

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT OF APPEALS  
STATE OF NEW YORK

-----

PEOPLE,

Respondents,

-against-

NOS. 50 and 51

CARNEGIE (ELIJAH) and DOCKERY  
(ANTHONY),

Appellants.

-----

20 Eagle Street  
Albany, New York  
April 16, 2026

Before:

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

Appearances:

ZACHORY NOWOSADZKI, ESQ.  
APPELLATE ADVOCATES  
Attorney for Appellants  
111 John Street  
9th Floor  
New York, NY 10038

JASON ELDRIDGE, ESQ.  
EPSTEIN & CONROY, P.C.  
Attorney for Respondents  
335 Adams Street  
Suite 2703  
Brooklyn, NY 11201

Brandon Deshawn  
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is  
2 People v. Carnegie.

3 MR. NOWOSADZKI: Good afternoon. And may it  
4 please the court.

5 CHIEF JUDGE WILSON: Good afternoon.

6 MR. NOWOSADZKI: Zachory Nowosadzki on behalf of  
7 Mr. Carnegie, Appellant. May I reserve two minutes for  
8 rebuttal?

9 CHIEF JUDGE WILSON: You may. I was going to ask  
10 you, since counsel is identical in both of these two cases,  
11 how the two of you would like to argue this. Would you  
12 rather have your time for both cases together, or would you  
13 rather do them separately?

14 MR. NOWOSADZKI: I would defer to the court. I'm  
15 fine arguing both of them together.

16 CHIEF JUDGE WILSON: Whatever - - - whatever - -  
17 -

18 MR. NOWOSADZKI: Would it be - - -

19 CHIEF JUDGE WILSON: Well, I think whatever your  
20 preference is. I wanted to give you the option.

21 MR. ELDRIDGE: Since the issues are identical, I  
22 think it most efficient to argue them together, but I defer  
23 to the court.

24 MR. NOWOSADZKI: That's - - - that's fine with  
25 me, Your Honor.

1 CHIEF JUDGE WILSON: Then why - - -

2 MR. NOWOSADZKI: Would it be then twenty minutes  
3 total?

4 CHIEF JUDGE WILSON: Yes. We'll give you each  
5 twenty minutes, and then tell me how much you'd like to  
6 reserve.

7 MR. NOWOSADZKI: Okay. Then in that case, I  
8 would like to reserve five minutes for rebuttal.

9 CHIEF JUDGE WILSON: Yes.

10 MR. NOWOSADZKI: Thank you.

11 Mr. Carnegie's young age at the time of his  
12 underlying offense was not adequately taken into account by  
13 the guidelines in the RAI, which treats this as an  
14 aggravating factor despite uncontroverted scientific  
15 evidence and federal and state law, which now recognizes  
16 that a young person, even an eighteen or nineteen-year-old,  
17 who commits a sex offense is less likely to reoffend as an  
18 adult.

19 JUDGE TROUTMAN: So if it's taken into  
20 consideration as an aggravating factor, doesn't that mean  
21 it is considered, the age?

22 MR. NOWOSADZKI: Right. So the - - - the inquiry  
23 under step one of Gillotti is whether the identified factor  
24 is of a kind or degree that's not adequately taken into  
25 account by the guidelines. So it's - - -

1 JUDGE TROUTMAN: But the guidelines, you said,  
2 they call it an aggravating factor, correct?

3 MR. NOWOSADZKI: Correct. And so it's our  
4 contention that by treating it as an aggravating factor,  
5 despite uncontroverted scientific evidence that's developed  
6 over the past several decades since the RAI was first  
7 created, which, by the way, has never been scientifically  
8 validated and is based - - -

9 JUDGE RIVERA: But isn't that an argument that  
10 goes to either the board or the legislature?

11 MR. NOWOSADZKI: The - - - I mean, yes, the - - -  
12 the - - - I mean - - -

13 JUDGE RIVERA: There is some policy choice in  
14 that. There is some perhaps expertise involved in  
15 concluding as - - - as you're arguing here that it's  
16 uncontroverted.

17 MR. NOWOSADZKI: I - - - I think it's - - -  
18 there's no real evidence to suggest that the board's  
19 conclusion on this issue is correct anymore. It may have  
20 been the - - -

21 JUDGE SINGAS: Right. But then that would - - -  
22 that would have - - - we would have to then look at the  
23 studies, read them, and make a decision about whether we  
24 agreed with the initial board assessment about age as an  
25 aggravating factor, and then decide whether now it's really

1 a mitigating factor. And isn't that beyond our - - - the  
2 realm of our powers?

3 MR. NOWOSADZKI: I - - - I don't believe so. I -  
4 - - this is - - -

5 JUDGE TROUTMAN: Why isn't that a legislative  
6 determination?

7 MR. NOWOSADZKI: I mean, the - - - the decision  
8 in Gillotti itself dealt with a situation, I think, that's  
9 analogous to here in that the court recognized that there  
10 are certain instances in that case, individuals who are  
11 convicted of possession of child pornography offenses,  
12 where the - - - following the guidelines to the T and  
13 assessing points - - -

14 JUDGE HALLIGAN: But - - - but the - - -

15 MR. NOWOSADZKI: - - - under factors 3 and 7.

16 JUDGE HALLIGAN: It seems to me this - - - this  
17 is difficult. Even if we were to agree with you that it  
18 could be considered as a mitigator, notwithstanding its  
19 treatment as an aggravator, I really struggle to see how it  
20 would work practically, and here's why.

