State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

February 8 thru February 10, 2022

State of New York
Court of Appeals

To be argued Tuesday, February 8, 2022 (arguments begin at 2 p.m.)

No. 10 Ferreira v City of Binghamton

This federal case, a negligence action arising from a shooting by Binghamton police as they executed a no-knock search warrant in 2011, hinges on whether the New York rule that plaintiffs who sue a municipality for negligence must prove the government owed them a "special duty" applies to cases of government-inflicted injury, or only where plaintiffs claim the municipality failed to protect them from a third party.

In August 2011, acting on a tip that a man had robbed local drug dealers, was armed, and was staying at his girlfriend's apartment in Binghamton, city police officers obtained a no-knock warrant to search the residence. They conducted an hour of surveillance that evening and saw the suspect meet another man outside the apartment and then leave the area. They made no further effort to determine whether the suspect had returned before the raid the next morning. A SWAT team armed with assault rifles was assigned to execute the warrant. They did not bring beanbag guns, tasers, or other less-lethal weapons for the raid, nor did they know the apartment's layout.

Plaintiff Jesus Ferreira, an overnight guest who was not expected by the officers, was sleeping on a living room couch near the front door when the SWAT team broke through it with a battering ram. Officer Kevin Miller, the first man through the door, immediately encountered Ferreira and within two seconds shot him in the stomach at a distance of three to six feet. Miller later testified that, as he entered the room, he saw Ferreira rising from the couch and yelled "down, down, down," but Ferreira instead walked toward him. He said Ferreira did not verbally threaten him, but was holding a gray Xbox controller which the officer mistook for a snubnosed revolver and, as a result, Miller said he believed Ferreira posed an immediate danger to himself and other officers. Ferreira testified that he watched a movie from the couch the previous night using the Xbox controller and that he left the controller on the floor when he fell asleep. The next morning, when he was awakened by the banging and yelling at the door, Ferreira said he sat up slightly from the couch, raised his arms above his head, and turned his torso toward the door so he would not be seen as a threat. He said he did not hear anyone yell "get down" before the shot, which came "the same instant" the door flew open.

Ferreira sued the City and Miller in U.S. District Court for the Northern District of New York, which instructed the jury that it could find the City liable based either on negligence of Miller in shooting Ferreira or negligence of other officers in planning the raid. The jury found Miller had not been negligent, but it found the City liable for negligent planning of the raid, partially offset by a finding that Ferreira was 10% at fault. It awarded Ferreira $3 million.

The court granted the City's motion to set aside the verdict against it on the ground that Ferreira failed to show the City owed him a special duty greater than it owed the general public. On appeal, Ferreira argued that no special duty is required where the police inflict the injury.

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the issue in a certified question: "Does the 'special duty' requirement ... apply to claims of injury inflicted through municipal negligence, or does it apply only when the municipality's negligence lies in its failure to protect the plaintiff from an injury inflicted other than by a municipal employee?"

For appellant Ferreira: Alexander J. Wulwick, Manhattan (201) 261-4096
For respondent Binghamton and Miller: Brian S. Sokoloff, Carle Place (516) 334-4500

State of New York
Court of Appeals

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To be argued Tuesday, February 8, 2022 (arguments begin at 2 p.m.)

No. 32 U.S. Bank National Association v DLJ Mortgage Capital, Inc.

U.S Bank National Association, as trustee for a residential mortgage-backed securities (RMBS) trust, filed a breach of contract suit against the seller of the mortgage loans, DLJ Mortgage Capital, Inc., alleging that it failed to pay for defective loans as required by the "repurchase protocol" of the trust's pooling and service agreement. The repurchase protocol provides that within 120 days of receiving written notice of a breach of any of its representations and warranties regarding the quality of the loans "which materially and adversely affects" the interests of the investors, DLJ must cure the breach or repurchase the defective loan. Beginning in December 2011, U.S. Bank sent letters to DLJ demanding that it cure or repurchase hundreds of defective loans, and saying its investigation of the loans was ongoing and the breaches were pervasive. U.S. Bank filed this suit in 2013, claiming DLJ did not repurchase any loans in response. DLJ moved to dismiss all claims based on loans the plaintiffs did not specifically identify in their timely pre-suit breach notices.

