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COURT OF APPEALS

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
EX REL ALLEN,

Appellant,

-against-

NO. 138

BRUCE YELICH,

Respondent.

20 Eagle Street
Albany, New York
November 14, 2018

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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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Next appeal on the calendar
2 is appeal number 138, People ex rel. Allen v. Yelich.

3 Good afternoon, counsel.

4 MR. CASSIDY: Good afternoon. My name is Michael
5 Cassidy from Prisoner's Legal Services of New York, on
6 behalf of appellant Erick Allen. I'd like to request two
7 minutes, please, for rebuttal.

8 CHIEF JUDGE DIFIORE: You may, sir.

9 MR. CASSIDY: Thank you. Mr. Allen seeks
10 concurrent out-of-state sentence credit against a
11 previously imposed and undischarged New York State sentence
12 for the time that her served in New Jersey.

13 JUDGE GARCIA: Counsel - - - counsel, if you
14 could clarify a little bit of the facts for me here. As I
15 understand it, this defendant - - - your client is out on
16 PRS. He absconds. He commits a crime in Jersey. He's
17 sentenced.

18 MR. CASSIDY: Yes.

19 JUDGE GARCIA: In my mind there are two things
20 now going on in New York. There is a violation of the PRS,
21 in which case he's going to get some type of incarceration,
22 right. And then there's the unfinished PRS term, right?

23 MR. CASSIDY: Yes.

24 JUDGE GARCIA: The Jersey sentence as I
25 understand it - - - again, I'm not 100 percent clear. But



1 the Jersey term of incarceration is run concurrently with
2 the time he gets for the violation in New York?

3 MR. CASSIDY: With the undischarged New York
4 sentence. Which - - - which includes the period of the
5 arrest for the - - -

6 JUDGE GARCIA: Which is essentially a penalty for
7 the violation, right. So he violates and they put him back
8 in to prison for a certain amount of time?

9 MR. CASSIDY: Yes.

10 JUDGE GARCIA: And that is offset by the Jersey
11 time. So let's just give an example. Let's say it was two
12 years here and the Jersey sentence was two years, those two
13 years would run concurrently.

14 MR. CASSIDY: Yes.

15 JUDGE GARCIA: And now what you're asking for, as
16 I understand it is the Jersey sentence of incarceration to
17 be run against the unexpired PRS time?

18 MR. CASSIDY: Yes, because he had served the - -
19 - there's - - - when - - - in the determinant sentence
20 situation, there's the determinant of prison term, and then
21 there's also the PRS - - -

22 JUDGE GARCIA: Right.

23 MR. CASSIDY: - - - as part of that. So at this
24 point in his sentence, he was - - - owed - - - owed the PRS
25 time, which becomes his new maximum term that he can be



1 held.

2 JUDGE GARCIA: Let's say in my hypothetical that
3 a two year sentence in Jersey, two years incarceration on
4 the - - - finish the sentence here, and you have eighteen
5 months left on the PRS, would you run them all together, so
6 you get - - - the two year incarceration term in New Jersey
7 covers both your incarceration that you get as a violation
8 and your unfinished PRS time?

9 MR. CASSIDY: It - - - it would. It - - - I mean
10 - - -

11 JUDGE GARCIA: But what kind of - - -

12 MR. CASSIDY: - - - had he been sentenced here in
13 New - - - New York, if he committed the crime on this side
14 of the Hudson River and been - - - been sentenced here,
15 there - - - there probably wouldn't have been a time - - -
16 a time assessment anyway. He would have served that new
17 term. That would've been applied against the PRS that he
18 owed.

19 JUDGE GARCIA: The - - - the time that he serves
20 in New York, is that for the violation being he goes to New
21 Jersey and commits another crime, or is it because he
22 absconded?

23 MR. CASSIDY: That - - - I'm not certain how - -
24 - how the - - -

25 JUDGE FAHEY: I thought it was the absconded.



1 MR. CASSIDY: - - - parole considered that.

2 JUDGE FAHEY: Yeah. In 2013, right.

3 MR. CASSIDY: Right.

4 JUDGE GARCIA: Because what I'm struggling with
5 is the policy of getting credit for all of this essentially
6 washes out any type of penalty for the other, right. So
7 you - - - you've got a sentence in New Jersey that's going
8 to run concurrently with a sentence being finished in New
9 York and concurrently against a PRS term that he violated
10 it by absconding. So by absconding and committing a crime
11 in New Jersey, you get to do this term in New Jersey and
12 wipe out your entire New York sentence at the same time?