21 My understanding is that, generally, a defendant  
22 is assessed often years after the time of a - - - of a  
23 conviction, right? And so at that point, the individual is  
24 no longer - - - were they a youth at the time of  
25 conviction, sixteen, seventeen, they're much older. And so

1           you can't, I don't think, assess the individual's, you  
2           know, cognitive impulse control - - - cognitive development  
3           impulse control, any of the sorts of things that the  
4           literature about youth gets at because they're much older.

5                        So I don't think you can do a defendant-by-  
6           defendant analysis. I think, instead, you'd have to say to  
7           the court, here's the literature. Sixteen-year-olds, that  
8           should be treated as a mitigator. So what do we do? Do we  
9           have one SORA court say sixteen is a mitigator, another say  
10          sixteen is not a mitigator? I mean, in line with some of  
11          the questions you're hearing about what I think are  
12          basically institutional competence, I don't know how we  
13          would have courts make this determination on a defendant-  
14          by-defendant basis. How - - - how would it work?

15                       MR. NOWOSADZKI: So the - - - the rule that we  
16          would ask this court to adopt is holding that, at step one  
17          of Gillotti, an individual's young age is, as a matter of  
18          law, a mitigating factor that's not taken into account.  
19          And so - - -

20                       JUDGE HALLIGAN: So you're asking us to say, for  
21          example, sixteen is always a mitigator, or are you asking  
22          that each SORA court be allowed to decide on a defendant-  
23          by-defendant basis?

24                       MR. NOWOSADZKI: I think that inquiry is proper  
25          under step three of Gillotti. I think what we would ask

1 this court to hold is that, at step one, it is a proper  
2 mitigating factor.

3 JUDGE HALLIGAN: So if that's how it proceeds,  
4 and you know, one SORA judge says sixteen is a mitigator  
5 because I don't think it can be a defendant-by-defendant  
6 analysis again because they've gotten much older, and the  
7 second SORA judge says sixteen is not a mitigator, that  
8 comes up on appeal. How - - - how are courts supposed to  
9 make that determination?

10 MR. NOWOSADZKI: Well, if - - - if this court  
11 holds that all lower SORA courts would be bound by our rule  
12 that - - -

13 JUDGE HALLIGAN: But - - - but how are we - - -  
14 how are we prepared? How - - - how are we capable of  
15 making a decision like that?

16 MR. NOWOSADZKI: And this is something that's  
17 been repeatedly recognized by the court - - - by the United  
18 States Supreme Court, by this court, that young people are  
19 different than adults.

20 JUDGE HALLIGAN: So you're basically asking us to  
21 make a Roper v. Simmons type determination, where we say  
22 sixteen is always a - - - a mitigator across the board.

23 MR. NOWOSADZKI: Correct. At step one of  
24 Gillotti.

25 JUDGE HALLIGAN: And isn't that essentially just

1 a challenge to the guideline itself to - - - to the  
2 treatment of it as an aggravator?

3 MR. NOWOSADZKI: Yes. I think that's part and  
4 parcel of the argument, but I think just a challenging  
5 factor 8 in saying point - - - shouldn't it be assessed  
6 under there, it still doesn't get to the heart of the  
7 argument, which not only then would it be treated as  
8 neutral, not aggravating or mitigating. All of the science  
9 suggests and conclusively shows that it is a mitigating  
10 factor, that in adulthood, individuals who committed  
11 offenses when they were young are less likely to reoffend.

12 CHIEF JUDGE WILSON: I'm - - - I'm still, I  
13 guess, having a little problem understanding your answer to  
14 Judge Halligan's hypothetical, and I understand you've  
15 confined it to section - - - to step one for a moment. But  
16 suppose we agree to that step one. And so the holding from  
17 this court is that age at time of commission of crime is a  
18 mitigating factor, right? But then what happens at step  
19 two and step three? Because all sixteen-year-olds who  
20 committed crime at age sixteen are going to have been  
21 sixteen. So when we get to step three, how do we  
22 differentiate among them?

23 MR. NOWOSADZKI: So - - -

24 CHIEF JUDGE WILSON: They all are the same in  
25 terms of the mitigating factor.

1 MR. NOWOSADZKI: So at step three, the courts  
2 would be taking into account the totality of the  
3 circumstances. Courts - - - SORA courts are making - - -

4 CHIEF JUDGE WILSON: But the - - - but the - - -  
5 but the fact that they were sixteen at the time, which is  
6 the thing that you are having us add as a mitigating factor  
7 is going to be the same for every sixteen-year-old.

8 MR. NOWOSADZKI: Yes. That's correct. And - - -  
9 but we're not saying - - -

10 CHIEF JUDGE WILSON: So is it always going to  
11 require a downward departure?

12 MR. NOWOSADZKI: No. We're not saying that that  
13 would always warrant a downward departure. For example - -  
14 -

15 CHIEF JUDGE WILSON: How do we differentiate?

16 MR. NOWOSADZKI: I mean, this court can list  
17 factors for SORA courts to consider. These are the types  
18 of - - -

19 JUDGE HALLIGAN: But they'd be sixteen - - -

20 JUDGE SINGAS: But how can you be asking for a  
21 holistic look and - - - and - - - but you're also arguing  
22 that just the immutable age should be something that's a  
23 mitigating factor? And don't you see how those two are  
24 inconsistent?

