

No. 25-_____

In the
Supreme Court of the United States

Israel Navarro,

Petitioner,

v.

The People of the State of New York,

Respondent.

On Petition for a Writ of Certiorari to
the Supreme Court of the State of New York, Kings County

APPENDIX

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App. 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: 20

-----X
THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER

Ind. No. 623-20

-against-

ISRAEL NAVARRO,

Defendant.

-----X
E. NIKI WARIN, J.:

The defendant moves pursuant to CPL 440.20 to set aside his sentence of thirteen years to life on his plea of guilty to Assault in the Second Degree as a persistent violent felony offender, arguing that the New York State recidivist sentencing provision is unconstitutional in light of the recent United States Supreme Court case of *Erlinger v. United States*, 602 US 821 (2024). The People oppose.

For the reasons set forth below, the defendant's motion is DENIED without a hearing.

STATEMENT OF FACTS

The defendant was indicted on February 6, 2020 and charged with Attempted Murder in the Second Degree and other related charges. The indictment was based on allegations that on January 31, 2020, the defendant attacked his former intimate partner in his apartment, stabbing her approximately forty times in the abdomen, chest, face, neck, and back with a kitchen knife. The complainant fled the apartment and a third party called 911. The defendant was arrested at the scene and later admitted to stabbing her after they had an argument. The complainant underwent emergency surgery as a result of the attack.

Appendix A

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After extensive plea negotiations and pre-trial proceedings over the next two years, the defendant pled guilty to the lesser charge of Assault in the Second Degree with a promised sentence of thirteen years to life. The People stated the reduced offer took into account the defendant's age – he was 65 years old at the time of the incident – and the wishes of his ex-girlfriend, the complainant (April 12, 2022 Tr., pg. 8).¹ On April 12, 2022, the defendant then entered a guilty plea to Assault in the Second Degree, which was accepted by the Court.

At the defendant's plea to a violent felony, it was not disputed that the defendant must be sentenced as a persistent violent felony offender. The predicate statement filed by the People listed two prior violent felony convictions; one for Manslaughter in the First degree where he was sentenced in 1980 to a term of five to fifteen years; and a second one, this time for Murder in the Second Degree where he was sentenced in 1988 to a term of twenty five years to life. As required by statute, the predicate statement also listed the dates of his incarceration and release; the defendant was incarcerated for the first sentence on December 11, 1980 and released on August 25, 1986; he was then re-incarcerated for the second sentence on January 7, 1987 and released on August 13, 2019.

At the plea, the defendant was arraigned on the predicate statement. The court clerk stated to the defendant:

You may admit, deny or stand mute as to whether you are the person who was convicted and sentenced on those violent felonies as recited in the statement.

¹The instant petition also contains details regarding the defendant's age and various age-related medical conditions (i.e. cataracts, poor hearing, osteoarthritis), and his minimal disciplinary infractions during his sentence so far. While these considerations are not legally relevant to the instant petition, the Court notes that his age was already weighed as mitigation prior to the acceptance of the plea and imposition of the sentence.

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If you wish to controvert, that is contest, dispute or deny that statement on any grounds, including a violation of your constitutional rights, you must state the grounds and you'll be entitled to a hearing before this Court without a jury

(*Id.*, pg. 23). The defendant acknowledged that he had received a copy of the statement and had discussed it with his attorney. The clerk then asked the defendant “Do you admit that you are the person who was convicted of those felonies?” The defendant stated “yes.” The clerk asked the defendant “Do you wish to challenge the constitutionality of the prior convictions?” The defendant responded “no.” (*Id.*, pg. 24). The Court then adjudicated the defendant a persistent violent felony offender (*Id.*).

The defendant appealed his conviction and sentence (*see People v. Navarro*, 233 AD3d 803 [2d Dept 2024]). On appeal, the Second Department found based on a totality of the circumstances the defendant did not knowingly voluntarily, and intelligently waive his right to appeal, without specifying the basis, citing to *People v. Thomas*, (34 NY3d 545 [2019]) and *People v. Lopez*, (6 NY3d 248 [2006]) (*Id.*). The Second Department held the sentence imposed was not excessive and his plea of guilty was knowingly, voluntarily, and intelligently entered (*Id.*) The defendant’s application for leave to appeal to the Court of Appeals was denied (*People v. Navarro*, 43 NY3d 1047 [2025]).

