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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE EX REL. E.S.,

Respondent,

v.

NO. 46

SUPERINTENDENT, LIVINGSTON
CORRECTIONAL FACILITY,

Appellant.

20 Eagle Street
Albany, New York
May 17, 2023

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:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 Number 46, People ex rel. E.S. v. Superintendent.

3 MR. HITSOUS: Good afternoon, Your Honors.
4 Jonathan Hitsous for appellants. May I have two minutes
5 for rebuttal?

6 CHIEF JUDGE WILSON: Yes, sir.

7 MR. HITSOUS: Thank you, Your Honor. This is not
8 one of the rare cases where there is a mismatch between the
9 plain meaning of statutory text and the actual legislative
10 intent.

11 One point that the Fourth Department's majority
12 and dissenting justices agreed on is that the language of
13 259-c(14) is in fact susceptible to a plain meaning.

14 Despite E.S.'s youthful offender status, he was
15 serving a sentence for a SARA enumerated offense against a
16 victim under 18. Under the natural reading of that text,
17 that would mean that SARA's mandatory school grounds
18 prohibition would apply to him.

19 Now, we understand that E.S. has now posited an
20 alternative interpretation of what a sentence might mean
21 under 259-c(14). We note that this alternative
22 interpretation is unpreserved. Nevertheless, this
23 interpretation does not sow ambiguity, let alone control.

24 E.S. is relying on CPL 1.20 which doesn't define
25 a sentence at all. It defines what it means to sentence,

1 sentencing in the verb form. In fact, it goes back and
2 cross-references a sentence. It says the imposition of a
3 sentence without further clarifying.

4 E.S. also relies on Article 720's definition of
5 youthful offender sentence and proposes that if the
6 legislature wants to target youthful offenders - - -

7 CHIEF JUDGE WILSON: Section 1.20 - - - sorry,
8 Section 1.20 does say imposition of a sentence upon a
9 conviction.

10 MR. HITSOUS: That's correct, Your Honor.

11 CHIEF JUDGE WILSON: And a youthful offender
12 adjudication is not a conviction.

13 MR. HITSOUS: That's correct, Your Honor. But it
14 says imposition of a sentence.

15 CHIEF JUDGE WILSON: A sentence upon a
16 conviction.

17 MR. HITSOUS: Yes, Your Honor.

18 CHIEF JUDGE WILSON: And arguably at least it's a
19 sentence upon a youthful offender adjudication, which is
20 expressly defined as not a conviction.

21 MR. HITSOUS: That's correct, Your Honor. But
22 that doesn't bring us any closer to understanding what a
23 sentence means because Article - - - or Section 1.20
24 doesn't say what that "a sentence" is.

25 CHIEF JUDGE WILSON: I guess - - -

1 MR. HITSOUS: It just says it's - - -

2 CHIEF JUDGE WILSON: Let me try - - - let me try
3 it one more time. Whatever a sentence means, it has to be
4 upon a conviction. And if there is no conviction for
5 whatever sentence means to rest upon, we then have not as
6 clear a statutory interpretation question as you're
7 suggesting.

8 MR. HITSOUS: That defines what a - - - what it
9 means to sentence. It's still not telling "a sentence" in
10 the noun form.

11 I would also note that when it comes to the
12 youthful - - -

13 CHIEF JUDGE WILSON: It uses "sentence" in the
14 noun form: a sentence upon a conviction. It doesn't say a
15 sentencing upon a conviction.

16 MR. HITSOUS: Yeah, but what is a sentence
17 and - - -

18 CHIEF JUDGE WILSON: It doesn't matter, right?
19 It has to be upon a conviction. So what is a conviction?

20 MR. HITSOUS: That - - - Your Honor, that cannot
21 be the case because we know that youthful offenders can be
22 sentenced. Look at Penal Law 60.02, authorized
23 disposition. It uses "sentence" repeatedly.

24 JUDGE TROUTMAN: When you say sentence, you mean
25 they can be incarcerated? They can serve an incarcerative

1 time frame.

2 MR. HITSOUS: The Penal Law expressly refers to
3 it as a sentence, a sentence of incarceration, and
4 Executive Law 259-c(14) simply says "a sentence".

5 JUDGE TROUTMAN: And what youthful offender does
6 is relieve them of the conviction itself, but not the
7 sentence, because they can serve one.

