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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 22

CURRY (EUGENE),

Appellant.

20 Eagle Street
Albany, New York
February 11, 2026

Before:

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

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1 CHIEF JUDGE WILSON: Last case on the - - - last
2 case on the calendar is People v. Curry.

3 MS. BREMER: Good afternoon. May it please the
4 court, Sabrina Bremer on behalf of Eugene Curry. May I
5 please reserve four minutes for rebuttal?

6 CHIEF JUDGE WILSON: Four? Yes.

7 MS. BREMER: Thank you. The Fourth Department
8 created a new extra statutory rule that an admission to a
9 violation of probation interrupts a term of probation.

10 JUDGE GARCIA: Counsel, can you just, and this is
11 very basic, and I'm sorry, but can you explain to me a few
12 things, like what happened here and what didn't happen
13 here? So what does probation do, and then what does the
14 court do or not do?

15 MS. BREMER: So Mr. Curry pled guilty to criminal
16 possession of a weapon in the second degree. He was
17 sentenced to a five-year term of probation. After about
18 two years - - - or year and a half successfully serving
19 some probation, the court received an information for - - -
20 requesting that it file a declaration of delinquency.
21 While the - - -

22 JUDGE GARCIA: And what's - - - that's a paper
23 filed by the probation department?

24 MS. BREMER: Yes. The information is a piece of
25 paper filed by probation. It was included in the record

1 here. And rather than filing a declaration of delinquency,
2 the court in this case - - -

3 JUDGE GARCIA: Now, just - - - just stop. So
4 does the court take that declaration from probation and
5 just file it, so it's a kind of a filing requirement, or is
6 there a new thing created that the court does?

7 MS. BREMER: Upon receiving that, the court has
8 the power - - -

9 JUDGE CANNATARO: Upon receiving what? Because -
10 - - because this goes to - - - my understanding is that
11 what probation is giving them is something along the lines
12 of a petition to make a declaration of delinquency, and
13 that the declaration is a separate thing, or is that - - -

14 MS. BREMER: Yes, exactly. The declaration of
15 delinquency filed by the court is a separate thing that the
16 court, in its discretion, can decide to file, which then
17 triggers the requirement to bring the probationer in for a
18 - - -

19 JUDGE GARCIA: Seventy-two hours or so.

20 MS. BREMER: Right, exactly. With - - -

21 JUDGE HALLIGAN: So for example if - - -

22 JUDGE GARCIA: And that's - - - I'm sorry.
23 That's what did not happen here. That last part we just
24 discussed.

25 MS. BREMER: Yes.



1 JUDGE GARCIA: The court did not file that
2 document - - - new document that starts a seventy-two hour
3 clock?

4 MS. BREMER: Exactly.

5 JUDGE HALLIGAN: So for example, if the court
6 received the, I don't know if you call it, a petition or
7 whatever the declaration is, that the court receives and
8 determined that there was not enough grounds to issue a
9 declaration, it - - - it could decline to do so and the
10 sentence would proceed as it had been; is that right?

11 MS. BREMER: Yes, exactly. The criminal
12 procedure law uses the court may file a declaration of
13 delinquency.

14 JUDGE HALLIGAN: Yes.

15 MS. BREMER: So it is a discretionary
16 determination by the court so that it can filter out the
17 information it's receiving from probation, because there
18 could be an instance in which what the court receives from
19 probation, as happened here, it receives the information,
20 the court takes a look at it, and the court tells Mr. Curry
21 at that point, okay, I'm going to put you out a few months.
22 Please keep coming back. We'll figure out what's going on.

23 CHIEF JUDGE WILSON: So let's - - - let's then go
24 another step. Suppose the court then had filed a
25 delinquency, right? Then, there has to be a hearing,

1 correct?

2 MS. BREMER: Yes, there has to be a hearing or
3 the probationer can admit to that violation of probation.

4 CHIEF JUDGE WILSON: And - - -

5 MS. BREMER: And then the court renders a
6 dispositional decision.

7 CHIEF JUDGE WILSON: Okay. And the dispositional
8 decision doesn't have to be a revocation of probation; is
9 that correct?

10 MS. BREMER: Exactly.

11 CHIEF JUDGE WILSON: It could be.

12 MS. BREMER: Right.

13 CHIEF JUDGE WILSON: But it could be else, right,
14 and that's set out in the statute?

15 MS. BREMER: Yes.

16 CHIEF JUDGE WILSON: Okay.

17 JUDGE CANNATARO: Could that - - -

18 JUDGE HALLIGAN: And what else could that
19 encompass?

20 MS. BREMER: I'm sorry. Could you - - -

21 JUDGE HALLIGAN: What - - - you said it could be
22 something else.

23 MS. BREMER: Yes.

24 JUDGE HALLIGAN: What else might that include
25 other than a revocation?

1 MS. BREMER: It can continue the term of
2 probation upon that admission or a finding. It could take
3 no further - - -

4 JUDGE CANNATARO: Could it extend the term of
5 probation, tack on some more time?

6 MS. BREMER: It can tack on the time from when
7 the declaration is filed until that final - - -

8 JUDGE CANNATARO: So just the stay time,
9 basically?

10 MS. BREMER: Um-hum.

11 JUDGE HALLIGAN: Could it include some time spent
12 in, for example, a drug treatment program? In other words,
13 a diversion? Is that one of the things it could do?

14 MS. BREMER: Yes. There are cases where a court
15 has modified the terms of probation by then, also requiring
16 that a probationer participate in a drug treatment program.

17 JUDGE RIVERA: So then is what went on here, the
18 court appearing to act as if indeed the declaration had
19 been filed?

20 MS. BREMER: No, because that hearing is never
21 held before Supreme Court. Supreme Court continues to have
22 Mr. Curry appear before it for a period of several more
23 months, and then eventually decides that the case should be
24 transferred to the drug treatment court, at which point Mr.
25 Curry makes an admission - - -

1 JUDGE RIVERA: Is the - - - is the court giving
2 him more chances?

3 MS. BREMER: Yes. The court is giving him more
4 chances, which - - -

5 JUDGE RIVERA: Is that what a court would do if
6 they didn't think there had been a violation?

7 MS. BREMER: I think that the court has a lot of
8 discretion in terms of the actions that it wants to take
9 upon receiving a report from probation.

