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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 112

ROBERTO ESTREMER, A,

Appellant.

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20 Eagle Street  
Albany, New York  
October 10, 2017

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The next appeal on the  
2 calendar is number 112, the People of the State of New York  
3 v. Roberto Estremera.

4 MR. MENDEZ: Good afternoon, Your Honors; Sam  
5 Mendez with the Office of the Appellate Defender for  
6 Roberto Estremera. I'd like to reserve two minutes for  
7 rebuttal, if I may?

8 CHIEF JUDGE DIFIORE: You may, sir.

9 MR. MENDEZ: Thank you. Your Honors, if ever  
10 there was a clear rule, it is the rule that this court laid  
11 down in People v. Sparber. Sparber held that a defendant's  
12 right to be present and to be heard at the imposition of  
13 sentence is unyielding.

14 JUDGE STEIN: Does this boil down to whether this  
15 is a resentencing or not? Is that really - - -

16 MR. MENDEZ: That - - -

17 JUDGE STEIN: - - - the crux of this?

18 MR. MENDEZ: - - - is one of the two - - - I  
19 think two critical questions in this case, and I - - -

20 JUDGE STEIN: So is - - - is Boyer relevant to  
21 that?

22 MR. MENDEZ: Excuse me?

23 JUDGE STEIN: Is Boyer relevant to that?

24 MR. MENDEZ: The case Boyer?

25 JUDGE STEIN: Are you familiar with Boyer?



1 MR. MENDEZ: It has not been mentioned in the  
2 briefs so far I'm afraid.

3 JUDGE STEIN: Okay. Well, Boyer was fairly  
4 recent, and, and, and we said that - - - that a procedure  
5 under 7085 was: "Merely to correct a clerical error and  
6 left the original sentence undisturbed." And that had to  
7 do with whether it could be used for predicate sentencing  
8 and time limits and things like that. So if the original  
9 sentence was never vacated and it remained valid, how could  
10 such a proceeding be deemed a resentencing?

11 MR. MENDEZ: Well, Your Honor, I would disagree  
12 with that notion that this was not a resentencing because  
13 that does seem to me to be out of line with many of this  
14 cases - - - of this Court's cases and in- - - including  
15 the Governor's approval memorandum for the statute itself  
16 which characterized these proceedings as resentencings.  
17 The statute calls for the reimposition of the originally  
18 imposed sentence, which is to say that what had happened  
19 before must happen again.

20 JUDGE STEIN: And then - - - and then the  
21 original sentence shall be deemed lawful.

22 MR. MENDEZ: Yes.

23 JUDGE STEIN: So, I mean, I - - - I guess this is  
24 - - - seems to me a little bit different from other cases  
25 because there is nothing that the court can do other than



1 restate a sentence that was previously stated in the  
2 presence of the defendant. So - - -

3 MR. MENDEZ: Yes, Your Honor. But there is - - -  
4 there are two problems with that argument.

5 JUDGE FAHEY: You know that - - - that does seem  
6 to be the People's strongest point, though. So I - - - and  
7 I guess I wonder if appealability is the key on this  
8 sentencing question. If a sentence in this case, which is  
9 a resentencing, can be appealed then it would seem that  
10 380.40 would apply. But we are reimposing that sentence  
11 cannot be appealed. That's the way I read 70.85, and I  
12 think, though, that is the strongest point, and if - - - if  
13 you can, I would address it in your oral argument.

14 MR. MENDEZ: The notion that the - - - the  
15 underlying sentence cannot be changed?

16 JUDGE FAHEY: Right. The point is is that when  
17 you're being sentenced you ought to be able to speak. And  
18 it's not - - - it's not whether or not it's a futile  
19 exercise or not or whether or not your sentence - - - your  
20 speaking itself as an arrogant exercise. It's a - - - it's  
21 a fundamental right that's been statutorily imposed, so the  
22 question between whether something's being reimposed and  
23 you've already had that opportunity or resentenced seems to  
24 lie in the - - - lie in the area of making a decision about  
25 whether or not that new determination can be appealed. The

1 way I understand 70.85 is it cannot be appealed afterwards.  
2 You're done. You've had your shot. But this sentence can  
3 be reappealed, and that's why you're here, obviously. And  
4 so that - - - that would stend- - - - tend to answer the  
5 problem that you have with I think the People's strongest  
6 argument.