25 MR. NOWOSADZKI: I - - - I don't see them as

1 inconsistent. I think, at step one, a court can say - - -  
2 this court can say this is a mitigating factor. And then  
3 step three, necessarily in - - - is a holistic assessment  
4 of the totality of the circumstances.

5 JUDGE SINGAS: Which circumstances? Then you're  
6 going to add in everything else? Because you'd like to say  
7 he was sixteen or she was sixteen and we'd like a downward  
8 departure because the literature shows that, at that age,  
9 she's actually less of a risk to recidivate than not,  
10 right? So then what happens after that? Like, you're  
11 still going to be arguing the same thing. This defendant  
12 at this age - - - right? Like, it's not - - - you're not  
13 incorporating everything else.

14 MR. NOWOSADZKI: Well, the - - - the court would  
15 definitely - - - step three, if - - - if we're past step  
16 one, that this is a mitigating factor, as a matter of law,  
17 step three, the court can consider the age that the person  
18 is at the time of their hearing. They can consider what  
19 this person has done in the - - - the interim period,  
20 whether they were incarcerated or released in the community  
21 as - - -

22 JUDGE RIVERA: You mean whether or not the  
23 literature - - - the literature findings are borne out in  
24 this individual's case?

25 MR. NOWOSADZKI: Correct. For example, I - - -

1 and I think, you know, if - - - if the - - - we're dealing  
2 with someone who is sixteen at the time of their offense,  
3 maybe they only get sentenced to two - - -

4 JUDGE RIVERA: Yeah, but they've been  
5 incarcerated that whole time.

6 MR. NOWOSADZKI: Right. I mean, at the SORA - -  
7 - SORA hearings - - - and the board is looking at an  
8 individual's disciplinary record while they're  
9 incarcerated. They're looking at things like the  
10 presentence investigation report, which the - - -

11 JUDGE SINGAS: But they might not be  
12 incarcerated. People get probationary sentences, in which  
13 case, they'll still be sixteen or seventeen, correct?

14 MR. NOWOSADZKI: Correct. And I think that - - -  
15 I was going to go there and say that, then under step  
16 three, the court can say, well, okay, the science says  
17 you're not - - - your brain is not fully developed until  
18 you're twenty-five. So maybe in this case, a downward  
19 departure is not warranted because, at the time of your  
20 hearing, you're still sixteen years old, and there is a  
21 likelihood of - - - of reoffense more than a - - - a  
22 departure would warrant, the moderate or a high risk of  
23 reoffense.

24 JUDGE HALLIGAN: It just - - - just seems like  
25 there's a lot that's very difficult to have - - - have

1 courts - - - SORA courts make these determinations on an  
2 individualized basis. I mean, the approach I think the  
3 Supreme Court took in Roper is a categorical one. You  
4 cannot impose this punishment for individuals of this age  
5 across the board in all circumstances. And that would be a  
6 - - - a clean rule. But I don't hear you asking for that.  
7 And I don't hear you asking for some determination that  
8 treating youth only as an aggravator is impermissible  
9 categorically. So I just don't see how this would get  
10 applied on a case-by-case basis.

11 MR. NOWOSADZKI: And so SORA courts make these  
12 fact-intensive determinations - - -

13 JUDGE HALLIGAN: But not about something like  
14 age, I don't think, which is binary and which often can - -  
15 - the - - - the - - - the actual consequences for an  
16 individual defendant can't be evaluated for years because  
17 you're years down the road.

18 MR. NOWOSADZKI: Right. I mean, so the SORA  
19 courts, though, are taking into account all - - - all sorts  
20 of - - - they have a wide range of evidence before them at  
21 the time of the hearing. And so they are already making -  
22 - -

23 JUDGE CANNATARO: It sounds a little bit like  
24 you're asking us to rewrite the SORA guidelines to - - - to  
25 - - - to have a more modern take on whether age is a

1 mitigator or an aggravator. Because I think, in your view,  
2 what I hear you saying is that the way the RAIs treat age  
3 now is actually backwards is - - - I mean, why isn't that  
4 the appeal that we're hearing the - - - that SORA needs  
5 modification? I'm sorry, the - - - the RAI needs  
6 modification.

7 MR. NOWOSADZKI: I mean, I - - - I don't disagree  
8 that the - - - the RAI - - - RAI does need modification. I  
9 think - - - I mean, this court recognized in Gillotti  
10 itself that there are unintended consequences of a strict  
11 following of the - - - the guidelines in the RAI. And  
12 despite that - - - despite these decades of scientific  
13 research, the - - - the board hasn't updated the RAI since  
14 it's been developed over thirty years ago at this point.  
15 And so - - -

16 JUDGE TROUTMAN: So are you suggesting we update  
17 their guidelines?

18 MR. NOWOSADZKI: I - - - I think, in - - - in  
19 this case here, as it's presented, we would just ask that  
20 the court hold that young age is a mitigating factor  
21 contrary to the way that the guidelines treat it at step  
22 one of Gillotti.

23 JUDGE TROUTMAN: So you are asking us to rewrite  
24 the guidelines?

25 JUDGE CANNATARO: Not only is that an ad hoc

1 solution, it - - - it - - - I think I've heard this  
2 question a little while ago. It's in direct contravention  
3 of what the guidelines are telling courts to do. So I - -  
4 - I - - - I feel like the solution is if - - - if the  
5 guidelines are really approaching this question  
6 incorrectly, you got to change the guidelines, not - - -  
7 not make youth a mitigating factor, because on the other  
8 side of the analysis, they're making it an aggravating  
9 factor. That's just - - - I don't know. It's - - - it's  
10 illogical.