10 JUDGE RIVERA: What - - - why - - - why would a
11 court be about the business of imposing additional
12 conditions, giving more chances, if the person had been
13 complying with the requirements that had already been
14 imposed?

15 MS. BREMER: Well, because I think that in this
16 case, Mr. Curry has had a significant struggle with
17 substance abuse throughout his whole life. And as is
18 reflected in the transcript, the court does want to give
19 him more chances and is very clear that it does not want to
20 sentence him to a term of incarceration. And it viewed - -
21 -

22 JUDGE RIVERA: Because he slipped.

23 MS. BREMER: Yes. Yes and - - -

24 JUDGE RIVERA: Okay. So because there is a
25 violation?

1 MS. BREMER: Yes. And I think that Mr. Curry
2 does admit to the violation. But under the statutory
3 scheme, that admission isn't what interrupts the term of
4 probation. The plain language of the statutory scheme is
5 very clear that only the court's filing of a declaration of
6 delinquency interrupts that probation - - -

7 JUDGE CANNATARO: So if the court had filed the
8 declaration of delinquency, per the procedure that's
9 envisioned in the statute, and then proceeded to do
10 everything else the same, keep him coming back, and then
11 eventually send him to diversion without, you know, taking
12 an admission from him in the court of original instance,
13 would that have all been okay, or would that still be
14 problematic?

15 MS. BREMER: That would be okay, because that
16 declaration would have interrupted his term of probation.
17 And had there been an untimely resolution on the violation
18 of probation, the - - - People v. Horvath addresses this.
19 The Court then loses jurisdiction to act on that violation,
20 and that argument is entirely foreclosed by the Fourth
21 Department's new rule in this case that the admission
22 itself is what interrupts a term of probation.

23 JUDGE GARCIA: Counsel, to go to your point, and
24 I think this was in response to something Judge Rivera was
25 asking, perhaps related, the Penal Law 65.15(2). It seems

1 that they described the tolling event as declared
2 delinquent by the court, right? You interpret that to mean
3 files. It doesn't say that, though, right?

4 MS. BREMER: Right. But then looking at CPL
5 410.30, that requires the filing of the declaration of
6 delinquency. So I do think it needs to be filed. And I am
7 aware that there is a case where I believe the Third
8 Department determined that an oral declaration of
9 delinquency was sufficient. However, there is no
10 allegation here that the court even orally ordered a
11 declaration of delinquency.

12 JUDGE GARCIA: Well, I think that goes to Judge
13 Rivera's point. Why is the court doing this if they
14 haven't decided that he's violated, right?

15 MS. BREMER: Why are they continuing to have him
16 - - -

17 JUDGE GARCIA: Yeah.

18 JUDGE RIVERA: And what authority would they have
19 to do so?

20 MS. BREMER: Well, his term of probation is still
21 ongoing, and I believe that at any point a court can
22 request that a probationer appear before it.

23 CHIEF JUDGE WILSON: So if this - - -

24 JUDGE RIVERA: Regardless of their complete
25 compliance?

1 MS. BREMER: Yes, a court has authority to issue
2 a warrant, not necessarily upon complete compliance, but if
3 they - - - the court has reason to believe probation was
4 violated.

5 JUDGE RIVERA: That's my point. That's my point.

6 JUDGE CANNATARO: Why would you do it?

7 JUDGE HALLIGAN: But the court can't alter the
8 terms without a hearing, can it?

9 MS. BREMER: No. There does need to be a hearing
10 or an admission by the probationer.

11 JUDGE HALLIGAN: In your view, is the guilty plea
12 a final determination for purposes of 65.15(2)?

13 MS. BREMER: No. The final determination
14 encompasses both the admission and then the court's
15 dispositional decision because that dispositional decision
16 is the crucial stage in the proceeding where the court
17 makes the determination whether probation should be
18 revoked, it should be modified, or it should be continued.

19 JUDGE HALLIGAN: So final determination as to the
20 delinquency doesn't mean did you violate or not? It means
21 what did you violate, and what is the - - - the ensuing
22 penalty or consequence?

23 MS. BREMER: Yes, exactly. Because upon that
24 finding, the court could determine that it is still just
25 going to continue that term of probation. And that all

1 goes back to the foundation of the court's jurisdiction is
2 the term of probation itself - - -

3 CHIEF JUDGE WILSON: Or modify the term of
4 probation to require drug treatment, right?

5 MS. BREMER: Yes.

6 CHIEF JUDGE WILSON: Or - - - or put the person
7 back in prison?

8 MS. BREMER: Yes.

9 CHIEF JUDGE WILSON: Right?

10 MS. BREMER: Exactly.

11 CHIEF JUDGE WILSON: Could do any of those
12 things?

13 MS. BREMER: Yes, it could. And when - - -

14 CHIEF JUDGE WILSON: And those - - - those - - -
15 the fact that somebody has pled guilty or been determined
16 guilty of a violation of probation doesn't dictate any of
17 those three choices?

18 MS. BREMER: Exactly. The court has discretion
19 to take any of those actions. A re - - -

20 JUDGE SINGAS: And also the plea of guilty
21 doesn't put any time limitation on it. So you could plead
22 guilty, and then the judge could decide three years later
23 what - - - how to handle that guilty plea, right?

24 MS. BREMER: So long as that term of probation is
25 ongoing, yes. But once the term of probation ends, the

1 court loses jurisdiction.

2 JUDGE GARCIA: Counsel?

3 JUDGE SINGAS: Well, not if - - - not - - - I
4 think what some of the questions are getting at is if the
5 guilty plea itself can toll - - -

6 MS. BREMER: Not - - -

7 JUDGE SINGAS: - - - the time of probation.

8 And I'm saying that a guilty plea doesn't then
9 introduce all the time limits that a - - - that a
10 certificate of delinquency does.

11 MS. BREMER: Yes, exactly. Because the statutory
12 scheme is clear only that filed declaration of delinquency
13 interrupts the term of probation. Otherwise the term of
14 probation continues to run.