7 MR. MENDEZ: Well, yes, Your Honor. This - - -  
8 this was a - - - as I read the statute - - - a full  
9 resentencing, again, because the statute specifically - - -

10 JUDGE FAHEY: So - - - so in some ways it seems  
11 like we're talking about the bureaucratic inconvenience of  
12 bringing someone in two times to say something and it's  
13 legitimate, it's real, it does - - - does impose a cost.  
14 There's no question about that. But - - - and quite often,  
15 most statements by defendants may be futile, but that  
16 doesn't deny them of the right.

17 MR. MENDEZ: That's correct, Your Honor. I would  
18 ask the Court to look to the example that it's met - - -  
19 it's set in People v. Sparber. One of those cases, Thomas,  
20 which was decided with Sparber, in that case the defendant,  
21 Mr. Thomas, was told before he entered his plea that he  
22 would have to serve a mandatory fixed five-year term of  
23 PRS. There was nothing that the defendant could do to  
24 change that. Nevertheless, this court remanded Mr. Thomas'  
25 case and ordered that he, along with thousands of other



1 defendants, speaking of administrative cost, ordered that  
2 thousands of defendants be resentenced in their presence.

3 JUDGE STEIN: But in those cases, they had never  
4 stood before a court to pronounce that sentence. In this  
5 case, that has already happened.

6 MR. MENDEZ: Well, yes, Your Honor. That is  
7 respondent's argument. The problem with that argument,  
8 however, is that Mr. Estremera's sentence of 25 years in  
9 prison has never actually - - - actually never been  
10 properly imposed. In 2001, Mr. Estremera's determinate  
11 term without PRS was an illegal sentence. And therefore,  
12 under 70.85 it had to be reimposed. Mr. Estremera had to  
13 be resentenced such that then, as Your Honor noted, the - -  
14 - the sentence would then be deemed a lawful sentence.

15 JUDGE RIVERA: So just to - - - to clarify,  
16 perhaps, on the response to the some of the questions  
17 you've already heard, so even if - - - even if, based on  
18 the statute and our prior case law, the defendant doesn't  
19 have a merits ground to complain about the actual sentence,  
20 his complaint is about the procedure, right, like other  
21 appeals where a defendant may complain that procedure has  
22 been violated and they're subject to some kind of relief  
23 for that violation, right?

24 MR. MENDEZ: Yes.

25 JUDGE RIVERA: Isn't all - - - isn't all he's



1 seeking here - - -

2 MR. MENDEZ: That's correct, Your Honor. Mr. - -  
3 -

4 JUDGE RIVERA: - - - to be brought in here and  
5 resentenced?

6 MR. MENDEZ: That's correct. Mr. Estremera's  
7 asking for the very limited remedy that this court provided  
8 for in Sparber. And I think that the point of that case,  
9 Sparber, Garner, and these other cases is that we are  
10 talking about a substantive right here. It's - - -

11 JUDGE WILSON: Doesn't the court have another  
12 option besides imposing the original sentence, which is to  
13 say I'm not going to impose the original sentence, and if  
14 that happens then the plea is vacated?

15 MR. MENDEZ: That's correct, Your Honor. That -  
16 - - that remedy is one of the two options that were  
17 available in this case. Mr. Estremera himself - - -

18 CHIEF JUDGE DIFIORE: Where the prosecutor is  
19 consenting - - -

20 MR. MENDEZ: That's correct, Your Honor. It was  
21 - - -

22 CHIEF JUDGE DIFIORE: - - - what - - - what is  
23 the purpose of the defendant being presented at the court,  
24 produced in the court?

25 MR. MENDEZ: Well, in the first place, there is



1 nothing in the statutory law or in this Court's decisions,  
2 particularly Sparber, that suggests the right to presence  
3 is limited in this circumstance. And the point of this - -  
4 -

5 CHIEF JUDGE DIFIORE: What would we have to add  
6 to the proceeding, sir?

7 MR. MENDEZ: Mr. Estremera has the right to make  
8 a statement on his own behalf. The point - - - the point  
9 is that this - - -

10 CHIEF JUDGE DIFIORE: What's the - - -

11 JUDGE RIVERA: Well, does he have to add  
12 anything? Can - - - can a defendant - - -

13 MR. MENDEZ: We don't know that because - - -

14 JUDGE RIVERA: - - - attend a sentencing and  
15 stand mute?

16 MR. MENDEZ: A defendant certainly has that  
17 right. Yes. But the point of this right is that it does  
18 protect not just the defendant's dignity interest but also  
19 the dignity of the proceedings themselves. Mr. Estremera  
20 was absent from his resentencing to 25 years in prison.

