

SUPREME COURT OF THE UNITED STATES

No. 24-1279

FRANK J. ANDERSON JR., Petitioner

v.

STATE OF NEW JERSEY, Respondent

PETITION FOR REHEARING OF THE DENIAL OF A WRIT OF CERTIORARI pursuant to Supreme Court Rule 44.2

Filed October 31, 2025

QUESTION PRESENTED

Whether the oral pronouncement of sentence in open court controls over a later written judgment of conviction, and whether enlargement of a sentence after oral pronouncement, without the defendant's presence, violates due process.

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TABLE OF AUTHORITIES

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STATEMENT OF THE CASE

Petitioner was convicted in Hudson County, New Jersey, under Indictment No. 95-12-2232. At sentencing, the trial court pronounced an oral sentence of a fixed term of incarceration and did

not mention Community Supervision for Life (CSL). Years later, the written Judgment of Conviction (JOC) added CSL. Petitioner was not present when the JOC was altered and did not learn of CSL until his release from custody more than a decade later.

On appeal, the Appellate Division acknowledged that the oral sentence controls but nevertheless remanded for resentencing instead of correcting the JOC. The New Jersey Supreme Court denied certification, and this Court denied the Petition for Writ of Certiorari on October 6, 2025.

Since that denial, multiple federal and state courts have issued decisions confirming that the oral sentence is controlling and that any enlargement after oral pronouncement without the defendant's presence is void. Petitioner invokes Rule 44.2 because these constitute intervening circumstances of substantial or controlling effect.

REASONS FOR REHEARING

I. The oral pronouncement of sentence controls over the written judgment of conviction, and enlargement of sentence after oral pronouncement in the defendant's absence violates due process.

The oral sentence pronounced in open court is the sentence of the court. *Pollard v. United States*, 352 U.S. 354 (1957); *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936). Once imposed, its terms cannot be enlarged without the defendant's presence. Here, the oral sentence contained no reference to CSL. The later written JOC added CSL after Petitioner's absence and without counsel. That alteration violates due process and the right to be present at sentencing. *United States v. Montoya*, No. 21-50129 (9th Cir. Sept. 13, 2023); *United States v. Quezada-Atayde*, 148 F.4th 360 (5th Cir. Aug. 6, 2025); *Matter of Kroll*, 2025 MT 218 (Mont. Sept. 29, 2025) each confirm that when a written judgment differs from the oral pronouncement, the oral pronouncement controls, and any unpronounced term must be vacated.

II. The New Jersey Appellate Division's inconsistent application of this rule demonstrates the need for clarification.

The same panel that decided Petitioner's case later recognized the rule but applied it differently in *Hawkins* and other cases. Such inconsistency in materially similar circumstances undermines uniform application of constitutional law and creates a conflict warranting rehearing.

III. Community Supervision for Life was never orally imposed and was disclosed years later.

Petitioner was not advised of CSL terms at sentencing. He learned of them thirteen years later upon release, when told by corrections officials without counsel present. Such post-hoc imposition is invalid under *Pollard* and *Wampler* and is in tension with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which limits judicial enhancement of punishment based on facts not found by a jury or admitted by the defendant. Here, no fact supporting CSL was adjudicated or pronounced.

IV. Recent decisions confirm the constitutional requirement of presence at sentencing and oral pronouncement control.

Across the circuits and states, courts have reaffirmed this principle: *Montoya* (9th Cir. 2023) – oral controls discretionary conditions; *Quezada-Atayde* (5th Cir. 2025) – written judgment

cannot expand oral sentence; Kroll (Mont. 2025) – adding conditions in writing without presence is sentencing in absentia. These intervening decisions constitute circumstances of substantial and controlling effect under Rule 44.2.

V. Relief is necessary to preserve integrity of the sentencing process.

The oral-pronouncement rule protects transparency and ensures that punishment is known to all parties at sentencing. New Jersey courts' divergence from this principle warrants this Court's review to preserve uniformity and constitutional integrity.

CONCLUSION AND PRAYER FOR RELIEF

Petitioner respectfully prays that this Court grant rehearing of the denial of his Petition for Writ of Certiorari. Rehearing is warranted because intervening federal and state decisions, and New Jersey's inconsistent application of the law, have a substantial and controlling effect on the question presented.

/s/ Frank J. Anderson Jr.

Petitioner Pro Se

193 West 48th Street

Bayonne, NJ 07002

Dated: October 31, 2025

RULE 44.2 CERTIFICATE OF COMPLIANCE AND GOOD FAITH

Pursuant to Supreme Court Rules 44.2 and 33, Petitioner certifies that this petition is presented in good faith and not for delay; that it is limited to intervening circumstances of substantial or controlling effect; and that it contains fewer than 3,000 words, excluding the parts exempted by Rule 33.1(d).

/s/ Frank J. Anderson Jr.

Petitioner Pro Se

Dated: October 31, 2025

**APPENDIX TO PETITION FOR REHEARING UNDER SUPREME COURT
RULE 44.2**

Exhibit A — Letter of Denial from the Clerk of the Supreme Court

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 8, 2025

Mr. Frank J. Anderson
193 W. 48th Street
Bayonne, NJ 07002

Re: Frank J. Anderson, Jr.
v. New Jersey
No. 24-1279

Dear Mr. Anderson:

The Court today entered the following order in the above-entitled case:
The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk