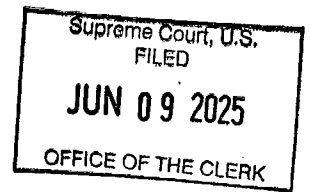


ORIGINAL



24-1279  
No. \_\_\_\_\_

---

In The  
**Supreme Court of the United States**

FRANK J. ANDERSON, JR.,  
PETITIONER,  
V.

STATE OF NEW JERSEY,  
RESPONDENT.

---

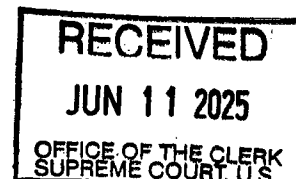
*On Petition for Writ of Certiorari  
to The New Jersey State Supreme Court*

---

***PETITION FOR WRIT OF CERTIORARI***

---

FRANK J. ANDERSON JR.  
193 West 48<sup>th</sup> Street  
Bayonne, NJ 07002  
908-249-5942 / frankj404@yahoo.com



## QUESTION PRESENTED

Does the New Jersey judicial process, by (1) preparing the judgment of conviction in the petitioner's absence, (2) departing from the orally pronounced sentence—which New Jersey law holds as the controlling determination of punishment—and (3) subsequently resentencing the petitioner in a manner that imposes a harsher penalty in contravention of the Double Jeopardy Clause, thereby infringe the petitioner's Federal rights under the Fifth and Sixth Amendments, as well as his due process rights? Specifically, does this practice run afoul of the settled precedent in cases such as *Bartone v. United States*<sup>1</sup> and related U.S. Supreme Court decisions addressing the requirement that a defendant be present at all critical stages of punishment and that the oral sentence—absent an unequivocal waiver—is controlling?

---

<sup>1</sup> *Bartone v. United States*, 375 U.S. 52, (1963).

## **RELATED PROCEEDINGS**

In an unpublished opinion from the New Jersey Appellate Division in A-003528-22 the court's decision denied Petitioner's appeal in a written opinion. (App., 3a – 19a) Thereafter, the New Jersey State Supreme Court denied Certification. (App., 1a – 2a)

## TABLE OF CONTENTS

Question Presented .....	i
Related Proceedings .....	ii
Table of Authorities .....	iii
Opinions Below .....	1
Jurisdiction .....	2
Constitutional and Statutory Provisions	
Involved .....	3
Introduction .....	4
Statement of the Case .....	6
Arguments.....	12
I.    PETITIONER    ANDERSON'S FIFTH, SIXTH    AND    FOURTEENTH AMENDMENTS,    RIGHT TO    BE PRESENT AT EVERY STAGE OF TRIAL WERE    VIOLATED WHEN    AN ADMINISTRATIVE    AGENT    OF THE COURT    PREPARED THE JUDGEMENT OF CONVICTION (JOC) DAYS LATER AFTER THE ORAL SENTENCE WAS PRONOUNCED AND PREPARED IT OUTSIDE OF PETITIONER'S PRESENCE WHICH INCLUDED A PUNITIVE TERM OF COMMUNITY SUPERVISION FOR LIFE (CSL) THAT WAS NOT ORALLY PRONOUNCED BY THE SENTENCING JUDGE.....	10

II.	THE ILLICIT ADDITION OF CSL AFTER COMPLETION OF THE CUSTODIAL TERM VIOLATES DOUBLE JEOPARDY PRINCIPLES.....	17
	Reasons for Granting the Petition .....	26
	Conclusion.....	28

## TABLE OF AUTHORITIES

### CASES

<i>Bartone v. United States</i> , 375 U.S. 52 (1963) .....	14, 17, 18, 20, 23,
<i>Commonwealth v. Lavoie</i> , 464 Mass. 83 (2013) .....	15
<i>Earley v. Murray</i> , 451 F.3d 71 (2d Cir. 2006) .....	14
<i>Ex parte Lange</i> , 85 U.S. (18 Wall.) 163 (1874) .....	19
<i>Fine v. Commonwealth</i> , 312 Mass. 252(1942).....	15
<i>Greene v. United States</i> , 358 U.S. 326 (1959).....	13
<i>Hill v. United States ex rel. Wampler</i> , 298 U.S. 460 (1936) .....	12, 13, 18, 19, 20
<i>Johnson v. Mabry</i> , 602 F.2d 167 (8th Cir. 1979).....	13
<i>Kennedy v. Reid</i> , 101 U.S. App. D.C. 400, 249 F.2d 492 (1957).3, 10	
<i>People v. Farrar</i> , 52 N.Y.2d 302 (1981) .....	15

