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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 182

LONNIE MECKWOOD,

Appellant.

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20 Eagle Street  
Albany, New York 12207  
September 13, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

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Penina Wolicki  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: People v. Meckwood.

2 MR. STACK: May it please the court, I am  
3 Brent Stack for the appellant, Lonnie Meckwood.

4 CHIEF JUDGE LIPPMAN: Any rebuttal time,  
5 counselor?

6 MR. STACK: Oh, yes, Your Honor. One  
7 minute, please.

8 CHIEF JUDGE LIPPMAN: One minute. Sure, go  
9 ahead.

10 MR. STACK: This case presents an issue in  
11 need of some clarification by this court on the issue  
12 of whether or not a foreign conviction can be used in  
13 New York State as a predicate felony conviction - - -  
14 or as a predicate felony for enhanced sentencing  
15 purposes.

16 CHIEF JUDGE LIPPMAN: What's the logic of  
17 not letting it be a predicate, when there's no YO  
18 statute in a particular state?

19 MR. STACK: I think the - - -

20 CHIEF JUDGE LIPPMAN: I mean, what's the -  
21 - - yes, go ahead. I'm sorry.

22 MR. STACK: It's New York policy. The  
23 legislature said we want to provide a provision  
24 whereby we can exempt youths - - - eligible youths  
25 from the burden of a criminal conviction and a long

1           prison sentence.

2                   CHIEF JUDGE LIPPMAN:  Yes, but let's say  
3           the other state has no comparable statute.  They're  
4           not - - - it's not in their policy.

5                   MR. STACK:  Right, not in the foreign  
6           state.  But I think, because - - -

7                   CHIEF JUDGE LIPPMAN:  Why, if it's not in a  
8           foreign state, why shouldn't it - - - why shouldn't  
9           it be considered a predicate here?

10                  MR. STACK:  I think, because our - - -

11                  CHIEF JUDGE LIPPMAN:  I could understand if  
12           the statute - - - statutory scheme is similar in the  
13           other state, and we're on the same wavelength policy-  
14           wise on this issue, that both states have the same  
15           interest, and we don't consider it as a predicate.  
16           But why, if there isn't the same policy alignment  
17           between New York, and let's say, Pennsylvania, or  
18           whatever state?

19                  MR. STACK:  I think it's because in our  
20           state, in determining whether or not a defendant is a  
21           predicate felon, we apply the laws of New York State  
22           to the elements of the crime, the facts of the crime,  
23           and we say - - - the penal law says you have to look  
24           at had that crime been committed in New York, would  
25           it have been a felony.  And we do that by taking the

1 penal law and you look at the facts and the elements  
2 and you determine - - -

3 JUDGE CIPARICK: YO adjudication is  
4 discretionary with the court. So - - -

5 MR. STACK: That's correct.

6 JUDGE CIPARICK: - - - we don't really know  
7 whether if he had committed the exact same crime in  
8 New York whether the judge presiding would have  
9 adjudicated him in YO. I mean, we can only  
10 speculate. Yes, it would have been eligible, but we  
11 don't know that that's what - - - that would have  
12 been the result.

13 MR. STACK: That's correct. And I think  
14 this court in People v. Carpenteur said that doesn't  
15 matter. This court focused on the eligibility. And  
16 they said the eligibility for YO status was what  
17 prevented the trial court from treating the foreign  
18 felony as a predicate felony.

19 The court said whether or not out-of-state  
20 conviction is a basis for multiple offender treatment  
21 depends on the law of New York. And the court goes  
22 on to say - - -

23 JUDGE GRAFFEO: I thought in Carpenteur, he  
24 received YO status in California?

25 MR. STACK: He did.

1 JUDGE GRAFFEO: So we - - -

2 MR. STACK: He did.

3 JUDGE GRAFFEO: - - - we said - - -

4 MR. STACK: We said that because - - -

5 JUDGE GRAFFEO: - - - we had similar  
6 policies, and therefore we would not consider that.  
7 But here it's the opposite. As Judge Ciparick said,  
8 Pennsylvania doesn't have this policy. There's no  
9 guarantee that just because you're eligible, you're  
10 going to receive YO status in New York. So why  
11 eliminate this conviction?

12 MR. STACK: Well, in People v. Kuey, this  
13 court said that when the foreign jurisdiction's  
14 statutory schemes and policies are similar, we will  
15 go ahead and give full faith and credit to the  
16 foreign conviction. We'll call it what - - -

17 JUDGE SMITH: Why doesn't Kuey defeat your  
18 case? I mean, in Kuey, they - - - Florida did have a  
19 statute, but it wasn't similar enough. Pennsylvania  
20 has no statute at all. How can that be a better case  
21 for you than Kuey?