Supreme Court denied DLJ's motion, ruling that U.S. Bank's timely pre-suit breach letters notified DLJ of numerous defective loans and also of the likelihood that additional breaches would be discovered, which would then relate back to the date of the initial complaint. The courts also ruled the plaintiffs were entitled to interest accrued on liquidated loans up to the date they are repurchased.

The Appellate Division, First Department affirmed based, in part, on the relation-back doctrine. In a related case, it said, "The trustee's timely presuit letters, which stated that DLJ had placed defective loans into the trusts 'on a massive scale,' cited breach rates between 65% and 72% in the trusts, cautioned that the specified defective loans were 'just the tip of the iceberg,' and stated that its investigation into the loans in the trusts was ongoing, put DLJ on notice that the breaches plaintiffs were investigating might uncover additional defective loans for which claims would be made. Therefore, plaintiffs' timely complaints that identified certain breaching loans may be amended to add the claims at issue, as they relate back to the original complaints...." It also upheld the ruling on interest.

DLJ argues that the plaintiff failed to comply with the repurchase protocols in the governing agreements, which "require timely notice as to every loan for which plaintiffs assert a claim." The parties "agreed to a loan-specific sole remedy that requires timely, loan-specific breach notices," it says, and "relation back cannot be used to excuse timely compliance with contractual requirements." It also contends that the plaintiff is not entitled to interest on liquidated loans.

For appellant DLJ: Richard A. Jacobsen, Manhattan (212) 506-5000
For respondent U.S. Bank: Kathleen M. Sullivan, Manhattan (212) 849-7000

State of New York
Court of Appeals

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To be argued Tuesday, February 8, 2022 (arguments begin at 2 p.m.)

No. 59 White v Cuomo

The State Legislature amended the Racing, Pari-Mutual Wagering and Breeding Law in 2016 by enacting a new article 14 to permit interactive fantasy sports (IFS) contests, in which players pay entry fees to an IFS provider, select fantasy teams of real-world athletes, and compete against other players for cash prizes based on the performances of their chosen athletes in actual sporting events. Article 14 declares that IFS contests do not constitute gambling as defined in Penal Law § 225, thereby eliminating criminal penalties for IFS; and it provides for consumer safeguards, minimum standards and the registration, regulation and taxation of IFS providers. Jennifer White and three other plaintiffs brought this action against then-Governor Cuomo and the State Gaming Commission to strike down article 14 as unconstitutional. They contend its authorization of IFS contests violates article I, section 9 of the State Constitution, which states that "no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling ... shall ... be authorized or allowed within this state," except for state run lotteries, pari-mutual betting on horse races, and state authorized casinos.

Supreme Court granted partial summary judgment to the plaintiffs, ruling that article 14's authorization for IFS contests violates the constitutional prohibition of gambling. It relied on Penal Law § 225, which defines "gambling" as a person betting on "a contest of chance or a future contingent event not under his control or influence; and defines "contest of chance" as any game "in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein." While IFS players may employ skill in choosing their teams, the court said, "IFS involves, to a material degree, an element of chance, as the participants win or lose based on the actual statistical performance of groups of selected athletes in future events not under the contestants' ... control or influence." However, it upheld the portion of article 14 that eliminates criminal penalties for IFS contests.

The Appellate Division, Third Department upheld, on a 4-1 vote, the finding that the statutory authorization of IFS violates the constitutional ban on gambling. The Constitution does not define "gambling," but the majority said "the current Penal Law definition comports with the common understanding of the meaning of the constitutional prohibition" and encompasses IFS contests. "[A]lthough participants in IFS contests may use their skill in selecting teams, they cannot control how the athletes on their IFS teams will perform in the real-world sporting events.... In other words, the skill level of an IFS contestant cannot eliminate or outweigh the material ... role of chance in IFS contests." It modified the judgment by striking down the decriminalization of IFS contests, saying the Legislature would not have wanted to leave them entirely unregulated.

The dissenter argued that "our judicial inquiry is limited to deciding whether the Legislature rationally determined, after hearing and considering evidence, that IFS contests are not 'gambling' as defined under Penal Law § 225.00.... [A]rticle 14 was constitutionally enacted because the legislative record supports that the outcome in an IFS contest neither depends (1) to a 'material degree upon an element of chance' nor (2) upon 'a future contingent event not under [the contestants'] control or influence...." He said the Legislature "concluded that the proper focus is not on the participants' influence over the real world events and a specific athlete's performance, but the participants' unquestionable influence on winning the contest by making skillful choices in assembling a fantasy roster."