<i>People v. Fuller</i> , 57 N.Y.2d 152 (1982) .....	13, 14
<i>People v. Richardson</i> , 925 F.2d 112 (2d Cir. 1991) .....	15
<i>People v. Selikoff</i> , 35 N.Y.2d 227 (1974) .....	13, 14
<i>Pollard v. United States</i> , 352 U.S. 354 (1957) .....	10
<i>Rivers v. Fisher</i> , 390 F. App'x 22 (2d Cir. 2010) .....	14
<i>Sanders v. United States</i> , 411 U.S. 711 (1973) .....	13
<i>State ex rel. B.P.C.</i> , 421 N.J. Super. 329 (App. Div. 2011) .....	6
<i>State v. Abril</i> , 444 N.J. Super. 553 (App. Div. 2016) .....	4, 9, 12
<i>State v. Jamgochian</i> , 363 N.J. Super. 220 (App. Div. 2003) .....	6
<i>State v. Laird</i> , 25 N.J. 298 (1957) .....	19
<i>State v. Pohlabel</i> , 40 N.J. Super. 416 (App. Div. 1956) .....	2, 9, 12

<i>State v. Rivers</i> , 252 N.J. Super. 142 (App. Div. 1991) .....	3
<i>State v. Sabong</i> , 18 N.J. Super. 346 (1952).....	4
<i>State v. Schubert</i> , 212 N.J. 295 (2012) .....	13, 16, 19, 22
<i>State v. Toth</i> , 37 N.J. Super. 414 (1955) .....	4
<i>Sudler v. City of New York</i> , 689 F.3d 159 (2d Cir. 2012) .....	14
<i>United States v. Diggles</i> , 957 F.3d 551 (5th Cir. 2020) .....	17, 21
<i>United States v. Gagnon</i> , 470 U.S. 522 (1985) .....	11, 22
<i>United States v. Marquez</i> , 506 F.2d 620 (2d Cir. 1974) .....	3, 10, 21, 23
<i>United States v. Villano</i> , 816 F.2d 1448 (10th Cir. 1987) .....	2, 21
<i>Waller v. Georgia</i> , 467 U.S. 39 (1984) .....	15



## **CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. V .....	10
U.S. Const. amend. VI.....	10
U.S. Const. amend. XIV.....	10

## **STATUTES AND RULES**

28 U.S.C. § 1257.....	1
28 U.S.C. § 2101(c).....	1
N.J. Ct. Rule 3:16.....	11
N.J. Ct. Rule 3:21-10.....	8, 19,
N.J.S.A. 2C:43-6.4.....	8, 9

## **OPINIONS BELOW**

The New Jersey's Appellate opinion on October 25, 2024, is unreported but is reproduced in the appendix at (App., 3a – 19a). The New Jersey State Supreme Court's denial of Certification on March 11, 2025, is unreported but reproduced in the appendix at (App., 1a – 2a) the Order dated January 26, 2023, for the denial of Post Conviction Relief and Illegal Sentence is reproduced in the appendix at (App., 27a – 32a). The Order dated June 1, 2023, for the Reconsideration of Post Conviction Relief and Illegal Sentence is reproduced in the appendix at (App., 20a – 26a). The Order in letter form from JUDGE DePASCALE dated March 7, 2014, denying for procedurals bar reasons is reproduced in the appendix at (App., 33a – 35a).

## **JURISDICTION**

The New Jersey Appellate Division issued its opinion on October 25, 2024 affirming the lower courts denial for post-conviction relief and to correct an illegal sentence. On March 11, 2025, the New Jersey State Supreme Court denied certification affirming the appellate court's decision. The state court decision in this matter is final, and the petition for a writ of certiorari is timely filed in accordance with the 90-day deadline mandated by 28 U.S.C. § 2101(c). Accordingly, the United States Supreme Court has jurisdiction to review the decision pursuant to 28 U.S.C. § 1257

## INTRODUCTION

The New Jersey Appellate Division's decision conflicts with previous New Jersey state precedent case law decided by New Jersey's highest court, along with cases decided throughout this country and is not in line with precedent cases that have been decided from this court. Defendant was originally sentenced in open court by an oral pronouncement from the sentencing judge that did not include community supervision for life, CSL term. Notwithstanding the clear record of the defendant's presence and understanding of his oral sentence, the Judgment of Conviction subsequently included CSL—a term imposed by statute. Despite the defendant's contention that the oral sentence controls, the Appellate Division failed to give due weight to this established common-law principle. Furthermore, the imposition of CSL was effectuated ten days after the sentencing hearing was held, outside the defendant's presence, and an effort to re-sentence him to include CSL after he served his complete prison term runs afoul of the constitutional safeguard against multiple punishments.