22 MR. STACK: Why is Carpenteur better than  
23 Kuey?

24 JUDGE SMITH: No, why is this case? Why is  
25 Meckwood better than Kuey?

1                   MR. STACK: I think Kuey itself is in some  
2 need of clarification. I think in Kuey this court  
3 said the rule to be drawn from Carpenteur is that if  
4 the statutory schemes are similar, we will give full  
5 faith and credit to the foreign conviction. But then  
6 in the holding, they said it's sufficient for us that  
7 the statutory schemes are different, but we're going  
8 to give full faith and credit to the - - -

9                   JUDGE SMITH: Okay. But why aren't they  
10 even more different here? Here you've got - - - you  
11 know, in Pennsylvania it's so different they don't  
12 have a YO.

13                   MR. STACK: I think they are more different  
14 here.

15                   JUDGE SMITH: So why isn't this a fortiori  
16 from Kuey? Why didn't we already decide this issue  
17 in Kuey?

18                   MR. STACK: I think - - - I think based on  
19 Carpenteur that Kuey needs to be modified.

20                   CHIEF JUDGE LIPPMAN: Let's say - - -

21                   JUDGE READ: But isn't there - - - isn't  
22 there an inconsistency then in the argument that  
23 you're making in terms of the treatment of the out-  
24 of-state and the in-state, potentially, so that all  
25 of the out-of-state would get the benefit, but some

1 of the in-state wouldn't? As Judge Ciparick said,  
2 it's - - -

3 MR. STACK: Well, I think the opposite  
4 argument is that if I commit a crime in New York  
5 State when I'm eighteen, I may get youthful offender  
6 status, I may not. If I commit it in, in this case  
7 California, I would get the status. If I commit it  
8 in Florida, I'm not even eligible. So I think the  
9 same is true. You would have - - -

10 JUDGE READ: There's no way to make it  
11 consistent?

12 MR. STACK: I think there is a way to make  
13 it consistent. I think the way to make it consistent  
14 is base it upon eligibility. If you are, in all  
15 respects, eligible for youthful offender status, then  
16 the trial courts are prohibited from using the  
17 foreign conditions - - -

18 JUDGE PIGOTT: Well, as Judge Ciparick  
19 said, it's discretionary. If he had committed that  
20 Pennsylvania crime here, he wouldn't have  
21 automatically gotten YO, right?

22 MR. STACK: That's correct; it's not  
23 automatic.

24 JUDGE PIGOTT: So is your argument that now  
25 the sentencing judge ought to look at it and decide

1           whether or not had that been convicted in New York he  
2           would or would not have given him YO status, and then  
3           sentence him accordingly? Does he have that  
4           discretion?

5                       MR. STACK: In this case, the trial court  
6           asked am I supposed to go back in time and determine  
7           whether or not I would have determined that he's a  
8           youthful offender. And the defense counsel said yes,  
9           that's what I'm asking you to do. I don't think that  
10          that's necessary. I think it's - - - the eligibility  
11          and the application of New York law is what - - -  
12          both the Carpenteur court and the Kuey court realized  
13          that - - - or recognized the fact that New York law  
14          is controlling here. We have to - - -

15                      JUDGE GRAFFEO: You're saying the  
16          eligibility in New York means you get the benefit,  
17          even though the state where you committed the crime  
18          doesn't extend the benefit? That's - - -

19                      MR. STACK: That's - - -

20                      JUDGE GRAFFEO: - - - that's the rule you  
21          want, correct?

22                      MR. STACK: That's what I'm saying. And I  
23          think the inverse of that is if you commit a crime in  
24          Florida, you don't get the benefit. If you commit a  
25          crime in Pennsylvania, you don't get the benefit.

1           You don't even get - - - there's not even any  
2           discretion in that case. It takes away the trial  
3           court's - - -

4                    JUDGE SMITH: There's obviously no perfect  
5           way to do it, because there's no way to know whether  
6           your client would have got a YO if there'd been a YO  
7           system in place.

8                    MR. STACK: That's right, Your Honor.

9                    JUDGE SMITH: But you're resolving - - -  
10          you're resolving that doubt in your client's favor by  
11          saying I don't care how horrible a felony he  
12          committed in Pennsylvania, and no matter how unlikely  
13          it is that anyone would ever give him YO treatment,  
14          he can't be a second felon in New York based on that  
15          case?