For appellant State: Senior Assistant Solicitor General Victor Paladino (518) 776-2012
For respondents White et al: Jeffrey Sherrin, Albany (518) 462-5601

State of New York
Court of Appeals

To be argued Wednesday, February 9, 2022 (arguments begin at 2 p.m.)

No. 13 Revis v Schwartz

Former National Football League cornerback Darrelle Revis is suing New York attorney Neil Schwartz and his law partner, Jonathan Feinsod, to recover damages for alleged breach of contract, fraud and related claims involving endorsement deals. Revis retained Schwartz as a contract advisor before signing his first NFL contract with the New York Jets in 2007, and the two men signed the standard representation agreement (SRA) required by regulations of the National Football League Players Association (NFLPA), in which Revis agreed that Schwartz would receive 2% of the compensation he earned under team contracts negotiated by Schwartz. The SRA contained a dispute resolution provision, which stated, "Any and all disputes between Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement shall be resolved exclusively through the arbitration procedures set forth in" the NFLPA regulations. Those regulations provide that any arbitration would be conducted pursuant to the voluntary labor arbitration rules of the American Arbitration Association (AAA). In a space contained in the SRA for the parties to list any other agreements between them, Revis and Schwartz noted that they had entered into a marketing and endorsements (M&E) agreement that entitled Schwartz to 10% of Revis' earnings from endorsement deals he negotiated.

When Revis filed this suit in 2016 for breach of the endorsements agreement, the Schwartz defendants moved to compel arbitration. Revis responded that the arbitration agreement in the SRA applies only to disputes involving player contracts, not endorsement deals.

Supreme Court granted the defendants' motion to compel arbitration, saying, "It is clear to the court that the parties entered into a valid arbitration agreement and that the issues stated in the [lawsuit] are encompassed within the SRA's broad arbitration clause...." It rejected Revis' claims that Schwartz acted as his attorney on endorsement deals and that this alleged misconduct was unrelated to Schwartz's player contract negotiations governed by the SRA.

The Appellate Division, Second Department affirmed in a 3-2 decision, ruling the defendants "established as a matter of law" that Revis agreed in the SRA "to arbitrate 'gateway' questions of arbitrability" by incorporating the AAA rules, which left courts with no authority to decide the issue. It said the SRA invokes "the broad umbrella of the NFLPA regulations..., which contains a broadly worded arbitration clause" and requires that the arbitration comply with the rules of the AAA. "The AAA rules, in turn, grant the arbitrator 'the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.' The SRA thus makes 'clear reference' to section 5 of the NFLPA regulations, which, in turn, makes 'clear reference' to the AAA rules in such a way that the intent of the parties to incorporate those specific documents 'may be ascertained beyond doubt'...."

The dissenters said, "[I]t is a misreading of the contract documents to draw a line from the SRA to the NFLPA regulations to the AAA rules, and then ... to conclude that the separate [M&E] contract must initially go to an arbitrator.... Notably..., the SRA only incorporates the arbitration procedures of the NFLPA regulations to the extent of resolving disputes over the meaning ... or enforcement '*of this Agreement*,' meaning the SRA only. By the plain language of the SRA, the NFLPA regulations are not incorporated for the resolution of disputes that arise outside of the SRA," in which "the existence of the M&E is disclosed but expressly described as a 'separate agreement.'" They said, "Here, there is no 'unambiguous' provision in the SRA that any disputes ... involving the M&E be arbitrated, particularly where there is at least a question of fact as to whether Schwartz's role in the M&E was that of an attorney rather than a contract advisor."

For appellants Revis et al: Mark S. Levinstein, Washington DC (202) 434-5000
For respondents Schwartz et al: Mario Aieta, Manhattan (212) 404-8755

State of New York
Court of Appeals

To be argued Wednesday, February 9, 2022 (arguments begin at 2 p.m.)