8 MR. HITSOUS: That's correct, Your Honor.
9 Youthful offender is a unique status in New York State
10 because they aren't convicted, but they still are serving a
11 sentence. That's clear from the statute.

12 Under E.S.'s interpretation that we should say
13 "sentence or youthful offender sentence", they would be
14 ineligible for parole in the first place.

15 JUDGE HALLIGAN: Counsel, if we don't think that
16 - - - that everything hinges on the noun/verb distinction
17 that I think you're drawing in 1.20, and we think that
18 that's enough to render it ambiguous, then what is your
19 response at that point?

20 MR. HITSOUS: Your Honor, we still get to the
21 same place because our reading would continue to be the
22 most natural reading.

23 JUDGE HALLIGAN: Why is that?

24 MR. HITSOUS: And - - - because "sentence" in its
25 ordinary usage simply means a court-imposed punishment.

1 And we know that parole is conditioned on imprisonment.

2 And we know that youthful offenders can serve a term of
3 imprisonment.

4 JUDGE HALLIGAN: So why wouldn't we import the
5 definition from that provision into the other provision as
6 we have in a number of other cases, right? There are - - -
7 there are other cases where - - - where the court has
8 imported a definition, particularly of a term of art, in
9 one statute into another statute. Why not do that here?

10 MR. HITSOUS: Your Honor, "sentence" as used in
11 259-c(14), is not a term of art. That's our position, that
12 it gets its ordinary usage which is simply court-imposed
13 punishment.

14 "Sentence" in 259-c(14) is synonymous with
15 imprisonment because you can't be paroled or conditionally
16 released without being in prison and - - -

17 JUDGE HALLIGAN: But are the two statutes so
18 distinct that we wouldn't do what we did in cases like
19 Duggins and import it?

20 MR. HITSOUS: Your Honor, if you could - - - I'm
21 not entirely clear about what definition we're looking to
22 import.

23 JUDGE HALLIGAN: What I'm talking about is - - -
24 is - - - is, I think, what Chief Judge Wilson is asking you
25 about, which is to the extent that the sentence is defined

1 as imposed upon a conviction, why would we not treat the
2 word "sentence" in 259-c as incorporating that definition?

3 MR. HITSOUS: Oh, because - - - because of the
4 noun/verb distinction. You can't incorporate a definition
5 that isn't a definition of "a sentence". It wouldn't make
6 sense to incorporate a definition of "to sentence" to
7 define a sentence. The two are apples and oranges.

8 JUDGE RIVERA: So - - - so we - - - if we
9 disagree on that point, do you lose?

10 MR. HITSOUS: If you - - - if you were to import
11 that definition and say that it's limited to conviction - -
12 -

13 JUDGE RIVERA: Yes.

14 MR. HITSOUS: - - - then that would be reading a
15 conviction requirement into the statute, and that would be
16 fatal because youthful offenders can't be convicted. I
17 would concede that, but we would say that you can't - - -
18 you can't incorporate this definition of "to sentence" to
19 shed light on what a sentence means. It's simply not
20 defining a sentence.

21 JUDGE HALLIGAN: Is that - - - is that only - - -

22 MR. HITSOUS: It's defining the act of
23 sentencing.

24 JUDGE HALLIGAN: Is that only because of the
25 noun/verb distinction? Is that the only reason that, in

1 your view, we can't import it?

2 MR. HITSOUS: No, Your Honor. I had mentioned
3 before Penal Law 60.02; that is the authorized disposition
4 for youthful offenders. You will see that it says
5 "sentence" repeatedly. It doesn't distinguish between
6 sentence and youthful offender sentence. It simply says
7 "sentence". So it is obvious that for statutory, for
8 textual purposes, youthful offenders can be sentenced; they
9 can be serving a sentence.

10 JUDGE GARCIA: But isn't that the - - - sort of
11 the point as I read it, of Criminal Procedure Law
12 720.10(14) which defines youthful offender sentence as the
13 sentence? So if you have a definition that says the
14 youthful offender sentence means "the sentence", where
15 you're using "sentence", you take this definition and you
16 plug in youthful offender sentence means "the sentence".

17 MR. HITSOUS: But youthful offender sentence is
18 simply a type of sentence, Your Honor. 259 - - -

19 JUDGE GARCIA: Right. But I'm - - - I'm actually
20 saying yes, under the definition of youthful offender
21 sentence, it is a sentence. Whatever that definition
22 means, and it's upon conviction or if it's a noun or a
23 verb, the youthful offender statute itself defines the
24 youthful offender sentence as the sentence. So why do you
25 need any of that other - - - any of that other argument?