DISCUSSION

Before addressing the question of whether *Erlinger* calls into question the constitutionality of the defendant’s sentence, the Court must first address whether the defendant waived his right to raise this challenge by failing to contest his predicate status and/or the relevant tolling periods when he was arraigned on the predicate statement. (*see* People’s Opp. at 21-23).

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A. Defendant's Arraignment as a Predicate Felony Offender Did Not Constitute a Waiver

A “persistent violent felony offender” stands convicted of a violent felony offense and has two or more prior violent felony convictions, where the sentences for those earlier violent convictions were imposed not more than ten years prior to the commission of the violent felony offense (PL 70.08[1]). In determining the ten year period, “any period of time during which the person was incarcerated for any reason between the time of the commission of the previous felony and the time of the commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served” (PL 70.04[1][b][v]).

The required procedure for adjudicating a defendant as a persistent violent felony offender is set forth in CPL 400.15 and 400.16, including the necessary contents of the predicate statement, and the colloquy during the arraignment (*see* CPL 400.16[2]; CPL 400.15[2]). The statute requires the defendant receive a copy of the predicate statement and that the defendant is asked on the record “whether he...wishes to controvert any allegation made therein...[and if so] he must specify the particular allegation or allegations he wishes to controvert” (CPL 400.15[3]). This provision also states that “[u]ncontroverted allegations in the statement shall be deemed admitted by the defendant” (*Id.*).

The People argue the defendant “effectively admitted” to the relevant periods of incarceration for tolling purposes when he was arraigned as a predicate felon (People’s Opp at pg. 19). The defendant asserts his silence as to the relevant periods of incarceration did not constitute

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an admission of the tolling period, nor waiver of any subsequent *Erlinger* challenge, relying on *People v. Jurgins*, (26 NY3d 607 [2015]).²

In *Jurgins*, the defendant moved under CPL 440.20 to set aside his sentence on the grounds that his prior out of state conviction did not qualify him a second felony offender (*Id.* at 611). During the arraignment on his predicate statement, the defendant was asked two questions: if he wished to challenge the predicate statement on the grounds that he was not the person named therein; or that it was unconstitutionally obtained; and he responded in the negative to both and did not raise any other challenge. The People argued that the defendant had therefore waived a later challenge to his predicate status, but the *Jurgins* court disagreed, finding the “defendant’s statements that he was not challenging the predicate felony information on the two grounds delineated by the court clerk did not constitute a waiver of other, unmentioned grounds” (*Id.*). The Court of Appeals further stated that although CPL 400.21(3) includes language that any unchallenged allegations are deemed admitted, “for that rule to apply, the court must ask the defendant if he or she ‘wishes to controvert *any allegation made*’ in the predicate felony statement” (*Id.*, Fn. 1 [emphasis added]; *see also People v. Wilcher*, 162 AD3d 466 [1st Dept 2018][“[t]he court did not adequately adhere to the statutory requirement that it ask the defendant if he wished to ‘controvert any allegation made’ in the predicate felony statement, which also requires that it provide defendant a clear opportunity to do so in response to that particular question”].³

² The People do not address *Jurgins*, relying instead on their argument that the colloquy here satisfied the *Apprendi* requirements as an admission by the defendant (*see People’s Opp.* at 19-21; citing to CPL 400.16(2) and 400.15(2), and *People v. Rivera*, (Sup Ct, Kings County, April 25, 2025, King J., IND-1453-05))

³ The *Jurgins* court considered the question of waiver on the appeal of the sentencing court’s denial of a 440.20, noting that a 440.20 motion is “the proper vehicle” to challenge “an alleged error in sentencing a defendant as a second or third felony offender [and] the decision to consider certain prior convictions as predicates” (26 NY3d at 612). Conversely, a similar challenge on direct appeal may be waived or may fail for lack of preservation if not argued at sentencing (*Id.*; *see e.g. People v. Hernandez*, -- NY3d --, 2025 Slip Op 99094[2025] (declining to address *Erlinger* claim on direct appeal when defendant did not contest his criminal history and/or relevant periods of incarceration at sentencing)).

