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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 84

MICHAEL E. PRINDLE,

Appellant.

20 Eagle Street
Albany, New York
June 1, 2017

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE DIFIORE: The next matter on this
2 afternoon's calendar is appeal number 84, the People of the
3 State of New York v. Michael Prindle.

4 MR. HOBBS: Good morning, Your Honors - - - good
5 afternoon.

6 CHIEF JUDGE DIFIORE: Good afternoon, sir.

7 MR. HOBBS: If I may, I'd like to reserve two
8 minutes for rebuttal.

9 CHIEF JUDGE DIFIORE: Yes, of course, you may.

10 MR. HOBBS: Okay. May it please the court, on
11 behalf of the appellant, Michael Prindle.

12 Based on this court's prior interpretations of
13 the PFO statutes, and based on the text of those statutes,
14 Mr. Prindle remained eligible for a non-PFO sentence as low
15 as three to six years, even after the court had found two
16 prior qualifying predicate convictions.

17 He became ineligible for that lower sentence, and
18 subject to a higher sentence only after the court made
19 additional findings of fact that went well beyond - - -

20 JUDGE RIVERA: Well, counsel, Rosen, Rivera,
21 Battles, Giles, many times the arguments have come up to
22 the court and been rejected, albeit with some very
23 compelling dissents, but nevertheless rejected. What's
24 different today in this case than every other case where we
25 have upheld as Constitutional the PFO, of course, based on

1 a particular reading that this court has taken of that
2 Statute?

3 MR. HOBBS: Every one of those cases dealt with
4 the - - - the authorization of a higher maximum, basically.
5 They dealt with the authorization problem by saying that
6 it's the step one findings, the prior convictions.

7 JUDGE STEIN: But why does the analysis change
8 any, if now we know that it also applies to the bottom end?
9 How does that change the analysis?

10 MR. HOBBS: Because after the step one findings,
11 it's clear in Rivera and - - - and Quinones say it
12 explicitly, after the step one findings, he could still get
13 a non-PFO sentence. Meaning that the minimum has not moved
14 up at all.

15 JUDGE STEIN: That's true with the maximum as
16 well.

17 MR. HOBBS: Well, the - - - no, the courts
18 expressly held that the maximum moves up at step one, based
19 on the prior convictions. That's when the sentencing
20 ceiling goes up; that's the key.

21 JUDGE STEIN: I - - - I thought we held that the
22 range moves after a determination of the prior felonies.

23 MR. HOBBS: The - - - the top end of the range.
24 Exactly.

25 JUDGE STEIN: No, the entire range.

1 MR. HOBBS: If the entire range moves up, then
2 step two is - - - is pointless. I don't know what happens
3 is step two, but if - - - if the bottom end of the range is
4 not moved up, then - - -

5 JUDGE STEIN: Well - - -

6 MR. HOBBS: - - - that's a pointless exercise.

7 JUDGE STEIN: My understanding is is that if - -
8 - if the - - - if there is discretion under step two - - -

9 MR. HOBBS: Um-hum.

10 JUDGE STEIN: - - - and the court finds, in its
11 discretion, that PFO sentencing is not required, because
12 step one entitles - - -

13 MR. HOBBS: Um-hum.

14 JUDGE STEIN: - - - the judge to order - - -

15 MR. HOBBS: Um-hum.

16 JUDGE STEIN: - - - PFO sentencing. Step two is
17 these factors, in my discretion, no, we're going outside
18 the PFO range, and we're going back to the second felony
19 offender range.

20 MR. HOBBS: If - - - if that's the way you want
21 to - - - to put it, I think that's fair enough. But what
22 you suggest to me that there is no mandatory minimum
23 created after step one - - -

24 JUDGE STEIN: Well, as - - -

25 MR. HOBBS: - - - there's still a possibility of

1 going down below it.

2 JUDGE STEIN: No, there's just as much a
3 mandatory minimum as there is a mandatory maximum. That is
4 that - - - that the court can go outside that range.

5 MR. HOBBS: But the court can't go outside that
6 range once it's made the step two findings.

7 JUDGE STEIN: No, no. Once it's made the step
8 one finding.

9 MR. HOBBS: I thought - - -

10 JUDGE STEIN: After the step one finding, if the
11 court, in the exercise of its discretion - - -

12 MR. HOBBS: Um-hum.

13 JUDGE STEIN: - - - does not make findings that -
14 - - that a - - - that a PFO sentence is required, then the
15 whole range changes.