1 It's the sentence. The youthful offender sentence is the
2 sentence. And then you plug that into the other statute,
3 which is that's the sentence: the youthful offender
4 sentence.

5 MR. HITSOUS: That is certainly another way to
6 get to the point that youthful offenders can, in fact, be
7 serving a sentence in the absence of a conviction, which
8 brings us back to what the Fourth Department, the majority
9 and the dissenting judges, were disputing.

10 They agreed that sentence was plain, but they
11 said that it was at odds with the youthful offender
12 provisions themselves. The youthful offender provisions
13 are intended - - - it's clearly established their purpose
14 is to provide for a fresh start with youthful offenders.

15 But the purpose of SARA, to protect people from
16 dangerous sex offenders, is in no way at odds with that
17 purpose. The fresh start to which the youthful offender
18 provisions contemplates occurs after one is done serving
19 their punishment. In this court's decision in Dawn Maria
20 C., you had affirmed a decision that describes the youthful
21 offender provisions as a balancing between fair punishment
22 and the mitigation of future consequences. Parole is not a
23 future consequence of a criminal conviction; it is a part
24 of the sentence. And the condition here terminates upon
25 service or completion of that sentence.

1 JUDGE HALLIGAN: Counsel, can I ask you - - - as
2 I understand, and you'll correct me if I'm wrong, under
3 your reading, SARA applies, but SORA does not apply to a
4 youthful offender; is that right?

5 MR. HITSOUS: That's correct, Your Honor.

6 JUDGE HALLIGAN: Why would that make sense? Why
7 would the legislature do it that way?

8 MR. HITSOUS: There's a very good reason why the
9 legislature would do it that way: because SORA and the
10 registration that that contemplates is the polar opposite
11 of what it would accomplish by sealing a conviction.

12 One who is registering is broadcasting to the
13 world: this is what this person did; this is where they
14 live; this is their address. The purpose of the youthful
15 offender provisions is to conceal that information to
16 enable a fresh start. So they would be completely at odds.

17 SARA doesn't serve that purpose. It doesn't
18 create that kind of stigma. E.S., for instance, as a
19 youthful offender, from the moment he's done with his
20 sentence, his adjudication is sealed. He never has to talk
21 about it again. Most people cannot ask him about that
22 again. He can apply and receive any job he qualifies for.
23 He can apply and receive any kind of license. In short, he
24 is receiving the same fresh start as every youthful
25 offender in New York.

1 The youthful offender provisions do not talk
2 about parole or parole conditions, and unless they did,
3 E.S. would be entitled to nothing more.

4 If I could emphasize another point, Your Honor,
5 about the distinction between - - -

6 JUDGE RIVERA: But - - - but are they - - - are
7 they suffering under the - - - I understand your point
8 about the fresh start. Are they suffering under the other
9 consequences that befall someone who has been subject to a
10 conviction?

11 MR. HITSOUS: No more - - -

12 JUDGE RIVERA: Otherwise be subject to SARA?

13 MR. HITSOUS: No more than anybody else who would
14 have a parole condition that they find to be onerous, Your
15 Honor. But where somebody like E.S. and all youthful
16 offenders are distinct is that when they're done serving
17 parole, they're receiving the fresh start. The slate is
18 wiped clean.

19 Now, with re - - - and actually something else
20 that I would note is that youthful offenders categorically
21 do not have to register as sex offenders. Had E.S. been an
22 adult, not only would he have faced the potentially higher
23 custodial sentence, not only would that sentence have been
24 determinate, not only would he have had to face PRS after
25 that, but he would have at least been considered by virtue



1 of that conviction for sex offender registration. But - -
2 -

3 CHIEF JUDGE WILSON: Thank you, Counsel.

4 MR. HITSOUS: Thank you.

5 MS. CHRISTY: Good afternoon, Your Honors.

6 Marquette Christie on behalf of E.S. May it please the
7 court.

8 Youthful offender status is a unique status
9 within the state's laws, and the legislature has repeatedly
10 reinforced that. SARA is no exception.

11 As both parties agree, the legislature has
12 exempted youthful offenders who are under probationary
13 supervision from the operation of SARA.

14 JUDGE RIVERA: But how does the application
15 of - - - of this SARA condition undermine the legislative
16 intent for YOs to have that fresh start, to not be
17 stigmatized? How does it undermine that?