The fundamental rule in criminal sentencing is that the oral sentence pronounced from the bench prevails when there is a conflict with a later written judgment. In *United States v. Villano*, 816 F.2d 1448 (10th Cir.1987), this Court of Appeals emphatically held that “[a]n unambiguous oral pronouncement of sentence controls when there is a conflict with the written judgment and commitment order.” The Appellate Division's decision in *State of New Jersey v. Frank J. Anderson Jr.*, Docket No. A-003528-22T2

blatantly disregards this controlling principle by validating the inclusion of CSL in the JOC despite the defendant's clearly stated oral sentence that omitted such a term. This error deprived the defendant of his right to the sentence as pronounced in open court. Specifically, where the JOC and or commitment order differ from the sentence on the record (sentencing transcripts) the oral pronouncement by the judge is controlling. *United States v. Marquez*, 506 F.2d 620 (2d Cir. 1974); Moreover, "It is the oral sentence which constitutes the judgment of the court, and which is authority for the execution of the court's sentence. The written commitment is "mere evidence of such authority." *Kennedy v. Reid*, 249 F.2d 492, 495(1957); Our Courts have consistently held that "In the event of a discrepancy between the court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the sentencing transcript controls, and a corrective judgment is to be entered". *State v. Rivers*, 252 N.J. Super. 142, 147 n.1,599 (1991). Moreover," Where there is a discrepancy between the trial court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the transcript the trial judge's remarks controls. This discrepancy should be corrected by the trial court and an appropriate amendatory judgment entered." *State v. Pohlabel*, 40 N.J. Super. 416, 423, (1956). In addition, "where there is a conflict between the oral sentence and the written commitment, the former will control if clearly stated and adequately shown, since it is the true source of the sentence, instead of the latter which is merely the work of a clerk." *In re De Luccia*, 10 N.J. Super. 374, 380-381 (1950); *In re*

*Sabong*, 18 N.J. Super., at pages 346-347; *State v. Toth*, 37 N.J. Super. 414, 416 (1955). In the case before the court today, the New Jersey Appellate Court decided "on the merits of defendant's claim, we agree with his argument that it was improper for the JOC to include a CSL term when CSL was not imposed at his sentencing hearing. "In the event of a discrepancy between the court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the sentencing transcript controls and a corrective judgment is to be entered." *State v. Abril*, 444 N.J. Super. 553, 564 (2016). A remand to correct the discrepancy is the appropriate remedy in such circumstances. *Ibid.* Still, with all the existing caselaw from New Jersey, along with caselaw from other authorities, the New Jersey Appellate Court decided that "A resentencing hearing to orally impose the CSL term under which defendant has been supervised for more than a decade would not offend double-jeopardy principles". Petitioner was orally sentenced by the sentencing judge to a custodial term of 20 years, then 7 days later after that sentence was imposed, an additional punitive term of CSL was reflected on the JOC which was prepared when petitioner was not present and had begun to serve his sentence. Inasmuch, petitioner was not notified of CSL until he served his maximum custodial sentence.

This Court should grant the petition for writ of certiorari.

### **STATEMENT OF THE CASE**

On or about December 22, 1995, Petitioner was Indicted on a ten (10) Count Indictment on Counts

one (1) and two (2) Aggravated Sexual Assault, Count three (3) Sexual Assault, Counts four (4) and five (5) Aggravated Criminal Sexual Contact, Count six (6) Criminal Sexual Contact, Count seven (7) Armed Burglary, Count eight (8) Burglary, Count nine (9) Possession of a Weapon for an Unlawful Purpose, and Count ten (10) Unlawful Possession of a Weapon. Original Charges. (App., 46a – 50a). On or about August 15, 1997, Petitioner was convicted of Counts two (2), three (3), five (5), six (6), nine (9), and ten (10) after a jury trial. On or about February 13, 1998, petitioner was sentenced by the Honorable Jose L. Fuentes in pertinent part as follows: "...twenty (20) years. You are to serve that sentence without parole for a period of ten years, which is the maximum parole ineligibility provided by law. You are assessed a \$100.00 Violent Crimes Compensation Board penalty, a \$75.00 Safe Streets penalty, and \$30.00 Law Enforcement Trust Fund penalty. On count nine I find the same aggravating and the lack of mitigating factors, and you're sentenced to five years in State Prison to run concurrent with the previous sentence. You have 45 days to file an appeal." (Sentencing Transcripts). Petitioner filed a direct appeal that was denied on or about December 6, 2000. Petitioner filed a PCR application that was denied on or about October 21, 2004. On or about August 14, 2009, a representative from the New Jersey Parole Board notified Petitioner for the first time that he would be released to Community Supervision for Life (CSL) and he would have to register for Megan's Law. (App., 36a – 44a). At that time, Petitioner had no idea what Community Supervision for Life was. Moreover, he had no idea that approximately twelve (12) years