16 MR. HOBBS: Let me try to explain the position
17 this way. After the step one findings, you're suggesting
18 the entire range moves up. And then step two allows the
19 court to exercise some discretion to go back to the old
20 range, right?

21 JUDGE STEIN: I - - - that's how I understand
22 what we've said.

23 MR. HOBBS: Once the court makes step two finding
24 supporting a PFO sentence, that's when the mandatory
25 minimum kicks in. That's when fifteen to life becomes the

1 minimum. And I - - - I have three sources of support for
2 that.

3 JUDGE GARCIA: But doesn't the maximum also - - -
4 why wouldn't that also kick in the maximum, which would be
5 life, at that point, right?

6 MR. HOBBS: I mean, I believe - - - well, I'm - -
7 - we're - - - I'm talking about the whole sentence, fifteen
8 to life versus twenty-five to life. The maximum moves up
9 to twenty-five to life, it becomes available, it becomes
10 authorized after step one. That's - - - that's the key to
11 this court's position.

12 My position is that - - -

13 JUDGE STEIN: And the minimum moves up, too.

14 JUDGE GARCIA: Right.

15 MR. HOBBS: But he then becomes inel - - - he's
16 clearly eligible still. He still has the possibility of
17 receiving a lesser sentence at that point. Because that's
18 the whole point of going to the step two.

19 If he could - - - Rosen - - - Rivera and Quinones
20 have expressly said, if he can convince the judge that
21 there are mitigating factors here, and if the People don't
22 carry their burden of proof to step two, the judge can
23 certainly exercise its discretion to propose a non-PFO
24 sentence.

25 JUDGE GARCIA: One of your arguments is that the

1 other states have done this, right, Connecticut is one
2 state that has overturned their equivalent statute, right?

3 MR. HOBBS: The amici make that point. Yes,
4 that's true.

5 JUDGE GARCIA: Right. That was done in 2007 in
6 response to Blakely and Cunningham. Not in response to
7 Alleyne in the minimum, because it's the same type of
8 thing. And if you find it, as it was the maximum or the
9 minimum, they're both moving up.

10 We've already ruled on this a number of times
11 since Cunningham and Blakely. You know, so if we were
12 going to do it for the reasons Connecticut did it on a same
13 statute, we would've done it before.

14 MR. HOBBS: I - - - I don't make that argument in
15 my - - - in my brief. I think that's a bit of evidence
16 that this court is standing alone outside of the practice
17 that everyone else has taken, and - - - and that, you know,
18 that maybe it should be reconsidered. But that's not the
19 core of my argument. My argument is not focused on what
20 the other states have done.

21 JUDGE GARCIA: So let's - - - let's break it down
22 then. So as a persistent felony offender - - -

23 MR. HOBBS: Um-hum.

24 JUDGE GARCIA: - - - the range is what?

25 MR. HOBBS: Well, the People's position is that

1 the range, after the step one, is from the top of the PFO
2 range of twenty-five to life, all the way down to the
3 bottom of the second felony offender sentence range, which
4 in this case would have been three to six.

5 JUDGE GARCIA: Right.

6 MR. HOBBS: I'm agnostic about whether or not
7 that's the full scope of the range. I think those are two
8 separate ranges being conflated there. My position that
9 it's - - - if you're going to be sentenced as a PFO, it's
10 twenty-five to life at the top end, to fifteen to life at
11 the bottom end.

12 And that bottom end is not a fixed minimum. It's
13 not a - - - there's no mandatory component to it until
14 after step two. Step two allows the court discretion to go
15 below that, and step two ends the court's discretion to go
16 below that.

17 JUDGE STEIN: But I don't understand why that - -
18 - the maximum, that same argument doesn't apply to the
19 maximum.

20 MR. HOBBS: That - - - because - - -

21 JUDGE STEIN: Because - - - because until after
22 you make the findings at step two - - -

23 MR. HOBBS: Um-hum.

24 JUDGE STEIN: - - - you can still, you know, the
25 maximum is - - - is a lower amount, depending upon the - -

1 - the crime involved.

2 MR. HOBBS: As the court has interpreted Apprendi
3 and its progeny, up until Alleyne, it said that the problem
4 was about when the sentence is legally authorized. So when
5 that - - - that twenty-five-to-life maximum is authorized.
6 Right.