16                   MR. STACK: Well, that's not correct,  
17          because if you apply New York law, the eligibility  
18          requirements do take into consideration the  
19          horribleness of the felony. If it's a - - -

20                   JUDGE GRAFFEO: I thought you just said the  
21          judge doesn't have the - - - shouldn't have the  
22          discretion to determine if he or she would give that  
23          YO status in New York if that crime had been  
24          committed in New York.

25                   MR. STACK: That's if - - -

1 JUDGE GRAFFEO: How does the severity come  
2 in, then?

3 MR. STACK: - - - that's if the defendant  
4 meets the eligibility requirements. The severity - -  
5 -

6 JUDGE JONES: Suppose Pennsylvania had a YO  
7 statute similar to New York's, but the client was - -  
8 - they declined to give him YO. Then what?

9 MR. STACK: If the Pennsylvania court  
10 declined to give him youthful offender status?

11 JUDGE JONES: Yes.

12 MR. STACK: Then I think, in application of  
13 Carpenteur and Kuey, you look at the two statutory  
14 schemes, as these cases say, and if they're similar,  
15 then you can give full faith and credit to the out-  
16 of-state conviction.

17 JUDGE JONES: So you're saying that the New  
18 York court could treat him as though he had been  
19 given YO even though it was denied?

20 MR. STACK: No, no. You would give full  
21 faith and credit to the denial of the YO status.

22 JUDGE SMITH: On that hypothetical, you'd  
23 lose the case?

24 MR. STACK: Pardon me?

25 JUDGE SMITH: On Judge Jones' hypothetical

1           you would lose the case?

2                       MR. STACK:   That's correct.

3                       CHIEF JUDGE LIPPMAN:   Okay, thanks,  
4           counsel.

5                       MS. PARRY:   May it please the court, my  
6           name is Joann Parry.   I'm Chief Assistant District  
7           Attorney for Broome County.   I represent the People  
8           on this appeal.

9                       I think this is a very simple decision for  
10          the court, because here, Pennsylvania, as a matter of  
11          its policy has determined that its age of majority is  
12          eighteen.   Anybody over the eighteen is treated as an  
13          adult for your purposes.

14                      CHIEF JUDGE LIPPMAN:   What about his - - -  
15          your opponent's proposed rule, which is essentially  
16          if he was eligible - - - if he would be eligible in  
17          New York, even though Pennsylvania has no comparable  
18          statute, that that would be enough?

19                      MS. PARRY:   I think that that - - -

20                      CHIEF JUDGE LIPPMAN:   Why - - - from a  
21          policy perspective, why is that bad?

22                      MS. PARRY:   - - - from a pol - - - because  
23          then we'd be basically saying we're going to ignore -  
24          - - we can do whatever we want with every conviction  
25          in every state.   If we don't like - - -

1 JUDGE PIGOTT: When you - - -

2 MS. PARRY: - - - the conviction, we're not  
3 going to use it, whether it's - - -

4 JUDGE PIGOTT: - - - when you file a  
5 predicate felony statement, must the judge accept  
6 that, or can he say, you know, I'm not going to - - -  
7 I don't want to do a predicate felony? Is it  
8 mandatory?

9 MS. PARRY: It is mandatory that it be  
10 filed. And if it's a Constitutionally obtained  
11 conviction, and it meets the statute, if it's an out-  
12 of-state one, then it must be. It's not  
13 discretionary.

14 JUDGE PIGOTT: But this was - - - this was  
15 a plea, right?

16 MS. PARRY: This was a plea.

17 JUDGE PIGOTT: You could have said to him,  
18 we'll let you plead to the charge, or whatever the  
19 reduced charge is, period.

20 MS. PARRY: We can - - - the prosecution  
21 must file a second felony offender statement. We  
22 cannot - - - we do not have the discretion to say  
23 we're going to treat you as a first offender. We're  
24 bound by the statute that requires us to file a  
25 mandator - - - if we believe there is a prior

1 predicate conviction, then we must file it.

2 JUDGE JONES: Would it matter if the  
3 conviction was for a crime which would have been a  
4 mandatory YO in New York?