after he was sentenced that he would be facing such penal and detrimental consequences of CSL and Megan's Law. On or about September 18, 2009, Petitioner was released from the Department of Corrections because he served his maximum sentence (App., 45a). While a direct appeal, and a prior post-conviction relief application were previously filed, the CSL issue was never addressed because Petitioner had no idea that his sentence was illegally enhanced to include CSL without his knowledge. (App., 48a). Thirty-three days (33) after serving the maximum sentence of approximately twelve (12) years, Petitioner was informed for the first time that he was sentenced to CSL and Megan's Law. He was told to sign on the line or it would delay his release, and he noted on the form that he was unaware of being sentenced to CSL. The conditions of Community Supervision for Life are more than those of the conditions of standard parole. See Sex Offender Management/Supervision on the New Jersey State Parole Boards Home page. "Parole officers assigned to the Sex Offender Management Unit use a "containment" approach to sex offender supervision. The Containment Approach includes intensive parole supervision". The conditions of (CSL) are so onerous that the Supreme Court of New Jersey has deemed them to be punitive in nature. *State v. Schubert*, 212 N.J. 295, 309 (2012). See *State ex rel. B.P.C.*, 421 N.J. Super. 329, 354 (App.Div.2011); *State v. Jamgochian*, 363 N.J. Super. 220, 224 (App. Div.2003). For example, since being on (CSL), petitioner has had to report to the Jersey City Parole Office District 4, at least twice a month. This interferes with petitioner's job and cost of living. Petitioner at times can lose

entire days' pay. While at the office petitioner is often required to conduct mandatory drug testing, searches, and answer questions under the threat of being placed on a curfew or being placed on Electronic Monitoring System. Petitioner cannot take a job unless it is approved by his assigned parole officer, which has caused petitioner to lose several employment opportunities as employers do not want to hire someone on parole. In addition, Petitioner has lost at least four (4) jobs as a result of parole officers contacting his employers and demands on him having to leave work to meet with him when they demand it. Petitioner cannot volunteer for anything unless it is approved by his assigned parole officer. Petitioners assigned parole officer conducts monthly visits to petitioner's residence and employment. This can be done at any time the parole officer decides. Petitioner cannot leave the state to go on vacation, visit friends and family, or even travel to New York City for a day trip. When Petitioner was advised about the addition of CSL to his sentence, he was unable to afford an attorney; accordingly, Petitioner filed a pro se Motion for Post-Conviction Relief to address the CSL issue on or about October 18, 2013, and a supplemental PCR Brief on March 10, 2014. On or about March 10, 2014, the court sent a letter stating that the Motion would not be heard due to a procedural bar. (App.,33a – 35a). On or about March 11, 2014, Petitioner filed a Motion for reconsideration, but it was never addressed by the court. After that denial, Petitioner was uncertain on how to proceed. The denial letter from Judge DePASCALE stated, "Your first motion for post-conviction relief was denied on October 21, 2004. Almost ten years have passed between the filing of



your first and second post-conviction motions, clearly in excess of the one-year time limit provided in Rule 3:22-12. Therefore, your second motion for post-conviction relief is procedurally barred". Additionally, your motion to suspend community supervision for life is without merit. N.J.S.A. 2C:43-6.4(c) states "[t]he judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later." Petitioner's motion was not filed under the precepts of N.J.S.A. 2C:43-6.4....to be relieved of CSL after serving the required 15 years. Petitioner Anderson moved before the Court because applying CSL to defendants' sentence is illegal as is argued in his petition and the supplemental brief. Whereas petitioner relied on N.J.Ct. Rule 3:21-10(b) (5). Petitioners' continuous supervision from parole and the onerous conditions that were being placed on him and knowing his rights have been and are still being violated, due to the sentence being illegal. Petitioner decided to file another illegal sentence motion with the court. Petitioner retained counsel to file a Motion to correct the illegal imposition of CSL. Subsequently a hearing was held on January 9, 2023, before Judge Nesle A. Rodriguez. On January 26, 2023, the court denied the defendant's Motion. (App., 27a – 32a). On May 9, 2023, counsel filed a reconsideration letter brief to correct the illegal sentence of CSL. The court held a hearing for that motion. That hearing was held on June 1, 2023. The court later that day denied petitioners reconsideration motion. (App., 20a – 26a). Petitioner

proceeded pro se and filed an appeal with the New Jersey Appellate Division. On October 25, 2024, the court issued a written opinion (App., 3a – 19a) and in that decision the court stated, “Remand for correction of defendant's sentence at a sentencing hearing to include CSL is required to comply with N.J.S.A. 2C:43-6.4(a). We disagree with defendant's argument that resentencing would violate the Double Jeopardy Clauses of the federal and State constitutions.” Still the court also noted that, “On the merits of defendant's claim, we agree with his argument that it was improper for the JOC (App., 46a – 50a) to include a CSL term when CSL was not imposed at his sentencing hearing. “In the event of a discrepancy between the court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the sentencing transcript controls and a corrective judgment is to be entered.” *State v. Abril*, 444 N.J. Super. 553, 564 (App. Div. 2016). A remand to correct the discrepancy is the appropriate remedy in such circumstances. see also *State v. Pohlman*, 40 N.J. Super. 416, 423 (App. Div. 1956) (“[W]here there is a conflict between the oral sentence and the written commitment, the former will control if clearly stated and adequately shown, since it is the true source of the sentence . . .”).