21 JUDGE FEINMAN: Do - - - do those sentencing or  
22 resentencing minutes then get forwarded to any agency that  
23 either supervises his PRS - - - so like in the  
24 indeterminate sentence, those minutes would be used by the  
25 parole board. But what about here with a determinate





1 sentence?

2 MR. MENDEZ: Your Honor, my - - - yes. Because  
3 defendants also - - - inmates also are - - - PRS is very,  
4 very much like parole and defendants also seek to earn  
5 their conditional release. And this is one of rare those  
6 opportunities - - -

7 JUDGE GARCIA: Isn't this - - - the whole point  
8 of this is he's not getting post-release supervision?

9 MR. MENDEZ: Oh, yes, Your Honor. But there's  
10 also such a - - - excuse me. That's correct. There is  
11 such a thing as conditional release, and Mr. Estremera will  
12 be seeking conditional release. And I see my time is up.  
13 The point I was trying to make with respect to the dignity  
14 of the proceedings is that this is a circumstance where the  
15 defendant, his presence lends - - - has a symbolic purpose  
16 that I think is overlooked in respondent's briefs, and this  
17 Court has never tied a defendant's right to be present to  
18 his or her potential contribution to the proceedings. If  
19 that were the case, defendants - - - as this Court is  
20 aware, most cases end in guilty pleas and every often a  
21 defendant's sentence is set in stone before the sentencing  
22 proceeding. Nevertheless, the defendant does have to be  
23 present and to make a statement on his or her own behalf.

24 CHIEF JUDGE DIFIORE: Thank you, counsel.

25 MR. MENDEZ: Thank you.



1 CHIEF JUDGE DIFIORE: Counsel.

2 MR. RIVELLESE: May it please the court, good  
3 afternoon; Vincent Rivellese for the Manhattan District  
4 Attorney's Office. I - - - I think the key here is that  
5 this is not a full resentencing proceeding. This is just a  
6 proceeding where something that happened in the past is  
7 being made - - - deemed legal because - - -

8 JUDGE RIVERA: Yes. But every - - - every single  
9 case has called it a resentence, including Boyer, may I  
10 say. And in every single case we've said it's an unlawful  
11 - - - that original sentence without the PRS is an unlawful  
12 sentence. It's illegal.

13 MR. RIVELLESE: That's correct. I think that the  
14 difference here - - -

15 JUDGE RIVERA: Boyer dealt with sequentiality not  
16 with the essence of the lawfulness of the sentence.

17 MR. RIVELLESE: Right. And also the - - - those  
18 cases weren't dealing with the right to be present because  
19 it wasn't presented as an issue in those cases.

20 JUDGE FAHEY: Let me ask this. Why don't you  
21 want them to be brought in and let them make a statement?

22 MR. RIVELLESE: I - - - I don't think that my  
23 office really has a horse in the race, and I'm just  
24 defending what the trial judge did. So - - -

25 JUDGE FAHEY: Well, no. But I mean just say - -



1 - tell me what would be the policy reason not to let  
2 someone make a statement at a sentencing?

3 MR. RIVELLESE: Because if it's not a place where  
4 anything can be done - - -

5 JUDGE FAHEY: All right.

6 MR. RIVELLESE: - - - based on the statement - -  
7 -

8 JUDGE FAHEY: I understand that policy. Okay.  
9 So let me follow that up, then, with another question.  
10 I've had a plea to the minimum sentence. All I can get - -  
11 - I've got - - - plead to an E felony, and I - - - and it's  
12 going to determinate and I'm getting a year-and-a-third,  
13 and I can add nothing to the proceeding at all. Should I  
14 be allowed to speak because I'm not aggrieved. I can't get  
15 more than the minimum. And it seems that you're arguing  
16 for an aggravement rule, and that's not what the statute  
17 says.

18 MR. RIVELLESE: Well, I think in that situation  
19 the judge still has discretion to impose a different  
20 sentence or refuse - - -

21 JUDGE FAHEY: This isn't up to the judge. This  
22 isn't in the sense that the judge has discretion here.  
23 This is up to the defendant as to whether the defendant  
24 wants to speak.

