor for
20 prejudice as well.

21 There's no record support for their conclusion
22 that he had notice or should have had notice, or that there
23 was a reasonable probability that he had notice. There's
24 no facts in evidence to support that.

25 So I think when you examine the facts here,

1 applying that four-factor test, the result is that this
2 case should be dismissed, that the proceedings should be
3 dismissed, because the government lost the right to intrude
4 on someone's liberty after this lengthy, unexplained delay.

5 CHIEF JUDGE WILSON: Thank you.

6 MS. GOETZ: Thank you.

7 MR. GLASSER: Good afternoon. Larry Glasser, for
8 the respondent, People of the State of New York.

9 JUDGE TROUTMAN: Could you start with the issue
10 of prejudice?

11 MR. GLASSER: Yes, absolutely.

12 There was no prejudice in this case for two
13 reasons, as Your Honors had indicated in your questioning.

14 The court in this case not only declined to
15 impose fifteen points for no supervision - - -

16 JUDGE TROUTMAN: Does prejudice - - - is
17 prejudice of fact - - - in and of itself, is that the be
18 end of all? Or do other factors also have to be weighed?

19 MR. GLASSER: Well, I think other factors have to
20 be weighed. Because whether the court considers prejudice
21 or harm, there's sort of a preliminary issue, which there
22 has to be a deprivation of a right that occurred - - - of a
23 liberty or property right.

24 JUDGE TROUTMAN: So did the court below consider
25 more than just prejudice? Did it consider other factors?

1 MR. GLASSER: It did consider other factors. And
2 one thing that I would - - - I would note to this court is
3 a - - -

4 JUDGE RIVERA: Well, wait a minute. When you
5 started out with the liberty interest, is your position
6 that he had no liberty interest?

7 MR. GLASSER: A - - -

8 JUDGE RIVERA: He had no interest that could be
9 protected as a constitutional right?

10 MR. GLASSER: A defendant duly convicted of a
11 registerable sex offense as this defendant was, does not
12 have a liberty interest in not registering.

13 JUDGE RIVERA: Well, I think - - -

14 MR. GLASSER: And this court has said - - -

15 JUDGE RIVERA: - - - what about having a timely
16 determination of their classification?

17 MR. GLASSER: Well, there might be some time that
18 this court found to be excessive, but considering a level 1
19 registration is for twenty - - -

20 JUDGE RIVERA: No, no. That was yes or no.

21 MR. GLASSER: I'm sorry?

22 JUDGE RIVERA: Might there be a liberty interest,
23 or is there a liberty interest in having a timely
24 determination of one's classification?

25 MR. GLASSER: There's no liberty interest after

1 six years in this case, no. Because even if the defendant
2 got the - - - a prompt hearing of the most favorable result
3 possible, he would have had to register for twenty years as
4 - - -

5 CHIEF JUDGE WILSON: Let me - - -

6 MR. GLASSER: - - - a result of his conviction.

7 CHIEF JUDGE WILSON: So let me ask you this.
8 Supposing the delay here had been fifty years. So at that
9 point, Mr. Collier is seventy-two years old before anyone
10 notices, and is that - - - in and of itself, would that
11 constitute a due process violation if they then tried to
12 start the SORA hearing then?

13 MR. GLASSER: I think it could, Your Honor,
14 because as opposing counsel - - -

15 CHIEF JUDGE WILSON: What - - - okay.

16 MR. GLASSER: - - - mentioned, there's an
17 expectation of finality. Because level 1 is twenty years,
18 I think certainly as long as you're within twenty years,
19 there's no expectation of being free and clear from any
20 consequences of your conviction.

21 CHIEF JUDGE WILSON: All right. And so when you
22 said, "could", you mean would or you're not sure?

23 MR. GLASSER: Well, I think it would depend on
24 the facts because, for example, if the crime is so heinous
25 that you would be, say, a level 3 subject to lifetime

1 registration, then perhaps there would be an argument that
2 after fifty years, you're still subject to registration for
3 your conviction.

