State of New York
Court of Appeals

The People of the State of New York, ex rel.,
John F. Ryan, on behalf of Richard Shaver,

Respondent,

-against –

Kevin Cheverko, Commissioner of the Westchester County Department of Correction and William Geciuceis, Warden

Appellants.

Brief of the New York State Defenders Association
& Center for Community Alternatives,
Amici Curiae

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Interest of Amici

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1800 public defenders, legal aid attorneys, 18-b counsel and private practitioners throughout the state. With funds provided by the state of New York, NYSDA operates the Public Defense Backup Center, which offers legal consultation, research, and training to nearly 6,000 lawyers who serve as public defense counsel in criminal cases in New York. The Backup Center also provides technical assistance to counties that are considering changes and improvements in their public defense systems. The New York State Defenders Association is contractually obligated "to review, assess and analyze the public defense system in the state, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities." This Court has granted NYSDA *amicus curiae* status in numerous cases dealing with the rights of criminal defendants. NYSDA has also served as counsel of record in this Court in a case addressing sentence calculation rules under Penal Law § 70.30. *See* Matter of Guido v. Goord, 1 N.Y.3d 345 (2004)

The Center for Community Alternatives (CCA) is a not-for-profit community-based organization that promotes reintegrative justice and a reduced reliance on incarceration through direct services, policy development and advocacy. For thirty-

years, CCA has assisted people caught up in all stages of the criminal justice system, from arrest to reentry. In addition to its focus on reentry and reintegration, CCA provides sentencing advocacy services, including helping defense counsel and defendants understand sentence computations and release dates. An understanding of release dates facilitates both knowing and informed plea bargains and effective reentry planning. Therefore, CCA has a strong interest in ensuring clarity and uniformity in application of Penal Law § 70.30.

This appeal raises an important issue about proper calculation of consecutive definite sentences. Penal Law § 70.30 (2)(b) imposes a cap on the duration of multiple consecutive definite sentences. The statute directs that such sentences are satisfied by service of the aggregate of the terms imposed, or "by service of two years imprisonment," whichever is less. The Appellate Division held the two-year sentence cap is an aggregate term from which jail time and good time credits must be deducted. Appellant disagrees and contends that jail time and good time credits can be applied only to reduce the aggregate of the consecutive sentences actually imposed, and cannot be credited against the lesser alternative two-year sentence cap. Under Appellant's reading of the statute, all inmates serving the two-year sentence cap would spend at least eight additional months in jail; and poorer inmates held as pre-trial detainees would be denied jail time credit and held in excess of two calendar years. Because Appellant's discriminatory interpretation is contrary to long-standing judicial construction and practical application of the statute [*see e.g.* People v. Teti, 41 A.D.2d

841 (2d Dept. 1973)], NYSDA and CCA have a substantial interest in the outcome of this appeal.

ARGUMENT

THE APPELLATE DIVISION CORRECTLY HELD THE TWO-YEAR CAP FOR CONSECUTIVE DEFINITE SENTENCES UNDER PENAL LAW SECTION 70.30 (2)(b) IS AN AGGREGATE TERM OF IMPRISONMENT FROM WHICH JAIL TIME AND GOOD TIME CREDITS ARE PROPERLY DEDUCTED.

Penal Law § 70.30 (2)(b) imposes a cap on consecutive definite sentences. The statute directs that multiple consecutive sentences are satisfied by completion of the aggregate of the terms imposed, or "by service of two years imprisonment," whichever is less.[1] The Appellate Division held the two-year sentence cap is an aggregate term of imprisonment from which jail time and good time credits must be deducted. Appellant, the Westchester County Commissioner of Correction (Commissioner) contends that jail time and good time credits can be applied only to reduce an aggregate term actually imposed, and cannot be applied to reduce a statutorily-capped two-year sentence. Relator, Richard Shaver, was sentenced to four consecutive one-year definite terms - a court-imposed four-year aggregate term. Instead of simply determining that two years is less than four years and applying jail time and good time credits to Shaver's statutorily-capped two-year sentence, the Commissioner took a different approach. He applied reductions for jail time (106

[1] Plus any term imposed for an offense committed while the defendant was under sentence - a provision not implicated in this appeal.

days) and good time (486 days) to the four-year aggregate term, resulting in 2 years, 4 ½ months to completion of the court-imposed aggregate term. As the court-imposed aggregate term (minus available credits) was longer than two years, the Commissioner reasoned that Shaver was required to serve two full calendar years without any reductions for jail time and good time credits. The Appellate Division correctly rejected the Commissioner's interpretation of the statute.

The text of Penal Law §70.30 (2)(b) neither confirms nor conclusively refutes the Commissioner's reading of the statute. The statutory language is, at best, ambiguous about whether jail time and good time credits apply to the statutory two-year sentence cap.[2] Therefore, judicial construction requires analysis of legislative intent and is properly informed by legislative history. Majewski v Broadalbin-Perth Cent. School Dist., 91 N.Y.2d 577 (1998). Here, Penal Law § 70.30 (2)(b)'s legislative history unmistakably reveals that the two-year sentence limitation was intended as an aggregate term from which jail time and good time credits should be deducted.