18 MS. CHRISTY: Your Honors, not being stigmatized
19 is only one of multiple reasons for the - - - for the
20 youthful offender statutes to have been enacted, but what
21 this case - - - this court's case law says is that another
22 purpose is to exempt youthful offenders from the practical
23 consequences that would accompany convictions, including
24 things like incarceration, extended incarceration, and
25 that's exactly the result that SARA contemplates if it were



1 to be applied to youthful offenders. It wouldn't mean that
2 they would be held. Even though they've demonstrated their
3 fitness for parole, they would be held.

4 JUDGE TROUTMAN: But youthful offenders can
5 receive an incarcerative sentence. They can be subject to
6 conditions of probation or parole, correct?

7 MS. CHRISTY: We would agree with that, Your
8 Honor.

9 JUDGE TROUTMAN: And if they were on probation or
10 parole, could they not be directed to have their addresses
11 be - - - not to be in certain places?

12 MS. CHRISTY: Well, what we know is that the
13 legislature's already deliberately made a carveout for
14 youthful offenders who are on parole from SARA - - - or
15 sorry, on probation from SARA, and all we're asking - - -

16 JUDGE TROUTMAN: But SARA aside - - -

17 MS. CHRISTY: Um-hum.

18 JUDGE TROUTMAN: - - - if you're on probation or
19 parole, could not a court impose a sentence that restricted
20 your address?

21 MS. CHRISTY: A court?

22 JUDGE TROUTMAN: As a condition of sentence,
23 could a probationer or parolee be told you can't live in X
24 location because there are, for instance, some known felons
25 in that area, so you are restricted from living there?

1 MS. CHRISTY: Well, I - - - I believe what - - -
2 what this court's case law in the area says is that that
3 can be done as a matter of discretion. But what we're
4 talking about here is whether it could be done as a
5 mandatory matter and whether that's what the legislature
6 intended to be done when it put that into it - - - when it
7 put the term - - -

8 JUDGE TROUTMAN: And why does it being done in a
9 mandatory manner go against the overall purpose of youthful
10 offender status?

11 MS. CHRISTY: Because what it means is - - - it
12 means that a youthful offender would not be able to
13 reintegrate, would not be able to enter the community at
14 the time that he's otherwise deemed fit to do so. And it
15 would mean that he would not be able to live with his
16 family, which - - -

17 JUDGE RIVERA: Well, but you're kind of - - -
18 kind of begging the question, right? Deemed to do so if
19 they satisfy these conditions.

20 MS. CHRISTY: Yes, which - - -

21 JUDGE RIVERA: Until the end of the sentence.

22 MS. CHRISTY: Um-hum.

23 JUDGE RIVERA: Right?

24 MS. CHRISTY: Which - - - which in the case
25 of - - - of - - - of - - - of urban uses is, in - - - in -

1 - - for the most part going to not be possible, given that
2 New York City is a very densely populated area and that,
3 for the most part, they're - - - they're not going to be
4 able to reunite with their families because of the 1,000-
5 foot restriction.

6 JUDGE RIVERA: Well, given that - - - that very
7 reality, one would think the legislature - - - because I
8 agree with you and the court has said so, right - - - is
9 deeply committed to this fresh start, that the legislature
10 would have made that express.

11 MS. CHRISTY: Yes.

12 JUDGE RIVERA: Not created the challenge we have
13 before us, about whether a sentence is a noun or a verb as
14 used or if it tracks back only to a conviction or to a YO
15 adjudication.

16 MS. CHRISTY: Yes. And - - - and that's
17 exactly - - - that's exactly the case, Your Honor. And - -
18 - and where the legislature has desired to create carveouts
19 for youthful offenders, and - - - and to say that they
20 should be subject to the same kinds of punishment that
21 adults would be subject to, it's deliberately put that into
22 the statute.

23 JUDGE SINGAS: Do you think YOs are entitled to
24 consideration for parole?

25 MS. CHRISTY: Yes.



1 JUDGE SINGAS: Okay. So Executive Law 259-c
2 seems to limit the Board's power to "incarcerated
3 individuals serving an indeterminate or determinate
4 sentence". Does that cover youthful offenders?

