

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,
Respondent

,

-against-

MATTHEW CORR,
Appellant.

NO. 67

PEOPLE,
Respondent,

-against-

BRYAN MCDONALD,
Appellant.

NO. 68

20 Eagle Street
Albany, New York
May 16, 2024

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:

AVA C. PAGE, ESQ.
APPELLATE ADVOCATES
Attorney for Appellants
111 John Street, 9th Floor,
New York, NY 10038

ANTHEA H. BRUFFEE, ESQ.
KINGS COUNTY DISTRICT ATTORNEY
Attorney for Respondent
350 Jay Street
Brooklyn, NY 11201 - 2900

Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next two matters on the
2 calendar are Number 67, People v. Corr, and Number 68,
3 People v. McDonald.

4 MS. PAGE: Good afternoon, Your Honors. May it
5 please the court. Ava Page from Appellate Advocates on
6 behalf of Brian McDonald and Matthew Corr.

7 May I please have three minutes for rebuttal?

8 CHIEF JUDGE WILSON: Yes.

9 MS. PAGE: Thank you.

10 The initial date of registration contemplated by
11 Correction Law 168-h(1), is the first time Mr. McDonald and
12 Mr. Corr registered for their underlying offenses, not
13 their subsequent date of re-registration in New York.

14 The plain language of the statute is clear, and
15 the court is bound by it. SORA was enacted as part of a
16 comprehensive federal scheme - - -

17 JUDGE RIVERA: Just - - - can I just clarify
18 something? Let's say it happened - - - or something
19 happened in reverse, so take this hypothetical. The person
20 is residing in New York. Their initial registration is
21 actually in New York. They move to Massachusetts, register
22 there. They move back to New York. Are they always
23 registering in New York? Or that pauses while they're in
24 Massachusetts? Actually, changed their residence; take it
25 that they've moved for five years. When they come back,

1 are they now doing another initial registration - - - what
2 - - -

3 MS. PAGE: No, Your Honor.

4 JUDGE RIVERA: - - - how does that work?

5 MS. PAGE: No, Your Honor. Your initial
6 registration date stays the same. So someone that
7 registered in New York and moved to a different state is
8 still required to register in New York. Their initial
9 registration date does not change.

10 JUDGE RIVERA: No. But what happens when they
11 move back?

12 MS. PAGE: The period does not toll. It
13 continues from the date they first registered in New York.

14 JUDGE RIVERA: Okay.

15 JUDGE GARCIA: So they get credit for that time
16 in the other state.

17 MS. PAGE: Yes, Your Honor.

18 JUDGE RIVERA: Okay. So they would get credit
19 going that way. But - - - okay.

20 MS. PAGE: Yes.

21 JUDGE RIVERA: So if they were here for five
22 years, moved to Massachusetts for five years, that adds up
23 to ten? When they come back, they are at ten?

24 MS. PAGE: Yes.

25 JUDGE RIVERA: They're not at five.

1 MS. PAGE: Yes.

2 JUDGE RIVERA: Okay. Thank you.

3 MS. PAGE: Yes. And - - -

4 JUDGE GARCIA: I'm sorry. Is there any
5 requirement related to New York while they're in the other
6 state?

7 MS. PAGE: They - - - I believe they are still
8 required to - - - well, they - - - before someone leaves
9 New York, they are required to inform New York authorities
10 of their new address in the new state.

11 There is a Third Department case that says you
12 are still required to register once you leave New York.
13 I'm not sure if that just consists of annually verifying
14 that your address remains the same.

15 But in any event, if the person moved back to New
16 York, their initial registration date would be the same.

17 CHIEF JUDGE WILSON: And what if they moved to
18 France for five years?

19 MS. PAGE: I believe that it would remain the
20 same, Your Honor. Because it's an immutable fact that
21 doesn't change just because I moved to France or Maryland.
22 It stays the same.

23 CHIEF JUDGE WILSON: And it would be - - - I
24 don't know if France has a sex offender registry, but let's
25 assume they moved to a country that doesn't have one. Does

1 that - - - do we know of any case like that or what would
2 happen?

3 MS. PAGE: No, Your Honor. Even if someone were
4 to register in New York and violate the terms of
5 registration, it still doesn't start their registration
6 period over.

7 JUDGE RIVERA: But what would you credit? In the
8 Chief Judge's example if, indeed, they moved to a place
9 where there's no registration requirement, what are you
10 crediting?

11 MS. PAGE: You would always credit the initial
12 registration date. It does not - - -

13 JUDGE RIVERA: But that's what I'm saying. You
14 wouldn't credit the time in this other place where you're
15 not registering, is that what you're saying?

16 MS. PAGE: The New York statute would credit
17 that, yes.

18 JUDGE GARCIA: It would?

19 MS. PAGE: It would.

20 JUDGE RIVERA: I don't understand what - - -

21 JUDGE GARCIA: So if you were in a country that
22 had absolutely no registration requirements at all, you
23 just would have to tell New York, I'm leaving day after I
24 register here. I'm coming back the day before my twentieth
25 anniversary and now I'm done.

1 MS. PAGE: Well, Your Honor, I don't know if - -
2 - I don't know when it comes to a different country. I
3 know that there's a whole comprehensive federal scheme when
4 it comes to that, as well as every state in the United
5 States. But if I am convicted of a registrable offense in
6 New York, I register in New York. And then I move to
7 another state, I must report that to New York. And I must
8 report that to the other state. And New York and the other
9 state communicate, and info share immediately as per
10 federal law and the law of every single state.

11 So if I were to fail to register in the new state
12 I would be subject to felony - - -

13 JUDGE RIVERA: Well, that's about - - - that's
14 about compliance, but the case is about crediting the time.
15 So I thought your argument was, if someone is registered in
16 another jurisdiction and they're in compliance, okay, but
17 they've registered and so they're under the authority of
18 that jurisdiction's SORA. That that's - - - I thought that
19 was your argument. That's why you're crediting that.