7 It has never considered the Alleyne issue.
8 Alleyne expressly says, whether or not a particular
9 sentence is legally authorized is beside the point. We
10 have another Sixth-Amendment problem, and the other
11 Sixth-Amendment problem is when it becomes mandatory, when
12 it - - - the defendant becomes ineligible for a lower
13 sentence in the lower half of the range.

14 JUDGE WILSON: Can I - - -

15 MR. HOBBS: (Indiscernible).

16 JUDGE WILSON: - - - ask you a different
17 minimum/maximum question? When I look at the papers in
18 Supreme, this is particularly the affidavit of Mr. Brazil
19 (ph.) - - -

20 MR. HOBBS: Um-hum.

21 JUDGE WILSON: - - - on the PFO status - - -

22 MR. HOBBS: Um-hum.

23 JUDGE WILSON: - - - in paragraphs 8 and 9, all
24 that he's complaining about is the imposition of a maximum
25 sentence to impose a life sentence, beyond the otherwise

1 imposed maximum sentence. And you're now arguing something
2 having to do with Alleyne about the minimum sentence. I
3 wonder what you've preserved.

4 MR. HOBBS: I believe it's - - - it's adequately
5 preserved. I mean, Alleyne shares with Apprendi the - - -
6 the general premise that any fact finding that aggravates
7 the range is - - -

8 JUDGE WILSON: I understand that. But I'm asking
9 if you argued anything about the minimum in the Supreme.

10 MR. HOBBS: Not expressly, Your Honor. It
11 articulates the major premise under Apprendi that's
12 consistent with Alleyne. He doesn't articulate the minor
13 premise, but that was a premise that was ruled out by
14 Harris, which was standing law at the time, and then it
15 would have made no difference. The court would have just
16 said no, the Constitution is against you on that point as
17 well.

18 And as I've cited in my brief, there's plenty of
19 case law from this court saying that if, you know, a new
20 Constitutional theory - - - if the Constitutional objection
21 is made, and a new sort of theory is - - - becomes
22 available based on intervening Supreme Court case law while
23 the case is pending on appeal, that's all you need to do to
24 preserve it.

25 Here, there's no factual issue that wasn't

1 developed that would have been developed otherwise. It's
2 clear that we were objecting on Sixth and Fourteenth
3 Amendment grounds under the case laws that existed at the
4 time. I don't see what - - - what difference it would have
5 made if someone had imagined that Harris might get
6 overruled.

7 CHIEF JUDGE DIFIORE: Thank you, Mr. Hobbs.
8 Counsel.

9 MS. MERVINE: Thank you.

10 May it please the court. Leah Mervine on behalf
11 of Monroe County. Good afternoon.

12 I - - - I think that's the most salient point,
13 what Judge Wilson raised about the preservation issue. It
14 is the People's position that this case is not preserved
15 for this court's review. If New York's - - -

16 JUDGE WILSON: But you didn't actually make the
17 preservation argument that I just stated, right?

18 MS. MERVINE: We did make a - - -

19 JUDGE WILSON: A different preservation argument,
20 no?

21 MS. MERVINE: I - - - I do believe that we made
22 it in the court below, at the Fourth Department, as well as
23 before this court. We made a two-prong preservation
24 argument in our brief. And the key prong, I think, is the
25 fact that Alleyne post-dated the notice of appeal in this

1 case by two years. And I would agree with Mr. Hobbs if
2 this issue had been raised of a minimum and a maximum based
3 on Harris.

4 JUDGE STEIN: What about the illegal sentence
5 exception to the preservation rule? Why wouldn't that
6 apply?

7 MS. MERVINE: If it were to be - - - and this
8 becomes almost like a chicken and an egg issue. And I
9 think that was raised in the reply brief.

10 JUDGE STEIN: Right. We would have to determine
11 first whether it was illegal to determine whether it was
12 preserved, right?

13 MS. MERVINE: Correct. So that, I mean, that
14 could be perceived as an exception to the preservation
15 rule, but could also circle back again. And once the
16 merits are examined, it could go back to preservation, if
17 that makes sense.

18 JUDGE STEIN: Okay. But so - - - so we can do
19 that then.

20 MS. MERVINE: Right. Well - - - and I think
21 that's sort of how preservation is illusory, in a sense, is
22 that you can raise preservation, and then there could be a
23 merit, and that could be found.

24 But in this case, I believe that preservation,
25 even after the merits are considered, will be the

1 dispositive bar. Because this State's jurisdiction has
2 never relied on Harris. And when Harris v. United States
3 was addressed, that was the Alleyne case. So Alleyne has
4 done nothing whatsoever to change the jurisprudence in this
5 State.