5 MS. PARRY: There is no mandatory YO in New  
6 York, except for - - -

7 JUDGE JONES: Misdemeanor, misdemeanor.

8 MS. PARRY: - - - misdemeanor.

9 JUDGE JONES: Misdemeanor.

10 MS. PARRY: And that wouldn't be a second  
11 felony. Then it wouldn't be a felony - - -

12 JUDGE JONES: I understand that. But just  
13 theoretically, would that matter?

14 MS. PARRY: If it were a - - - if there  
15 were mandatory and it was an out-of-state conviction?

16 JUDGE JONES: Yes.

17 MS. PARRY: That's a good question. I  
18 don't know what the answer would be. I would think  
19 we'd be bound by a mandatory, if we had to treat it  
20 as a YO, regardless of how it was treated in other  
21 state, it might be. But obviously, that's not where  
22 we're at.

23 I think with Carpenteur and Kuey, I think  
24 what we take from those two cases is a very simple  
25 rule. If it's not a - - - if they don't have a YO

1 adjudication, then we don't - - - obviously, we treat  
2 it as an adult. If they - - - even if they do  
3 adjudicate someone - - - a youthful offender under  
4 their statutes, then we must take our New York  
5 statute to look at it and say just because you call  
6 it YO doesn't mean it's a YO necessarily. What's the  
7 effect of it?

8 So, for instance, in *Carpenteur* - - - or  
9 [*Carpentoor*] - - - the California statute  
10 specifically says it's not a conviction for the  
11 purposes of a predicate. So the effect of that  
12 youthful offender adjudication is just like New  
13 York's youthful offender. It cannot be used as a  
14 predicate.

15 CHIEF JUDGE LIPPMAN: So if it's on all  
16 fours, it's easy.

17 MS. PARRY: Right. And in the Florida one,  
18 which was *Kuey*, the YO, although it was called a  
19 youthful offender adjudication, that - - - it was an  
20 adult conviction for the purposes of using it as a  
21 predicate. That's why the court permitted it to be  
22 used as a predicate.

23 So I think you take those two. What the  
24 rule should be, and I think clearly is, when you read  
25 those two cases together - - -

1 CHIEF JUDGE LIPPMAN: You think that's the  
2 existing law in New York?

3 MS. PARRY: Yes.

4 CHIEF JUDGE LIPPMAN: Or the precedent?

5 MS. PARRY: Is that the - - - you look at  
6 the effect of what the adjudication is. If it's, in  
7 fact, the effect of it is like our youthful offender,  
8 then it cannot be used as a predicate. If it's the  
9 effect of an adult conviction and it can be, then it  
10 should.

11 Then I think, in this case, of course, when  
12 there is no YO in the other state, we have to respect  
13 that court's - - - that state's finding, and use that  
14 conviction for the purposes of predicate in New York.

15 CHIEF JUDGE LIPPMAN: Okay.

16 MS. PARRY: Thank you.

17 CHIEF JUDGE LIPPMAN: Thanks, counsel.

18 Counselor, rebuttal?

19 MR. STACK: Yes. I believe that it isn't  
20 an easy issue. It is easy when it's all fours. When  
21 the statutory schemes are identical or more or less  
22 identical, then our policy considerations are met by  
23 applying the foreign jurisdiction's law.

24 JUDGE PIGOTT: Did this come up during the  
25 plea negotiations? I was kind of surprised. I mean,

1           it was all a negotiated plea. You knew you were  
2           pleading to a second felony offense, and then all of  
3           a sudden, this pops up. I - - - did it just occur to  
4           somebody later?

5                       MR. STACK: I think there was - - - there  
6           were no challenges to the Constitutionality of the  
7           foreign conviction or whether or not it was my client  
8           who was convicted, I think. So facially, there  
9           weren't any challenges to the predicate felon  
10          existing and it being - - - the felony statement  
11          being filed. I think the challenge arose at  
12          sentencing when as sentencing him as a second violent  
13          felon.

14                      JUDGE PIGOTT: Well, I mean, if you were  
15          right, I mean, does this vacate the plea? I mean,  
16          you want to go to trial on the indictment?

17                      MR. STACK: No, I would - - - if I'm right,  
18          I believe my client is entitled to be resentenced as  
19          a first-time felon rather than a second violent  
20          felon.

21                      JUDGE PIGOTT: Okay.

22                      MR. STACK: I would go back to sentencing,  
23          not back to - - -

24                      JUDGE PIGOTT: Just to that part? Okay.

25                      CHIEF JUDGE LIPPMAN: Okay. Thanks.

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MR. STACK: Thank you.

CHIEF JUDGE LIPPMAN: Appreciate it. Thank  
you both.

(Court is adjourned)

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

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Lonnie Meckwood, No. 182 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Penina Wolicki*

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