11 JUDGE GARCIA: It would be - - - it would be kind  
12 of - - - I - - - I think the analogy I think of is, you  
13 would then come in with studies that said, you know, people  
14 who prey on strangers are less likely to offend again. So  
15 even though you get points for preying on a stranger, it  
16 should be a mitigating factor.

17 MR. NOWOSADZKI: Right. If - - - if there are  
18 two decades of scientific research that all support the  
19 conclusion that that individual is less likely to reoffend,  
20 then I think that case could be talked about if the  
21 guidelines - - -

22 JUDGE GARCIA: So we would do that rather than  
23 the board and legislature?

24 MR. NOWOSADZKI: I mean, certainly, they can. I  
25 think what's clear is that they have never undertaken any



1 effort to amend the guidelines since they've been  
2 developed. And so it's our position now that the court has  
3 to intervene.

4 JUDGE RIVERA: So - - - so are - - - are you - -  
5 - are you suggesting that perhaps there is a - - - a legal  
6 issue that we can address something along the lines of it's  
7 arbitrary and capricious?

8 MR. NOWOSADZKI: Yes. I would ask this court to  
9 - - - to hold that that registration - - -

10 JUDGE HALLIGAN: But that's - - -

11 JUDGE CANNATARO: Can you really do that? That  
12 sounds like in Article 78. When did you bring your Article  
13 78?

14 MR. NOWOSADZKI: I mean, we haven't, Your Honor.  
15 And - - - but we did hear at the SORA hearing, argued that  
16 factor 8 gets it wrong and that there is - - -

17 JUDGE HALLIGAN: But - - - but in Article 78, it  
18 seems to me or - - - or you - - - you know, something that  
19 brings a substantive declaratory claim, is the way in which  
20 we usually contemplate whether what an agency has done is  
21 supported by any, you know, reasonable evidence as  
22 arbitrary and capricious and so forth. This is not that  
23 case, I don't think, because as - - - as you just said,  
24 we're here just looking at whether or not, in this  
25 individual case, there - - - there is some room to treat

1 this as a mitigator.

2 MR. NOWOSADZKI: Yes. I mean, we - - - we are  
3 asking, though, that this court, as a matter of law, rule  
4 that this is a - - - a mitigating factor, not just for Mr.  
5 Carnegie but for every individual who was young at the time  
6 of their underlying offense. And again, we're not arguing  
7 that this would necessarily warrant a downward departure  
8 for everyone or even the vast majority of people, right?  
9 The - - -

10 JUDGE RIVERA: It sounds, in part, like you're  
11 arguing that the board is now acting in a way in  
12 contravention of its directive under the correction law. I  
13 mean, has there been some lawsuit to that effect? I mean -  
14 - -

15 MR. NOWOSADZKI: And not to my - - -

16 JUDGE RIVERA: I mean, just saying that the - - -  
17 there's a bunch of data across a significant period of time  
18 that supports your position is not necessarily going to get  
19 to what I now sort of - - - we're - - - we're asking  
20 questions about whether or not you're actually challenging  
21 the authority in this proceeding - - - the authority of the  
22 board to come to this conclusion and to stick with it.

23 MR. NOWOSADZKI: I mean, yeah, we - - - we do  
24 argue in our brief that the board here has abdicated their  
25 responsibilities to maintain guidelines, right? The - - -

1 the overarching purpose of SORA that this court has  
2 recognized is an accurate risk assessment of an  
3 individual's risk of reoffense.

4 JUDGE CANNATARO: Could you bring some sort of  
5 action to compel the board not to abdicate its  
6 responsibilities as opposed to this solution?

7 MR. NOWOSADZKI: I - - - I mean, hypothetically -  
8 - - theoretically that's - - - that's possible. That's not  
9 the case that we have before this court, though, and we  
10 would urge this court to act here and declare that this is  
11 a mitigating factor as a matter of law. I see my light is  
12 on.

13 CHIEF JUDGE WILSON: Thank you.

14 MR. ELDRIDGE: May it please the court. Jason  
15 Eldridge for the respondent, Kings County.

16 JUDGE HALLIGAN: Counsel, can - - - can I pick up  
17 on Judge Cannataro's last question to your adversary?  
18 Let's assume, hypothetically, if you will, that there was  
19 literature that was crystal clear that youth operated as a  
20 mitigating factor with respect to recidivism for the  
21 offenses at issue here, and the board nonetheless only  
22 treated it as an aggravator. What would the remedy be for  
23 that?

24 MR. ELDRIDGE: Okay. First of all, I'd say  
25 that's obviously not our position.

1 JUDGE HALLIGAN: I understand.

2 MR. ELDRIDGE: Young age can never be a  
3 mitigating factor.

4 JUDGE HALLIGAN: That's why I said  
5 hypothetically.

6 MR. ELDRIDGE: I think, if I understand the  
7 question correctly, one of the issues with defendant's  
8 claim here is that he's asking this court to substantially  
9 rewrite the guidelines.