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In this case, the defendant was advised at the beginning of the colloquy that he must state the grounds for a challenge to the statement “on *any* grounds.” However, he was only asked the same two questions that the Court of Appeals found insufficient to cover all such grounds in *Jurgins*; namely, if he admitted he was the person convicted of the prior felonies and if he wished to challenge the constitutionality of the prior convictions. Significantly, he was not asked if he wished to controvert *any* allegation within the predicate statement – a question that may encompass a challenge to the relevant periods of incarceration and any tolling of the ten-year period (*see e.g.* *People v. Smith*, 86 Misc3d 1211[A] [Sup Ct Bronx County 2025][finding defendant relinquished subsequent challenge under *Erlinger* where his prior convictions and periods of incarceration were placed on the record and he was directly asked if he wished to challenge the statement “in any way”]; *People v. Sabater*, 86 Misc3d 181, 186, and ftn. 4 [Sup Ct NY County 2024][defendant deemed to have admitted dates of incarceration relevant to tolling where asked whether he wanted to dispute “any” of the allegations in the predicate statement and said no]; *cf. People v. Hernandez*, -- Misc3d --, 2025 NY Slip Op 25135 [Sup Ct NY County 2025]).

On this record, the Court finds that the defendant did not “effectively admit” to the accuracy of the relevant tolling periods, nor can his failure to challenge the tolling provisions when he was not directly asked to raise *any* other challenge constitute a waiver under *Jurgins*. Accordingly, the Court will address the defendant’s claims on the merits.

B. The *Erlinger* Decision

In *Erlinger*, the Supreme Court addressed the issue of judicial fact-finding at sentencing authorized under the Armed Career Criminal Act (hereinafter “ACCA”) (18 USC Sec 924[e]). The ACCA requires a mandatory minimum sentence and greatly increases the maximum sentence available if the sentencing court finds the defendant has sustained three prior convictions for a

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violent felony and/or serious drug offense that are “committed on occasions different from one another” (*Id.*). At the sentencing hearing in *Erlinger*, the prosecution sought an increased sentence based on burglaries committed twenty-six years earlier when the defendant was eighteen years old (*Erlinger*, 602 US at 827). The court determined that the defendant’s burglarizing of a pizzeria, a sporting goods store, and two other restaurants “occurred on different occasions” rather than occurring “during a single episode” and as a result, the defendant was sentenced under the ACCA to a mandatory minimum term of fifteen years (*Id.*).

The Supreme Court characterized the sentencing court’s “different occasions” inquiry as a “fact laden task,” that would include an analysis of whether the crimes were committed close in time, if their locations were in proximity, and whether “the offenses [were] similar or intertwined in purpose or in character” (*Erlinger*, 602 US at 834 quoting *Wooden v. United States*, 595 US 360, 369 [2022]). Such an analysis may require a “qualitative assessment about the character and relationship of the offenses” and “whether the crimes shared a common scheme or purpose” (*Id.* at 841 [internal citations omitted]). The Supreme Court held that under the rule announced in *Apprendi v. New Jersey* (530 US 466 [2000]), such an inquiry must be found beyond a reasonable doubt by a jury of one’s peers (*Erlinger*, 602 US at 834, 835). In *Apprendi*, the Supreme Court found a New Jersey hate crime statute violated the defendant’s right to a trial by jury because it permitted a longer term of imprisonment if the trial judge found by a preponderance of the evidence “that the defendant in committing the crime *acted with a purpose* to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity” (*Id.* at 469 [internal citations omitted] [emphasis added]). The *Erlinger* court recognized its decision as an application of the *Apprendi* rule, characterizing it as “as nearly on all fours with *Apprendi* … as any we might imagine” (*Id.* at 835). It also stated “[w]hile recognizing Mr. Erlinger

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was entitled to have a jury to resolve ACCA's occasions inquiry unanimously and beyond a reasonable doubt, we decide no more than that" (*Id.*).