13 MR. CASSIDY: Well, as running concurrently would
14 the - - - what was left owed on the New York sentence,
15 which at that time was the PRS, it would - - - it would - -
16 - he would serve both of those at the same time, which
17 would have happened had he been sentenced here as well.

18 JUDGE STEIN: So you're not arguing, as I
19 understand it - - - again, just to clarify your position -
20 - - that - - - that - - - that New York was required to - -
21 - to comply with what you see as New Jersey's desire to run
22 all of this concurrently, right? In other words, you're
23 not saying that what New York did was illegal, you're just
24 saying it wasn't fair?

25 MR. CASSIDY: That's a big part of the argument,



1 that it was fundamentally unfair not to run that - - - that
2 time - - - credit that time here. Less that - - - I mean,
3 there's no constitutional argument that - - - that he - - -
4 that New York - - - the Department would have to run that
5 time, but it's sort of the reverse, looking at well, why
6 shouldn't this time be run.

7 And - - - and based on the case law in the - - -
8 in the court's - - - particularly in the definite sentence
9 situation, which - - - which there's a long history and
10 line of precedent regarding the definite sentence cases,
11 the - - - the way the Department has sought to distinguish
12 those cases, there's no - - - there's no reasonable
13 distinction on that. The Department is denying the credit
14 - - -

15 JUDGE STEIN: Well, but isn't there a reasonable
16 distinction between the courts of our state deciding what
17 is the fair and proper way to run these sentences, and
18 having another state make that determination? So - - -
19 because as I understand it, and correct me if I'm wrong,
20 and maybe I'll ask your adversary the same question, this
21 is in fact how when New York State wants to run something
22 concurrently to another state, generally they send the
23 defendant to that other state and let the sentence run, and
24 then if there's more time, they come back?

25 MR. CASSIDY: Right. It would work both ways.



1 JUDGE STEIN: Right. So what - - - what's unfair
2 about letting the state of conviction, if you will, make -
3 - - make its own determination as to how a sentence is
4 going to run? And - - - and if they want to run it
5 concurrently, send it to the other state.

6 MR. CASSIDY: Well, we - - - we believe - - - we
7 invited the court to look at the Hall decision as - - - as
8 an example of this suggestion.

9 JUDGE STEIN: Yeah, but Hall, it was clear. The
10 state - - - the state court and the federal court were - -
11 - expressly said that they wanted the same thing.

12 MR. CASSIDY: Right. But I would argue that the
13 - - - that the important principle to take from that case
14 is not this - - - this dual situation there, but the idea
15 that, you know, it wasn't - - - New Jersey wanted - - -
16 agreed that its sentence could - - - could run concurrently
17 with the New York sentence. It was through no fault of Mr.
18 Allen's that he didn't get returned to New York. New York
19 knew where he was. They knew what was going on.

20 JUDGE WILSON: Well, could Mr. - - -

21 MR. CASSIDY: They had a warrant against him.

22 JUDGE WILSON: - - - could Mr. Allen had asked to
23 be moved to New York?

24 MR. CASSIDY: But he had no authority or power to
25 compel them to bring them back. And they chose not to act



1 on the warrant. That - - - that's one of the troubling
2 parts of this case, which I - - - I believe contributes to
3 the fundamental unfairness in that they knew where he was,
4 they had the warrant, they could've acted on it.

5 JUDGE STEIN: Well, maybe they didn't want it to
6 run concurrently.

7 MR. CASSIDY: Maybe they didn't want to pay for
8 him to - - - to - - - to be incarcerated here. The problem
9 though is he's left languishing there through no fault of
10 his own, to find out once he gets back here he's not
11 getting any credit.

12 JUDGE STEIN: Wait a minute. He - - - he wasn't
13 left languishing. He was serving time on a New Jersey
14 sentence. And if he served more time there than that
15 sentence was, he - - - I think under our statute, he may
16 have had to be given credit for that time here. But - - -
17 but that's not the case here.