15 JUDGE GARCIA: Counsel - - -

16 JUDGE HALLIGAN: Do you know if this is - - -

17 JUDGE GARCIA: I'm sorry, is there - - -

18 JUDGE CANNATARO: I was about to ask that same
19 question.

20 JUDGE GARCIA: It seems like the judge here was
21 trying to provide opportunities here. I think that's fair
22 to say. Is there a benefit to the defendant to not have
23 this document filed?

24 MS. BREMER: Yes. It is a benefit not to have
25 the declaration of delinquency filed because his term of

1 probation continues to run. But then, under the Fourth
2 Department's new rule, because Mr. Curry made that
3 admission, the court thereafter has jurisdiction to
4 sentence him.

5 CHIEF JUDGE WILSON: Let me just ask you about
6 the duration of the tolling, though. My understanding of
7 is that it would run from the point in time where there's a
8 declaration up until the point of time where there's a
9 final determination, and then it stops; is that right?

10 MS. BREMER: Yes. That's - - -

11 CHIEF JUDGE WILSON: That - - - and that final
12 determination is supposed to be made promptly.

13 MS. BREMER: Yes.

14 CHIEF JUDGE WILSON: So we're not talking about
15 five years in between those two. It could be a month. It
16 could be a couple of months. But it's supposed to be
17 prompt.

18 MS. BREMER: Yes, I do think it needs to be
19 prompt. And I think - - -

20 CHIEF JUDGE WILSON: The statute says that, no?

21 MS. BREMER: Yes, it does.

22 JUDGE HALLIGAN: Do you know if this is a
23 recurring practice, or is this something that happened in
24 this case?

25 MS. BREMER: In terms of a declaration of

1 delinquency not being filed?

2 JUDGE HALLIGAN: Yes. In your experience?

3 MS. BREMER: I - - - yes. So in our office, it
4 does seem that often an information for - - - for
5 delinquency is filed. And then - - -

6 JUDGE HALLIGAN: You mean what the - - - what - -
7 -

8 MS. BREMER: What probation sends - - -

9 JUDGE HALLIGAN: Right.

10 MS. BREMER: - - - and then sometimes a
11 declaration of delinquency will be affixed to a warrant.
12 But it is unclear if that happened in this case.

13 JUDGE CANNATARO: Follow-up question to that.
14 How aberrant is what happened here from what happens
15 everywhere else, if you know? Is this a local Rochester
16 thing, or is this the way it's working in courts all over
17 the State of New York?

18 MS. BREMER: I can only speak for Rochester, and
19 I can only speak from some brief observations of drug
20 treatment court. But what happened to Mr. Curry, I think,
21 is not uncommon. What might be uncommon is how long he was
22 kept in drug treatment court, but in terms of the procedure
23 of a violation of probation then being transferred to drug
24 treatment court, I have observed that several - - -

25 JUDGE GARCIA: I just have a follow up to the

1 question I asked you, with the Chief Judge's permission. I
2 - - - you said that if they - - - if they file this notice,
3 is that what tolls? That's what tolls in your view. So if
4 the court here filed the notice immediately, that tolls
5 probation so that, let's say, your client goes and
6 completes this treatment in a year, is that - - - and I'm
7 sorry for these basic questions. Is that year period after
8 the filing deducted from the probation time so that they
9 have to continue to do the full probationary period absent
10 that year?

11 MS. BREMER: Yes. Yes.

12 JUDGE GARCIA: So isn't that a benefit to not
13 filing it because then the period could continue to run?
14 So if this judge is trying to provide this opportunity to
15 the client saying, I'm not going to file because your
16 probation is continuing to run. So I'm going to give you
17 an opportunity to do this without tolling your probation;
18 isn't that a benefit?

19 MS. BREMER: Yes, I think it is a benefit. And
20 it would have been a benefit to Mr. Curry had his term - -
21 - his term of probation continued to run, and when it
22 expired on June 5th, 2021, if drug treatment court had
23 noticed that his probation had been completed.

24 JUDGE GARCIA: So now the - - -

25 JUDGE RIVERA: So your point is that the court

1 can give this benefit, but when the clock runs out, the
2 clock runs out?

3 MS. BREMER: Yes, exactly.

4 CHIEF JUDGE WILSON: So I'm sorry, I think that
5 your answer to Judge Garcia is inconsistent with the answer
6 that I think you gave to me. So let me see if we can all
7 straighten this out. I thought that you had answered my
8 question about whether the tolling - - - we agree when it
9 starts, but that it ends once the court makes a final
10 determination. Judge Garcia has asked you once the court
11 makes that final determination and says what I'm doing is
12 referring you to drug treatment, and the drug treatment
13 takes a year, that's still tolled. Which of those two is
14 it?

15 MS. BREMER: Oh, I apologize. So if the final
16 determination is a modification of probation of please go
17 to drug treatment court and complete that as a condition of
18 your probation, the statute says that once the court makes
19 that modification, the tolling stops.

20 JUDGE RIVERA: Okay. I - - - I'm sorry. I
21 didn't understand that that was the question you were being
22 asked, and that was the question that you were answering
23 because I thought the question was posed with the
24 understanding, and I may be incorrect, so I'll ask this
25 question if that was not the question, with the

1 understanding that the declaration had not been filed, in
2 other words, the judge would hypothetically would be doing
3 what it appears the judge is doing here. You said it
4 yourself, giving more chances. There's no declaration
5 that's been filed.

6 MS. BREMER: Right. No - - -

7 JUDGE RIVERA: There is a benefit that enures
8 because the clock has not yet started - - - stopped.
9 Excuse me. Running because there's no declaration. But I
10 understood your position when I directly asked you that.
11 Yes, that's a benefit, and the judge could keep doing that.
12 But once the clock runs, the judge can't now decide I've
13 given you - - - I've given you enough chances. I'm now
14 going to declare some violation, or you plead guilty, and
15 now I'm going to sentence you. Is that it?

16 MS. BREMER: Yes. So - - -

17 JUDGE RIVERA: Okay.

18 JUDGE GARCIA: So essentially, we should make
19 clear if we rule your way to a judge that if you want this
20 tolled, you have to file this declaration and any of the
21 time you spend in drug treatment after you file a
22 declaration is tolled off of your probation?