The *Erlinger* decision expressly noted that the "different occasions" inquiry under ACCA did not fall within the exception defined in *Almendarez-Torres v. United States* (523 US 224 [1998]), a precedent which allows for a sentencing judge to find "the fact of a prior conviction" without violating a defendant's constitutional right to jury fact-finding, even when it will result in an increased sentence.⁴ Rather, the "different occasions" inquiry in *Erlinger* was distinct from *Almendarez-Torres* because the sentencing judge had "assume[d] for itself the responsibility of deciding whether [the defendant's] past offenses differed enough in time, location, character, and purpose to have transpired on different occasions" and therefore "did more than *Almandarez-Torres* allows" (*Erlinger*, at 838, 840). Similarly, the *Apprendi* court distinguished the inquiry required under the New Jersey hate crime statute from the permissible judicial determination in *Almendarez-Torres* stating that "[w]hereas recidivism does not relate to the commission of the offense itself, New Jersey's biased purpose inquiry goes precisely to *what happened in the commission of the offense*" (*Id.* at 469 [internal citations omitted] [emphasis added]).

C. *Erlinger* does not Render PL 70.08 Unconstitutional

There have been a spate of decisions by New York trial courts that have concluded a determination by the sentencing court on the applicable tolling for a predicate violent felony offender does not run afoul of the *Erlinger* decision (see *People v. Rivera*, 85 Misc3d 1032 [Sup Ct NY County 2024]; *People v. Jackson*, 86 Misc3d 411 [Sup Ct Queens County 2025]; *People v.*

⁴ The *Almendarez-Torres* court held a jury was not required to determine the fact of a defendant's prior convictions to aggravated felonies beyond a reasonable doubt because of "the distinct nature of the issue and the fact that recidivism does not relate to the commission of the offense, but goes to the punishment only" (*Id.* at 244 quoting *Oyler v. Boles*, 368 US 488, 452 [1962] [emphasis in original]).

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Lawton, 86 Misc3d 1210[A] [Sup Ct Kings County 2025]; *People v. Vickers*, -- Misc3d -- 2025 NY Slip Op 25157 [Sup Ct Bronx County 2025]).⁵ Like these courts, this Court is persuaded that the *Erlinger* decision applied the principles of *Apprendi* to strike down the judicial factfinding required for the ACCA “different occasions” inquiry - it did not announce a new rule (*Rivera*, 85 Misc3d at 1036; *Vickers*, -- Misc3d -- at 3). The *Erlinger* decision does not, therefore, undermine the existing authoritative precedent that the New York persistent violent felony offender statute passes muster under the *Apprendi* rule (see *Jackson*, at 906-908 (collecting cases); e.g. *People v. Bell*, 15 NY3d 935 [2010]; *People v. Sweeper*, 15 NY3d 925 [2010]; *People v. Frazier*, 16 NY3d 36 [2010]).

Further, this Court agrees that the nature of the inquiry for the tolling provision is substantially different than the ACCA’s “different occasions” determination in *Erlinger*, and is instead more akin to the mundane “fact of a prior conviction” determination upheld in *Almanderez-Torres* (e.g. *Jackson*, 86 Misc3d at 421 [the ten year tolling “involves no exercise of discretionary judgment by the court, and relate neither to the manner and circumstances of the commission of the crime, nor to the character and background of the defendant”]; *Rivera*, 85 Misc3d at 1037-1038 [finding “no logical distinction – certainly not one that would trigger the constitutional right to a jury trial – between a judicial finding of the fact of a prior conviction which can be made by the judge without controversy – and the fact of a prior incarceration and the relevant dates which triggers the tolling provision...the remaining tolling provision calculus is just a bit of arithmetic, which is not a finding of fact at all”]; *Vickers* at 3 [the ten year tolling “only necessitates a

⁵ The Court recognizes that this list is not complete, and further, that multiple trial courts have also come to the opposite conclusion (compare *People v. Lopez*, 85 Misc3d 171 [Sup Ct NY County 2024]; *People v. Perry*, 85 Misc3d 982 [Sup Ct Kings County 2024]; *People v. Rodney*, 85 Misc3d 852 [Sup Ct NY County 2024]; *People v. Taylor*, 86 Misc3d 263 [Sup Ct Nassau County 2024]).

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mechanical ‘*quantitative*’ finding based on an *objective* numerical calculation”] [emphasis in original]).

The Court agrees that identifying the period of time the defendant spent incarcerated on his prior convictions from the predicate statement is readily distinguished from the substantive, qualitative, and discretionary inquiry by the sentencing court in *Erlinger* into the defendant’s behavior in previous offenses and the manner in which the offenses were committed (602 US at 840). As set forth in *Jackson*, “[t]he date that a Defendant entered or was discharged from a correctional facility to serve a sentence, like the date that a conviction occurred, has nothing to do with the manner in which the underlying offense was committed” (86 Misc3d at 420).