10 JUDGE HALLIGAN: What - - - what I'm asking is if  
11 - - - if it was established, hypothetically, that there was  
12 a clear connection between youth ages sixteen and seventeen  
13 and a reduced risk of recidivism for these offenses, what  
14 would the remedy be to adjust the guidelines? How would  
15 one approach that?

16 MR. ELDRIDGE: I'm not sure of the answer to  
17 that, Your Honor, to be honest. I mean, part - - -

18 JUDGE HALLIGAN: Would there be a remedy?

19 MR. ELDRIDGE: Well, I think - - - number one, I  
20 think this goes toward the rational basis question, I think  
21 is, as I pointed out in my brief, given the unsettled  
22 nature of the literature right now.

23 JUDGE HALLIGAN: No. But I'm asking you, if you  
24 were to assume, hypothetically, that the literature was  
25 clear and not unsettled. So if that - - - if that were the

1 landscape, could someone bring, for example, an Article 78  
2 against the board, some kind of declaratory judgment  
3 action? Would there be any redress from a court in a  
4 circumstance where a guideline over time became completely  
5 contradicted by the scientific literature?

6 MR. ELDRIDGE: I think, at that point, Your  
7 Honor, the court could declare that the board did not have  
8 - - - if the literature were crystal clear, the - - - this  
9 court could say the board has no rational basis for the  
10 conclusion that it has drawn. As far as the procedure at  
11 that point, I'm not sure what it would be. But this court  
12 - - - whether that would be directing the board to rewrite  
13 the guidelines - - -

14 JUDGE CANNATARO: So there - - - there is a legal  
15 remedy? You - - - you think there may well be a legal  
16 remedy? Let me just tell you what I'm asking. I'm - - -  
17 I'm curious to know whether this is strictly a policy slash  
18 political question, or whether you could come to court in  
19 some appropriate procedural vehicle and get that relief.

20 MR. ELDRIDGE: I think, as I said, the court  
21 could declare that the board did not have a rational basis  
22 for its decision. I'm not sure - - -

23 JUDGE CANNATARO: There's a legal remedy for this  
24 problem?

25 MR. ELDRIDGE: Well, that's what I'm not sure of,

1 to be honest here.

2 JUDGE CANNATARO: I understand.

3 MR. ELDRIDGE: I don't know, at that point, if  
4 the court - - - I don't know if this court has the  
5 authority to direct the board, which is - - - was given its  
6 mandate by the legislature. I don't know if the court  
7 could say you should - - -

8 JUDGE RIVERA: Well, people affected by agency  
9 actions challenge it all the time, right?

10 MR. ELDRIDGE: I - - - I agree, Your Honor. And  
11 that's why I said I'm not sure - - -

12 JUDGE RIVERA: Whatever the standard may be by  
13 which one measures the propriety of the agency action.

14 MR. ELDRIDGE: I'm sorry. I'm not sure I  
15 understand your question.

16 JUDGE RIVERA: Well, you've - - - you've set out  
17 a particular standard. I don't know that we need to really  
18 get into whether or not that standard - - - I think you  
19 were arguing the rational basis test. I don't know that  
20 that's really the appropriate test, but we don't have to  
21 decide that because that's not the nature of this question  
22 - - - these questions you're hearing.

23 MR. ELDRIDGE: And I apologize. I'm not sure  
24 what - - - if the literature were crystal clear, my  
25 position is the literature is absolutely not crystal.

1 JUDGE RIVERA: Yes. That wasn't said the - - -  
2 the - - -

3 MR. ELDRIDGE: And if it were - - -

4 JUDGE RIVERA: As said, that wasn't the  
5 hypothetical.

6 MR. ELDRIDGE: I understand. If the literature  
7 were crystal clear and that this court found that there was  
8 no rational basis for the board's decision, I'm not sure at  
9 that point what the remedy is. If this court would - - -  
10 do you then direct the legislature to direct the board to  
11 rewrite the guidelines? Do you direct the board to rewrite  
12 the guidelines? I'm not sure what the remedy is at that  
13 point. I apologize if I've misunderstood the question.

14 JUDGE RIVERA: No. I think you usually - - -

15 JUDGE CANNATARO: No, no, no. I think you  
16 understood it. It's just a little hard - - -

17 JUDGE RIVERA: Usually, you strike down the  
18 guideline.

19 MR. ELDRIDGE: Well, that's - - -

20 JUDGE RIVERA: It has no rational basis.

21 MR. ELDRIDGE: But I think that's one of the  
22 problems with the defendant's argument right now. The  
23 defendant didn't - - - you know, he's trying to negate the  
24 points under factor 8, but he didn't preserve that  
25 argument. So to an extent, he's doing an end run around

1 and trying to negate the - - - the excuse me - - - to  
 2 attack the risk factor itself. And he's not just saying  
 3 that young age - - - I shouldn't have gotten ten points for  
 4 that because that would have made no difference for either  
 5 of these defendants. They would have remained at the same  
 6 risk level. And he's not saying age is a neutral factor.

7 He's trying to go even one step further and say  
 8 that this - - - his age is a basis to completely lower his  
 9 presumptive risk level. And this would be contrary to the  
 10 intent of the board. The board doesn't want to allow  
 11 defendants to employ the downward departure procedure to,  
 12 in effect, nullify an assessment - - -

13 JUDGE CANNATARO: What would have been the effect  
 14 on the assessed risk level in this case if the youth factor  
 15 had been assessed at zero. Would that have changed?