20 But again, in the Chief Judge's hypothetical, if
21 the person moves to a place where they are not subject to
22 any kind of registration requirement, they're not being
23 tracked, they're not being - - - there's no authority over
24 them in that way. Again, my question to you is what - - -
25 what are you crediting?

1 MS. PAGE: Sure. If I may confine the
2 hypothetical to the fifty United States and territories?

3 JUDGE RIVERA: Well, no, don't they all have a
4 registration requirement?

5 MS. PAGE: Yes.

6 JUDGE RIVERA: This is the point. If you move to
7 a place where there is no registration requirement.

8 MS. PAGE: I don't believe that issue has been
9 addressed. But under the current law, New York would
10 credit the time since you first registered in New York.

11 JUDGE GARCIA: But to go back to something you
12 said on that, so I understand it. So let - - - you
13 register in New York and now I move to Massachusetts. I
14 believe you said that under federal law, then those
15 authorities communicate with each other.

16 MS. PAGE: Yes, Your Honor.

17 JUDGE GARCIA: The person's moving there, and
18 then are you getting information back then from
19 Massachusetts while the person is there?

20 MS. PAGE: Under federal law, yes. All of this
21 information is shared to the federal government and between
22 states.

23 JUDGE GARCIA: So is that a little different than
24 if I commit the crime in Massachusetts, I register in
25 Massachusetts, I'm there in Massachusetts. Why would they

1 tell anything to New York until I get here? Right?

2 MS. PAGE: When - - - if I commit the crime in
3 Massachusetts, register, and then move to New York?

4 JUDGE GARCIA: Ten years later, I move to New
5 York.

6 MS. PAGE: Yes. That is - - -

7 JUDGE GARCIA: Those ten - - - first ten years,
8 which is what we're talking about hypothetically, right,
9 the credit. In those ten years, is there any obligation or
10 process whereby Massachusetts is feeding any information to
11 New York about what's going on there and what their
12 supervision is or what the status is?

13 MS. PAGE: Well, all - - - all states report to
14 the National Federal Registry; so yes, that is accessible
15 by New York law enforcement. But importantly, New York,
16 Delaware, and Massachusetts; the states at issue here, all
17 require substantially the same registration for level one
18 requirement - - - for level one registrants.

19 So in New York, Delaware, Massachusetts, all
20 registries maintain the same information. That's your
21 name, your Social Security number, your physical
22 description, your home address, your employment address,
23 your school address, your offense details - - -

24 JUDGE RIVERA: So is the rule that you're looking
25 for, if you've been registered in a jurisdiction, who's - -

1 - their registration requirements are equivalent to those
2 in New York, you get credit but if they're not, you don't?

3 MS. PAGE: Well, the rule that we're asking for
4 is simply that all level ones with no designation as
5 adjudicated as such by a New York court, get the years
6 since their initial registration date towards the twenty-
7 year period. So this doesn't require New York - - -

8 JUDGE TROUTMAN: Does the statute specifically
9 say that?

10 MS. PAGE: The statute says, "initial
11 registration date," Your Honor, and the meaning of that is
12 - - -

13 JUDGE TROUTMAN: But does it mention another
14 jurisdiction where you initially registered?

15 MS. PAGE: It does not further define it. But it
16 didn't have to because SORA has always been enacted to
17 comply with - - -

18 JUDGE HALLIGAN: But when you look at other
19 states - - - your adversary mentions Ohio, and I think
20 Maine. And I took a look at statutes from a number of
21 other states. Right? And what I'm wrestling with is many
22 of them - - - I think almost all of them, either provide
23 some very specific date, for example, your date of release
24 from incarceration or they set up some process or they
25 require you to register for life, and then you can go to a

1 court to get relief.

2 And when I look here, 168-k, which says this is
3 about registration for change of address from another
4 state. It obviously doesn't have any process mechanism
5 like that. And I take your plain language argument about
6 initial registration date, but I would expect if the
7 legislature meant that in the way that you're suggesting,
8 that we would see some acknowledgment of how to do that.
9 And I think as well, you know, when you look at the
10 authority that the SORA board and the SORA courts are given
11 by the statute, there's not some broad rulemaking authority
12 or something like that. So what do we do about the absence
13 of a process mechanism, which seems kind of - - - I don't
14 know if it's absolutely singular, but certainly unusual.

15 MS. PAGE: Well, New York has already set up the
16 perfect process mechanism for this, which is the SORA
17 hearing. So at the SORA hearing, if an out-of-state
18 individual moves to New York, everyone must have a SORA
19 hearing that is registrable. At that hearing - - -

20 JUDGE HALLIGAN: But isn't that really set up to
21 deal with the risk level?

22 MS. PAGE: It is set up to find all the facts
23 about the out-of-state person, including: their criminal
24 history, whether they're registrable, their conduct while
25 incarcerated or supervised in the foreign state, any

1 subsequent criminal history. So all this fact-finding of
2 which initial registration - - -

3 JUDGE CANNATARO: But this wouldn't really be a
4 fact-finding. This would be some sort of determination at
5 the SORA hearing about whether or not to give credit. And
6 it seems to me that what you would end up getting, if you
7 had the SORA court do it, was individualized determinations
8 that could be as different as the person who's doing the
9 hearing. Which is the benefit of having a statutory or
10 even an administrative procedure in place for evaluating
11 the standards for applying that credit.

12 Are - - - would you be advocating for a - - - for
13 ad hoc determination as to each person who's seeking credit
14 for time spent in another jurisdiction?

15 MS. PAGE: No, Your Honor. This argument only
16 applies to people designated level one, no designation by
17 New York courts. So first of all, this is what the SORA
18 court does in every single case.

19 JUDGE GARCIA: But it doesn't look at a foreign
20 jurisdiction - - - "foreign" being another state's
21 jurisdiction - - - and say, is their supervision regime
22 substantially equivalent to ours? Because that, to Judge
23 Halligan's point, seems to be what some of these statutes
24 that actually do this are getting at.