25 MR. RIVELLESE: Yes. Well, and one difference



1 here is that he already had the opportunity the first time  
2 that he was sentenced, and he was told and had the  
3 opportunity to speak about that sentence and got that  
4 sentence, which the only thing that could have happened at  
5 this additional proceeding - - -

6 JUDGE RIVERA: Shouldn't he - - - doesn't he also  
7 have the right to observe this procedure? It may very well  
8 be that he observes what he considers to be an error in the  
9 procedure? To know what is being done, to hear the judge  
10 pronounce that sentence and then decide whether or not he  
11 wishes to challenge it?

12 MR. RIVELLESE: If there were something that  
13 happened that aggrieved him, then he would have that right.  
14 I think - - -

15 JUDGE FAHEY: See that's - - - that's the problem  
16 - - -

17 MR. RIVELLESE: I know.

18 JUDGE FAHEY: - - - I think with your argument.  
19 That's the - - - the weakness that I focused on. I thought  
20 that the People had a good argument on the reimposition  
21 versus sentencing. Judge Stein brought that out. I think  
22 that's a strong argument. The problem I have with that  
23 argument is that that argument, in and of itself, assumes  
24 that there's no - - - assumes that there's no appeal. But  
25 where there's an appeal you should certainly be allowed to

1 speak. That's the distinction I see there. But this  
2 aggrievement article, this is a much more serious policy  
3 issue because we're not concerned when - - - they don't - -  
4 - you don't get the right to speak at a sentencing because  
5 there's something to be gained. Usually, it's a cut-and-  
6 dry procedure, as you've been through hundreds of them,  
7 probably. And - - - but nonetheless, we're talking about  
8 the face of justice, how it looks. And the fundamental  
9 right to speak at that moment seems to me a very profound  
10 right that shouldn't be diminished by the cost or the  
11 inconvenience of providing it. Particularly when the  
12 statute says the defendant must be personally present at  
13 the time of sentencing is pronounced.

14 MR. RIVELLESE: I think, again, it's just because  
15 of the peculiar circumstance of this statute. This is a  
16 statute that - - - I have to read it because it's a title  
17 that I wouldn't remember: "The transitional exception to  
18 determinate sentencing laws." It's not a statute saying  
19 how to resentence. It's not a statute saying resentencing.  
20 It's - - - it's giving you some special information about a  
21 special circumstance. In this case - - -

22 JUDGE FAHEY: See, there's not two rules in the  
23 statute for sentencing and resentencing. That's why your  
24 reimposition argument I thought was a good one because it's  
25 a - - - it's an intelligent argument. But - - - but



1 sentencing is sentencing is sentencing. There's not  
2 separate rules for these. So - - -

3 CHIEF JUDGE DIFIORE: What about the language in  
4 the statute that says: "When the case is before the court  
5 to determine whether to resentence"?

6 MR. RIVELLESE: Because there could be a  
7 resentencing in that situation if, for example, the  
8 defendant did not receive the post-release supervision and  
9 no one consents to removing that from the sentence he would  
10 have to be brought back and given post-release supervision  
11 or allowed to withdraw his plea. So the case could be  
12 before the court where we don't know yet whether the  
13 district attorney consents or whether the judge wishes to  
14 give the non-post-release supervision sentence and then  
15 there could, indeed, be a requirement that there be a  
16 resentencing or a plea withdrawal. And - - - and of course  
17 - - -

18 JUDGE FEINMAN: What - - - I'm sorry. Sorry.  
19 Finish your thought and then I have a question.

20 MR. RIVELLESE: That - - - well, actually, I  
21 think it says that whether the case is again before the  
22 court pursuant to the Corrections Law which require people  
23 to bring back defendants who hadn't received proper post-  
24 release supervision or otherwise. So it's encapsulating  
25 any situation where a defendant happens to be - - - or the

1 case, even, happens to be before the court whether or not  
2 the defendant is.

3 JUDGE FEINMAN: So what do we make of the fact  
4 that the assistant district attorney who was opposing this  
5 440, who was an experienced assistant district attorney,  
6 characterizes this in his opposition papers or in his  
7 papers, rather, basically taking no position about the  
8 resentence or consenting to the non-imposition of PRS calls  
9 it a resentence?