18 MR. CASSIDY: Well, that's if - - - if you looked
19 at the parole - - - that provision of the parole jail time
20 statute, which is inapplicable in a situation where it's
21 been a concurrent sentence that's been ordered, that - - -
22 that would apply - - -

23 JUDGE STEIN: Well, that's if there's a
24 concurrent sentence ordered by a New York court, not if
25 there's a concurrent sentence ordered by an out-of-state



1 court.

2 MR. CASSIDY: Well, there's no distinction in the
3 statute about that. And so it was a concurrent sentence.
4 It only makes sense to guard against that - - - that
5 spillover provision that they call it, if the sentences
6 were run consecutively, because then there's a - - -
7 there's a period of time you're trying to ensure that the
8 sentences are being served separately. And - - - and in a
9 situation where the sentence is ordered concurrently,
10 there's no - - - no spillover concern to be - - - to guard
11 against.

12 So - - - so here, the Department could have acted
13 on their warrant, brought him back to New York, given him -
14 - - and they concede that they would - - - would've given
15 him credit, day for day, including against the PRS term for
16 any time that he served in New York. So merely because of
17 how it was administered and where he served the time, he's
18 being penalized and - - - by nearly four years of time that
19 he could've gotten credit if he'd only been brought back.
20 And it's really through no fault of his own. The burden
21 should be on the Department. If they really have an
22 interest in making - - - having him serve the time in New
23 York, they could've acted on it and brought him back. And
24 they didn't do that. And I see I'm out of time.

25 CHIEF JUDGE DIFIORE: Thank you, counsel.



1 MR. CASSIDY: Thank you.

2 CHIEF JUDGE DIFIORE: Counsel?

3 MR. GINSBERG: Your Honors, and may it please the
4 court. New York has always had the authority to administer
5 New York penal sentences. But on petitioner's theory, New
6 York would've given up a large portion of that authority to
7 its sister states. And in this case - - -

8 JUDGE RIVERA: Counsel, what - - - what's your
9 position as to what the New Jersey court ordered? What
10 were they running - - - or what did they say they wanted
11 their sentence to run concurrent against?

12 MR. GINSBERG: Well, as we read the New Jersey
13 court order, the New Jersey court didn't actually order its
14 sentence to run concurrently with petitioner's undischarged
15 PRS term, which would be I guess in colloquial terms, the
16 sentence underlying the PRS violation, then the imminent
17 PRS violation. But what the New York - - - what the New
18 Jersey court said is that they wanted the New Jersey
19 sentence to run concurrently with the sentence imposed on
20 the PRS violation.

21 Now, the sentence imposed on the PRS violation is
22 not the underlying undischarged term, but it's the time
23 assessment. And arguably, that's exactly what DOCs did,
24 because strictly speaking, the time assessment as we point
25 out in footnote 4 of our brief, was styled as for seventy-



1 one months, but it was backdated as of 2011, when the
2 parole warrant was issued. And so all that time he was in
3 New Jersey custody, DOCs allowed him to essentially tick
4 away on that seventy-one month time sentence.

5 JUDGE STEIN: But if - - - if that's what the New
6 Jersey - - - if that's what is determined the New Jersey
7 court intended to do, then is there any - - - anything left
8 to decide on this appeal?

9 MR. GINSBERG: No. No. We think that's a full
10 alternative ground for affirmance in this case. But I do
11 want to hit the - - - I think the statutory interpretation
12 question, because DOCs certainly wants to be heard on that.
13 Petitioner's PRS was interrupted. It was not running
14 during the entirety of the time when he was in New Jersey
15 custody. Which means that the only time that - - - the
16 only way that that obligation - - - the PRS obligation
17 could be reduced, is through an award of credit. Now, if
18 you look at the PRS framework, such credit, in this case,
19 could only be awarded as Your Honors have pointed out in
20 your colloquy with my friend on the other side, under
21 70.40(3)(c)(i). Petitioner says that there's an exception
22 to that exclusivity where you have a concurrent sentence as
23 opposed to a consecutive sentence. There's no textual
24 basis for that exception in the order - - - in the - - - in
25 the PRS framework. In fact, in the PRS framework, it says