6 And going back to the preservation issue, our - -
7 - our two-pronged argument was, one, that, again, including
8 Mr. Brazil's objections, he was saying he believed that the
9 United States Supreme Court in Battles was going to reach
10 this issue and change New York's law; it never did. So
11 that is the preservation that, you know, if Battles had
12 changed, then perhaps it would be preserved.

13 But second fold, Alleyne didn't even exist at the
14 time that this case was being considered, and there was
15 never an argument made about an expanded minimum. And that
16 is the only thing that Alleyne addresses.

17 And I - - - I think it's really important to
18 point out that this court has said in Rivera that it will
19 follow Almendarez-Torres until the Supreme Court rules
20 otherwise.

21 And we're going back to 1998, the U.S. Supreme
22 Court has had multiple opportunities to change its
23 position, and it never has.

24 CHIEF JUDGE DIFIORE: Ms. Mervine, once a step
25 one is satisfied, what's the range - - - the authorized

1 range of sentence?

2 MS. MERVINE: I believe the authorized range of
3 sentence for Mr. Prindle would be a minimum of three to six
4 with a maximum of twenty-five to life in this case. And
5 that is why this is a penalty provision, as found by
6 Justice Valentino, after the three certified convictions
7 which were proven beyond a reasonable doubt, expanded the
8 range to that amount.

9 And that is how this court has interpreted it
10 seven times. We have Rosen, we have Rivera, we have
11 Quinones, we have Bell, Battles, and Giles. In each one of
12 those times, this court has upheld its interpretation of
13 the Statute. And - - -

14 JUDGE STEIN: But we said that it changed the
15 range. We didn't specifically say that the range went down
16 to, as you say, a minimum of three to six. So in other
17 words, if - - - if the - - - after step two, right - - -

18 MS. MERVINE: Correct.

19 JUDGE STEIN: - - - if - - - if the - - - if the
20 additional factors are found - - -

21 MS. MERVINE: Yes.

22 JUDGE STEIN: - - - then there is no discretion
23 to go three to six; is there?

24 MS. MERVINE: Again, I believe that in - - - and
25 this is my interpretation of the case law, that it does

1 expand the range, and it does give the court the ability to
2 sentence within its discretion - - -

3 JUDGE STEIN: Well, if the court found that all
4 of these factors rendered it necessary to sentence someone
5 as a persistent felony offender, then how - - - how can you
6 say that the - - - the court can sentence to three to six?

7 MS. MERVINE: Because the court still has
8 discretion at that juncture. It's my understanding of the
9 law that the court has to find that the penalty is
10 appropriate. And I think that's why this provision is so
11 beneficial to - - -

12 JUDGE STEIN: But isn't that what those findings
13 say, is that the penalty is not appropriate? It just seems
14 inconsistent to me.

15 MS. MERVINE: That the panel - - - I'm not sure I
16 understand.

17 JUDGE STEIN: If - - - if the court finds those
18 factors that the - - - the - - - the lower range is not
19 appropriate.

20 MS. MERVINE: I think the whole point in this
21 case is that there is discretion. But that discretion is
22 based solely upon expanding a range based on the fact that
23 the person is proven guilty beyond a reasonable doubt, and
24 that's what elevates the sentence and expands it. And that
25 - - - that's my reading of the case law.

1 And I - - - I just think it's really critical to
2 - - - for this court to - - - to look at the stare decisis
3 principle that the law in New York should not be changed
4 based on a new court.

5 I would just note that in this case, when Prindle
6 first came before this court, it was a three to four
7 decision. We don't get the opportunity to come back and
8 argue that this was a depraved-indifference murder; this
9 was a terrible case. And - - - and we appreciate that we
10 don't have that availability to do that, and we would ask
11 that this court uphold its prior precedents. I think
12 that's so important.

13 And I don't believe that anything in the law has
14 changed. And I would ask this court to continue to follow
15 the Supreme Court's decision until the Supreme Court rules
16 otherwise. I don't believe there is anything whatsoever
17 that has been changed in the law. And based on that, we go
18 back to preservation, where this case was not preserved for
19 this court's review.