4 JUDGE RIVERA: What if you showed that if it had
5 been timely, or at least not fifty years - - - let's go
6 with ten - - - that you would have had access to evidence
7 that might have allowed the court to determine that the
8 risk level should not be 3, but now, because of the time
9 that has passed, that evidence is no longer available?

10 MR. GLASSER: Yes. I think that might be a
11 different situation because there - - - and this court has
12 said in Watts, for example, and I think Judge Garcia, this
13 might be the case you're referring to. I think Knox as
14 well. A defendant does have an interest in not being
15 mislabeled or miscategorized, but a defendant - - - this
16 court need not protect a defendant from an accurate
17 classification. And what - - - and there's no allegation
18 in this case that because of the passage of time, you know,
19 records that he successfully completed treatment
20 disappeared or - - - or a character witness on his behalf
21 he would have been able to present, but now he couldn't.

22 JUDGE HALLIGAN: Yeah, but I think there is - - -

23 MR. GLASSER: That would be a different scenario.

24 JUDGE HALLIGAN: I think there is an argument
25 that your adversary is making that living in the world with

1 an understanding that you have no further debt to pay for
2 whatever crimes you've committed is something with some
3 weight to it. And to draw that to a close later rather
4 than sooner, you know, inflicts some harm on the defendant.
5 So do we give that no weight at all in your calculus, or
6 some weight but in your view, is it - - - it's not very
7 significant? Or it's outweighed by the fact that he ended
8 up with a level 1 designation?

9 MR. GLASSER: I would say almost all of those
10 things. I think it has - - -

11 JUDGE HALLIGAN: Well, it's one or the other?
12 It's some weight or no weight?

13 MR. GLASSER: - - - either a little weight, but
14 it's certainly, in the grand calculus, does not get much
15 weight at all. Because I think the case - - - and I know,
16 Judge Garcia, you were asking, Gravino is one of the cases,
17 at least, that says the failure to inform a defendant at
18 the time of his plea or sentence that he has to register,
19 doesn't negate or undo the proceedings. So the harm or the
20 - - - the prejudice that the defendant is actually
21 complaining about here, particularly in their brief, the
22 stigma - - -

23 JUDGE CANNATARO: Counsel, I don't mean to
24 interrupt, but you just - - - I feel like we're - - - I
25 want to lay some ground rules if it's possible on this

1 question of, quote, "harm" and quote, "prejudice" because
2 you just said harm or prejudice.

3 MR. GLASSER: I'm sorry.

4 JUDGE CANNATARO: My understanding, and I think
5 we heard something about this earlier, is that prejudice is
6 something that affects your ability essentially to get a
7 fair hearing.

8 MR. GLASSER: Right.

9 JUDGE CANNATARO: Something happens that you're -
10 - - or a series of things happen, memories fade, evidence
11 gets lost, whatever it is. Harm is a somewhat broader
12 category.

13 And you know, we heard questions about people
14 living in the world for years and years and years and all
15 of a sudden finding out that they have to register. And
16 maybe that's a harm, maybe that's not harm. But do you
17 agree with that sort of distinction that prejudice is one
18 thing? It's sort of a procedural question, and harm is
19 something more general that might still be cognizable as a
20 matter of due process, but it's not the same thing as
21 prejudice?

22 MR. GLASSER: I can understand that, Your Honor.
23 I would agree with that. And what I was about to say to
24 Judge Halligan, the harm that the defendant complains of
25 here is the harm from having to register, which flows from

1 the conviction.

2 They have not identified any harm as a result of
3 the delay that occurred.

4 JUDGE RIVERA: Well, he - - -

5 MR. GLASSER: Their brief in particular talks
6 about stigma.

7 JUDGE RIVERA: - - - set up - - - he's lived his
8 life in a particular way. And now if there's public
9 information or a public registration, then that is going to
10 potentially upend that life in a particular way, right? He
11 may have had a - - - had employment that now he's going to
12 lose. Right? Isn't that also part of the harm?

13 MR. GLASSER: Well, as you said, Your - - -

14 JUDGE RIVERA: Prejudice to how will I set up my
15 life if I'm on the registration? How will I - - - I mean,
16 if you didn't have to tell someone because it wasn't
17 public, right, you're now going to have to explain to an
18 employer, perhaps that you didn't tell me, I didn't know.
19 I don't want you here.