25 So the legislature is making a determination. I

1 think to Judge Cannataro's point that this is substantially
2 equivalent, and the judges are applying that framework to
3 each case. Here, I'm not sure what they would do. Because
4 the issue isn't did you not - - - do you not have any
5 violations in - - - let's just say Massachusetts. The
6 issue is, would Massachusetts catch the violations we would
7 catch? You may have been violating all the time under our
8 rules, but Massachusetts just isn't set up to have you
9 under the same conditions.

10 So how do you do that without a statute?

11 MS. PAGE: Three answers to that, Judge. First
12 of all, Ohio and Maine don't provide for any hearing for
13 the risk level classification, it's automatic. So New York
14 already gives far more due process.

15 JUDGE HALLIGAN: Yeah, but the legislature has
16 made a very explicit determination about how this question
17 should be dealt with. Right? In Ohio.

18 MS. PAGE: Yes. Because they don't have a court
19 decide someone's level, they had to provide a mechanism for
20 applying for credit.

21 JUDGE HALLIGAN: But to Judge Garcia's question,
22 we could have, for example, one court or one department
23 decide. If we were to conclude - - - I realize you might
24 have a different view - - - but that the credit should be
25 given for jurisdictions where there's equivalent

1 supervision or requirements. You could have one court or
2 department say, okay, Pennsylvania is equivalent, and
3 another court say it's not. It just seems like an unwieldy
4 process.

5 MS. PAGE: I understand that concern, Judge. The
6 prosecution has not pointed out a single state that has
7 materially different, let alone substandard, requirements
8 to New York. And that is because all states exist under
9 this uniform federal comprehensive scheme. So - - -

10 JUDGE CANNATARO: So the natural conclusion of
11 that statement would be, you don't have to do some sort of
12 qualitative assessment of the various reporting regimes or
13 oversight regimes because it's level one, and basically,
14 they're all the same?

15 MS. PAGE: Exactly, Your Honor. There is no need
16 for New York to look at another state's statute, and that
17 is not what Mr. Corr and Mr. McDonald are asking here.

18 I see my time has expired.

19 JUDGE SINGAS: But what if - - - what if there
20 was a violation or noncompliance in the other state? That
21 would be something that New York would be interested in
22 knowing, not just necessarily what the level is, but is
23 this person compliant? So before they come back, New York
24 would want to know that, and what would be the mechanism to
25 obtain that information?

1 MS. PAGE: Of course, Your Honor. May I answer?
2 My time has expired.

3 CHIEF JUDGE WILSON: Please go ahead.

4 MS. PAGE: Of course, New York would want to know
5 that, Your Honor. And New York would know that at the SORA
6 hearing for out-of-state defendants. Let's look at Mr.
7 McDonald and Mr. Corr's SORA hearing. The New York SORA
8 court - - - the New York prosecution knew everything about
9 their prior criminal history, which was none. The facts of
10 their offense: noncontact, nonviolent offense. The facts
11 of their sentences: probation. The facts of any subsequent
12 criminal behavior, which there was none. So the New York
13 SORA court has all this information if someone has
14 committed another sexual offense or any sort of criminal
15 misconduct that will result in an upward departure, which
16 will require lifetime registration. So this argument would
17 not apply to them.

18 The - - - if I just may briefly conclude?

19 CHIEF JUDGE WILSON: Sure.

20 MS. PAGE: The initial date of registration is an
21 immutable fact. Like my birthday, my criminal record, my
22 date of professional licensing, or vaccination, that does
23 not change when I move states. And New York routinely
24 accounts for out-of-state facts such as these in all of our
25 proceedings.

1 This court recognized this in Jones from 2015.
 2 This is exactly what the SORA court does and what happened
 3 here when everyone agreed that Mr. McDonald and Mr. Corr
 4 were unanimously level ones, posed the lowest risk
 5 possible, and their initial registration date was
 6 uncontested. So this in no way requires New York courts to
 7 look at other state's registration laws, only the objective
 8 fact of initial date of registration.

9 If someone has not been complying with
 10 registration, that will result in a felony conviction.

11 JUDGE SINGAS: Not with registration. Not
 12 compliant for their level one requirements. How would New
 13 York know.

14 MS. PAGE: That would be a violation of
 15 registration, Your Honor. If there's any violation of
 16 reporting your registration requirements, which, if any of
 17 the information I stated, like your address, your Internet
 18 identifiers, if any of that changes, three - - - you have
 19 to report that within three days in Delaware, in ten days
 20 in New York and Massachusetts. So it's a strict liability
 21 crime - - -

22 JUDGE SINGAS: And who are you reporting it to?

23 MS. PAGE: The law - - - the local law
 24 enforcement authority. So all of the states know if
 25 someone has not registered and that's how failure to

1 register prosecutions are made. And then the receiving
2 state, per New York law and per federal law, has all of
3 that information. So New York courts are making extremely
4 nuanced fact-finding, not only the initial date of
5 registration, but all subsequent criminal history in the
6 sending state.

7 CHIEF JUDGE WILSON: Thank you.

8 MS. PAGE: Thank you.

9 MS. BRUFFEE: Good afternoon, Your Honors.

10 The entire New York SORA statute makes clear that
11 the initial date of registration under 168-h(1) was not
12 intended to be registration in any other jurisdiction under
13 any other SORA statute.

14 JUDGE GARCIA: Counsel, could you just address
15 this - - - one of the latter parts of this argument with
16 your opponent? That - - - and I don't know this. Level
17 one registration requirements in all other states are,
18 would you agree, are substantially equivalent to New
19 York's.

20 MS. BRUFFEE: No, I would not agree with that
21 because the federal system permits some variations in the
22 level of notification and the amount of time that a - - -
23 that they require for verification. And also, there's the
24 unknowable factor: even if the statute is on all fours with
25 New York, of how the enforcement is handled in those

1 states. And Your Honors have to decide this issue, not
2 just for Massachusetts and Delaware, but for all states and
3 territories that have SORA statutes.

4 JUDGE RIVERA: You're basically saying that the
5 system that the federal government has spent a lot of time
6 encouraging the states to set up is something that we can't
7 trust?