In identical language to the current text, Penal Law § 70.30 (2)(b) was first proposed in the 1964 Study Bill drafted by the Temporary Commission on Revision

[2]For example, an unambiguous text supporting the Commissioner's proposed interpretation might read: "If the sentences run consecutively . . . the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of two years imprisonment without reduction by credits otherwise available pursuant to subdivisions three and four of this section, plus any term imposed for an offense committed while the person is under the sentences, whichever is less."

of the Penal Law and Criminal Code. The subdivision [then numbered proposed Penal Law § 30.30 (2)(b)] provided:

> 2. Definite sentences. A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. Where a person is under more than one definite sentence, the sentences shall be calculated as follows:
>
> (b) if the sentences run consecutively and are to be served in a single institution, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of two years imprisonment plus any term imposed for an offense committed while the person is under the sentences whichever is less.

See 1964 Study Bill A. 5376/ S. 3918.

The Commission's Staff Notes reveal that the two-year sentence limitation was intended as an alternative aggregate term when court-imposed terms total more than two years. The statute requires service of the aggregate term of the consecutive definite sentences actually imposed (*e.g.*, 20 months), or, when that exceeds two years, a statutorily-capped two-year aggregate term. The Staff Notes leave no room for doubt on this point:

> Paragraph (b) also provides a limitation upon the aggregate term of consecutive definite sentences. Under existing law there is no limitation and a person may receive three or more consecutive one-year terms. The proposed law limits the aggregate term to two years, plus any term imposed for an offense committed while the person is under the sentences.
>
> As in the case of the limit upon the aggregate maximum of consecutive indeterminate sentences, the limit herein provided does not affect the authority of the court to impose multiple sentences or govern the lengths of individual sentences: it is merely a direction as to calculation. Consideration was given to limiting the aggregate term to one year, rather than two years, as in the case of related offenses (see § 30.25 subd. 3). This was rejected because it would leave

> the offender free to commit numerous separate misdemeanors with impunity. The two-year limit plus any term imposed for a new offense seems to strike a reasonable balance (emphasis added).

See Temp. St. Comm. on Revision of Penal Law and Criminal Code, Comm. Staff Notes, N.Y. Penal Law § 30.30 (later revised as § 70.30) at 296-297.

When consecutive sentences are imposed, jail time and good time credits are applied against the aggregate term of imprisonment. *See* 70.30 (3)(b) ("If the sentences run consecutively, the [jail time] credit shall be applied against the aggregate term); Penal law 70.03 (4)(b) (In the case of a person serving a definite sentence, the total of such [good time] allowances shall not exceed one-third of his term or aggregate term and the allowances shall be applied as a credit against such term.") Therefore, the Appellate Division correctly held that Shaver's two-year aggregate term should be reduced by available jail time and good time credits.

The Staff Notes of the Temporary Commission on Revision of the Penal Law and Criminal Code have been regarded as an authoritative guide to the legislative intent of numerous Penal Law sections. *See e.g.*, People v. Finley, 10 N.Y.3d 647 (2008); People v. Chiddick, 8 N.Y.3d 445 (2007); People v. Garson, 6 N.Y.3d 604 (2006); People v. Owusu, 93 N.Y. 2d 398 (1999); People v. Feerick, 93 N.Y.2d 433 (1999); People v. Hedgeman, 70 N.Y.2d 533 (1987). Here, the Staff Notes clearly explain the legislative intent of Penal Law § 70.30 (2)(b) and confirm the correctness of the Appellate Division's holding. The subdivision is simple and even-handed in application; it is also consistent with computation rules for consecutive indeterminate

and determinate sentences [*see* Penal Law § 70.30 (1)(b)(c)(d)(e)(f)] , where statutory caps are imposed on aggregate maximum terms, and jail time and good time credits apply in the usual manner.

In stark contrast, the Commissioner's interpretation would deny jail time credit whenever the statutory two-year sentence cap is triggered, thereby forcing inmates who were held as pre-trial detainees to serve longer terms of imprisonment than otherwise identically-situated inmates who were released pre-trial. The 1965 Legislature that enacted the Revised Penal Law (L.1965, chap. 1030) would not have approved such a discriminatory provision because - even then - sentence calculation rules that unfairly disadvantaged pre-trial detainees were viewed as constitutionally objectionable. *See e.g.* Stapf v. United States, 367 F.2d 326 (D.C. Cir. 1966) (Where defendant was sentenced to maximum term but denied credit for pre-trial custody the "disparity in treatment constitutes an irrational and arbitrary classification.") And by denying good time credit to inmates serving statutorily-capped two-year sentences, the Commissioner's interpretation would violate Correction Law § 803, which directs that "Every person confined in an institution serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of his sentence . . . ." *See* Matter of Guido v. Goord, 1 N.Y.3d 345, 349 (2004) ("'In any case' means in *any* case, and we cannot conclude that by saying 'any' the Legislature meant some and not others.")

In short, the Commissioner's proposed reading of Penal Law § 70.30 (2)(b) is inconsistent with clearly expressed legislative intent. It would lead to arbitrary and unreasonable computations that are completely at-odds with basic sentence calculation rules under the Penal Law and Correction Law. The order of the Appellate Division should be affirmed.

Conclusion

The order of the Appellate Division should be affirmed.

Respectfully submitted,

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