20 MR. GLASSER: And perhaps, as you said, it may
21 have. Perhaps in some case there would be harm from a
22 delay. You know, for example, if the defendant had bought
23 an apartment after he got released from jail or bought a
24 house right next to a school, that by registering, he
25 wouldn't be able to live there. He may also have other

1 legal recourse. He'd have - - - you know, he could sue or
2 seek an injunction or something like that. There's none of
3 that here.

4 CHIEF JUDGE WILSON: Well, don't - - - doesn't
5 the fact that one of the Taranovich factors that's being
6 imported into here is just pure delay, and that's different
7 from prejudice, mean that there's an understanding that
8 delay is going to cause some cognizable injury?

9 MR. GLASSER: Well, what this court has said in
10 Knox is for either a procedural or a substantive due
11 process claim, there has to first be a deprivation. And
12 again, I would argue there's no deprivation here in the
13 first place. But as to prejudice, the Taranovi - - -

14 CHIEF JUDGE WILSON: Well, but the - - - if
15 that's your position then with my fifty-year example you
16 would still say, no, sorry, there's no deprivation here?

17 MR. GLASSER: Well, but again, after fifty years,
18 a level 1 registrant, for example, a level 1 offender would
19 have a liberty interest in not having to register after
20 fifty years.

21 CHIEF JUDGE WILSON: What about a level 2
22 registered?

23 MR. GLASSER: Again, I think that would be a
24 different issue. A level 2 offender may not, and in fact
25 they received a benefit of fifty years of not registering

1 and being able to live free of registration when they
2 should have registered.

3 CHIEF JUDGE WILSON: And so suppose that the
4 board had sent Mr. Collier or somebody else a notice saying
5 you actually don't have to register? It's erroneous, but
6 they sent him that notice and then he lives for whatever
7 period of time, six years, ten years, fifty years with that
8 expectation. And then somebody decides, oh, wait a minute,
9 that was actually - - - figures out that was wrong. Your
10 view then is still there's no deprivation? There's no
11 protectable liberty interest there?

12 MR. GLASSER: That would be a trickier question,
13 but I think if the government affirmatively tells him he
14 does not need to register, then that might give him an - -
15 - a vested liberty interest, because the government had
16 told him he would not be subject to a restriction.

17 JUDGE RIVERA: And the remedy for that would be
18 that he doesn't have to register or he has to be - - - I
19 think they called it unclassified. That is to say, law
20 enforcement knows, but it doesn't have to go on any public
21 - - -

22 MR. GLASSER: Right.

23 JUDGE RIVERA: - - - it doesn't have to be
24 publicly disseminated?

25 MR. GLASSER: Well, the unclassified

1 determination is something the Fourth Department created in
2 Gregory. That's not existent in the statute or
3 specifically crafted anywhere in the sex offender law.

4 Rather, what the Correction Law does explicitly
5 say is whether any of the relevant agencies or the court
6 doesn't promptly adjudicate the defendant according to the
7 timelines of the statute. It says that does not relieve
8 the defendant from his obligations to register. It does
9 not relieve the court from adjudicating a risk level.

10 JUDGE HALLIGAN: Would your analysis be different
11 if the designation had not been set nunc pro tunc? In
12 other words, backdated, and so then the time ran from the
13 date of designation six years later?

14 MR. GLASSER: I think that could be different,
15 yes. Because as I was saying, if six years later, for
16 example, he was adjudicated level 1 and he - - - if he
17 could show he would have been level 1 in the first place,
18 then for years, let's say '14 to '20 after the
19 adjudication, which would have been '21 to '26 - - -

20 JUDGE HALLIGAN: And like - - - likewise - - -

21 MR. GLASSER: - - - he would have a liberty
22 interest.

23 JUDGE HALLIGAN: Likewise, I think you said the
24 analysis might be different if there - - - if the defendant
25 could show that the lapse of time impaired his ability to

1 put on evidence or a witness or - - - or whatever it is.