8 MS. BRUFFEE: No, I'm not saying that, Your
9 Honor. I'm saying that they set up the system.

10 JUDGE RIVERA: Right.

11 MS. BRUFFEE: They allowed for some variation.
12 They allowed for - - - if - - -

13 JUDGE RIVERA: What would be the variation at
14 level one? Give me - - - give me any jurisdiction that
15 varies when it comes to level one?

16 MS. BRUFFEE: Oh, I can't. I didn't do a fifty-
17 state survey of all the variations. But the statute could
18 be exactly the same as New York's, however, the enforcement
19 of that statute could be vastly different.

20 JUDGE RIVERA: That's what I'm saying. You're -
21 - - you're - - -

22 MS. BRUFFEE: And the legislature - - -

23 JUDGE RIVERA: But that's what I'm saying. The
24 uniformity of the system tells us otherwise. That's what
25 Congress had set up. Again, a lot of time was - - -

1 MS. BRUFFEE: Well - - -

2 JUDGE RIVERA: - - - spent on encouraging the
3 states to set up a particular type of system. Yes, you're
4 correct, of course, that each state does have some
5 flexibility. I'm not going to dispute - - -

6 MS. BRUFFEE: There are variations.

7 JUDGE RIVERA: - - - that with you.

8 MS. BRUFFEE: They could be less strict. And we
9 don't - - - statutes are amended all the time, and the
10 legislature in New York could have taken that into
11 consideration. Could also - - - a state could decide
12 tomorrow that even though they're going to forego some
13 federal funding, that they don't want the statute. They
14 could also decide - - -

15 JUDGE RIVERA: But then there's nothing to
16 credit, right?

17 MS. BRUFFEE: That's true.

18 JUDGE RIVERA: If you're not - - -

19 MS. BRUFFEE: Okay.

20 JUDGE RIVERA: - - - under a registration regime
21 - - -

22 MS. BRUFFEE: Right.

23 JUDGE RIVERA: - - - there's nothing to credit?

24 MS. BRUFFEE: That's absolutely correct. They
25 could also decide - - - you know, we don't have enough

1 funding right now to enforce this well or they could lack
2 the motivation to do it. So the legislature. -

3 CHIEF JUDGE WILSON: That could be - - - that
4 could be true within New York State, too, right? And the
5 enforcement is done on a local level, no?

6 MS. BRUFFEE: Pardon?

7 CHIEF JUDGE WILSON: That could be true within
8 New York State as well. Some counties or municipalities
9 might enforce - - - might have the same resource
10 constraints or not?

11 MS. BRUFFEE: But the legislature has to
12 determine this based on its view of New York's enforcement.
13 They have some knowledge - - -

14 CHIEF JUDGE WILSON: Well, then - - - and - - -
15 and right - - -

16 MS. BRUFFEE: - - - that New York - - -

17 CHIEF JUDGE WILSON: - - - and maybe that view is
18 there's a lot of variability, and we - - - but it's roughly
19 within an area we're willing to tolerate, and so that
20 variability across states maybe doesn't matter either?

21 MS. BRUFFEE: Well, I think that New York - - -
22 New York has set forth this - - - the entire statute shows
23 that it intended not to take into consideration the
24 enactments of how states - - -

25 JUDGE HALLIGAN: How - - - how so? Where in the

1 - - -

2 MS. BRUFFEE: Okay.

3 JUDGE HALLIGAN: - - - statute do you see that?

4 MS. BRUFFEE: So there are a number of - - - if
5 you read SORA as a unified whole.

6 JUDGE HALLIGAN: Yeah.

7 MS. BRUFFEE: If you take a look at 168-k, it
8 sets forth in excruciating detail all of the requirements
9 of DCJS, the Division of Criminal Justice Services, the
10 board, the court; all the things they have to do to reach a
11 risk level determination. They say nothing about - - -

12 JUDGE HALLIGAN: But what about what I - - -

13 MS. BRUFFEE: - - - finding out - - - sorry.

14 JUDGE HALLIGAN: Sorry. Go ahead.

15 MS. BRUFFEE: They say nothing about finding out
16 when this offender registry - - - registered in another
17 state, about whether they complied fully, whether the state
18 statute is on all fours with ours. If there had been an
19 intention to include another state's SORA, that would have
20 been within that - - -

21 JUDGE HALLIGAN: But what about - - -

22 MS. BRUFFEE: - - - within that section.

23 JUDGE HALLIGAN: - - - what I take your
24 adversary's argument to be - - - I'm sure she'll correct me
25 if I'm misstating it when she gets back up. But - - -

1 which is the initial registration date is as readily
2 ascertainable as my birth date or yours.

3 MS. BRUFFEE: Yes.

4 JUDGE HALLIGAN: And so that's all we need to
5 know. That's clear guidance. And there's - - - if there
6 are not, in fact, significant variations, one state to
7 another, in terms of supervision requirements given the
8 umbrella of the federal law that you wouldn't expect to see
9 anything further in 168-k. You don't need to.

10 MS. BRUFFEE: But you would certainly need to see
11 some mechanism for finding out whether the defendant has
12 complied with such - - - you know when the registration
13 date is.

14 JUDGE HALLIGAN: So what exactly would you need
15 to know? The registration date - - -

16 MS. BRUFFEE: Well - - -

17 JUDGE HALLIGAN: - - - is presumably fairly
18 readily ascertainable. Would you need to know whether
19 there have been periods of - - -

20 MS. BRUFFEE: Whether there was compliance - - -

21 JUDGE HALLIGAN: - - - noncompliance?

22 MS. BRUFFEE: - - - and what the statute says in
23 the other state. You would need to know that because there
24 are variations. They may not be - - -

25 JUDGE RIVERA: But why - - -

1 JUDGE HALLIGAN: Okay. But I - - -

2 JUDGE RIVERA: - - - why isn't that information -

3 JUDGE HALLIGAN: - - - I thought - - -

4 JUDGE RIVERA: - - - that would be resolved at a
5 SORA hearing? Wouldn't it be the burden - - - what - - -
6 excuse me.