Amendment, and by Article I, paragraph 10 of the New Jersey Constitution. See *United States v. Gagnon*, 470 U.S. 522, 526, (1985). In some circumstances that do not involve the confronting of witnesses or evidence against a defendant, the right is protected by the due process clauses of the Fifth and Fourteenth Amendments. *Gagnon*, supra, 470 U.S. at 526. The right is so vital to the proper and fair functioning of the criminal justice system that it is protected by a specific rule. New Jersey's Rule 3:16(b) provides in pertinent part: "The defendant shall be present at every stage of the trial, including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, unless otherwise provided by Rule. Nothing in this Rule, however, shall prevent a defendant from waiving the right to be present at trial. A waiver may be found either from (a) the defendant's express written or oral waiver placed on the record, or (b) the defendant's conduct evidencing a knowing, voluntary, and unjustified absence after (1) the defendant has received actual notice in court or has signed a written acknowledgment of the trial date, or (2) trial has commenced in defendant's presence." Petitioner Anderson was sentenced on February 13, 1998. During that sentencing hearing, petitioner Anderson was present and did speak at his sentence. The court sentenced Anderson to a 20-year term with a parole disqualifier of 10 years. This sentencing term was to be served in state prison. At the end of the hearing, petitioner Anderson was taken into custody and began to serve his sentence. At no time, thereafter, was Anderson ever called back before the court for any imposition of any additional

sentence. It wasn't until August 14, 2009, 33 days prior to Petitioner being released from prison, that Petitioner was told by a representative of the New Jersey State Parole Board, that upon release, petitioner will be released on Community Supervision for Life and would have to register under Megan's Law. (App., 36a – 44a). It was here that Petitioner Anderson had first heard of CSL and Megan's Law and was unaware of such. After being released and reporting to parole, Anderson was assigned to a parole officer and was required to sign a form of conditions of parole. In the instance, Judge Jose L. Fuentes, J.S.C.; never sentenced petitioner to CSL, nor was Petitioner ever advised of any sentence called CSL or Megan's Law at any time during pretrial, during trial, or during the sentencing proceedings. In *State v. Pohlman*, 40 N.J. Super. 416, 423 (App. Div. 1956), it shows that "where there is a conflict between the oral sentence and the written commitment, the former will control if clearly stated and adequately shown, since it is the true source of the sentence, instead of the latter which is merely the work of a clerk." 40 N.J. Super. 416, 423 (App. Div. 1956); see also *State v. Abril*, 444 N.J. Super. 553, 564 (App. Div. 2016) ("In the event of a discrepancy between the court's oral pronouncement of sentence and the sentence described in the judgment of conviction, the sentencing transcript controls, and a corrective judgment is to be entered."). In *Wampler*,<sup>2</sup> the United States Supreme Court has approved of the broad rule that "[t]he judgment of the court establishes a defendant's sentence, and that sentence may not be increased by an administrator's

---

<sup>2</sup> *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936).

amendment.” *Earley*, 451 F.3d at 75 (citing *Greene v. United States*, 358 U.S. 326, 329 (1959) and *Johnson v. Mabry*, 602 F.2d 167, 170 (8th Cir. 1979).

The United States Supreme Court has long recognized that a defendant’s presence at critical stages of criminal proceedings, particularly during sentencing, is indispensable to the fairness and integrity of the adjudicative process. In *Sanders v. United States*, 411 U.S. 711 (1973), the Court emphasized that the defendant must be afforded a meaningful opportunity to participate in the proceedings, a principle that is equally applicable in the context of sentencing. This right is a necessary component of due process under the Fifth Amendment, as later extended to the states through the Fourteenth Amendment.

In *State v. Schubert*, 212 N.J. 295, 309 (2012), The New Jersey State Supreme Court stated, “It is the Legislature, for example, that described community supervision for life as a “special sentence *N.J.S.A. 2C:43–6.4a*. We cannot disregard sentence” to be imposed by the sentencing court. such a clear expression of the intent of the Legislature when it enacted *N.J.S.A. 2C:43–6.4*.” Sentencing is a uniquely judicial responsibility. *People v. Selikoff*, 35 N.Y. 2d 227, 240-241 (1974); *People v. Fuller*, 57 N.Y. 152, 158-159 (1982) (“The court ... alone must impose the sentence ...”); Seventy-seven years ago, the Supreme Court established that the sentence imposed by the sentencing judge is controlling: it is this sentence that constitutes the court’s judgment and authorizes the custody of a defendant. *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936). Speaking for a unanimous Court, Justice Cardozo announced a basic