23 MS. BREMER: Yes. To interrupt that term of
24 probation you have - - - the court must file a declaration.

25 JUDGE GARCIA: Because otherwise you're gambling

1 on the client to say, I think you're going to do this, and
2 I want to give you a break. And our message should be,
3 well, if you're going to do that, you should be aware of
4 the risk that, like you said, sorry, the clock ran.

5 JUDGE CANNATARO: Time is going to run out.

6 JUDGE HALLIGAN: And - - - and if - - - if the
7 term of probation, let's assume the declaration of
8 delinquency is filed, and then a final determination is
9 made which would then, I think, cut off the toll you're
10 saying, right?

11 MS. BREMER: Um-hum.

12 JUDGE HALLIGAN: If - - - if the judge wants to
13 have someone participate in, for example, drug treatment
14 for a period of time that is longer than the remaining
15 probationary period on the original conviction, can the
16 judge do that as a condition of, for example, not revoking
17 parole?

18 MS. BREMER: I don't think so because once the
19 term of probation ends, for example, say someone has five
20 months left on their term of probation and the court wants
21 them to appear before a drug treatment court for a year,
22 the Court loses jurisdiction over that probationer once the
23 term of probation ends.

24 JUDGE HALLIGAN: So even if the choice in the
25 judge's view would be a year in drug treatment or I revoke,

1 the judge doesn't have authority to do that in - - - in the
2 circumstances you're - - - you're explaining?

3 MS. BREMER: Right, once the term of probation
4 ends.

5 JUDGE CANNATARO: But that's a problem, I think,
6 from - - - from the drug treatment perspective, because my
7 understanding of the nature of these - - - of that
8 particular treatment court is the court checks in with the
9 person from time to time and sees how they're doing, and if
10 they're not succeeding, you maybe give more services or
11 change the services that are being given, and then you
12 bring them back, and see how it's going. So it can be a
13 somewhat protracted process.

14 And it sounds like you're saying, well, once the
15 - - - once there's a disposition in the court where they
16 made that request of a delinquency, the time starts ticking
17 again, and if it runs out, the treatment court loses
18 jurisdiction.

19 MS. BREMER: It does, but the court could still
20 file another declaration of delinquency if - - - as long as
21 the time has not run out.

22 JUDGE CANNATARO: Wow.

23 JUDGE RIVERA: Wait, now I've lost you.

24 MS. BREMER: Oh. So let's say that the court
25 files a declaration - - -

1 JUDGE RIVERA: Yes.

2 MS. BREMER: - - - of delinquency, and then the
3 final - - -

4 JUDGE RIVERA: You've got the toll.

5 MS. BREMER: Yes, we have the tolling, and then
6 the modification is a condition of your probation is now
7 drug treatment court.

8 JUDGE RIVERA: You mean you - - - you've reached
9 a determination - - -

10 MS. BREMER: Yes.

11 JUDGE RIVERA: - - - is that what you mean or
12 not?

13 MS. BREMER: Yes. You've reached the
14 determination.

15 JUDGE RIVERA: That's what I missed. I got you
16 now. I got it.

17 MS. BREMER: Yes. Yes. You determined there's
18 been a violation. The modification will be participate in
19 drug treatment court.

20 JUDGE RIVERA: Yes. Yes.

21 MS. BREMER: And the time continues to run upon
22 the modification - - - the determination that there will be
23 a modification because that's what the statute says.

24 JUDGE RIVERA: And if you want to extend the
25 time, just file another declaration.

1 MS. BREMER: And then if you want, if that person
2 a two months later before drug treatment court is not doing
3 well, the court can file another declaration of delinquency
4 and determine.

5 JUDGE RIVERA: So the court doesn't need to wait
6 for the petition, right?

7 MS. BREMER: No, the court - - -

8 JUDGE RIVERA: The court can do this sua sponte
9 because they've got the person appearing before them?
10 Yeah, okay.

11 MS. BREMER: Yes. Yes. So if they're not doing
12 well after two months before drug treatment court, the
13 court has the power to say I'm filing a new declaration of
14 delinquency, you've violated these conditions of drug
15 treatment court, and I'm revoking.

16 JUDGE CANNATARO: Can the drug treatment court do
17 that, or does it have to go back to the court of original
18 instance?

19 MS. BREMER: In Rochester, I believe the drug
20 treatment court can and does make those decisions because
21 of the way our drug treatment court is organized under the
22 statute.

23 JUDGE CANNATARO: Okay.

24 MS. BREMER: I see my light is on. So unless
25 there are - - -

1 CHIEF JUDGE WILSON: Thank you.

2 MS. BREMER: - - - any further questions?

3 MR. ASHE: Good afternoon, Your Honors. Ryan
4 Ashe for the People. The People's position here is plainly
5 - - - I'm going to try and put as few words as possible
6 that a court's acceptance of a guilty plea for a violation
7 of probation necessarily includes a declaration of
8 delinquency.

9 JUDGE SINGAS: And where's - - - what's your
10 authority for that?

11 MR. ASHE: What was that? I'm sorry.

12 JUDGE SINGAS: What's your authority for making
13 that statement?

14 MR. ASHE: Well, Your Honor, my authority is in -
15 - - I would say, in - - - in the statute. It's not - - -
16 there isn't an express - - -

17 JUDGE SINGAS: Well, the statute, I mean, there's
18 - - - there's nothing in the penal law or CPL, is there,
19 that provides for any other method to toll this period
20 other than the filing of the declaration?

21 MR. ASHE: My argument would be that it - - - it
22 - - - it's contemplated by the statute, and that the - - -
23 the filing of a written declaration isn't ever described as
24 the only method. And so therefore - - -

25 JUDGE SINGAS: I mean, I feel like there's lots



1 of things that can be contemplated, but unfortunately we're
2 stuck with the words on the page, so.