7 MS. BRUFFEE: Sorry.

8 JUDGE RIVERA: Wouldn't it be the burden - - -
9 thank you - - - of the individual who's subject to
10 registration - - - who's moving here, and will be subject
11 to New York registration - - - to come forward with
12 evidence of when they initially registered? And that - - -
13 and again, there is communication within this system, so
14 you would have a record of whatever their violations are
15 that have been recorded. And you could present that to
16 make whatever argument you wish to make. But it doesn't
17 change the initial registration.

18 MS. BRUFFEE: Well, the initial registration
19 doesn't change the initial registration in New York. If
20 the legislature had intended any other jurisdiction, they
21 would have put in there what is required. And I'll give
22 you an example of why - - -

23 JUDGE RIVERA: But, given that people travel, one
24 would think, actually, that they would have said the
25 initial registration in New York, as opposed to the initial



1 registration date, which is all encompassing.

2 MS. BRUFFEE: Well, it's a New York statute.
3 Most statutes, if they're defining something or giving an
4 example of something - - -

5 JUDGE RIVERA: Except that SORA is - - -

6 MS. BRUFFEE: - - - they don't say, in this - - -

7 JUDGE RIVERA: - - - except that SORA is part of
8 an integrated system under the federal statutes. You're
9 trying to comply with federal statutes as well as - - -
10 you're right, have your own flexibility.

11 MS. BRUFFEE: Okay.

12 JUDGE TROUTMAN: Can I ask you? You indicated
13 with respect to 168-k - - -

14 MS. BRUFFEE: Yes.

15 JUDGE TROUTMAN: - - - and that is detailed with
16 respect to the requirements of registration - - -

17 MS. BRUFFEE: Yes.

18 JUDGE TROUTMAN: - - - but it doesn't mention
19 anything about credit.

20 MS. BRUFFEE: Correct.

21 JUDGE TROUTMAN: So is it your argument that
22 because it speaks to very specific things and doesn't
23 mention that, that that is why credit is not something that
24 was contemplated?

25 MS. BRUFFEE: That's one of my one of my

1 arguments, yes. That this (k) is specifically directed to
2 sex offenders who are coming in from another state. And
3 this is what the board has to do. This is what DCJS has to
4 do. This is what the court has to do. And the reason that
5 the legislature presumably would have provided for this is
6 exemplified by what happened in the Corr hearing.

7 Corr hearing, there's no prior independent
8 determination of the things that the court would have
9 needed to know if it was going to provide credit: date of
10 registration; did he comply; was the statute commensurate
11 with ours; was it stricter; was it not as strict. And they
12 couldn't know the enforcement, obviously.

13 So what happened in the Corr hearing? First of
14 all, is none of that. The - - - the defendant doesn't
15 provide any documentation of the date or the compliance and
16 relies on defense counsel say-so.

17 JUDGE RIVERA: Let me ask you this hypothetical.
18 Let's say you have an individual - - - we'll just keep with
19 Massachusetts for the moment. Lives in Massachusetts
20 nineteen years and six months - - -

21 MS. BRUFFEE: Okay.

22 JUDGE RIVERA: - - - and decides they want to
23 come to New York, right? They move to New York one day
24 before the twenty years. Right? During that time, those
25 few months, they said they decide they want to move to New

1 York. They do whatever they need to do to prepare for
2 that. And one day beforehand, they move here.

3 Under your rule, of course, now they have to
4 register for another twenty years - - -

5 MS. BRUFFEE: Yes.

6 JUDGE RIVERA: - - - correct? Okay.

7 MS. BRUFFEE: Correct.

8 JUDGE RIVERA: Now you have another person - - -
9 let's say that's even the same sex crime. I'm not even
10 going to change anything like that. Both are level one.
11 Also moving from Massachusetts. Moves here the day after
12 twenty years. You say they don't have to register?

13 MS. BRUFFEE: Correct.

14 JUDGE RIVERA: How can that be what the
15 legislature intended? How does that serve the interest,
16 both of New York as its own sovereign - - - the people of
17 New York, as well as within a state that's part of this
18 federal - - - larger federal system?

19 MS. BRUFFEE: The legislature may well have
20 weighed the possibility of such a hard case - - - and it is
21 a hard case, I acknowledge that - - - by recognizing that
22 some of the other states - - -

23 JUDGE HALLIGAN: Well, there's not anything in
24 the legislative history, I don't think but correct me if
25 I'm wrong, that indicates an - - - a consideration of this

1 question specifically.

2 MS. BRUFFEE: No. But the statute itself shows
3 that they have decided not to give credit.

4 JUDGE CANNATARO: Through the silence?

5 MS. BRUFFEE: Well, they haven't given credit.

6 JUDGE HALLIGAN: Or perhaps that they did not
7 directly consider the question?

8 MS. BRUFFEE: Well, they might have. But what
9 the statute says is what the statute says. So (k) didn't
10 provide for procedure for determining it. The legislature
11 could have said under this section, date of registration in
12 any jurisdiction. It could have provided for credit. And
13 there's another section of SORA which seems to indicate
14 that if they had intended it, this meaning that the defense
15 is putting forward, they would have written this section
16 differently.

17 JUDGE CANNATARO: Counsel, can I ask you a
18 somewhat related legislative question? One of the first
19 things that I thought when this appeal showed up was, why
20 are we getting this question now? SORA has been around for
21 such a long time. I would think that other level ones have
22 come to New York from different jurisdictions - - -

23 MS. BRUFFEE: Many.

24 JUDGE CANNATARO: - - - and wanted credit.

25 MS. BRUFFEE: Many.

1 JUDGE CANNATARO: And part of the answer that I
2 found to that question is courts have been doing this.
3 Courts have been giving credit - - -

4 MS. BRUFFEE: No.

5 JUDGE CANNATARO: - - - for this. And I'm just
6 curious, what do you say to those courts? Have they acted
7 completely in the absence of legislative authority to do -
8 - -

9 MS. BRUFFEE: Yes.

10 JUDGE CANNATARO: - - - what they did?

11 MS. BRUFFEE: Yes. And not all courts have done
12 that. You don't - - - if you don't give credit. If
13 somebody had come and said, please, here in court, give me
14 credit and the judge just says, no. What happens is the
15 level one, two, or three is circled and it goes off and the
16 person registers.