2 MR. GLASSER: Yes.

3 JUDGE HALLIGAN: Yes.

4 MR. GLASSER: Here the First - - - the Appellate
5 Division, which is a fact-finding court made the
6 determination that the defendant materially benefited from
7 the delay. And I would submit that's either a finding of
8 fact or at - - - at most, a mixed question that has ample
9 support in the record because the defendant did materially
10 benefit two ways. Number one is the court did decline to
11 assess fifteen points for a lack of supervision, even
12 though objectively he was released without supervision.
13 And that's because he did live - - - and as the prosecution
14 conceded, he turned his life around during those six years.
15 That he presumptively would have gotten those fifteen
16 points, I think, if the hearing was held immediately upon
17 his release where he was not under supervision, those
18 fifteen points would have been assessed. He would have
19 been level 2.

20 The other way he materially benefited, as we've
21 discussed, is that it was nunc pro tunc. So he is not
22 going to be registered. He is not subject to any review
23 any longer than he would have been if he was promptly
24 adjudicated. And in fact, he's a level 1 offender who's
25 only subject to registration for fourteen years. That's

1 less registration than any other level 1 offender that I'm
2 aware of.

3 So he has, in fact, I believe the appellate
4 court, the language they used was materially benefited.
5 And that's because the trial court or the SORA court did
6 make him whole from any prejudice that may have been
7 present from the timing of the hearing in this case.

8 But I would submit that, again, in the first
9 place he had no liberty interest six years after his
10 conviction of not being an accurately classified registered
11 sex offender.

12 Moreover, I would note, and this was something
13 that opposing counsel did not touch on. There's no - - -
14 there was no deliberate action in this case to delay the
15 defendant's hearing, and defendant, in their brief on page
16 20, acknowledges it was negligence by the government. And
17 this court has repeatedly held, as has the U.S. Supreme
18 Court, that negligence or clerical error does not give rise
19 to a due process claim.

20 CHIEF JUDGE WILSON: I mean, that makes me wonder
21 whether that Taranovich factor actually has any application
22 in a SORA proceeding. Correct?

23 MR. GLASSER: And your - - - thank you.

24 CHIEF JUDGE WILSON: Because right, there may be
25 circumstances - - - I would hope not, but there may be

1 circumstances in criminal prosecution where the government
2 might do that. But a SORA proceeding, I can't see that
3 ever happening, really.

4 MR. GLASSER: And I would agree, Your Honor. And
5 I think that's distinguishable. And I believe - - - Judge
6 Halligan, I believe you asked about Taranovich before. It
7 may have been someone else. That's different because in
8 two reasons. One is there - - - if it's the prosecution,
9 the DA's office choosing to delay, then, you know, they
10 have the consequence of the decision they made.

11 SORA here is not punitive. It's not something
12 sought by the DA's office. It is - - - as this court has
13 regularly said, it's a remedial statute, its purpose is to
14 notify the community. But also under Taranovich you sort
15 of - - - you don't know what you don't know. When a
16 defendant is, perhaps, indicted ten years later, evidence
17 may have been lost that by virtue of ten years having
18 passed, we don't know what's been lost or what may favor
19 the defendant.

20 Here, we know that he has materially benefited
21 from the delay in this proceeding, and he has not
22 particularly identified - - -

23 CHIEF JUDGE WILSON: Well, I think more - - -
24 more - - -

25 MR. GLASSER: - - - frankly, either harm or

1 prejudice.

2 CHIEF JUDGE WILSON: Sorry. More to the point, I
3 think, the things that the board would use, or the court
4 would use in making the risk level determination or
5 downward departure are things that are known in the record.

6 MR. GLASSER: Yes, Your Honor.

7 CHIEF JUDGE WILSON: So it's static.

8 MR. GLASSER: And again here, it's actually
9 better - - - better for the defendant than static because
10 he lived at liberty, unsupervised for six years. He
11 demonstrated that he did, in fact, turn him - - - his life
12 around. He got credit for that. He would not have gotten
13 that credit if the hearing was held immediately upon his
14 release on that static record.