3 MR. ASHE: Right. And I think that I - - -

4 JUDGE RIVERA: But if the plea is after the time
5 runs out, how - - - how is there jurisdiction?

6 MR. ASHE: If the plea - - - my argument, if
7 there's no declaration filed - - -

8 JUDGE RIVERA: Right.

9 MR. ASHE: - - - the plea is after the probation
10 term would have ended - - -

11 JUDGE RIVERA: Yes. Yes.

12 MR. ASHE: - - - it's not valid. The plea - - -

13 JUDGE RIVERA: What's not valid?

14 MR. ASHE: The jurisdiction to sentence him - - -
15 sentence the defendant on that plea, there's no
16 jurisdiction. The - - - the term is expired, and they've
17 completed probation.

18 CHIEF JUDGE WILSON: So here you're saying that
19 the guilty plea started the toll, right?

20 MR. ASHE: Yes.

21 CHIEF JUDGE WILSON: And so when did the toll
22 end?

23 MR. ASHE: In this circumstance, the - - -

24 CHIEF JUDGE WILSON: In this case?

25 MR. ASHE: Well, yeah. When did the toll end?

1 CHIEF JUDGE WILSON: Has it ended?

2 MR. ASHE: Yeah, right? I think that's the - - -
3 that's the argument. I think toll isn't the right word.

4 JUDGE HALLIGAN: But that's a - - - isn't that
5 concerning? Suppose you have a defendant who pleads guilty
6 and does so as a condition of being referred to drug
7 treatment court. Could the judge determine - - - and let's
8 assume that that individual otherwise has three months left
9 on their probation. Could the judge determine that five
10 years in drug treatment court is appropriate? The toll
11 hasn't ended, I think, you just said.

12 MR. ASHE: Well, oh, the toll - - - okay. So in
13 this circumstance, there's a declaration that's been filed.

14 JUDGE HALLIGAN: No, I'm saying same facts as
15 here.

16 MR. ASHE: Okay.

17 JUDGE HALLIGAN: I think your - - - your argument
18 is the guilty plea somehow subsumes a declaration, right,
19 and therefore effectuates a commencement of a toll, yes?

20 MR. ASHE: Yes.

21 JUDGE HALLIGAN: Okay. And so then I think the
22 Chief asked you, when does that toll end? And I think
23 you're saying maybe it hasn't ended.

24 MR. ASHE: When - - - it - - - it ends at the
25 final determination.

1 JUDGE HALLIGAN: Okay. But - - -

2 MR. ASHE: But if - - -

3 CHIEF JUDGE WILSON: And when did - - - sorry.

4 JUDGE HALLIGAN: But - - - but if a judge refers
5 someone to drug treatment court, what is the end point of
6 that participation? I think you're saying it's not when
7 the probation would have otherwise ended, which is the
8 other side's position. When does it end, and how do we
9 know?

10 MR. ASHE: The - - - and I - - - I promise this
11 is not a circular answer. The - - - what the probation or
12 what the drug treatment court's jurisdiction comes from is
13 the agreement between the treatment court and the
14 defendant. The defendant is voluntarily subjecting
15 themselves to the drug treatment court's jurisdiction.

16 JUDGE HALLIGAN: And so if the drug treatment
17 court concludes that the defendant has not met the
18 objectives of participation, can that continue indefinitely
19 for years long past the time at which the probation period
20 would otherwise have ended?

21 MR. ASHE: In theory, yes.

22 JUDGE HALLIGAN: Yes, in theory.

23 CHIEF JUDGE WILSON: And your answer is, I guess,
24 that what the defendant faced with ten years in drug
25 treatment court and going nowhere ten years after his

1 probationary term has ended, should do is go to the court
2 and say, just put me back in jail to finish the rest of my
3 sentence?

4 MR. ASHE: Correct, Your Honor. Because - - -
5 because the idea is that the defendant is - - - can be in
6 drug treatment court for as long as they want. Drug
7 treatment court is an extra opportunity for them to avoid
8 incarceration and therefore - - -

9 JUDGE SINGAS: Yeah, but - - - but - - - but drug
10 treatment court could also extend their probationary
11 sentence. If they're sentenced to probation, and they have
12 five years of probation, and they make it through four
13 years and ten months, and then the judge decides, like here
14 actually after the expiration, that he's going to get an
15 additional sentence, but there's no jurisdiction over him.

16 MR. ASHE: I think there is jurisdiction because
17 to get - - -

18 JUDGE SINGAS: How?

19 MR. ASHE: Because there's a violation within the
20 term of probation.

21 JUDGE SINGAS: But the statute tells us the only
22 way that you can toll that time, the only way you can toll
23 that five-year period is by filing this declaration of
24 delinquency. So short of that - - -

25 MR. ASHE: I don't necessarily - - - well, my - - -



1 - my point is that that's not the only way to toll it. My
2 - - - my point is that - - -

3 JUDGE SINGAS: Okay. So I'll go back to what's
4 your authority for saying that? So show me something that
5 says that you can toll it any other way.

6 MR. ASHE: The absence of the - - - the word
7 written and filed in every time that declaration of
8 delinquency is mentioned in the statute, it doesn't say,
9 you know, written and filed. And my argument is that
10 that's because there are - - -

11 JUDGE CANNATARO: How do you get from a written
12 declaration of delinquency or possibly a - - - and a verbal
13 oral declaration of delinquency to a completely different
14 method of tolling? Because your argument, as I understand
15 it, is that the - - - the guilty plea, the adjudication - -
16 - the disposition is - - - is what tolls. But that's
17 nowhere envisioned in the statute.

18 MR. ASHE: Well, I think the - - - the reason - -
19 - I don't think that it's necessarily not envisioned by the
20 statute because - - - because of my logic and the way I see
21 the declarations and how they relate - - - they relate to a
22 finding of a violation. And my logic is that step one is
23 presumably when something happens, an information for
24 delinquency is filed.

25 And that is a - - - that is a mere allegation by



1 the probation department, whoever is supervising this
2 person that comes to the court. But then, the second step
3 happens, and the court says, I have now the opportunity to
4 look at these allegations and decide whether or not they
5 appear to be verifiable and whether or not they appear to
6 constitute a violation. And that is when the court can
7 issue a declaration of delinquency. And it's after that we
8 move to a third step, where the defendant is guaranteed a
9 hearing and guaranteed essentially a finding after that
10 hearing and - - -

11 JUDGE RIVERA: A finding of the violation? So
12 the declaration is not a finding, a final finding of a
13 violation, correct?