16 MR. ELDRIDGE: Either defendant - - - it wouldn't  
 17 have changed for either defendant.

18 JUDGE CANNATARO: Because I'm wondering, you  
 19 know, assuming we accept your adversary's proposition that  
 20 in order to counterbalance this terrible mis - - -  
 21 misapplication of - - - of - - - of - - - of the way youth  
 22 works in the guidelines, if we were to say, as a matter of  
 23 law, that youth is a mitigating factor automatically, I  
 24 would think the best you could do would be to get to zero,  
 25 not to get a downward departure, right? Because if the



1 guidelines are giving you ten and the Court of Appeals  
2 says, no, it's actually a mitigating factor, you go down  
3 from ten to zero.

4 MR. ELDRIDGE: I agree. But that's not the  
5 argument that he has preserved. And that's why he's  
6 attacking the risk factor itself. And in this case, it  
7 would have made no difference for either of these  
8 defendants. Mr. Carnegie would have - - -

9 JUDGE RIVERA: I don't understand why you're  
10 going to ten - - - to zero. This is about departures, not  
11 about points.

12 MR. ELDRIDGE: Correct. Sorry. I think I may  
13 have misunderstood.

14 JUDGE RIVERA: Well, I - - - I thought the - - -  
15 the - - - I may have misunderstood the line of questioning  
16 here, that if it is indeed a mitigating factor, you change  
17 the point scale. But Gillotti is setting up what you do  
18 for departures, not about point assessments.

19 MR. ELDRIDGE: I agree. My point is, I think  
20 what the defendant is doing here is - - - is trying to  
21 attack the assessment of points under factor 8. But that  
22 argument isn't preserved. So instead he's attacking the  
23 risk factor itself. And I think he's - - -

24 JUDGE RIVERA: Why is he foreclosed from doing  
25 that?

1 MR. ELDRIDGE: That's not the argument that he  
2 preserved with the court below.

3 JUDGE RIVERA: No attacking the risk factor.  
4 You're saying that's not the argument he preserved?

5 MR. ELDRIDGE: He didn't - - - the argument he  
6 didn't preserve is the claim that he should not have been  
7 assessed points under factor 8. And that's why, I think,  
8 he's doing this other argument and attacking the risk  
9 factor itself. I think - - - I don't want to speak for the  
10 defense counsel. But I think the overarching issue here is  
11 that the research is absolutely not as consistent in its  
12 finding as defendant is claiming it to be, even in the  
13 cases he is citing in his brief. It's not a settled  
14 question whether offender's young age will - - - is a - - -

15 JUDGE HALLIGAN: Does - - -

16 MR. ELDRIDGE: - - - measure of recidivism.

17 JUDGE HALLIGAN: Does there have to be some - - -  
18 some showing in the first instance by the board that there  
19 is evidence showing that it is an aggravator?

20 MR. ELDRIDGE: Well, that's the board's position,  
21 Your Honor.

22 JUDGE HALLIGAN: But doesn't the board need some  
23 basis for a conclusion?

24 MR. ELDRIDGE: Well, if you look to the  
25 guidelines, the board was tasked with writing the

1 guidelines. It did so with the assistance of experts in  
2 consulting assessments.

3 JUDGE HALLIGAN: So you're saying simply that the  
4 presence of some experts, with no evidence that can be  
5 pointed to, is sufficient to justify a determination?

6 MR. ELDRIDGE: Well, I think the board, in their  
7 expertise, were tasked with the - - - with coming up with  
8 these guidelines, and they've done so. And their expertise  
9 is entitled to - - -

10 JUDGE HALLIGAN: So I take it the answer is yes.  
11 The fact that there are experts, you're saying, is enough  
12 without pointing to any - - - any evidence, any studies, or  
13 research showing a correlation or connection between the  
14 factor and the risk of recidivism?

15 MR. ELDRIDGE: Yes, Your Honor. And that is - -  
16 -

17 JUDGE RIVERA: But I thought they did point to  
18 something.

19 MR. ELDRIDGE: They did. They point to a series  
20 - - - they don't go into detail, but they do cite to, I  
21 think it's four or five studies when they cite why ages  
22 under twenty or less is an aggravating factor. And the - -  
23 - the legislature tasked them, as a board of experts, all  
24 five of them have to have expert qualifications. And in  
25 the guidelines, they say that in writing the risk

1 assessment guidelines, they didn't just rely on the five of  
2 them. They consulted with other experts in the fields.  
3 They cite to the studies for factor 8. And in their expert  
4 conclusion, they concluded that, if you are twenty or less  
5 when you commit your first sex offense, that that is an  
6 aggravating factor, so - - -

7 JUDGE HALLIGAN: Do you think that's consistent  
8 with the Supreme Court's conclusion in Roper v. Simmons?

9 MR. ELDRIDGE: I do, Your Honor. And the reason  
10 is that these cases, and defendant cites a number of these,  
11 stand for the proposition that young people develop  
12 differently or maybe that they're less morally culpable.  
13 But that's a completely separate issue as to whether  
14 someone is likely to reoffend sexually. I don't see that  
15 the two are the same issue. They might be related, but I  
16 don't see that they're the same issue.