In this case, the Court made no determination as to defendant’s underlying intent or the manner in which the predicate offenses were committed. The defendant’s status as a predicate violent felony offender was determined by confirming the previous convictions were for violent felonies and calculating the time excluded from the ten-year tolling period due to the defendant’s incarceration on the prior sentences for Manslaughter in the First Degree and Murder in the Second Degree, facts that were apparent from the predicate statement.⁶

Therefore, the Court finds that the defendant was not deprived of his right to a jury by the calculation of the tolling provision of PL 70.04(b) that resulted in an enhanced sentence under New York’s recidivist violent felony sentencing scheme.

⁶ Indeed, any calculation of the tolling provision was particularly non-controversial in this case: the defendant was re-incarcerated for murder less than five months after his release from serving his manslaughter sentence; and the instant offense occurred less than six months after the defendant’s release from his incarceration for his murder conviction.

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Conclusion

Accordingly, the Court DENIES without a hearing the defendant's motion to set aside his sentence as illegally imposed pursuant to *Erlinger* and CPL 440.20.

Dated: August 18, 2025
Brooklyn, New York

ENTER:



E. Niki Warin

E. Niki Warin, A.S.C.J.

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Supreme Court of the State of New York Appellate Division: Second Judicial Department

M308314
JR/

VALERIE BRATHWAITE NELSON, J.

2025-10446

DECISION & ORDER ON APPLICATION

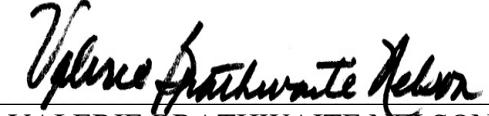
The People, etc., plaintiff,
v Israel Navarro, defendant.

(Ind. No. 623/2020)

Application by the defendant pursuant to CPL 450.15 and 460.15 for a certificate granting leave to appeal to this Court from an order of the Supreme Court, Kings County, dated August 18, 2025, which has been referred to me for determination.

Upon the papers filed in support of the application and the papers filed in opposition thereto, it is

ORDERED that the application is denied.



VALERIE BRATHWAITE NELSON
Associate Justice

October 1, 2025

Appendix B

PEOPLE v NAVARRO, ISRAEL

App. 13

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM
THE PEOPLE OF THE STATE OF NEW YORK,

v.

ISRAEL NAVARRO,
Defendant.

NOTICE OF MOTION TO SET
ASIDE SENTENCE

Ind. No. 623/20

PLEASE TAKE NOTICE that, upon the supporting affirmation of Sylvia Lara Altreuter, Esq., the accompanying exhibits, and memorandum of law, Israel Navarro will move this Court on April 14, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, for an order setting aside his sentence pursuant to C.P.L. § 440.20.

Dated: New York, New York
March 24, 2025

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Appendix C

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OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
28 Liberty Street, 16th Floor
New York, New York 10005
Attention: Managing Attorney's Office

App. 15

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM
THE PEOPLE OF THE STATE OF NEW YORK,

v.

ISRAEL NAVARRO,

Defendant.

Ind. No. 623/20

MEMORANDUM OF LAW IN SUPPORT OF ISRAEL NAVARRO'S MOTION TO SET ASIDE HIS SENTENCE PURSUANT TO C.P.L. § 440.20

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PRELIMINARY STATEMENT

This Court sentenced Israel Navarro as a persistent violent felony offender on May 4, 2022. His predicate status was premised on a 1980 first-degree manslaughter conviction and a 1988 second-degree murder conviction, both of which were purportedly within the ten-year tolling period set forth in Penal Law § 70.04(1)(b)(iv) by virtue of Mr. Navarro's incarceration following those convictions. When he was arraigned as a predicate, Mr. Navarro was expressly told he did not have the right to contest his predicate status before a jury of his peers. As several New York courts have held following the U.S. Supreme Court's decision in Erlinger v. United States, 602 U.S. 821 (2024), this is incorrect—Mr. Navarro had the right to have a jury decide the facts underlying his predicate status, namely, how long he was incarcerated. Because current law prohibits this Court from convening a jury to determine how long Mr. Navarro was actually incarcerated, and thus whether his convictions were within the ten-year tolling period, the persistent violent felony offender statute is unconstitutional. Accordingly, Mr. Navarro's sentence is illegal and must be vacated.