14 MR. ASHE: That is - - - that is almost exactly
15 my argument. And I think that's the - - -

16 JUDGE RIVERA: Okay. So then how - - - a guilty
17 plea is a, right, admission that you violated? It seems to
18 me these are different things.

19 MR. ASHE: I don't think so because the
20 admissions are contemplated by the statute.

21 CHIEF JUDGE WILSON: But don't you agree, though,
22 that even after a finding of a violation after the hearing,
23 the court doesn't have to revoke probation?

24 MR. ASHE: That's right. The court has the - - -
25 in - - - in the absence of a - - - what we have here is the

1 defendant voluntarily subjecting themselves to the process
2 that comes along with drug court, and that includes
3 effectively a deferred sentencing and a deferred
4 determination. If the defendant - - -

5 CHIEF JUDGE WILSON: Wait, wait. Why do you say
6 voluntarily? The court can't order that?

7 MR. ASHE: In - - - in this - - - it's a
8 contract. The idea behind drug court is that in this
9 circumstance, because there's a violation of probation, you
10 have to plead to the violation to get in there. And it
11 requires consent of all parties.

12 CHIEF JUDGE WILSON: Whoa, whoa, whoa. You
13 couldn't - - - you couldn't be found to have violated?

14 MR. ASHE: To get into drug court?

15 CHIEF JUDGE WILSON: Um-hum.

16 MR. ASHE: I - - - I - - - drug court requires
17 the consent of parties at all times.

18 JUDGE RIVERA: So a judge could say, I'm willing
19 to do it?

20 MR. ASHE: Yes.

21 JUDGE RIVERA: And if the person says, I don't
22 want to go to drug court, the judge cannot order it?

23 MR. ASHE: I - - - that is my understanding, yes.

24 And - - -

25 JUDGE SINGAS: And - - - and that contract that

1 they sign, is there a back end on it? Do you say for one
2 year you're going to be in drug court or - - -

3 MR. ASHE: So the - - - the way my brain kind of
4 deals with this is that there's like a - - - there's a
5 minimum maximum so that there's a two - - - that this
6 contract says two years.

7 JUDGE SINGAS: So - - - so it's - - -

8 MR. ASHE: It's going to - - - if you complete
9 with my terms favorably for two years - - -

10 JUDGE CANNATARO: The agreement in this case was
11 for two years in drug treatment?

12 MR. ASHE: It says - - - well, see, it says the
13 original maximum is going to be two years. And then it
14 says - - -

15 JUDGE HALLIGAN: Is the contract in the record?

16 MR. ASHE: The contract is in the record, yes.

17 JUDGE HALLIGAN: Do you have the - - - happen to
18 have the cite for us?

19 MR. ASHE: I don't happen to have the cite.

20 JUDGE HALLIGAN: That's okay. I'll find it.
21 Thanks.

22 MR. ASHE: The - - - but what the contract says
23 is unless this term is modified, unless you're found to not
24 have complied. And so that's kind of the - - - that's the
25 agreement. You can be in drug court - - -

1 JUDGE CANNATARO: Which is at the sole discretion
2 of the treatment court, I would think, right, because no -
3 - - no one's going to admit that they failed to comply, or
4 do they?

5 MR. ASHE: I don't personally know that. It's
6 person - - - it's possible that they can. Someone - - -
7 the argument here - - -

8 JUDGE CANNATARO: That's not the important point.
9 The point I was ultimately trying to get to is that the
10 drug treatment court may very well find itself at a point
11 where it wants to extend the term of the stay in that
12 court, the visit to that court, possibly beyond the
13 original probationary period. And I understand you to be
14 saying that's all fine, all based on the original guilty
15 plea; is - - - is - - - is that it?

16 MR. ASHE: Right. Because - - - because the
17 guilty plea has - - - is - - - is - - - is the subject of
18 the court's jurisdiction here. The guilty plea
19 encompasses, as a condition of guilty plea, we're going to
20 take you into drug court.

21 JUDGE CANNATARO: I thought you said it was the
22 contract that was the basis of the court's jurisdiction.

23 MR. ASHE: Yeah, I think the - - - I think they
24 kind of rise and fall because, like - - -

25 JUDGE CANNATARO: It's a package?

1 MR. ASHE: The reason you're entering drug court
2 is to be supervised on - - - on these terms. And - - -

3 JUDGE SINGAS: Yeah, but the rub is that you're
4 still under a - - - a period of probation. And in some
5 courts, they'll change, you know, it'll be modified, you'll
6 get off probation and then enter drug court and enter into
7 a new agreement if all sides agree and everybody goes in
8 wide open. But it seems that the way Rochester is doing it
9 is that your period of probation remains running. And then
10 you begin this new drug court contract, and it doesn't
11 matter if the probationary period ends; is that right?

12 MR. ASHE: Well, I - - -

13 JUDGE SINGAS: I'm just asking for what - - -

14 MR. ASHE: I - - - I - - - yeah.

15 JUDGE SINGAS: - - - for what goes on in your
16 court there.

17 MR. ASHE: I don't want - - - it - - - it's hard
18 - - - it's hard for me to say. My understanding is, and my
19 understanding comports with what defense counsel has
20 represented, is that the declaration - - - declaration of
21 delinquency does exist separately, and it is usually
22 attached to the warrant that authorizes agents to bring the
23 defendant into the courtroom. That warrant package, if
24 they're, you know, if they're stapled together, if they're
25 part of the same warrant package, that doesn't get put

1 necessarily in the court's record, the record here that
2 gets put up on appeal or it doesn't get to be given to one
3 of the parties.

4 JUDGE RIVERA: You're saying he appeared pursuant
5 to a warrant?

6 MR. ASHE: When he makes his first appearance in
7 front of the - - -

8 JUDGE RIVERA: Yes.

9 MR. ASHE: - - - court there, it is a - - -

10 JUDGE RIVERA: After the petition? After the
11 petition is filed?

12 MR. ASHE: Yes, after the - - - it's called
13 information. Yeah.

14 JUDGE RIVERA: I'm sorry. Okay.

15 MR. ASHE: It's - - - it's - - - I forget
16 exactly. I believe it's a footnote in my brief about - - -
17 I think he's - - - I think he's taking it on a return on
18 warrant appearance.