1 that, "any time spent in custody" - - - it's intentionally
2 broad, is evaluated through that prism. And there's no
3 dispute that that provision itself does not afford the PRS
4 credit at issue here. Now, petitioner mentioned these
5 lines of lower court cases, again, in the New York order -
6 - - the New York sentencing order context that purport to
7 require DOCs to enforce orders directing a subsequent
8 sentence to run concurrent with a prior interrupted
9 sentence. In the penal law language, that's kind of like
10 dividing by zero. There's just no machinery to do that
11 under the penal law.

12 By definition, concurrency can only be achieved
13 with a sentence that is running. So with respect, I mean,
14 this court has never passed on that issue. We think that
15 exception, if you will, is wrongly decided by the lower
16 courts. There's just no statutory basis for it. But even
17 embracing that exception to the extent that lower courts
18 like Campbell and Midgley did, the exception simply doesn't
19 apply here. The way the lower courts were able to carve
20 out that exception was on the basis of New York court's
21 inherent authority to direct the operation of New York
22 penal sentences.

23 We don't have that here. We have a court of New
24 Jersey. New Jersey does not have that same inherent
25 authority, does not have any inherent authority over



1 administration of New York penal sentences based on the
2 Equal Sovereignty Doctrine and the like.

3 And as far as fairness goes, you know,
4 freestanding fairness has never been a dispositive
5 criterion for awarding credit against a - - - in this state
6 anyway, against a interrupted sentence. There has to be
7 some affirmative statutory basis or some overriding
8 constitutional command or the like. We don't have that
9 here. But let's look at where the fairness interests lie.
10 Let's look first at petitioner's circumstances. He was
11 counseled at the New Jersey sentencing hearing.

12 The Howard case from the Third Department at that
13 time had been on the books for a year. And that case
14 basically counsels people in petitioner's circumstances to
15 ask for - - - do something, make yourself known to get the
16 state of conviction - - - of subsequent conviction, to work
17 with the executive authority of the previous state to send
18 you back to get that credit. Howard had been on the books.

19 But there's no evidence that petitioner asked the
20 New Jersey court or the New Jersey Department of
21 Corrections, or anyone in New Jersey, to arrange for him to
22 serve that sentence in DOCs. Now, we think that's enough
23 to mitigate any unfairness concern. But again, we're
24 dealing with PRS here.

25 And PRS, although in some ways similar to parole,



1 it's also subtly different. PRS was enacted as part of a
2 get tough on crime statute, Jenna's Law, in 1998. So if
3 you're going to break ties with fairness, we certainly
4 think that there's a reason to do so in favor of a strict
5 interpretation of PRS credit, as opposed to a permissive
6 interpretation.

7 JUDGE FAHEY: Let me - - - let me ask this. Are
8 you familiar with Ifill, it's a Third Department case of
9 2017?

10 MR. GINSBERG: Sure.

11 JUDGE FAHEY: The way I read that, it seems like
12 the state expert there, who's the same expert as here, said
13 that parole jail time credit can be ordered to run
14 concurrently with PRS violation by a New York court. So do
15 you reconcile it by simply saying that a New York court can
16 do that but New Jersey court can't?

17 MR. GINSBERG: Well, if we had to reconcile it,
18 that's how I would reconcile it, that New York gets to that
19 - - - that - - - the DOCs attorney in that case got to that
20 result by - - - not through the language of the penal code
21 - - - the penal law, but really outside the penal law and
22 through New York court's inherent authority.

23 JUDGE FAHEY: Well, the court's authority would
24 trump the penal law authority.

25 MR. GINSBERG: Exactly.



1 JUDGE FAHEY: I think that - - - I think that's
2 what our - - - the situation of our jurisprudence is. So -
3 - - so that's how you reconcile his statements in Ifill
4 with this testimony before us today?

5 MR. GINSBERG: Well, the answer is yes to your
6 question if I had to reconcile it. But I do want to push
7 back on your premise with respect as we see it, that's not
8 this court's jurisprudence. That's the lower court's
9 jurisprudence.