17 JUDGE CANNATARO: So you're arguing that the  
18 science isn't really there?

19 MR. ELDRIDGE: Yes, Your Honor. I think science  
20 is not - - - what - - - what counsel is arguing for, the  
21 science is not as settled as he's trying to make it seem.  
22 We point to - - -

23 JUDGE RIVERA: Because the science is not obvious  
24 when it comes to youthful sex offenders - - - not sex - - -  
25 someone who offends at a young age, wherever that cutoff

1           may be, versus young people generally having difficulty  
2           with impulse control.

3                       MR. ELDRIDGE: I - - - I think they're - - -  
4           they're separate issues, Your Honor. A person - - - I  
5           think you could say young people generally have issues with  
6           impulse control. Maybe they're less morally culpable, but  
7           that's different than trying to predict whether a young  
8           person is going to reoffend sexually. And the board, in  
9           their expert opinion, has come to the conclusion that those  
10          who are twenty or less at the time of their first sexual  
11          offense are more likely to reoffend. And that's why they  
12          are assessed in - - -

13                      JUDGE CANNATARO: So if impulse control is part  
14          of it, then surely, you could understand logically the  
15          argument that if a young person has difficulty with impulse  
16          control, they will be more likely to reoffend because they  
17          can't control their impulses, right? I mean - - -

18                      MR. ELDRIDGE: I - - - I agree, Your Honor. And  
19          part of that goes to what I heard earlier. You know, if -  
20          - - sometimes people are given probationary sentences. If  
21          so - - - if you have a young person who, at age sixteen is  
22          given a probationary sentence, he's still arguing - - -  
23          he's still wrestling with impulse control at that point in  
24          his life. So the board's conclusion is correct, at least  
25          for - - - for that situation. And as I said, I think

1 they're - - - they're separate issues, you know, to have a  
2 - - - say that young people generally have a difficult time  
3 controlling their impulses or that they're less morally  
4 culpable, that doesn't measure - - -

5 JUDGE HALLIGAN: I think - - - I think a few  
6 other state high courts have said more specifically that  
7 the research shows that - - - that - - - that youth  
8 correlates with less recidivism with respect to sexual  
9 offenses specifically. Do you think they got it wrong?

10 MR. ELDRIDGE: I'm not saying - - - yes, I think  
11 they got it wrong. But I think the - - - for the issue for  
12 us is that the literature is unsettled, and therefore, the  
13 board, in their expertise, came to a position, and they  
14 have a rational basis for their position, you know, just -  
15 - -

16 JUDGE HALLIGAN: Is there any indication that the  
17 board has looked at any more recent literature since the  
18 time at which the guidelines were promulgated, which is a  
19 while ago?

20 MR. ELDRIDGE: There's no evidence that they have  
21 done that. But as this court has recognized, the - - - the  
22 board can amend the guidelines if it thinks that the  
23 science has changed, as it has done in the past. And in  
24 the absence of action by the board, we should conclude that  
25 they don't believe that the science warrants a change in



1 the guidelines at this point.

2 JUDGE TROUTMAN: So it's up to the board to  
3 adjust the regulations if it's appropriate to do so - - -

4 MR. ELDRIDGE: Yes. I think that's - - -

5 JUDGE TROUTMAN: - - - not the court.

6 MR. ELDRIDGE: Yes. I think that's what the  
7 legislature tasked the board with coming up with.

8 JUDGE RIVERA: When is the last time they did  
9 that?

10 MR. ELDRIDGE: I believe the last time they  
11 amended the guidelines - - - Counsel, correct me if I'm  
12 wrong - - - I believe it was 2006. But as I said, even in  
13 the absence of action, the board is tasked with this by the  
14 legislature. If they want to change the guidelines, the  
15 procedures are there in place to do so. And if they  
16 haven't done so, we can conclude that they don't think the  
17 science warrants a change. And from my reading of the  
18 science, I think, as unsettled as it is, there's no reason  
19 for the board to be changing the guidelines at this point.

20 JUDGE RIVERA: Do you know, does the board have  
21 regular meetings?

22 MR. ELDRIDGE: I don't know the answer to that,  
23 Your Honor.

24 JUDGE RIVERA: Okay. Thank you.

25 MR. ELDRIDGE: I would assume so, but I don't

1 know the answer to that. There are no more questions?

2 Thank you.

3 CHIEF JUDGE WILSON: Thank you.

4 MR. NOWOSADZKI: To address a few points here,  
5 the prosecution's attempt to - - - to say that the science  
6 is not - - - is - - - is unsettled, I think, is not founded  
7 out in the studies that we cite. And as other states'  
8 supreme courts have recognized that young people who commit  
9 sex offenses are less likely to reoffend as an adult.

10 JUDGE TROUTMAN: But what about the argument that  
11 it is for the board to adjust their own regulations and not  
12 the court or the legislature?

13 MR. NOWOSADZKI: Right. So to - - - to amend  
14 factor 8, I think, sure, that the board should endeavor to  
15 - - - to do that. But this court in Gillotti held that the  
16 departure mechanism is the appropriate remedy to - - - for  
17 a court to say that the assessment of points here - - - or  
18 there's other factors that the board has not taken into  
19 account that do warrant a downward departure or could  
20 warrant a downward departure, not even necessarily that  
21 it's warranted in every case.

22 JUDGE CANNATARO: What - - - what's your basis  
23 for saying that's a factor not taken into account? Because  
24 I understand your argument to be that it is a factor taken  
25 into account the wrong way.