19 JUDGE RIVERA: Okay. I'm sorry. Yeah. Okay.

20 MR. ASHE: Yeah. The - - - the - - -

21 JUDGE RIVERA: So a warrant had been issued, is
22 what you're saying?

23 MR. ASHE: I believe so. The - - - the
24 appearance might have been talking about an appearance on
25 the information or the appearance on the declaration or



1 something like that.

2 JUDGE RIVERA: So there may very well have been a
3 declaration, but it's just missing from the record?

4 MR. ASHE: Yes, Your Honor.

5 JUDGE RIVERA: Okay.

6 MR. ASHE: That - - - that is - - - that is
7 possible too. And that might also be a signal of why, in
8 this case, even defense counsel appears to not have even
9 taken issue with this, because eventually the point is, is
10 that defendant's clock is - - - for appellate purposes,
11 defendant's clock is running. His probation period is
12 running while he's appearing in front of Supreme Court.

13 JUDGE CANNATARO: So let me just ask you real
14 quick. The statute says declare the defendant delinquent
15 and file a written declaration. And I know maybe written
16 is not - - - that's honored in the breach, but file is
17 still there. So if you're saying that these warrants with
18 the attached declaration, which may exist in this case, but
19 in any event, as a matter of course doesn't get put into
20 the record, which I think is the same thing as saying
21 doesn't get filed, haven't we violated the statute?

22 MR. ASHE: No, Your Honor, because the court's
23 authority here to sentence the defendant ultimately is - -
24 - comes from his guilty plea. The jurisdiction - - - the
25 jurisdiction that to haul defendant in the court over and

1 over in drug court and make sure he - - - make sure he's
2 abiding by his terms isn't coming from that declaration,
3 so.

4 CHIEF JUDGE WILSON: But then you're treating the
5 declaration as irrelevant to tolling, then?

6 MR. ASHE: No, no, no, Your Honor, because I
7 think that the period was running. The period - - - while
8 he was reporting to the Supreme Court for a year before he
9 eventually got granted drug court. I think that the
10 periods was running. I'm not arguing that.

11 CHIEF JUDGE WILSON: So when did the toll start,
12 on his - - - on his guilty plea?

13 MR. ASHE: Well, yeah.

14 CHIEF JUDGE WILSON: In county court?

15 MR. ASHE: Yes.

16 JUDGE HALLIGAN: And so - - - so in a case where
17 a declaration is filed, does the declaration have no effect
18 on the toll?

19 MR. ASHE: No, Judge. It would - - - it would
20 begin the tolling process. But what the declaration does
21 is because it's attached to a warrant, the warrant
22 authorizes them to bring them in the court. It also
23 entitles you to a hearing. And those are claims that a
24 defendant can raise to the jurisdiction of the court when
25 there isn't a guilty plea. The guilty plea takes over, and

1 - - - and those - - - those are forfeited when you plead
2 guilty to the violation that was alleged.

3 JUDGE HALLIGAN: I'm trying to understand, in
4 terms of the toll, the interplay between the declaration
5 and a guilty plea under your reading. I take you to be
6 saying the guilty plea effectuates an indefinite toll. I
7 mean, a toll that will go for as long as it takes for the
8 drug treatment court to be satisfied that the objectives
9 have been satisfied, or for the defendant or the court to
10 say, I want out of this, please revoke my parole and
11 sentence me. So what's - - - what's the effect in terms of
12 a toll that the declaration effectuates when it's properly
13 filed, as opposed to the toll you're describing coming from
14 the guilty plea? I know your light's on, sorry.

15 MR. ASHE: So the toll from the - - - from the
16 declaration serves the purpose of the probation term not
17 expiring while they're trying to return him on a warrant,
18 or where they're trying to take him into custody to hold
19 him for the - - - for the hearing. And so in a - - - in a
20 case where, let's say there's a two year probation term,
21 and the information for delinquency comes in a year and
22 eleven months.

23 JUDGE HALLIGAN: And then you're saying the
24 guilty plea allows the toll to extend indefinitely beyond
25 that two-year period?

1 MR. ASHE: If the guilty plea had taken - - -
2 takes place before the end of the probation term, I - - -
3 my position, the position of the People, is that that
4 subjects the defendant to the jurisdiction of the
5 sentencing court here, which - - -

6 JUDGE CANNATARO: Yeah, but it tolls - - - it
7 also tolls the probationary period. That's what you said
8 before.

9 MR. ASHE: It effectively tolls. The word for -
10 - - for here toll would be a word where it would only - - -
11 yeah, yeah. It's hard for me to wrap my brain around the
12 word toll where the - - - the probation term ultimately
13 never continues. To me, toll is kind of like a temporary
14 word.

15 JUDGE CANNATARO: Right.

16 CHIEF JUDGE WILSON: So it permanently suspends
17 it?

18 MR. ASHE: Exactly. Yeah, it - - -

19 JUDGE CANNATARO: The clock stops ticking.

20 MR. ASHE: Right.

21 CHIEF JUDGE WILSON: Well, it never runs again.

22 MR. ASHE: They have the same definition, but
23 they might be different words. I think the clock stops
24 ticking.

25 CHIEF JUDGE WILSON: Thank you.



1 MR. ASHE: Thank you.

2 MS. BREMER: Very briefly, I just wanted to
3 address some of the due process concerns that arise under
4 this new rule, where an admission to a violation interrupts
5 this term of probation. Under the statutory scheme, as has
6 become apparent this afternoon, there isn't indefinite
7 tolling contemplated. There's a very clear end date. The
8 tolling stops when there's been a final determination on
9 that violation versus if admission to a violation tolls - -
10 - tolls the term of probation. That term of probation, in
11 essence, extends the court's jurisdiction indefinitely.
12 And although under the statutory scheme there are - - -
13 there is plain language allowing a defendant to make a
14 claim that a court has been untimely in bringing it back -
15 - - bringing the probationer back in for a hearing on the
16 violation, that avenue for relief is entirely foreclosed
17 for all defendants, not just those who consent to a
18 deferred sentencing before drug treatment court.