principle of criminal sentencing: "The only sentencing known to the law is sentence or judgment entered upon the record of the court. Until corrected in a direct proceeding, it says what it was meant to say and this by an irrebuttable presumption." Id. 464. "Any alteration to that sentence, unless made by a judge in a subsequent proceeding, is of no effect." *Earley v. Murray*, 451 F.3d 71, 75 (2d Cir. 2006) ("*Earley I*") emphasis added), Any addition to that sentence not imposed by the judge [is] unlawful." Id. "If, as in *Wampler*, an erroneous order of commitment prepared by the clerk of the court with the court's knowledge cannot alter the sentence imposed by the court, only the judgment of a court, as expressed through the sentence imposed by a judge, has the power to constrain a person's liberty. *Wampler*, 298 U.S. at 464." *Earley I*, 451 F.3d at 75. See also *Sudler v. City of New York*, 689 F.3d 159, 171 (2d Cir. 2012) (administrative authorities have no power to alter a sentence, because the imposition of a sentence is a judicial act; only a judge can do it); *Rivers v. Fisher*, 390 Fed. Appx. 22, 24 (2d Cir. 2010) ("There is no doubt that *River's* constitutional rights were violated when the Department of Corrections administratively imposed a 5-year term of supervised release that was not orally pronounced by the sentencing judge"). Moreover, after imposing sentence in a defendant's presence, the Court cannot thereafter increase the sentence with defendant absent. *Bartone v. United States*, 375 U.S. 52, (1963). Sentencing is a uniquely judicial responsibility. *People v. Selikoff*, 35 N.Y. 227, 240-241 (1974); *People v. Fuller*, 57 N.Y. 152, 158-159 (1982) ("The court ... alone must impose the sentence ..."); *People v. Farrar*, 52 N.Y. 2d 302, 306 (1981) ("The

sentencing function rests primarily with the Judge, whose ultimate obligation is to impose an appropriate sentence."). Because the court is responsible for sentencing, and because "the right to an open court in criminal proceedings ... functions for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, " *Commonwealth v. Lavoie*, 464 Mass. 83, 86 (2013), quoting *Waller v. Georgia*, 467 U.S. 39, 46 (1984), the judicial act of sentencing promotes transparency and provides the defendant with a prompt and definitive statement regarding the consequences of his guilty plea or conviction. As a result, it greatly facilitates a defendant's knowledge of his or her obligation to society, a defendant's decision as to whether to pursue an appeal and the public's understanding of the sentencing process. See *Fine v. Commonwealth*, 312 Mass. 252,256 (1942) ("Sentence is final judgment in a criminal case, and that is the end of the case, apart from statutory provisions, so far as concerns the usual and ordinary control of the court"). *Commonwealth v. McLaughlin*, 431 Mass. 506, 518 (2000) (inherent power of trial judge to stay execution of sentence). Compare *United States v. Richardson*, 925 F.2d at 117 ("We agree that if the executive branch had unilateral power to directly and automatically ratchet up a sentence ... [a] threat to the authority and independence of the judicial branch ...").

In the instance, the Judgment of Conviction was prepared on February 20, 1998, by the court clerk Susan Smith. This was prepared outside of the petitioner's presence and was done 7 days after petitioner was sentenced. Judge Fuentes sentenced petitioner on February 13, 1998, and that sentence

imposed is the true and controlling sentence. The court clerk's mere act of checking off a box indicating Community Supervision for Life (CSL) on the judgment of conviction (JOC), (App., 48a) has resulted in petitioner having to serve a sentence that has been deemed punitive and more onerous than that of just regular parole. The minimum time required to be served on CSL is 15 years, then someone can petition the court to ask to be removed from CSL and Megan's Law. Moreover, the fact that CSL was not part of the orally pronounced sentence, petitioner was unaware of CSL until he was ready to be released from prison. Petitioner was denied the opportunity to challenge CSL nor was petitioner represented by counsel when CSL was added to the JOC. The New Jersey Appellate Court states, petitioner was aware of the imposition of CSL due to the many appeals following his conviction. In the written opinion the court writes, "Although CSL was not mentioned at defendant's sentencing hearing, the JOC entered seven days later included a CSL provision. The court continues by writing, defendant was on notice of the JOC, which was the subject of his direct appeal and first PCR petition. In both instances, defendant challenged aspects of his sentence, but not the CSL provision in the JOC." In addition, the court writes that the instance is distinguishable from *State v. Schubert*, 212 N.J. 295 (2012). In *Schubert*, prior to the plea hearing *Schubert* executed the plea form and two additional forms containing questions, one titled "For Sexual Offenses" and the other titled "Additional Questions for Certain Sexual Offenses." These forms are acknowledgment of someone pleading guilty and being made aware of the requirements of Megan's



Law and community supervision for life. Even though in *Schubert* the court did not pronounce Megan's Law or CSL at the time of sentencing, *Schubert* had notice of these conditions when he signed the forms and new of them. Here in petitioner Anderson's case, although it was a trial and not a plea, there was never any mention of Megan's law or CSL at any time before trial, after trial, or at the time of sentencing. Any appeals or post convictions taken by defendant or appointed counsel is not a substitute for where defendant has been notified of CSL being applied to the JOC even if that JOC was part of any appeals filed. Since defendants are not present when the written judgment is entered, the oral pronouncement is controlling. *United States v. Diggles*, 957 F.3d 551 (5th Cir. 2020).