15 So if the court has no further - - -

16 JUDGE RIVERA: So is - - - is prejudice then
17 dispositive?

18 MR. GLASSER: No, it's not. It would be a
19 factor. But - - - and I think it's a necessary - - - well,
20 I think it's a necessary component. Yes. Without
21 prejudice, I don't think there - - - there cannot be a
22 deprivation of a constitutionally-protected right if the
23 defendant has not been prejudiced.

24 JUDGE RIVERA: That sounds like it's dispositive.

25 MR. GLASSER: And as I'm saying that out loud, I



1 would argue it's dispositive. I think what I was trying to
2 say is it's not the only factor. But I think it would be
3 dispositive. And I think here we have, again, either the
4 factual determination or at least the mixed question
5 finding that there was no prejudice.

6 JUDGE RIVERA: Right. So the fact that there is
7 some prejudice I think, because if there's no prejudice,
8 your position is it's dispositive. But if there was some
9 prejudice, however, whatever prejudice the court might
10 find, I think your position is, well, you're still going to
11 look at all the factors to determine whether or not - - -
12 looking at these other factors, they should - - -

13 MR. GLASSER: Yes.

14 JUDGE RIVERA: - - - they - - - right?

15 MR. GLASSER: Yes.

16 JUDGE RIVERA: They nevertheless should register?

17 MR. GLASSER: Right. Because - - - well, then it
18 would be a question of what - - -

19 JUDGE RIVERA: There's been a due process
20 violation? You can put it that way.

21 MR. GLASSER: Well, it would depend on what the
22 due process violation was. Because, for example, if
23 there's a procedural due process violation, a court could
24 vacate the finding and remand it for a new SORA hearing.

25 JUDGE RIVERA: Yeah.

1 MR. GLASSER: If - - - you know, if a defendant
2 didn't have counsel, let's say.

3 JUDGE RIVERA: Right, right, right.

4 MR. GLASSER: No, there's no point in doing that
5 here. The defendant got the most favorable result he
6 should. So for the defendant to claim he's somehow
7 entitled to be an unregistered sex offender, because we
8 didn't have - - -

9 JUDGE RIVERA: No. I'm just trying to understand
10 your position. If there is no prejudice, then there is no
11 claim. Right?

12 MR. GLASSER: Correct. Yes.

13 JUDGE RIVERA: I mean, that's your position?
14 There's no due process violation.

15 MR. GLASSER: Yes.

16 JUDGE RIVERA: But even if there is some
17 prejudice, you're still saying it might still not be a due
18 process violation because it's a multifactor test?

19 MR. GLASSER: Yes.

20 JUDGE RIVERA: Okay.

21 MR. GLASSER: And the court would have to craft a
22 remedy depending on exactly - - -

23 JUDGE CANNATARO: And would those be the
24 Taranovich factors or would it be something else? Because
25 it seems to me Taranovich is addressing a different kind of

1 prejudice.

2 MR. GLASSER: Yes. Well, Taranovich seems to be
3 primarily procedural due process claim of the delay.

4 JUDGE CANNATARO: Well, it's not even procedural.
5 They're both kind of procedural, but Taranovich - - - you
6 know, the - - - that usually involves an inquiry about
7 whether you're or you're going to get a fair hearing
8 concerning something that happened in the past. And
9 obviously, a lot of the Taranovich factors relate to how
10 reliable is the evidence going to be about this thing that
11 happened in the past.

12 Whereas the inquiry in SORA is, what risk do you
13 present to the community today?

14 MR. GLASSER: Right.

15 JUDGE CANNATARO: So I don't understand why a
16 test that evaluates the procedural fairness of the evidence
17 about a thing that happened in the past relates to a
18 different kind of hearing that - - - that's asking a
19 question about something that's going on right now?

20 MR. GLASSER: I would agree, Your Honor. And I
21 would think for that reason, the passage of time or the
22 delay is much less significant in the SORA context.

23 JUDGE CANNATARO: Right. So that's a Taranovich
24 factor that to me, maybe, isn't so relevant for this kind
25 of inquiry.