10 The expert in that case, that DOCs attorney was
11 citing Campbell and Midgley, in the like, those are lower
12 court cases from the Third and Fourth Department. Now, to
13 be sure, this court has said in cases like Garner and
14 Sparber that - - -

15 JUDGE FAHEY: I was going to say, it seems that
16 that principal's been pretty well enunciated and
17 established by this Court. Not in this circumstance, but
18 the principal itself has.

19 MR. GINSBERG: Well, we don't think we need that
20 to win here, so I don't want to quarrel too much with it.
21 But again, even in the Garner and Sparber case, there the
22 court did not approve the sort of dividing by zero that
23 you'd have to do in order to get - - -

24 JUDGE FAHEY: These mathematic analogies, you're
25 losing me. I'm just telling you. You know, you've got - -



1 -

2 MR. GINSBERG: Well, sometimes the lower courts
3 lose us we think with - - - with this. But Garner and
4 Sparber just say DOCs, when you are presented with a
5 definite sentence that does not have a PRS term attached,
6 you have to implement - - - to determine sentence rather,
7 you have to implement that determinant sentence.

8 JUDGE FAHEY: So let me ask you this. We've got
9 a little time left here. What do you think about the
10 fairness argument?

11 MR. GINSBERG: Well, I'd like to get to the rest
12 of the fairness argument. I think the fairness argument
13 certainly does not cut in petitioner's favor.

14 JUDGE FAHEY: Really?

15 MR. GINSBERG: Really, Your Honor.

16 JUDGE FAHEY: Tell me why.

17 MR. GINSBERG: I think it - - - I think it
18 doesn't cut in petitioner's favor for the reasons I was
19 discussing before. The fact that he was counseled at the
20 sentencing hearing. These cases were on the books in terms
21 of this is the procedure to ask for. But also, you know,
22 the fairness - - - there are two sides to the fairness
23 coin. There's fairness to petitioner. But there's also
24 fairness to the sovereign interest of the State of New York
25 in controlling how petitioner pays his debt to New York.



1 And that would be completely subverted here.

2 But in any event, this court has never recognized
3 - - - and we think the appropriate standard, as we point
4 out in our brief, and the other side didn't dispute in its
5 reply brief anyway, is that there has to be a clear command
6 - - -

7 JUDGE RIVERA: Well, the real - - - the real
8 issue is you have a New Jersey court and they are the ones
9 who are deciding whether or not they want the time to be
10 concurrent or consecutive. And when they've made that
11 intent clear, let's put aside your first argument.

12 MR. GINSBERG: Right. Suppose they did.

13 JUDGE RIVERA: (Indiscernible) your first
14 argument. But let's just say with this alternative
15 argument, once they've made that - - - that clear, you may
16 have other arguments about fairness, but you can't say
17 there's not some part of it that seems unfair because
18 that's their sentence and they've decided they want it to
19 run day to day with the New York sentence.

20 MR. GINSBERG: Oh, but Your Honor, for New Jersey
21 purposes, if this case had arisen in New Jersey, New Jersey
22 in its own courts for New Jersey purposes, could interpret
23 this as day to day running. We are not dictating how New
24 Jersey in its own courts, in its own administrative system,
25 controls how petitioner pays his debt to New Jersey. We



1 are - - - we are saying - - -

2 JUDGE RIVERA: Right. But I - - - I thought - -
3 - I thought where you end up is because of an
4 administrative - - - because of administrative issues, he
5 ends up not getting, for the moment I'll it the benefit, of
6 that New Jersey court's intent. And that's where the
7 unfairness lies.

8 MR. GINSBERG: Well, we don't see it as
9 administrative issues. We see it as that's what the
10 legislative scheme dictates.

11 JUDGE STEIN: But could the New Jersey court have
12 ordered sua sponte the return of the defendant to New York
13 to ensure that it's - - - it ran concurrent to any sentence
14 that New York imposed?