## **II. THE ILLICIT ADDITION OF CSL AFTER COMPLETION OF THE CUSTODIAL TERM VIOLATES DOUBLE JEOPARDY PRINCIPLES.**

The fundamental principle governing criminal sentencing is that the oral sentence pronounced on the courthouse floor is the definitive judicial act that constitutes the defendant's sentence. As held in *Bartone v. United States*, 375 U.S. 52 (1963), the "sentence is a uniquely judicial act," and its oral pronouncement has irrevocable binding authority as to the extent and nature of the punishment imposed. The common-law principle—that the oral sentence controls—provides that any subsequent written judgment or clerical certificate must conform to what was clearly and unambiguously stated in open court.

Indeed, as recognized in *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936), any deviation from the sentence as orally pronounced renders the subsequent written judgment void insofar as it attempts to impose additional punishment. In the present case, the sentencing judge clearly imposed a custodial term during the sentencing proceeding, and the orally pronounced sentence did not include any additional punitive term of Community Supervision for Life (CSL).

The Double Jeopardy Clause of the Fifth Amendment, incorporated against the States by the Fourteenth Amendment, protects a defendant from being subjected to multiple punishments for a single offense. The quintessential guarantee of double jeopardy rests on a defendant's reasonable expectation that once the judicial summary of his sentence is pronounced—in this instance, the oral sentence—that determination finalizes the punishment. The subsequent addition of CSL to the sentence after the defendant has served his custodial term constitutes an impermissible "resentencing" that directly undermines that finality. As the U.S. Supreme Court has emphasized in *Bartone*, "[s]entencing is a uniquely judicial responsibility," and once the sentence has been imposed and actuated, any later modification that increases the deprivation of liberty must be strictly scrutinized under double jeopardy principles.

The defendant, having completed his custodial term in accordance with the orally pronounced sentence, had a legitimate expectation that his punishment was complete. The New Jersey Appellate Court's decision to remand for the erroneous inclusion

of CSL – a term that was not communicated to, nor acknowledged by, the defendant at the time of his sentencing – effectively seeks to re-impose punishment for the same offense after finality has attached. This is analogous to seeking a resentencing in clear defiance of the doctrine of finality which lies at the heart of protection against double jeopardy, as reiterated in *Hill v. United States ex rel. Wampler*.

In *State v. Schubert*, 212 N.J. 295, 305 (Oct 22, 2012), the court writes, citing *State v. Laird*, 25 N.J.298, 305, 135 A.2d 859 (1957). A core principle of “the jurisprudence of England and America ... is that no man can be twice lawfully punished for the same offense.” *Ibid.* (quoting *Ex parte Lange*, 85 U.S.163, (1874)). The court further recognizes that, N.J. Ct. Rule 3:21–10, “was not designed to authorize an enlargement of the punishment after the sentence imposed had been satisfied and the defendant discharged.” On September 18, 2009, petitioner Anderson completed his sentence and was discharged from custody from the department of corrections. (App., 45a) Final Discharge by Reason of The Expiration of His Maximum Sentence. By ordering a remand to insert the CSL term, the New Jersey Appellate Court is, in effect, authorizing a resurrection of punitive proceedings long concluded. The remand order, which seeks to alter the finality of the sentenced custodial term by introducing a new punitive element – CSL – constitutes an impermissible alteration to a finalized sentence. Once the defendant has served the term imposed by the trial court’s unequivocal oral pronouncement, any judicial attempt to impose an additional sanction based on administrative or

clerical modifications breaches the prohibition against multiple punishments for the same offense.

Moreover, by permitting post hoc administrative corrections that alter the scope of a sentence, the remand order ignores established constitutional principles and extensive case law, which demand that the judicial determination of a sentence be final upon its effective execution. As noted in *Bartone* and further articulated in *Hill v. United States ex rel. Wampler*, the fundamental fairness of the sentencing process requires that any modifications increase a defendant's punishment only through a proper, contemporaneous judicial determination—with the defendant present and afforded full opportunity to be heard. From when the JOC was prepared until petitioners' completion of his sentence, petitioner was never called back before the completion of that sentence to orally impose CSL. Here, the administrative court clerk included an additional punishment of CSL on petitioners JOC which was not orally pronounced at the time of sentencing. Moreover, the remand order itself, which seeks to alter a final sentence by inserting CSL into the defendant's punishment record unconstitutionally reopens the sentencing process, thereby subjecting the defendant to multiple punishments for the same offense. Accordingly, the defendant respectfully requests that this Court recognize and remedy these constitutional violations that impinge on double jeopardy principles. .