19 JUDGE RIVERA: The point of the declaration is to
20 then make a determination how to proceed, right? Whether
21 there's a finding of a violation or not a finding of
22 violation, right, the defendant is entitled to a hearing.
23 So why - - - why wouldn't the guilty plea make it totally
24 unnecessary to do the rest of this?

25 MS. BREMER: So why wouldn't a - - -

1 JUDGE RIVERA: Guilty plea basically serve
2 effectively the purpose of the declaration and the hearing?

3 MS. BREMER: Because then there is no clear end
4 to the tolling. The final determination is the court
5 making the determination whether probation will be
6 continued - - -

7 JUDGE RIVERA: Right, but that's true whether
8 it's a declaration or the plea, right?

9 MS. BREMER: Right. But if it's - - -

10 JUDGE RIVERA: It's always that declaration at
11 the end - - - excuse me, not declaration, decision.

12 MS. BREMER: Yes, there's always the decision at
13 the end. But if a court has filed a declaration of
14 delinquency and takes years to render a decision on that
15 alleged delinquency - - -

16 JUDGE RIVERA: You mean once someone's plea - - -
17 in this example, they plead and then takes years; is that
18 what you mean?

19 JUDGE CANNATARO: No. The disposition is the
20 plea, right?

21 MS. BREMER: No, the - - -

22 JUDGE RIVERA: No, no, the disposition is what
23 you're going to impose - - -

24 MS. BREMER: Yes, yes.

25 JUDGE RIVERA: - - - as the sanction based on the

1 plea.

2 MS. BREMER: Yes, exactly.

3 JUDGE CANNATARO: Right, right.

4 JUDGE RIVERA: I get that. I get that. That
5 much I understood.

6 MS. BREMER: Yes.

7 JUDGE CANNATARO: Can I just ask - - -

8 JUDGE RIVERA: No, wait, wait. I'm sorry. I'm
9 not - - -

10 JUDGE CANNATARO: I'm sorry. Go ahead.

11 JUDGE RIVERA: I'm sorry, Judge. I just want to
12 not lose this thread because you said it can go on
13 indefinitely, but doesn't. Isn't that the point about the
14 plea serving? My - - - my point is, why shouldn't the plea
15 serve as the declaration that tolls until the judge does
16 render a determination?

17 MS. BREMER: Because under the statutory scheme,
18 if the court takes a long time to render that final
19 determination, the probationer can make a claim, such as
20 under People v. Horvath, that the court lost jurisdiction
21 because of the court's own belated - - -

22 JUDGE RIVERA: I'm saying why wouldn't that - - -
23 why can't that run from the plea instead of a declaration?

24 MS. BREMER: Well, because - - - well, for one,
25 that - - - the court losing jurisdiction because it was

1 untimely needs to be preserved below. So in Mr. Curry's
2 instance, for example, he could not raise a claim under
3 People v. Horvath because his attorney did not argue - - -

4 JUDGE RIVERA: I thought you said it's
5 jurisdictional. Did I miss something again?

6 MS. BREMER: So if the term of probation has
7 ended, the court no longer has jurisdiction to enter that
8 final disposition.

9 JUDGE RIVERA: Right, okay.

10 MS. BREMER: If the court is untimely in holding
11 a hearing to determine whether there's been a violation or
12 to render that final disposition - - -

13 JUDGE RIVERA: Okay.

14 MS. BREMER: - - - the probationer needs to raise
15 that claim below - - -

16 JUDGE RIVERA: Okay.

17 MS. BREMER: - - - for it to be preserved.

18 JUDGE GARCIA: Counsel, just as a hypothetical,
19 and going back to my earlier point, if you were
20 representing someone not this particular defendant, but
21 someone in this situation, would there ever be a reason
22 why, and I'm not saying this happened here at all, but
23 would there ever be a reason why you would ask the court
24 not to file the declaration?

25 MS. BREMER: Yes, so that term of probation is

1 not interrupted. Perhaps the court and the probationer
2 come to an agreement that he will go to drug treatment - -
3 -

4 JUDGE GARCIA: But for your client's benefit,
5 representing a client in this situation, again, not this
6 person, but would a lawyer in that situation ever ask the
7 court for my client's benefit, don't file this now?

8 MS. BREMER: I'm not aware of that happening.

9 JUDGE GARCIA: Okay.

10 CHIEF JUDGE WILSON: If you thought your client
11 hadn't violated probation, I assume you would tell the
12 court, don't file the declaration.

13 MS. BREMER: Yes. And as happened here, there is
14 a maybe a reference. When Mr. Curry is brought in, he
15 tells the court, I can explain. I was hit by a car. This
16 is why I missed these appointments.

17 JUDGE RIVERA: But might the declaration be filed
18 without counsel having had an opportunity to make any
19 argument?

20 MS. BREMER: Yes.

21 JUDGE RIVERA: Yeah. Okay.

22 JUDGE TROUTMAN: But couldn't a defendant decide
23 drug court is beneficial and asked for that informal
24 opportunity to continue on. And that's why the declaration
25 would not be filed?

1 MS. BREMER: Yes. And the term of probation
2 would continue to run, because that declaration is the only
3 statutory mechanism to interrupt that term of probation.

4 JUDGE TROUTMAN: No, what I'm saying is, can't a
5 defendant just - - - by agreement, there is no declaration
6 filed? They're just asking for a little extra to make sure
7 they're successful. And that is why the declaration would
8 not be filed. They're asking for a modification of
9 condition without interruption of probation, but just to
10 ensure a successful completion.

11 MS. BREMER: Yes. I don't think that the court
12 is obligated to file.

13 JUDGE TROUTMAN: Certainly not obligated. But
14 there are times when probation officers contact the court
15 regarding a person and a need for an adjustment of the
16 terms and conditions.

17 MS. BREMER: Um-hum. Yes.

18 CHIEF JUDGE WILSON: Thank you.

19 (Court is adjourned)
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C E R T I F I C A T I O N

I, Christy Wright, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Curry (Eugene), No. 22 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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