17 Unless there was an appeal, there would be no
18 appellate decision.

19 JUDGE RIVERA: - - - And one would think that
20 they're incentivized to do so because it's a long time to
21 be on the registry.

22 MS. BRUFFEE: Yeah. So - - -

23 JUDGE RIVERA: You have nothing to lose in that
24 way, right? If you're not going - - -

25 MS. BRUFFEE: Exactly.

1 JUDGE RIVERA: - - - to get the credit, you're
2 not going to get credit.

3 MS. BRUFFEE: And so - - -

4 JUDGE RIVERA: Can we get back, though, to my
5 question because I don't think you had an opportunity to
6 answer it. I asked you, what was furthered - - - in my
7 hypothetical, what policy was furthered? If we applied the
8 rule, as you say to my hypothetical? I think you were
9 going to try and answer that for me. You said they were
10 hard cases, but I think you wanted to try to answer that.

11 MS. BRUFFEE: Yes. The policy that would be
12 furthered is, if the - - - if the legislature decided that
13 certain jurisdictions were not enforcing - - -

14 JUDGE RIVERA: Okay.

15 MS. BRUFFEE: - - - the policy that - - - what -
16 - - what the result of that would be - - -

17 JUDGE RIVERA: Yes.

18 MS. BRUFFEE: - - - not - - - I don't mean not
19 enforcing the registration. But say their law enforcement
20 agencies didn't use the registration information to try and
21 prevent crime, or solve crime - - -

22 JUDGE RIVERA: No, but in my hypothetical,
23 they're coming from - - -

24 MS. BRUFFEE: I am answering your question.

25 JUDGE RIVERA: - - - the exact same jurisdiction.

1 MS. BRUFFEE: Pardon?

2 JUDGE RIVERA: In my hypothetical, they're coming
3 from the same jurisdiction, same law enforcement scenario.

4 MS. BRUFFEE: The same as what? I'm sorry.

5 JUDGE RIVERA: My hypothetical was they're both
6 coming from Massachusetts.

7 MS. BRUFFEE: Oh, okay.

8 JUDGE RIVERA: One comes a day before twenty
9 years, one comes a day after.

10 MS. BRUFFEE: Right.

11 JUDGE RIVERA: And as I understood your
12 interpretation - - -

13 MS. BRUFFEE: Right.

14 JUDGE RIVERA: - - - of the statute, the one who
15 came here one day before twenty years, now has to register
16 for twenty years. The one who came here one day after
17 twenty years does not.

18 MS. BRUFFEE: The reason I'm answering -

19 JUDGE RIVERA: Yes.

20 MS. BRUFFEE: - - - in the broad, is that what
21 the legislature has done - - -

22 JUDGE RIVERA: Yes.

23 MS. BRUFFEE: - - - the rule that the legislature
24 has imposed has to be a universal rule. It can't be
25 picking, you know, Massachusetts or Delaware, okay. It's

1 the - - - you get credit if you come from Massachusetts,
2 and you don't get credit if you don't come from - - -

3 JUDGE RIVERA: Yes. But whether or not the - - -
4 the legislation is interpreted, as you say, is now for the
5 court to determine. So my question is, again, since SORA
6 is about furthering a particular policy about public safety
7 and information so that - - -

8 MS. BRUFFEE: Yes.

9 JUDGE RIVERA: - - - law enforcement can track.
10 how is that furthered, given my hypothetical, and given the
11 way your interpretation of the statute would apply?

12 MS. BRUFFEE: It is furthered in the - - - in the
13 broad by the legislature's determination that if the law
14 enforcement agencies are not using this information, an
15 offender could well have re-offended and the people - - -
16 the SORA court would not have known because the other
17 jurisdiction is not using this information, is not cross
18 referencing, is not enforcing. And that would be the
19 policy reason that the legislature decided that it was only
20 going to use New York's registration for twenty years
21 because that advances the policy reasons.

22 If I could, I'd just like to add, if Your Honors
23 would look at 268-f(2), which also shows that the
24 legislature didn't intend initial date of registration to
25 be in another state. That provision is - - - says, "For

1 sex offender required to register under this article,"
2 meaning the whole SORA, "on each anniversary of the sex
3 offender's initial registration date during the period he's
4 required to register," the following should apply and then
5 they mail verification forms, et cetera.

6 The import of that is that DCJS wants the
7 information on the sex offender once a year on the
8 anniversary of the registration. So assuming for
9 argument's - - -

10 CHIEF JUDGE WILSON: So of the - - - of the
11 initial registration?

12 MS. BRUFFEE: Yes. Initial registration.

13 CHIEF JUDGE WILSON: And that doesn't help us
14 know which of those two it is?

15 MS. BRUFFEE: On - - - so say, hypothetically,
16 are two defendants registered in New York today. Okay.
17 Assuming that the initial date of registration is their
18 date of registration in Massachusetts and in Delaware, they
19 would have to mail their registration form in today. And
20 then in the case of Mr. Corr, who registered in
21 Massachusetts in January, he would then have to send a
22 second form in in January.

23 In the case that's eight months later, Mr.
24 McDonald would have to send his in in August, in three
25 months. So did - - - would the legislature have intended



1 DCJS to get two forms in one year? I mean, the language of
2 the statute, the implication of all these sections is, this
3 is an initial registration in New York. If they'd meant in
4 another jurisdiction, they surely would have said so. And
5 if they meant to credit, they also would have provided for
6 that.

7 CHIEF JUDGE WILSON: Thank you.

8 MS. BRUFFEE: Thank you.

9 MS. PAGE: SORA has always - - -

10 JUDGE HALLIGAN: Counsel, can I ask you - - -
11 sorry to interrupt you.

12 MS. PAGE: That's okay.

13 JUDGE HALLIGAN: But what's your level - - -
14 what's your response to the level of detail in - - - in
15 168-k, and the granularity with which the legislature
16 clearly considered how to proceed when you come in from out
17 of state?