## REASONS FOR GRANTING THE PETITION

Petitioner respectfully requests that this Court grant the petition for writ of certiorari pursuant to Rule 10, as the present case raises issues of national import and involves clear federal constitutional questions. In particular, the case presents a circuit split and disagreement among the courts regarding the controlling nature of an orally pronounced sentence versus the later written judgment of conviction. While established precedent has long held that an unambiguous oral sentence control—see, e.g., *United States v. Marquez*, 506 F.2d 620 (2d Cir.)—the New Jersey Appellate Division’s decision in this matter validates a written judgment that modifies that oral sentence by adding a harsher punitive term (Community Supervision for Life) after the defendant’s absence. This departure from the controlling common-law principle not only raises a significant conflict with lower courts, but it also impacts the nationwide standard of procedural fairness in sentencing, thereby warranting review by this Court. In *United States v. Villano*, 816 F.2d 1448 (10<sup>th</sup> Cir. 1987), the Tenth Circuit held that, “an unambiguous oral pronouncement of sentence controls when there is a conflict with the written judgement and commitment order.” *Id* at 1450. Judge Logan’s concurrence underscored the right to be present at sentencing and the constitutional infirmity of letting a clerk’s later JOC supersede the judge’s spoken sentence. The decision in *United States v. Diggles*, 957 F.3d 551, 556-57 (5<sup>th</sup> Cir. 2020), the Fifth Circuit reaffirmed that a sentencing court’s spoken pronouncement is the definitive act of sentencing, and

that post-sentencing administrative additions exceed judicial authority and violated due process.

New Jersey jurisprudence echoes the "oral controls" principle but only imperfectly. In *State v. Rivers*, 252 N.J. Super. 142 (App. Div. 1991), the Appellate Division declared that any conflict must be corrected in favor of the transcript of the oral pronouncement. Yet in the decision below, the same court validated an out-of-court JOC amendment that added Community Supervision for Life without Petitioner's presence. Similarly, while the New Jersey Supreme Court in *State v. Schubert*, 212 N.J. 295 (2012), reiterated that special sentences must be "imposed by the sentencing court," it did not confront the procedural void when a clerk absent the defendant incorporates such a term post hoc. This split undermines the uniform administration of federal criminal justice. A defendant in Denver Colorado may see his oral sentence honored, while one in Bayonne New Jersey may endure a harsher written judgment entered outside his presence. Such divergent treatment offends the Due Process Clause by depriving defendants of the right to a transparent, prompt, and authoritative sentencing determination. It also compromises the Sixth Amendment right to be present at "critical stages" of punishment, as recognized in *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

The petition further implicates critical federal constitutional questions under the Fifth, Sixth, and Fourteenth Amendments. Petitioner's due process rights are at issue because the added term of CSL occurred in his absence—an essential stage of the sentencing process that, under our jurisprudence,

must be conducted in the presence of the defendant to ensure fairness and transparency. The practice of preparing the Judgment of Conviction outside the defendant's presence and subsequently imposing a harsher penalty contravenes the safeguarding principles set forth in *Bartone v. United States*, 375 U.S. 52, (1963), as well as in numerous Supreme Court decisions emphasizing that the defendant must be present at all critical stages of the sentencing process. Moreover, the imposition of an additional punitive term after the oral sentence—without an unequivocal waiver—raises serious double jeopardy concerns, as it effectively increases the punishment post-sentencing, contrary to longstanding constitutional safeguards.

The issues presented herein are not only pivotal to Petitioner's rights but also bear significant nationwide importance. Ensuring that sentencing adheres strictly to the controlling oral pronouncement is fundamental to maintaining the integrity of the judicial process and the public's confidence in the fairness of criminal adjudication. Moreover, the circuit split regarding whether the oral sentence or the subsequent written commitment should prevail further underscores the need for this Court's review to achieve uniformity in the application of these essential principles.

For the foregoing reasons, and in light of the established standards embodied in Rule 10 and the seminal cases such as *United States v. Marquez*, 506 F.2d 620 (2d Cir. 1974), and *Bartone v. United States*, 375 U.S. 52, (1963), this Court should grant the petition for certiorari to resolve the conflicting interpretations and to ensure that constitutional due

process and double jeopardy protections are uniformly applied.

### **CONCLUSION**

This Court should grant the petition for writ of certiorari.

Respectfully Submitted,

FRANK J. ANDERSON JR.,  
193 West 48<sup>th</sup> Street  
Bayonne, NJ 07002  
908-249-5942