Mr. Navarro is now seventy years old, and his health is failing. Incarcerated at Auburn Correctional Facility, he is going blind and deaf, and he is debilitated by osteoarthritis in his joints. He wears a complete set of dentures and still experiences side effects from three COVID-19 infections from when he detained at Rikers Island. Because he is already serving a sentence of twenty-five years to life, a resentence here will only serve to make him eligible to go before the parole board sooner, at which point the parole board can evaluate whether Mr. Navarro should be released.

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STATEMENT OF FACTS

Israel Navarro was charged on January 31, 2020, after he stabbed his then-girlfriend. Altreuter Aff. ¶ 3.¹ He was remanded to Rikers Island, and he pleaded guilty to second-degree assault (Penal Law § 120.05(2)) on April 12, 2022. Id. ¶¶ 3–4.

At his plea, this Court arraigned Mr. Navarro as a persistent violent felony offender. Id. Ex. 1. To begin, the Court recited certain allegations in the predicate felony statement, namely, that Mr. Navarro was convicted on September 22, 1980, of first-degree manslaughter and on February 8, 1988, of second-degree murder. Id. Ex. 1, at 22–23. The Court then explained Mr. Navarro could “admit, deny or stand mute as to whether” he was the person named in the predicate statement. Id. Ex. 1, at 23. The Court continued: “If you wish to controvert, that is contest, dispute or deny that statement on any grounds, including a violation of your constitutional rights, you must state the grounds and you’ll be entitled to a hearing before this Court without a jury.” Id. (emphasis added).

Next, the Court confirmed with Mr. Navarro he received a copy of the predicate felony statement and had discussed it with his attorney. Id. Ex. 1, at 23–24. In addition to listing the convictions, the predicate statement alleged Mr. Navarro was incarcerated from December 11, 1980, to August 25, 1986; January 7, 1987, to February 15, 1988; and February 16, 1988, to August 13, 2019. Id. Ex. 2. Mr. Navarro admitted he was the person convicted of the felonies listed on the statement and said he did not wish to challenge the constitutionality of either conviction. Id. Ex. 1, at 24. He was not asked about, nor did he address, the tolling alleged in the statement.

On May 4, 2022, Mr. Navarro was sentenced, as a persistent violent felony offender, to thirteen years to life. Id. Ex. 3. His direct appeal from his conviction is pending. Id. ¶ 6.

¹ The supporting affirmation of Sylvia Lara Altreuter, Esq., is referenced as “Altreuter Aff.”

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Mr. Navarro, who is now seventy years old, is incarcerated at Auburn Correctional Facility, and his health is failing. Id. ¶¶ 7–13. He is going deaf and wears hearing aids in both ears. Id. ¶ 8. Even though one of his hearing aids broke in 2023 and has not been repaired, Mr. Navarro works hard to comply with prison rules and instructions—for example, he has hung a sign in his cell that explains to correction officers that he is hard of hearing so they know to speak louder and repeat instructions for him. Id. He is going blind from cataracts, which DOCCS is not treating. Id. ¶ 9. He has severe osteoarthritis in his left shoulder and right knee, which makes it painful for him to walk and move. Id. ¶ 10. After three COVID-19 infections when he was detained at Rikers Island, he suffers from brain fog, fatigue, and memory loss. Id. ¶ 11. Mr. Navarro wears a full set of dentures, suffers from hypertension, an enlarged prostate, and foot edema from diabetes. Id. ¶ 12. Recently, one of his leg veins burst and he had to be rushed to the hospital and then placed on bed rest. Id. At other points in his incarceration, he has been diagnosed with tuberculosis and Hepatitis C. Id. ¶ 13.

Now in prison, serving this sentence on top of his 1988 life sentence, Mr. Navarro has dedicated himself to his sobriety and committed to living peacefully. He finds solace in his faith and reading the Bible. Id. ¶¶ 14, 21. He tries to advocate for others in prison who are unable to advocate for themselves. Id. ¶ 20. He has accrued only two disciplinary tickets, both of which received minor punishments. Id. ¶¶ 16–18, Ex. 6. He listens to the radio, crochets, cooks his own food, and follows the news; he also read voraciously before his eyesight began to fail. Id. ¶ 19. Mr. Navarro is especially dedicated to his work in the industries program, where he assembles wood furniture and receives uniformly positive recommendations from prison officials. Id. ¶ 15, Ex. 5. He is haunted by the horror he caused another person, and he strives every day to be worthy of another chance. See id. ¶¶ 19–21.