18 MS. PAGE: Yes, Your Honor. To that, I would
19 respond, SORA has always been a statute of reciprocity that
20 recognizes people will move from out of state to New York
21 that must register. SORA was enacted to comply with
22 federal law. It's been amended to comply with federal law.

23 JUDGE HALLIGAN: Okay. With - - - but you agree
24 there's nothing in there that suggests that the legislature
25 took account of specifically the question of crediting

1 time, although, it took account of a lot of other things?

2 MS. PAGE: I would say that in Correction Law
3 168-h(1), it's clear that the initial registration date for
4 out-of-state people - - - for anyone adjudicated level one,
5 no designation, is twenty years. So it did not need to be
6 specifically spelled out.

7 JUDGE HALLIGAN: And in the federal system, I
8 think you were referencing some of the - - - if I
9 understood you correctly, information that's available - -
10 -

11 MS. PAGE: Yes.

12 JUDGE HALLIGAN: - - - right? If someone comes
13 to New York and says, I want credit for five years of
14 registration in another state, any state, how is it that
15 the SORA board or the SORA court can ascertain whether or
16 not that individual was in compliance with registration
17 during those X years?

18 MS. PAGE: Yes, Your Honor. So in every SORA
19 hearing for an out-of-state person that must register, DCJS
20 - - - the Division of Criminal Justice - - -

21 JUDGE HALLIGAN: Yeah. Um-hum.

22 MS. PAGE: - - - Services gets all of that
23 information from the sending state and gives it to the
24 board of examiners. This is in the statute.

25 JUDGE HALLIGAN: Okay. In the Corrections Law or

1 in the federal - - - in the Wetterling Act?

2 MS. PAGE: Both.

3 JUDGE HALLIGAN: Okay.

4 MS. PAGE: But in Corrections Law.

5 JUDGE GARCIA: Counsel, it seems to me we're
6 talking about SORA and the federal law, maybe this is the
7 wrong way to look at it. I always looked at this scheme as
8 a federalism issue, right? The feds can - - - the federal
9 government can set a floor, and New York can build off of
10 that, depending on what protections the New York
11 legislature feels residents in New York deserve. So they
12 can build up.

13 Now, if they do that and they decide twenty years
14 under these conditions is enough to satisfy us that the
15 person no longer has to register, can't they also say those
16 - - - we could do it a number of different ways. We could
17 insist that you do that in New York or - - - as Maine or
18 Ohio has done, we can say you have to show us under the - -
19 - this framework that that other jurisdiction is
20 substantially equivalent to what our state has said are the
21 requirements for your twenty-year registration.

22 So nineteen and a half is a tough hypothetical,
23 but really what the state is saying is we want twenty years
24 under our conditions. And the way we're ensuring that is,
25 if you choose to move in here, you're doing twenty years

1 under our regime.

2 MS. PAGE: Your Honor, I think what's telling is
3 that, as Judge Cannataro pointed out, numerous judges
4 across our state have interpreted initial date of
5 registration - - -

6 JUDGE GARCIA: We've had cases where numerous
7 judges are doing various things; even in SORA, and we've
8 said no. Because - - - you know, sometimes issues are
9 open. What we have to decide now is what did the
10 legislature think they wanted to do in terms of protecting
11 New Yorkers in this context?

12 So what it seems - - - a very compelling argument
13 is they could have done this in a number of different ways,
14 but they chose to do it by insisting that you have to do
15 twenty years under these conditions of supervision for us
16 to be comfortable with you being released from a
17 registration requirement. That may have harsh effects in
18 certain circumstances.

19 The other way for the legislature to do it would
20 be the way Ohio and Maine has done it.

21 MS. PAGE: No, Your Honor. Because New York
22 legislature has specifically held this issue is resolved at
23 the SORA hearing. And it's notable the prosecution does
24 not cite a single case besides these two, decided by the
25 same hearing court, where New York courts interpreted 168-

1 h(1) to deny credit to this population deemed to pose the
2 lowest risk of ever reoffending by a New York court.

3 The court cannot do statutory interpretation
4 supported by fearmongering that does not exist with a shred
5 of evidence. The prosecution can't cite a single case that
6 has different registration requirements to New York, which
7 makes sense because SORA was enacted and amended under this
8 comprehensive federal law.

9 JUDGE GARCIA: Why would those other states
10 bother to have that mechanism then?

11 MS. PAGE: Because they don't have any due
12 process hearing, Your Honor. So there's no fact-finding
13 going on.

14 JUDGE GARCIA: And all the - - - why would they
15 need to have these criteria to look at if they're all the
16 same system? Like, if you're saying every - - - every
17 level one system is the same, why would you need anything?

18 MS. PAGE: Well, it's -

19 JUDGE GARCIA: As long as you've registered a
20 level one in another state, you should just automatically
21 get credit under your view?

22 MS. PAGE: Exactly. And many states do that.
23 It's a very simple process to determine someone's initial
24 date of registration. And to Judge Singas' earlier
25 question, any noncompliance is known by the SORA court. My

1 office does these hearings every day. If someone out-of-
2 state is coming here that has been re-arrested, convicted
3 of any offense, especially a sex crime, any failure to
4 register - - -

5 JUDGE GARCIA: Agreed. But the - - -

6 MS. PAGE: - - - the court knows.

7 JUDGE GARCIA: - - - the issue, I think, is
8 whether New York would be confident that those types of
9 violations are caught in the nineteen and a half years the
10 person is under another supervisory regime, not whether
11 they were caught, I think. Clearly, you're right. They
12 would know that. The conflict - - -

13 JUDGE SINGAS: Or if the - - - or if the
14 reporting was different? If they said - - - you know what
15 in Arizona you have to just check in every three years. So
16 we wouldn't know what was going on there in the - - - in
17 year 2 - - - you know, 1 and 2, because they don't have to
18 check in, or year 4 and 5. And New York is saying, you
19 know what? We want to know.