No. 14 People v Angelo Burgos

Angelo Burgos and several co-defendants were charged with assault after two men were slashed and seriously injured during a street brawl in Manhattan in March 2012. In 2013, Burgos retained Andres Aranda, an attorney who had represented him twice before in criminal cases, to defend him against the charges. Aranda had a history of disciplinary sanctions issued by the Appellate Division, First Department, including an admonition in 1989 for neglecting a criminal case and a one-year suspension imposed in 2006 for neglecting client matters. In May 2015, about two months before Burgos' assault trial was to begin, the U.S. Court of Appeals for the Second Circuit suspended Aranda from practicing law in that court for 18 months based on a "pattern of misconduct" in neglecting criminal appeals. Aranda did not inform Burgos or the state trial court of the suspension.

On Aranda's advice, Burgos waived his right to a jury and proceeded to a bench trial. Supreme Court acquitted him of two gang assault counts, but convicted him of four counts of first-degree assault and sentenced him to 20 years in prison.

In February 2016, after the verdict, the First Department imposed reciprocal discipline on Aranda and suspended him for 18 months, to run from the date of the Second Circuit's suspension. Burgos then retained a new attorney and filed a CPL 440 motion to vacate his conviction, arguing that Aranda's failure to disclose his suspension by the Second Circuit deprived Burgos of his right to counsel of his choice and that Aranda's Second Circuit suspension amounted to a constructive suspension in New York State courts, thus depriving him of his right to counsel when Aranda represented him at trial.

Supreme Court denied the motion to vacate, saying "there is no legal or ethical authority which required" Aranda to inform Burgos of his Second Circuit suspension. Aranda "was still in good standing in this jurisdiction when he tried the indictment at issue. The defendant has not explained how the attorney's silence fell below professional standards, or prejudiced him."

The Appellate Division, First Department affirmed, saying, "At the time of defendant's trial, his retained counsel was serving an 18-month suspension from practice before the ... Second Circuit, imposed for counsel's neglect in pursuing appeals to that court. Trial counsel's later suspension by this Court, as reciprocal discipline, was not in effect at the time of defendant's trial, notwithstanding that the suspension was nunc pro tunc to a date preceding that trial. Accordingly, we find no basis for concluding that counsel was constructively suspended from practice in this State at the time of defendant's trial.... Regardless of whether counsel should have informed defendant of the Second Circuit suspension, defendant has not shown that counsel's failure to do so requires a new trial."

Burgos argues, "[T]he essence of the right to counsel of choice is a defendant's informed decision about who will represent him. An attorney who is currently suspended in a sister jurisdiction has an obligation, similar to the obligation of an attorney laboring under an actual or potential conflict of interest, to disclose the suspension to his client and to the trial court. Only then can a trial court ensure both that the defendant is informed of, and waives, any issue pertaining to the suspension and that the trial court independently exercises its discretion in deciding whether to disqualify the lawyer." He also says the Second Circuit suspension "stripped away any assumptions about Aranda's legal ability and moral character.... [N]otwithstanding the fact that Aranda was technically still licensed to practice in New York at the time of Appellant's trial..., Appellant was constructively deprived of his right to counsel."

For appellant Burgos: Wayne E. Gosnell, Jr., Manhattan (212) 922-1080
For respondent: Manhattan Assistant District Attorney Sheila L. Bautista (212) 335-9000

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To be argued Wednesday, February 9, 2022 (arguments begin at 2 p.m.)

No. 15 The Moore Charitable Foundation v PJT Partners, Inc.