10 MR. RIVELLESE: Imprecision. Because at the time  
11 - - - because at the time nobody is talking about presence  
12 at a resentencing proceeding, and - - - and it's imprecise  
13 speech.

14 JUDGE FEINMAN: But the People really didn't care  
15 whether he was present or not. They had no objection to  
16 him being present. It was the judge who did this.

17 MR. RIVELLESE: We wouldn't have an objection to  
18 him being present at all. It's not - - - it's not the  
19 question of objecting to it or finding that presence would  
20 be wrong. It's just that to say that he should be brought  
21 back down from prison to hear the same thing again, it's  
22 not required. That's our argument.

23 JUDGE FEINMAN: Would he be allowed to speak if  
24 he was present again for the purpose of generating a  
25 transcript of the resentencing that could be used, whether



1 it's on conditional release or, you know - - -

2 MR. RIVELLESE: Well, of course he'd be allowed  
3 to speak if he were there. I mean this is not - - - we're  
4 not supporting a rule laying out - - -

5 JUDGE FEINMAN: And so if that's the case why is  
6 that the case?

7 MR. RIVELLESE: Because anytime a defendant's  
8 present in the courtroom, if he wishes to speak it makes  
9 sense for the judge to hear what he has to say. But to say  
10 that he is required to be there to just hear that this  
11 post-release supervision is not going to have to be served  
12 when he already has been not serving it, it seems that's  
13 not the same as a resentencing proceeding.

14 JUDGE GARCIA: So, counsel, I'm sorry to  
15 interrupt, but if we leave things the way they are, and I'm  
16 trying to understand the process of this, it's up to each  
17 individual judge whether or not they produce a defendant  
18 for this type of sentencing? It's not up to your office,  
19 right? You don't make the request.

20 MR. RIVELLESE: Right. I mean we would just - -  
21 -

22 JUDGE GARCIA: So a judge in the next courtroom  
23 may say, yeah, I always want the defendant here for one of  
24 these proceedings and the judge in this case may say I  
25 never want a defendant here for this?





1 MR. RIVELLESE: They could say that. They could  
2 say that.

3 JUDGE WILSON: Can you - - - can you help me with  
4 - - -

5 CHIEF JUDGE DIFIORE: How common are the - - -

6 JUDGE WILSON: I'm sorry.

7 CHIEF JUDGE DIFIORE: How common is the - - -  
8 this proceeding under 70.85?

9 MR. RIVELLESE: It was a little more common ten  
10 years ago when it first happened. It's going to be less  
11 and less common over the years. This case is 20 years old  
12 almost, so it's not something that's going to effect  
13 thousands of cases. It's not something that's going to be  
14 a huge fiscal responsibility. And it's also not something  
15 that my office has a lot of interest in as far as we're not  
16 trying to exclude defendants, but as far as whether the  
17 resources of the State should be brought to bear to bring  
18 down a defendant to hear that he doesn't have to do what he  
19 already isn't doing and was told he didn't have to do, it  
20 seems like that's not the same as a resentencing  
21 proceeding.

22 JUDGE WILSON: Can you help me understand  
23 Correction Law 601(d)(4), if you have it there? If not,  
24 I'll read you what - - -

25 MR. RIVELLESE: I - - - I don't have it in front



1 of me.

2 JUDGE WILSON: Okay. So - - -

3 MR. RIVELLESE: That's to the bring the  
4 defendants back for the resentencing?

5 JUDGE WILSON: Yes. And it - - - this concerns  
6 what they call designated persons who are the people like  
7 Mr. Estremera. (4) says: "If the sentencing court shall  
8 not have issued a superseding commitment order reflecting  
9 an imposition of a term post-release supervision then the  
10 court shall calendar such person for a court appearance."  
11 And then says: "At such court appearance the court shall  
12 furnish a copy of such notice and the proceeding date  
13 pursuant to paragraph (c) to the district attorney, the  
14 designated person, and assigned counsel."

15 MR. RIVELLESE: Yes.

16 JUDGE WILSON: So when I read that it seems to me  
17 that that contemplates the presence of the defendant in the  
18 court receiving from the court in person that statement.