15 MR. GINSBERG: The New - - - the New Jersey court
16 certainly could have tried to do that. I think New York -
17 - -

18 JUDGE STEIN: Would have to agree?

19 MR. GINSBERG: - - - I think New York would have
20 to agree. New York is part of the Interstate Corrections
21 Compact, as is New Jersey. So I think there's good reason
22 to think that they would agree. And if you look at the
23 cases - - - and I'll just say this before I sit down, in
24 footnote 6 of our brief where we collect when this happens
25 in other states, you do have examples of courts ordering



1 defendants sent to other states to - - - to serve out terms
2 like this.

3 Sometimes they're accepted, sometimes they're
4 not. That would present a set of different issues. But
5 this is not a unicorn type of issue that happened.

6 JUDGE RIVERA: So your - - - so your position is
7 no matter what the New Jersey court wanted to do, it didn't
8 - - - it couldn't necessarily actualize that?

9 MR. GINSBERG: It couldn't - - - yes. The answer
10 to your question is yes, Your Honor. The New Jersey court
11 could not control New York's administration of petitioner's
12 New York penal sentence. And we'd ask that the court below
13 be affirmed.

14 CHIEF JUDGE DIFIORE: Thank you, counsel.
15 Counsel?

16 MR. CASSIDY: Yes, Your Honor. There's at least
17 two points that I'd very much like to respond to. One, as
18 to what the New Jersey court intended. That it intended
19 its sentence to run concurrently with the underlying New
20 York sentence. The time owed here in New York I think is -
21 - - is beyond dispute. Now, despite raising doubts about
22 that, both the Supreme Court and the Appellate Division
23 made a factual determination already about what the New
24 Jersey court intended. And it's never been in dispute from
25 the beginning.

1 Most importantly, Mr. DiSimone, who is the head
2 of Office of Sentence Calculation, he worked from the
3 premise as well that this is what New Jersey intended. And
4 - - - and all the arguments in this case have been
5 developed with that premise in mind. So it would be very
6 unfortunate for the case to not even be decided after
7 coming this far on that factual question, which I don't
8 think is genuinely in dispute.

9 The other point that I feel important to - - - to
10 - - - to note is that the sentence - - - the definite
11 sentence cases, which DOCs litigated - - - or made
12 prisoners litigate to get the credit for - - - for some
13 forty years, they uniformly lost. To my knowledge, without
14 exception, throughout the supreme courts in the Fourth
15 Department, the Second Department, and the Third
16 Department, beginning in the 1970s right up to 2011, and
17 then finally in 2013, DOCs conceded all right, we'll give
18 this credit.

19 And those cases were really tethered to the idea
20 that the New York - - - underlying New York sentence had
21 been interrupted. And it was a fiction that it couldn't
22 resume until they returned to DOCs custody. But those
23 definite sentence cases is a typical scenario where the
24 individual would serve that time in the county jail before
25 coming back to DOCs when this - - - this idea that the



1 sentence would then resume. And that credit was given in
2 those cases.

3 And the Howard case is an aberration. And we
4 specifically pointed out the conflict between Howard and
5 that line of cases and DOCs reasoning. Unfortunately, the
6 Appellate Division below didn't - - - didn't address that
7 and simply echoed its language from Howard that it was
8 incumbent that he return to New York without acknowledging
9 the arguments and explaining why that was the case, without
10 any - - - any elucidation about that. And - - - and we
11 really feel that that conflict - - - this court has an
12 opportunity to resolve that conflict here. And - - - and
13 it's really to perpetuate this fiction that because the
14 sentence was interrupted, he couldn't get any credit for
15 that.

16 It just doesn't make any sense in that it's not
17 paroled jail time that's at issue here. It's concurrent
18 sentence credit. And there's an entirely different statute
19 which explains, 70.30, how DOCs is to calculate a sentence
20 involving a concurrent sentence, whether it's a New York
21 sentence or any other state sentence. And so the
22 exclusivity argument about the PRS statute being on PRS
23 instead of ordinary parole, somehow altering that and being
24 an exclusive remedy, that this isn't parole jail time to
25 begin with.



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And secondly, it doesn't even address the question that set that spillover provision of 70.40(3)(c)(3), really only makes sense if it's a consecutive sentence and not a concurrent sentence.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. CASSIDY: Thank you very much.

(Court is adjourned)



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

I, Amber Minton, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York, ex rel Allen v. Bruce Yelich, No. 138, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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