5 MS. CHRISTY: We think it does, Your Honor. And
6 the reason the distinction between c(1) and c(14) is that
7 in c(1), we're referring to their - - - there's a modifier
8 in front of the word "sentence". So just like a youthful
9 offender sentence is a modifier of the term "sentence" that
10 changes the meaning of a sentence, we think that the - - -
11 the phrase "indeterminate or determinate sentence" that
12 appears in front of the word sentence in c(1) also changes
13 the meaning of that, meaning that indeterminate or
14 determinate sentence can encompass both adult sentences and
15 youthful offender sentences.

16 JUDGE HALLIGAN: What - - -

17 MS. CHRISTY: So - - -

18 JUDGE HALLIGAN: Go ahead.

19 MS. CHRISTY: So - - - so it's - - - it's not the
20 case that we're trying to say that the same term receives
21 different meanings in the same statute. What we're saying
22 is that different terms receive different meanings in the
23 same statute.

24 JUDGE HALLIGAN: What do you do, then, about the
25 multiple references to the term "sentence" in the youthful

1 offender statutes themselves?

2 MS. CHRISTY: Well, Your Honors, we've made
3 multiple claims here. One is that the - - - the - - - the
4 statutory text is clear. But if for some reason it's not
5 clear, then we have multiple arguments in favor of why we
6 should win on ambiguity.

7 JUDGE HALLIGAN: I guess what I'm asking, though,
8 is how can it be clear, in light of what Judge Singas
9 pointed out and the references to the term "sentence" in
10 the youthful offender provisions themselves?

11 MS. CHRISTY: The reason that it can be clear is
12 that the definition section always trumps a common meaning.
13 So - - -

14 JUDGE HALLIGAN: Only if you import it.

15 MS. CHRISTY: Yes.

16 JUDGE HALLIGAN: And - - - and given the
17 difference in purpose between SARA and the - - - the
18 Criminal Procedural Law, it - - - it's not obvious to me
19 that you would do that as readily as you might have in - -
20 - in cases involving the CPL and the Penal Law.

21 MS. CHRISTY: Well, Your Honor, we're sort of
22 already partly there, as far as the importation is
23 concerned, because the Board agrees the definition of
24 conviction as it appears in the CPL does apply to SARA, at
25 least in the context of probationer. So all we're asking

1 this court to do is essentially to hold that that same
2 logic applies to the parole provision of SARA as well and
3 to say that a sentence means - - -

4 JUDGE GARCIA: But isn't that somewhat different
5 because they don't have a conviction? Under the terms of
6 the statute, there is no conviction, so there's no
7 argument; they have one. But they do have a sentence under
8 the YO statute. So the argument is the - - - the provision
9 applies to them because they have a sentence. It's not
10 picking and choosing so much, it seems, right? You just
11 don't have a conviction under the YO statute.

12 MS. CHRISTY: Youthful offenders have a youthful
13 offender sentence, and it's - - - and that's not the same
14 thing as a sentence under the CPL because the sentence
15 requires a conviction. That's our argument.

16 What we're saying, at best, even if the court
17 doesn't like that argument, it gets us to a place of
18 ambiguity. And if - - - if the law - - - or sorry, if the
19 legislature's language was ambiguous, then the canons of
20 statutory construction apply, and the - - - and the in pari
21 materia doctrine in particular, which says that you need to
22 read these statutes in conjunction with each other. So
23 SORA is supposed to be read in conjunction with SARA, and
24 what we know is that youthful offenders are uniformly
25 exempt from ZORA - - - from SORA. They do not have to

1 register.

2 JUDGE TROUTMAN: But you do agree that SORA and
3 SARA are different. It was pointed out when the other side
4 was arguing that to impose SORA defeats the youthful
5 offender status.

6 MS. CHRISTY: Well, it - - - it doesn't necess -
7 - - I mean.

8 JUDGE TROUTMAN: SORA does. If you have to
9 register, then you're broadcasting to the world: I am a
10 convicted sex offender.

11 MS. CHRISTY: A Level 1 sex offender does not
12 have to - - - Level 1 sex offender is not put on the
13 internet. Their information is not broadcast.