The Moore Charitable Foundation and its investment vehicle, Kendall JMAC, LLC, were defrauded of $25 million through a fake investment that was part of a Ponzi scheme operated by Andrew W.W. Caspersen. The Foundation and JMAC are suing his employers to recover their money. Caspersen was hired in 2013 as a managing director of Park Hill Group, LLC, a division of the investment bank PJT Partners, and in 2014 he arranged a deal for PJT that would generate a fee of $8.1 million from Irving Place Capital. The Foundation alleged that Caspersen sent a forged invoice to Irving Place instructing it to deposit the fee into an account he controlled, and when PJT asked him about the missing fee, he falsely told it the deal had not fully closed and the fee would be paid when it did. Caspersen used the stolen $8.1 million for high-risk investments on his own account and quickly lost it all. In 2015, he convinced the Foundation to invest $25 million in a security with a risk-free return of 15%, which did not exist. He sent the Foundation, which had no prior connection to PJT or Park Hill, a letter on Park Hill letterhead instructing it to deposit the funds into an account he created and controlled. Caspersen then wired $8.9 million of that to PJT to cover for his prior theft of the Irving Place fee and other missing fees. He wired the rest to his personal brokerage account and promptly lost it all on high-risk investments, while drinking heavily every day, according to the plaintiffs. In 2016, when he approached the Foundation about a similar $20 million investment, it looked more closely into the details and his scheme unraveled. Caspersen was arrested within weeks, pled guilty to securities fraud and mail fraud, and was sentenced to four years in prison. He was also ordered to pay $37.2 million in restitution to his victims. The plaintiffs have received none of it, but PJT returned $8.6 million to the Foundation, the amount PJT's insurer covered. The Foundation and JMAC filed this action in 2017, arguing that PJT and Park Hill were liable for their losses based on the defendants' negligent supervision of Caspersen, among other claims.

Supreme Court dismissed the claim for negligent supervision and all but one other claim, rejecting the plaintiffs' argument that Caspersen's excessive high-risk trading from his office, his diversion of the Irving Place fee, and his heavy drinking at work should have put the defendants on notice of his propensity for fraud. It said, "Plaintiffs do not ... allege defendants were aware of this conduct before Caspersen sold plaintiffs the fake investment. Engagement in high-risk behaviors such as personal trading and excessive use of alcohol is not necessarily causally connected to fraudulent conduct." It declined to consider the defendants' argument that they owed the plaintiffs no duty of care because they were not clients of the defendants.

The Appellate Division, First Department modified by dismissing the suit entirely. "The complaint fails to state a cause of action for negligent supervision, because it does not allege that defendants were aware of the facts that plaintiff contends would have put them on notice of the employee's criminal propensity...," it said. "Further, the complaint also fails to allege that plaintiffs were ever customers of defendants, which is fatal to a claim of negligent supervision."

The Foundation and JMAC argue that "there is no principled basis for drawing the line to include current and former customers within an employer's duty of non-negligent supervision, while excluding prospective customers who just happen not yet to have completed a transaction with the employer. All the relevant factors – the reasonable expectations of parties and society, and considerations of fairness and sound public policy – support treating prospective customers the same as current or former customers," and it "would be in line with caselaw both within and outside of New York." They also say they alleged "more than enough facts" to show that PJT knew or should have known of Caspersen's propensity for fraud.

For appellants Foundation and JMAC: Stephen Shackelford Jr., Manhattan (212) 336-8330
For respondents PJT and Park Hill: Aidan Synnott, Manhattan (212) 373-3000

State of New York
Court of Appeals

To be argued Thursday, February 10, 2022 (arguments begin at noon)

No. 16 Toussaint v Port Authority of New York and New Jersey

Curby Toussaint was injured while working on the World Trade Center construction site in 2014 when he was struck from behind by a power buggy, which is generally used to carry newly mixed concrete from the truck to the site of the pour. Toussaint was working with a rebar bending machine when another worker drove up with the power buggy and climbed down from it. Toussaint said an operating engineer, James Melvin, began joking with the driver, then "jumped on it, and he lost control of the buggy, fell off the buggy, and it smashed me." He said Melvin apologized and explained he had been "horse playing." Melvin testified that he had been assigned to maintain cranes in another area of the work site that day, that he had never received any training on power buggies and had never used one, and had not been assigned to operate this one. He said he decided to move the buggy "because it was in the middle of the road." Toussaint brought this suit against the Port Authority of New York and New Jersey as the owner of the work site, asserting a claim under Labor Law § 241(6) premised on an alleged violation of Industrial Code (12 NYCRR) § 23-9.9(a). The code provision states, "Assigned operator. No person other than a trained and competent operator designated by the employer shall operate a power buggy."

Supreme Court denied the Port Authority's motion to dismiss the Labor Law § 241(6) claim, rejecting its argument that the Industrial Code provision was too general to support the claim. The court also found there was a question of fact about whether Melvin was acting within the scope of his employment when he moved the buggy.