1 MR. GLASSER: Absolutely. I would agree, Your
2 Honor.

3 CHIEF JUDGE WILSON: Thank you.

4 MR. GLASSER: Okay. Thank you very much.

5 MS. GOETZ: Excuse me. First of all, I don't
6 think prejudice can be dispositive because the - - - I
7 think a multifactor balancing test allows courts to
8 evaluate the facts that present themselves in a variety of
9 circumstances. And courts - - - the federal courts have
10 already applied a similar test to this one that has to do
11 with constitutional speedy trial from Barker v. Wingo in
12 other civil contexts, including the context of deprivations
13 - - - in property deprivations in a civil forfeiture
14 proceeding.

15 So if this kind of a test applies when there's a
16 property deprivation, it should apply with equal force when
17 - - -

18 JUDGE GARCIA: So if - - -

19 MS. GOETZ: - - - we're talking about liberty
20 deprivation.

21 JUDGE GARCIA: If we're going to a multifactor
22 test, one thing I've been struggling with here is, we've
23 said many times the purpose of SORA is to protect the
24 community, right? Community safety. How do we figure that
25 here? And I know seriousness of the offense means

1 something very different in the Taranovich context, right?
2 It means how long would it take you to put this thing
3 together and go forward with the prosecution?

4 But for example, if you had someone who's crime
5 classified them as a level 3 sexually violent offender, and
6 for some reason when they get out of serving their time,
7 they are not required to register for five years. And that
8 defendant then comes in, they realize it and says, I was
9 living my life, I had a job, I was counseling children, and
10 now you're going to make me register as a sexually violent
11 offender level 3, and I'm not going to be able to do that.

12 How do we factor in the risk now for someone who
13 - - - assume would have a lifetime registration as a
14 sexually violent offender and severe limitations on their
15 contact and their ability to have jobs where they had daily
16 unsupervised contact with minors, who now is saying but
17 I've done that for five years and I have an expectation I
18 can do it forever?

19 MS. GOETZ: Well, I think this court is clearly
20 free to decide what multifactor - - - what test - - - what
21 the factors should be in that multifactor test.

22 JUDGE GARCIA: So would you agree - - -

23 MS. GOETZ: And I think - - -

24 JUDGE GARCIA: - - - that there would be some
25 public safety factor here?

1 MS. GOETZ: I mean, if the court wants to
2 consider that, I think that could fit into the prejudice
3 prong. The seriousness of the offense could be considered
4 in terms of prejudice overall to the community, in addition
5 to prejudice to a defendant. I don't think it should be a
6 separate factor. I think it would be weighed too heavily,
7 probably, in a situation like that.

8 But I think prejudice is sort of a comprehensive
9 factor that can account for a lot of different pieces of
10 the puzzle.

11 But I want to emphasize here that we're talking
12 about a misdemeanor offense for which a person served a
13 year in jail, was released, and - - -

14 JUDGE GARCIA: No. I'm just trying to figure out
15 what the test would be, generally.

16 MS. GOETZ: Sure. And I think - - -

17 JUDGE GARCIA: And I understand this is not that
18 - - - that case.

19 MS. GOETZ: Right. This is absolutely not that
20 case. And I think it's important for us to remember what
21 case this is. This is a case where an individual served a
22 misdemeanor sentence, was released after serving that
23 sentence with no further issues. And to suggest that fifty
24 years down the road or even fifteen years down the road,
25 that there's got to be a point at which the government

1 can't simply forget about things.

2 JUDGE TROUTMAN: Even though it was a
3 misdemeanor, would you look into the underlying facts as to
4 the - - - with respect to the risk, the harm that occurred?

5 MS. GOETZ: I think the other piece of this
6 puzzle, though, is that we do have facts here that show
7 that the - - - the risk to the community as measured by
8 what actually went - - - what happened over the past - - -
9 those six years, we know that - - -

10 JUDGE TROUTMAN: What about happened that caused
11 the conviction in the first instance? Is that to be
12 weighed in at all?