19 MR. RIVELLESE: Yes. Because if he were to be  
20 receiving post-release supervision at that point, that  
21 would be something he has not yet received. So he would  
22 have to be present to receive that. That would be an  
23 enhancement of his sentence. But if the district attorney  
24 waives the post-release supervision, there's nothing going  
25 to be added, there's not going to be any enhancement, so



1 that changes the nature of the proceeding. That's why it's  
2 for consideration of whether to resentence as opposed to  
3 just for resentencing because that's - - - the statute  
4 doesn't contemplate that everyone that comes before will  
5 actually be resented. The judge is just considering  
6 whether they will be, and in this case, he wasn't. Unless  
7 there are any other questions, I will rest on my brief.

8 CHIEF JUDGE DIFIORE: Thank you, counsel.

9 MR. RIVELLESE: Thank you.

10 CHIEF JUDGE DIFIORE: Mr. Mendez.

11 MR. MENDEZ: Thank you. I'll be brief, Your  
12 Honors. This was a resentencing. Everything in this  
13 statute, 70.85, and in the accompanying statute, 401(d),  
14 indicates that this is meant to be a resentencing. As I  
15 noted, the governor's approval memorandum stated that very  
16 clearly.

17 JUDGE STEIN: When - - - when an appellate court  
18 reduces a sentence on appeal is that a resentencing?

19 MR. MENDEZ: I think that is different, Your  
20 Honor.

21 JUDGE STEIN: Why?

22 MR. MENDEZ: Well, for a few reasons. In the  
23 first place, I don't think that the Appellate Division  
24 could modify a defendant's sentence in this way because as  
25 I read the statute - - -



1 JUDGE STEIN: Well, no.

2 MR. MENDEZ: Yes.

3 JUDGE STEIN: In any case. In any case.

4 MR. MENDEZ: It is different, Your Honor, because  
5 the Appellate Division does have that extraordinary  
6 jurisdiction to do so and it takes place in an appellate  
7 court where many, certainly of our clients, simply - - -

8 JUDGE STEIN: But if - - - but if we're saying  
9 that no matter what the consequences, no matter whether the  
10 - - - the defendant has anything to add, no matter whether  
11 the defendant is - - - is suffering - - - you know, is  
12 being aggrieved by it, whenever there's anything to do with  
13 sentence that defendant must have the right to be present  
14 and be heard, then how is that different from this  
15 situation?

16 MR. MENDEZ: Well, Your Honor, it is - - - it is  
17 not our position that whenever anything happens with  
18 respect to sent- - - a sentence the defendant must be  
19 present. It is our position, and the law is quite clear,  
20 that when there is a sentencing the defendant must be  
21 present. And sentencing under the statutes take place in  
22 the trial court.

23 JUDGE FEINMAN: So what happens if a defendant is  
24 sentenced three-to-six and the court determines you know  
25 what, on appeal he wasn't really a second felony offender,



1 the sentence should be something less than that, you know.  
2 Does he have to be present when it goes back?

3 MR. MENDEZ: No, Your Honor. I don't think that  
4 - - - we're certainly not asking the court to find that.  
5 Our - - - our case is built around 380.40, which is the  
6 statute that governs the actions of the trial court and the  
7 imposition of sentence. And it states very clearly, having  
8 nothing to do with Appellate Division proceedings, that in  
9 the trial court the defendant must be personally present -  
10 - -

11 JUDGE FEINMAN: But if it's remitted by the  
12 Appellate Division - - - because, you know, after all there  
13 could be a range of sentences that could be imposed once  
14 it's determined that he's not a second felony offender.

15 MR. MENDEZ: To - - - to the extent that there is  
16 a resentencing or another sentencing proceeding, yes, the  
17 defendant must be present for that.

18 JUDGE FEINMAN: All right.

19 MR. MENDEZ: Very - - - I see my time is up, Your  
20 Honors. This is the very last in a long line of cases in  
21 which this Court has dealt with the PRS statute and the  
22 quite unexpected crisis that occurred when that statute was  
23 enacted in 1998. This Court has consistently stood up for  
24 the defendant's rights, including the right to be present  
25 at sentencing. In this case, which is very much of a dying

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breed, is not the case in which this Court should alter  
that precedent and should simply reapply Sparber.

CHIEF JUDGE DIFIORE: Thank you, Mr. Mendez.

MR. MENDEZ: Thank you.

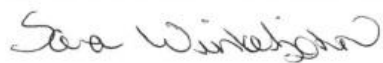
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Roberto Estremera, No. 112 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

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