20 MS. PAGE: And I think it's telling, again, that
21 the prosecution cannot point out a single state that's
22 different. If there was one that was subpar to New York's,
23 surely they would have brought it up in their brief. The
24 states at issue here are nearly identical. All level ones
25 have to verify annually in New York, in Delaware and

1 Massachusetts. All level ones need to report - - -

2 JUDGE HALLIGAN: But what about the rest of the
3 country?

4 MS. PAGE: Again, if there was any
5 differentiation, I'm sure the prosecution would have
6 brought it to the court's attention. But there's not
7 because - - -

8 JUDGE CANNATARO: So if we could find a state
9 where they do something roughly analogous to what your
10 adversary says New York is doing or should be doing, which
11 is you start fresh when you come to New York, it's - - -
12 it's a new twenty when you get here. What does that do to
13 your argument? Especially, the federalism argument that we
14 have some sort of nationalized system where everyone's
15 giving credit for everything else that happened in another
16 jurisdiction?

17 MS. PAGE: Well, I would say if the court found
18 another state didn't give credit, does not take away from
19 our argument here. Because - - -

20 CHIEF JUDGE WILSON: Why is that?

21 MS. PAGE: Because the New York legislature has
22 been clear for this population deemed to pose the lowest
23 risk of ever re-offending. Like, Mr. McDonald, who was a
24 teenager in college when he filmed a fellow student in the
25 shower, which would not even be registrable in New York.

1 So for this very sympathetic, low-risk population, we want
2 to give credit from the initial registration date, because
3 we recognize - - -

4 JUDGE RIVERA: Well, why wouldn't that - - - I'm
5 a little - - - I'm not really clear why you're going down
6 that road, but maybe I'm wrong on this. Why isn't this
7 just - - - as I understood the interpretation, that - - -
8 that you have argued for, why isn't this just a question of
9 the burden of proof? I mean, look, your clients want the
10 credit. They got to make their case. They got to show the
11 initial date. They got to show that it certainly seems
12 possible that they would have to show that, indeed, they
13 were under a regime that's equivalent to New York. Why
14 isn't that just a burden of proof?

15 MS. PAGE: Well, Judge, I'm looking at the
16 hearings here, the initial date of registration wasn't
17 contested by the prosecution or the judge - - -

18 JUDGE RIVERA: No, no. I'm - - - but I'm saying
19 for the - - - in terms of interpreting the statute.

20 MS. PAGE: That the registrant be required to
21 provide documentation - - -

22 JUDGE RIVERA: And you've got other burdens, I
23 mean, right? They argue - - - they're arguing for whatever
24 level of classification. And as I understood it, counsel
25 is arguing for credit. Counsel's got to make the case for

1 the credit.

2 MS. PAGE: Yes. If - - - I would say that the
3 statute clearly intends for the initial date to be honored.
4 If this court were to fashion a rule going forward about
5 the - - - who needs to provide that evidence, that does
6 always come from the sending state. But if the court wants
7 to put the burden on an individual to show paperwork
8 saying, look, here's the first date I registered on
9 official documentation from the other state - - -

10 JUDGE RIVERA: But I'm talking about this other
11 question that my colleagues are asking about, right? To
12 say, look, it's equivalent. You're saying you can just see
13 what the law is with respect to registration, what the
14 requirements are in that other state. Of course, your
15 client would have been subject to it, so they would know
16 what it is. And that allows the people to respond that
17 there shouldn't be credit because it's not equivalent. I
18 think - - - doesn't that address the issue?

19 MS. PAGE: I - - -

20 JUDGE RIVERA: I mean, I may be misunderstanding
21 your argument, this is why I'm asking.

22 MS. PAGE: I think asking the New York SORA court
23 to conduct a in-depth analysis of other state's registry
24 laws is not what's contemplated - - -

25 JUDGE RIVERA: Okay.



1 MS. PAGE: - - - by the statute. If that's the
2 remedy that the court wants in our favor, and the best one
3 we're going to get, that's fine. But I think the SORA
4 statute is clear that the court just looks at initial
5 registration date. They have all that information from the
6 sending state. If it's not clear or if it's contested,
7 they don't get credit. But notably, in both of these
8 cases, everyone agreed that the initial date of
9 registration was, for Mr. McDonald, August 20th, 2015; for
10 Mr. Corr, January 29th, 2016.

11 They're not asking that they shouldn't be
12 required to register in New York. They're not asking New
13 York to apply another state's law or risk level
14 determination. And they're certainly not trying to avoid
15 criminal liability for failure to register. They just want
16 the court to apply the plain language of the statute to
17 give them the appropriate years towards their twenty-year
18 period in New York since their initial date of
19 registration.

20 JUDGE RIVERA: Oh, I'm sorry. Last question if
21 the Chief Judge will allow me? I do promise it's the last
22 one, just to follow-up on this.

23 So then under your interpretation of the statute,
24 it's automatic once you show the initial date of the
25 registration in the other jurisdiction? And the people

1 would have no opportunity to challenge that at the SORA
2 hearing?

3 MS. PAGE: That is the rule that the statute sets
4 forth. And - - -

5 JUDGE RIVERA: Okay.

6 MS. PAGE: - - - because the initial date of
7 registration is just part of the facts of the case. If
8 someone has not registered, if someone has been convicted
9 of any crime, that will be dealt with through an upward
10 departure, which the prosecution has the opportunity to
11 make, and the court will certainly enforce. And that
12 person will be a level two or three requiring lifetime
13 registration, and this argument won't apply.

14 So just like every SORA hearing, the court does
15 this comprehensive analysis and can easily determine the
16 initial date of registration. If there's any question,
17 credit should not be given. If it's disputed, if it's
18 unclear, credit should not be given. But in both of these
19 cases it was uncontested, and credit should be awarded.

20 CHIEF JUDGE WILSON: Thank you.

21 MS. PAGE: Thank you.

22 (Court is adjourned)

23

24

25



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, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Matthew Corr, No. 67, and People v. Bryan McDonald, No. 68 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

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

Date: May 23, 2024