13 MS. GOETZ: I mean, I don't think so. SORA - - -

14 JUDGE TROUTMAN: So don't you look at the nature
15 of the offense at all?

16 MS. GOETZ: The - - - I don't think it makes
17 sense, because we're not talking about punishing somebody
18 for that conduct. What we're talking about is the - - -

19 JUDGE TROUTMAN: But isn't it a risk factor,
20 depending upon what occurred?

21 MS. GOETZ: The facts of a case - - - the facts
22 of a conviction?

23 JUDGE TROUTMAN: The facts of the - - -

24 MS. GOETZ: Sure. Are part of the risk
25 assessment instrument if that's what you're asking about.

1 JUDGE TROUTMAN: Yes.

2 MS. GOETZ: And again, if the court wishes to
3 consider the seriousness of the harm in the underlying
4 offense as part of - - -

5 JUDGE TROUTMAN: So it could be serious even
6 though it's classified as a misdemeanor?

7 MS. GOETZ: Sure.

8 JUDGE TROUTMAN: Because you can plead cases down
9 even though the offense, if it had gone to trial or
10 indictment, could have been a higher charge. Right?

11 MS. GOETZ: Sure. But we don't know - - - I
12 mean, there was no indictment in this case.

13 JUDGE TROUTMAN: No, we don't. But I'm saying so
14 that's why factors plural.

15 MS. GOETZ: Makes sense. Yes. I think that's
16 really - - - the bottom line is that factors make sense
17 because we're trying to figure out in a particular
18 circumstance what's fair, what violates our understanding
19 of concepts of fundamental fairness.

20 A defendant has an interest in notice. Notice is
21 a crucial part of our constitutional law. The right to
22 know who the witnesses are against you at a trial. The
23 right to know what the elements of the charges are.

24 JUDGE RIVERA: But you're not claiming that he
25 was put in a worse position? Because - - - to be able to

1 argue to the court whatever risk classification he should
2 or should not be designated as, right? You're not saying
3 he was put in a worse position after six years?

4 MS. GOETZ: The delay didn't - - - wasn't - - -
5 didn't make it worse for him to adjudicate that actual - -
6 -

7 JUDGE RIVERA: To argue whatever he was going to
8 argue. Correct?

9 MS. GOETZ: Sorry?

10 JUDGE RIVERA: To argue whatever he wanted to
11 argue to the court with respect to his classification?

12 MS. GOETZ: Well, he - - -

13 JUDGE RIVERA: He wasn't put in a worse position
14 because it took six years?

15 MS. GOETZ: Right. He - - -

16 JUDGE RIVERA: As opposed to someone who might -
17 - - the hypothetical we were talking about before - - -
18 might be put in a worse position, because the evidence is
19 no longer available that they wanted to rely on?

20 MS. GOETZ: Sure. And in that circumstance, that
21 person could present that evidence in this multifactor - -
22 -

23 JUDGE RIVERA: Yes. But I'm just - - -

24 MS. GOETZ: - - - test.

25 JUDGE RIVERA: - - - saying that's not your

1 client?

2 MS. GOETZ: No. He was objectively able to show
3 these very favorable facts that, you know, were to his
4 benefit.

5 JUDGE RIVERA: It helped - - - helped him? The
6 six-year delay in that way helped him?

7 MS. GOETZ: If you're examining - - - right.
8 Just what happened at the hearing.

9 JUDGE RIVERA: No, I understand you want us to
10 step back from that, right?

11 MS. GOETZ: Right.

12 JUDGE RIVERA: But you agree that that was
13 helpful to him?

14 MS. GOETZ: Yes.

15 But I want to talk very briefly about the
16 negligence. You know, my adversary talked about how this
17 is really about negligence. Negligence can never cause a
18 due process violation.

19 This is not about negligence. This is not about
20 a single act. The cases having to do with substantive due
21 process violations and how negligence is - - - takes it out
22 of that scheme, those have to do with affirmative acts by
23 an individual. And those affirmative acts, if they're
24 negligent, may not shock the conscience.

25 But we're talking about the compounding of

1 multiple failures over and over, over a period of years.
2 SORA doesn't just exist in a vacuum, it only works - - - it
3 only does something if the individuals charged with
4 administering it do what they're supposed to do. And
5 notice is a crucial part of that.

6 JUDGE CANNATARO: Could you just explain what the
7 multiple failures were? Because, I don't know. I just
8 assumed someone early on, as he was getting ready to leave
9 prison, jail, just made a terrible mistake, and this fell
10 under a table or something like that.