1 MR. NOWOSADZKI: Correct. And so the - - -  
2 that's - - - that's the argument that it's - - -

3 JUDGE CANNATARO: They're very different.

4 MR. NOWOSADZKI: - - - not adequately taken into  
5 account. But the - - - this court in Gillotti, again,  
6 recognized that the - - - the downward departure process is  
7 in place for this very reason, that there the - - - the  
8 board determined that, you know, you get scored points for  
9 the number of complainants and for the age of complainants  
10 or whether they're strangers. And that's true even in  
11 cases where an individual possesses child pornography. Yet  
12 this court said that SORA courts should give particularly  
13 strong consideration that the assessment of those points,  
14 in many cases, will result in an overassessment of  
15 someone's risk of reoffense. The SORA statute places the  
16 ultimate responsibility and burden on the SORA court to  
17 determine an individual's risk of reoffense and not the  
18 board. So we're - - - all we're asking for is that a SORA  
19 court be able to consider an individual's young age - - -

20 JUDGE RIVERA: So then what - - - what is the - - -  
21 - what is the court to do? Read through all of those - - -  
22 all of the scientific literature, look at all the reports,  
23 and decide for itself, oh, they're right; the board is  
24 wrong. Is that what they're doing?

25 MR. NOWOSADZKI: That - - - I mean, that's what

1 we urge the court to do here. That's what the - - - the -  
2 - - the court did not. The court just stopped at step one  
3 and said, well, the RAI already considers young age. And  
4 so the court stopped the analysis there. But if this court  
5 issues a decision, then that would certainly provide  
6 guidance to SORA courts going forward on how to - - -

7 JUDGE CANNATARO: On what basis would this court  
8 issue that kind of decision? There isn't even a record of  
9 this argument being made in a sense that it's substantiated  
10 by the evidence, is there?

11 MR. NOWOSADZKI: Yeah. So at - - - at the SORA  
12 hearing in both of these cases, we presented numerous  
13 scientific studies that were cited in our prehearing  
14 filings. Those are in our appendix, that this is a  
15 mitigating factor, that at - - - step one of Gillotti's  
16 tends to reduce Mr. Carnegie's and Mr. Dockery's risk of  
17 reoffense. And despite that, the court stopped at step one  
18 and said no because the board - - -

19 JUDGE CANNATARO: But did the court entertain  
20 that question? Did it deal with that - - - with whatever  
21 was submitted? I - - - I thought - - - I thought that the  
22 court said this is a factor that's taken into account by  
23 the guidelines.

24 MR. NOWOSADZKI: Correct. And it's our - - -

25 JUDGE CANNATARO: They didn't say, like, you're

1 right or you're wrong or if it is a factor or it's not a  
2 factor. You're - - - it didn't entertain the question.

3 MR. NOWOSADZKI: Right. And so it's our position  
4 that that - - - stopping there was error, and that's what  
5 the bias - - -

6 JUDGE CANNATARO: Okay. My ultimate question is,  
7 if the court below didn't entertain it, does that mean we  
8 should entertain it here?

9 MR. NOWOSADZKI: Yes. It's - - - it's fully  
10 preserved, argued both at the SORA hearing and to the  
11 Appellate Division that all - - - we're - - - although some  
12 studies we might cite for the first time before this court,  
13 there were numerous studies before the SORA hearing in both  
14 cases of Mr. Dockery - - -

15 JUDGE RIVERA: So - - -

16 MR. NOWOSADZKI: - - - and Mr. Carnegie.

17 JUDGE RIVERA: So why isn't the factor not youth,  
18 but the fact that the science has shifted and they  
19 understand - - - why isn't that the factor?

20 MR. NOWOSADZKI: I think the - - - the court  
21 could articulate it that - - - I - - -

22 JUDGE RIVERA: No.

23 MR. NOWOSADZKI: I hear that as - - -

24 JUDGE RIVERA: Hasn't that - - - why wouldn't  
25 that be the factor that a - - - an individual would present

1 to the court? Or could it - - - could it say that's the  
2 factor I want to present?

3 MR. NOWOSADZKI: Yes. I don't hear that as  
4 dissimilar from what we argued below. I - - - I understand  
5 that to be what the argument below was.

6 JUDGE RIVERA: Well, your - - - your argument - -  
7 -

8 MR. NOWOSADZKI: That you've then - - -

9 JUDGE RIVERA: No. Your argument is, well, they  
10 got it wrong. But the factor is youth, and the lower court  
11 is going to say, I have - - - I have the board's  
12 articulation. It has made a choice, right? Versus our  
13 factor is the science has shifted. That is not accounted  
14 for in the guidelines. We'd like you to take a look at it  
15 and see if it - - - it does indeed lead to a factor or  
16 circumstance that mitigates the risk for this particular  
17 individual. It strikes me that those are two different  
18 kinds of arguments you'd present to a court.

19 MR. NOWOSADZKI: I - - - I hear them as the same,  
20 Your Honor. I - - -

21 JUDGE RIVERA: Very well. Okay.

22 MR. NOWOSADZKI: I see my red light is on. If  
23 the court has no further questions, we ask you to reverse.  
24 Thank you.

25 CHIEF JUDGE WILSON: Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Court is adjourned)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Carnegie (Elijah) and People v. Dockery (Anthony), Nos. 50 and 51 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Brandon Deshawn*

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

Agency Name: eScribers

Address of Agency: 7227 North 16th Street  
Suite 207  
Phoenix, AZ 85020

Date: April 24, 2026