The Appellate Division, First Department modified in a 3-2 decision by searching the record and granting summary judgment to Toussaint on the issue of liability. It said, "The requirement that a designated person operate a power buggy is 'self-executing in the sense that [it] may be implemented without regard to external considerations such as rules and regulations, contracts or custom and usage'.... We have held that similarly worded provisions of the Industrial Code are sufficiently specific to support a Labor Law § 241(6) claim.... We agree with the dissent that the regulation's requirement that a 'trained and competent operator ... shall' operate the power buggy is general, as it lacks a specific requirement or standard of conduct.... However, since the term 'designated person' has been held to be specific, 12 NYCRR 23-9.9(a) is a proper predicate for a claim under Labor Law § 241(6)." It concluded, "It is undisputed that [Melvin] was not 'designated by the employer' to operate the power buggy ... and his operation of [it] was a proximate cause of plaintiff's injuries."

The dissenters argued the claim should be dismissed, relying on a prior First Department decision that found another Industrial Code provision "which, in almost identical language to that in section 23-9.9(a), requires that '[a]ll power-operated equipment ... shall be operated only by trained, designated persons,' was only a 'mere general safety standard that is insufficiently specific to give rise to a nondelegable duty under [Labor Law § 241(6)].... I conclude that Industrial Code § 23-9.9(a) is insufficiently specific to support a claim under" the statute. They said, "To impose liability under these circumstances, and on these facts..., would potentially expose a defendant to liability any time an unauthorized person on his own initiative or even a trespasser moved such an item of equipment and caused injuries, an outcome not within the scope of the statute and inconsistent with our precedent."

For appellant Port Authority: Christian H. Gannon, Manhattan (212) 651-7500
For respondent Toussaint: Brian J. Shoot, Manhattan (212) 732-9000

State of New York
Court of Appeals

To be argued Thursday, February 10, 2022 (arguments begin at noon)

No. 18 People v Jeffery Bush

Jeffery Bush was driving in Brooklyn in May 2017 when a police officer stopped him for changing lanes without signaling. After the officer observed an open container of alcohol on the passengers seat and learned Bush's license had been suspended, the officer arrested him. In a search at the precinct, the officer recovered a bag of crack cocaine from Bush's waistband.

Bush agreed to a plea bargain in which he would plead guilty to a class A misdemeanor of criminal possession of a controlled substance in the seventh degree, with 20 days of community service, in satisfaction of all charges against him. At the plea hearing, Supreme Court explained the rights Bush would be giving up by pleading guilty, confirmed the details of the crime, and told him, "You understand you can't get re-arrested. You must return on the adjournment date [for sentencing]. And you must complete the community service or else there will be a one year jail alternative." Bush confirmed that he understood and entered his guilty plea. The court made no mention of a conditional discharge at the plea proceeding.

Two months later, after Bush completed his community service, he appeared for sentencing and the court mentioned for the first time on the record that the sentence would be a conditional discharge. Addressing the prosecutor and defense counsel, the court said, "Community service completed. And the promise is a C.D.?" Both attorneys said yes. Without explaining that Bush would face up to a year in jail if he violated conditions of the discharge, the court then sentenced him to a one-year conditional discharge and a six-month license suspension.

The Appellate Division, Second Department affirmed, rejecting Bush's argument that his plea was not knowing, voluntary, and intelligent because he was not informed before the plea that his sentence would include a period of conditional discharge. It said, "The defendant's contention is unpreserved for appellate review because the defendant was made aware that he would be subject to a period of conditional discharge at the outset of the sentencing proceeding, and nonetheless failed to move to withdraw his plea or otherwise raise this issue prior to the imposition of sentence...." The court declined to exercise its interest of justice jurisdiction.

Bush argues that Court of Appeals precedents "establish that preservation is not necessary or reasonable where the court introduces an entirely new *type* or *category* of sentence after the defendant has pleaded guilty.... Because Mr. Bush was never informed before pleading guilty that he would have to complete a one-year conditional discharge after satisfying his community service sentence, and was first told of this new type of sentence shortly before the sentence was imposed, he did not ... have an adequate opportunity to object and preservation should not be required." He further argues, "The court's failure to inform him of the direct consequence of the conditional discharge before he pleaded guilty deprived him of due process...."

For appellant Bush: Ying-Ying Ma, Manhattan (646) 592-3633
For respondent: Brooklyn Assistant District Attorney Arieh Schulman (718) 250-3311