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ARGUMENT

Israel Navarro was denied his right to a jury trial with respect to a key fact upon which his enhanced sentence as a persistent violent felony offender rested. Namely, Mr. Navarro was not afforded a jury trial regarding the amount of time his alleged incarceration tolled the ten-year period set forth in Penal Law § 70.04(1)(b)(iv) such that his 1980 and 1988 convictions constituted violent predicate felonies for the purpose of the 2022 sentencing in this case. As a result, this Court must set aside his sentence.

C.P.L. § 440.20(1) provides that “[a]t any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law.” For example, a sentencing court must set aside a persistent violent felony sentence when a defendant is illegally sentenced as a persistent violent felony offender. See, e.g., People v. Kirby, 196 A.D.3d 601, 602 (2d Dep’t 2021); People v. Rivera, 143 A.D.3d 1002, 1003 (2d Dep’t 2016); see also People v. Jurgins, 26 N.Y.3d 607, 614–15 (2015).

The Sixth Amendment provides that, “[i]n all criminal prosecutions, the accused” possesses “the right to a speedy and public trial, by an impartial jury.” U.S. Const. amends. VI, XIV; accord N.Y. Const. art. I § 2. This right to a jury trial was enshrined in the constitution “to prevent oppression by the Government” and to provide “an inestimable safeguard against” “arbitrary action” by courts and prosecutors. Duncan v. Louisiana, 391 U.S. 145, 155–56 (1968).

By virtue of the Due Process Clause, the right to a jury trial encompasses the right of the accused to have a jury determine every element of every offense with which he is charged beyond a reasonable doubt. United States v. Gaudin, 515 U.S. 506, 510 (1995). This encompasses the right to have a jury decide, beyond a reasonable doubt, “any fact” that increases the statutory sentencing range for an offense. Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); Alleyne v. United States,

570 U.S. 99, 103 (2013). This “ensur[es] that the judge’s authority to sentence derives wholly from the jury’s verdict”—“a fundamental reservation of power in our constitutional structure.” Blakely v. Washington, 542 U.S. 296, 306 (2004).

The U.S. Supreme Court recently reaffirmed these principles in Erlinger v. United States, 602 U.S. 821 (2024). In Erlinger, the Court held that “[v]irtually any fact that increases the prescribed range of penalties to which a criminal defendant is exposed must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea).” Id. at 834 (alteration and quotations omitted). Applying that principle to the facts before it, the Court determined the defendant had been denied his constitutional right to a jury trial on certain facts that enhanced his sentence—specifically, whether his prior felonies were committed on different occasions as required by the federal Armed Career Criminal Act (“ACCA”). Id. at 835, 849. The Court suggested that, as a practical matter, in cases when the prosecutor seeks an enhanced sentence, it could bifurcate the proceedings: first, a defendant would be tried on liability; and second, on the facts underlying the sentencing enhancement. Id. at 847–48. The Erlinger Court distinguished these facts from the very narrow exception to this rule established by Almendarez-Torres v. United States, 523 U.S. 224, 239 (1998): when legislation provides for enhanced sentences for people with prior convictions, a sentencing court, rather than a jury, can determine the existence of a prior conviction.²

Here, Mr. Navarro’s sentence was illegally imposed because he was deprived of his constitutional right to have a jury determine the facts that enhanced his sentence under New York’s

² Although Mr. Navarro recognizes that this Court does not have the authority to overrule Almendarez-Torres, he asserts it must be overruled in light of Apprendi and its progeny. See Erlinger, 602 U.S. at 850–51 (Thomas, J., dissenting) (“Each Term, criminal defendants file a flood of petitions specifically presenting this Court with opportunities to reconsider Almendarez-Torres. Today’s decision demonstrates further that it is time for this Court to do its part by granting one of those many petitions and overruling Almendarez-Torres.” (alteration, quotation, and citations omitted)).