14 JUDGE TROUTMAN: So you're arguing that SORA,
15 they should be required to register?

16 MS. CHRISTY: No, we're not arguing that at all.
17 We're arguing that the legislature exempted youthful
18 offenders from - - - from SORA, which is also considered to
19 be a nonpunitive statute, and that SARA - - -

20 JUDGE TROUTMAN: Because Level 1 is different,
21 you're saying. You're saying that the two are the same?

22 MS. CHRISTY: I'm saying that both are considered
23 to be nonpunitive statutes and that the - - - the
24 legislature has already decided that youthful offenders are
25 exempt from the nonpunitive workings of SORA, and

1 therefore, they should also be exempt from the
2 nonpunitive - - -

3 JUDGE TROUTMAN: But youthful offenders can be
4 subject to punitive sentences; you agree, don't you?

5 MS. CHRISTY: They can be subject to youthful
6 offender sentences, Your Honor.

7 JUDGE TROUTMAN: Punitive - - - they can - - -
8 they can, in fact, serve time in a state correctional
9 facility, which is quite punitive.

10 MS. CHRISTY: Yes.

11 JUDGE TROUTMAN: Do you agree?

12 MS. CHRISTY: Yes.

13 JUDGE TROUTMAN: The - - - the amount of time
14 that they may serve is different, but it is a sentence
15 nonetheless.

16 MS. CHRISTY: True, Your Honor. But - - - but
17 what we're saying is we already know that at least with
18 respect to one portion of SARA, the legislature has clearly
19 stated that youthful offenders are exempt and that's
20 youthful offenders who are serving probationary sentences.
21 So it makes no - - - there would be no logical reason why
22 the legislature would suddenly decide that youthful
23 offenders who are subject to parole terms are somehow not
24 to be treated in the same way.

25 JUDGE SINGAS: Did you preserve your argument?

1 MS. CHRISTY: The argument's not preserved in
 2 exactly this form, Your Honor, but this court has
 3 repeatedly stated in its case law that pure questions of
 4 statutory interpretation can be raised and considered for
 5 the first time in this court.

6 If there are no further questions - - -

7 CHIEF JUDGE WILSON: Thank you.

8 MS. CHRISTY: - - - thank you.

9 MR. HITSOUS: The fact that there are other
 10 statutes out there that are aimed at protecting the public
 11 from sex offenders doesn't justify erasing distinctions
 12 found in the text. We acknowledge youthful offenders
 13 aren't required to register, but if anything, that supports
 14 why the legislature would have wanted them to come under
 15 SORA. Because they're not required to register, that means
 16 that every youthful offender who could be subject to this
 17 condition has offended against somebody who's under the age
 18 of eighteen, and a court has found that probation or a
 19 sentence less than incarceration wouldn't be sufficient to
 20 protect the public.

21 With respect to this distinction between parole
 22 and probation, if anything, that assists in the Board's
 23 interpretation because that distinction came in the same
 24 legislative enactment, which is SARA itself. The
 25 presumption that those different terms and any effect they



1 have are intentional would be at its strongest.

2 Now, it could be that, in theory, there could be
3 compelling evidence of contrary legislative intent, but my
4 adversary provides no such evidence. She simply says that
5 she can't imagine any reason why the legislature would have
6 done that. We answer that in our brief through the lens of
7 the statute because Penal Law says that probation is only
8 reserved for those where it would be sufficient to protect
9 the public. People sentenced to prison by operation of law
10 are going to be more dangerous than people on probation.

11 And frankly, even if there is no clear intent
12 stated in the - - - in the legislative history in one way
13 or another, that isn't the end of the story, particularly
14 where the natural reading of the text has this effect.

15 This court confronted a similar situation in Teri
16 W., another case involving youthful offenders, and remarked
17 that it was not clear the legislature had even considered
18 whether or not - - - how this statute would have an effect
19 on youthful offenders. But in the absence of such proof,
20 what we were left with was what the legislature had done.
21 And what we're left with here and what the legislature has
22 done is enact a statute whose natural reading would extend
23 to youthful offenders and for good reason.

24 The final note that I would say is that my
25 adversary says that if the legislature wants to treat

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youthful offenders like adults, it has said so in the past.
Well, likewise, I would direct this court to Mental Hygiene
Law 10.03(g) (1) as proof that where the legislature wants
to include both a conviction and sentence requirement when
defining sex offender, it has done so as well.

CHIEF JUDGE WILSON: Thank you.

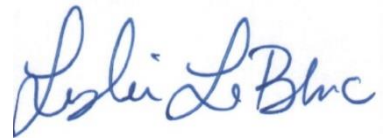
MR. HITSOUS: Thank you.

(Court is adjourned)

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

I, Leslie LeBlanc, certify that the foregoing transcript of proceedings in the Court of Appeals of People ex rel. E.S. v. Superintendent, Livingston Correctional Facility, No. 46 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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