11 MS. GOETZ: So - - - right. So it wasn't just
12 that one failure, because that certainly does - - -

13 JUDGE CANNATARO: So yeah - - - so what else was
14 there?

15 MS. GOETZ: So there are multiple failures here.
16 One of them is the prosecution's failure to cite anything
17 about SORA at any point in time during the proceedings.
18 The - - - another failure is the court's failure to certify
19 him as required by statute. These are statutory
20 requirements

21 JUDGE CANNATARO: He wasn't certified as a sex
22 offender - - -

23 MS. GOETZ: Not certified. No.

24 JUDGE CANNATARO: - - - at the time of
25 conviction?

1 MS. GOETZ: Never. So that's another failure.

2 No one from the court staff brought it to the
3 judge's attention. Not a clerk, not a court officer, not a
4 court attorney. Nobody brought the case back later on and
5 said, oh, wait, we forgot to do this crucial thing. He
6 went and served a jail sentence in the City Department of
7 Corrections. The Department of Correction - - - the
8 facility that's holding an individual serving a sex offense
9 sentence has an independent obligation to notify that
10 person about what their registration requirements were and
11 to produce that person for the SORA hearing before the
12 expiration of their jail sentence. That didn't happen
13 either here.

14 So - - - and beyond that, after the person's
15 released, they - - - you know, they have a criminal
16 conviction; that information goes to the Department of
17 Criminal Justice Services, which is responsible to be the
18 repository of criminal justice information. They know the
19 person's been convicted of a sex offense. They know the
20 person never had a SORA hearing. They didn't do anything
21 either.

22 And then, beyond that, the Board of Examiners of
23 Sex Offenders, I don't know the inner workings of that
24 agency, but they did nothing either.

25 So this isn't about negligence. It's not about

1 one person dropping the ball as a person's getting released
2 from jail and not doing what they were supposed to do, and
3 - - - and excusing that. This is about egregious,
4 compounded failures by the government to do anything to
5 either let Mr. Collier know that he had this
6 responsibility, or - - -

7 JUDGE RIVERA: Is this an aberration, or does
8 this happen with frequency?

9 MS. GOETZ: You know, honestly, I was wondering
10 that same thing. Like, how frequently is this really a
11 problem? In my office, over - - - since I briefed this
12 case, three of my colleagues have reached out to me about
13 SORA hearings that they were doing saying, oh, can I see
14 those - - - you know, what did - - - I can't share the
15 briefs with anyone outside - - -

16 JUDGE RIVERA: I understand.

17 MS. GOETZ: - - - because they're sealed. But -
18 - -

19 JUDGE RIVERA: I understand.

20 MS. GOETZ: - - - you know, what kind of
21 arguments can we make? I - - - I have a case where - - -

22 JUDGE RIVERA: We're talking about similar
23 delays? If you can say. If you can't, I understand.

24 MS. GOETZ: No. I - - - I'm sorry that I don't
25 know the exact details about those delays, about how long

1 they were, about what explanations there were for them.

2 JUDGE RIVERA: Okay.

3 MS. GOETZ: I know one of the cases involved
4 somebody who had a second SORA hearing, and that triggered
5 the understanding that they had failed to do one on a first
6 conviction. I don't know the lapse of time there, but - -
7 - you know, one of them, the case was dismissed because of
8 the delay. I don't know what the - - - what test the
9 judges used in those circumstances.

10 But that's why we need a test that makes sense,
11 that's easy to apply, that allows balancing of multiple
12 factors. This is not - - - this is absolutely not a strict
13 aberration. What I think is aberrational in this case is
14 the absolute failure to notify him.

15 And the government had an ample opportunity to
16 explain why there was a delay or why they didn't notify
17 him. They did nothing in the trial court. So those are
18 facts that this court, I think, must consider in deciding
19 whether this is the kind of delay that deprives the
20 government of the ability to act, to deprive liberty in
21 this case.

22 CHIEF JUDGE WILSON: Thank you.

23 MS. GOETZ: Thank you.

24 (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. Collier (Roderick), No. 118 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: November 29, 2025