20 So I would ask this court to uphold the Fourth
21 Department's decision, unless there are any further
22 questions.

23 CHIEF JUDGE DIFIORE: Thank you, counsel.

24 MS. MERVINE: Thank you.

25 CHIEF JUDGE DIFIORE: Mr. Hobbs.

1 MR. HOBBS: Thank you, Your Honors.

2 First of all, again, on this court's prior
3 precedent, this court has never addressed the question of
4 when the lower end of the range becomes fixed or becomes a
5 mandatory minimum. I say that the - - - it becomes a
6 mandatory minimum, it may be available again after step
7 one, but it is a mandatory minimum only after step two, and
8 after those findings that go beyond the fact of prior
9 convictions.

10 And I'd say that because the Fourth Department -
11 - - not the Fourth Department, every department, all four
12 departments have said so. They've said that it's the
13 minimum permissible sentence once the court has adjudicated
14 him of persistent felony offender and made both sets of
15 findings.

16 To the nature of the findings. The nature of the
17 findings are that PFO sentence should be imposed, that a
18 lifetime supervision is warranted in the public interest,
19 and three, the record here. The record here shows that the
20 sentencing hearing took place after the PFO findings were
21 made, and everyone in that courtroom understood that it was
22 going to be a life sentence at that point. And the defense
23 counsel expressly said, I would like you to impose the
24 minimum of fifteen to life, and that's what the court did.
25 He got that minimum; he wasn't going to get anything less

1 than that.

2 As the questions have suggested here, it seems
3 the court sees the step two as a selection, basically. Do
4 we go ahead with the - - - the PFO range, the A-1 range, or
5 do we move back to the - - - the - - - the normal range.
6 And if - - - if that's what's going on at step two, that is
7 clearly outside of the - - - of the scope of Alleyne.

8 Alleyne says there isn't room for sentencing
9 discretion, to pick a sentence within a range. That's
10 always been allowed. But what's not allowed is exercising
11 discretion to determine what the range is.

12 JUDGE GARCIA: But we've - - - we've said, and
13 clearly, I think in Rivera as in anywhere else, that it's
14 clear that the prior felony convictions are the sole
15 determinant of whether a defendant is subject to a
16 recidivist sentencing - - -

17 MR. HOBBS: Um-hum.

18 JUDGE GARCIA: - - - as a persistent felony
19 offender. That's the range. So it increases this range,
20 but the sole determinant of getting you to that range are
21 the felony convictions.

22 So I don't see how Alleyne changing, okay, now
23 you're looking at the mandatory minimum, and Alleyne was a
24 very different scheme - - -

25 MR. HOBBS: Um-hum.

1 JUDGE GARCIA: - - - how that affects that
2 analysis where we've said, and, you know, we've said it
3 time and again, that the sole determinant to getting you to
4 a range with a minimum and a maximum - - -

5 MR. HOBBS: Um-hum.

6 JUDGE GARCIA: - - - are the prior convictions.

7 MR. HOBBS: Because the - - - that range is
8 clearly not mandatory. That - - - that minimum there is
9 clearly not mandatory - - -

10 JUDGE GARCIA: Simi - - - so un - - - under your
11 theory.

12 MR. HOBBS: - - - until after step two.

13 JUDGE GARCIA: But neither is the maximum under
14 your theory.

15 MR. HOBBS: But the - - - you don't - - - a
16 maximum doesn't have to be mandatory. A maximum is what's
17 the - - -

18 JUDGE GARCIA: Right.

19 MR. HOBBS: - - - maximum that's authorized.

20 JUDGE GARCIA: But the ruling in Apprendi wasn't
21 that it had to be a mandatory maximum. The ruling in
22 Apprendi was, if you changed the available maximum, it was
23 a violation.

24 MR. HOBBS: If it's - - -

25 JUDGE GARCIA: So under your theory, we would

1 have violated Apprendi by changing the maximum available
2 for the judge to "select" within.

3 MR. HOBBS: I don't agree, Your Honor. And it's
4 because there's a difference between maximums, when a
5 maximum becomes available, and when a minimum becomes
6 mandatory. The - - - those two things function in a
7 different way.

8 The maximum becomes available after step one, and
9 maybe the minimum provisionally moves up, but it's only
10 provisionally moves up. If - - - it still is available for
11 the court to go below that. And once the court cuts off
12 that - - - that option by making additional findings, it
13 has made that minimum now as a matter of law, a fixed
14 minimum. It has cut off its discretion to go any lower.

15 And that's the very function of a mandatory
16 minimum, to cut off discretion.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.

18 (Court is adjourned)

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

I, Meir Sabbah, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Michael E. Prindle, No. 84 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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