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mandatory persistent sentencing statute. Namely, Mr. Navarro was sentenced in 2022 as a persistent violent felony offender based on two predicate convictions, one from 1980 and one from 1988, which the prosecution alleged were within the statutory ten-year period because such period was tolled by three terms of incarceration: from December 11, 1980, to August 25, 1986; from January 7, 1987, to February 15, 1988; and from February 16, 1988, to August 13, 2019. See Altreuter Aff. Ex. 2. However, Mr. Navarro was entitled to have a jury trial on whether he was incarcerated for these periods. Because the statute forecloses this, it is unconstitutional, and Mr. Navarro's sentence must be set aside.

In New York, people convicted of a violent felony and with two more predicate violent felony convictions are eligible to be sentenced a persistent violent felony offender and receive an enhanced sentence. Penal Law § 70.08(1). “[F]or a prior violent felony to be effective as a predicate for enhanced sentencing,” however, “the sentence on the prior felony must have been imposed no more than ten years before the commission of the felony on which the defendant is being sentenced.” People v. Dozier, 78 N.Y.2d 242, 243–44 (1991); Penal Law §§ 70.04(1)(b)(iv), 70.08(1)(a). This ten-year period excludes “any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony.” Penal Law § 70.04(1)(b)(v). In other words, “[t]his ten-year lookback period is extended by any period of incarceration between commission of the prior felony and commission of the current felony.” People v. Hernandez, 2025 WL 515364, at *1 (N.Y. Feb. 18, 2025); Penal Law § 70.04(1)(b)(v).

The amount of time Mr. Navarro was purportedly incarcerated between 1980 and 2019 is a fact that, following the Supreme Court’s ruling in Erlinger and as numerous other trial courts have already found, he was entitled to have determined by a jury of his peers. See People v. Sabater,

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2024 N.Y. Slip Op. 24321 (Sup. Ct., N.Y. Cnty. Dec. 3, 2024) (Mandelbaum, J.); People v. Gardner, 224 N.Y.S.3d 321, 325 (Sup. Ct., Queens Cnty. 2024) (Morris, J.); People v. Perry, 223 N.Y.S.3d 879, 887 (Sup. Ct., Kings Cnty. 2024) (Kitsis, J.); People v. Banks, 218 N.Y.S.3d 519, 527 (Sup. Ct., N.Y. Cnty. 2024) (Mandelbaum, J.); People v. Lopez, 85 Misc. 3d 171, 178–82 (Sup. Ct., N.Y. Cnty. 2024) (Conviser, J.).³

For one, the alleged length of his incarceration increased his sentencing range on this case. As a first violent felony offender standing convicted of a D violent felony, Penal Law § 70.02(1)(c), Mr. Navarro could have been sentenced to between two and seven years in prison to be followed by one-and-a-half to three years of post-release supervision, *id.* §§ 70.02(2)(b), (3)(c), 70.45(2)(e). Instead, he was sentenced as a persistent violent felony offender, which meant the sentencing range was between twelve years to life in prison and twenty-five years to life in prison. *Id.* § 70.08(3)(c).

For another, this fact is not subject to the Almendarez-Torres exception. As the Court explained in Erlinger,

To determine whether [the defendant]’s prior convictions triggered ACCA’s enhanced penalties, the district court had to do more than identify his previous convictions and the legal elements required to sustain them. It had to find that those offenses occurred on at least three separate occasions. And, in doing so, the court did more than Almendarez-Torres allows.

602 U.S. at 838–39. Similarly here, the Court made a finding with respect to the amount of time Mr. Navarro purportedly spent in state or local custody, which is different than taking judicial notice of a prior conviction or its statutory elements. That is, “the court did more than Almendarez-Torres allows.” *Id.* at 839. Accordingly, Mr. Navarro was deprived of his right to have a jury decide the tolling question, and this Court must set aside his sentence.

³ This Court does not need to address the question of retroactivity because Mr. Navarro’s direct appeal is still pending and his conviction is not final. See People v. Rodney, 224 N.Y.S.3d 332, 335–36 (Sup. Ct., N.Y. Cnty. 2024) (Mandelbaum, J.).

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Although Mr. Navarro pleaded guilty and did not dispute that he was the person named in the predicate felony statement or the constitutionality of his prior convictions, he has not waived his right to seek a jury trial on the question of tolling. His “statements that he was not challenging the predicate felony information on the two grounds delineated by the court clerk did not constitute a waiver of other, unmentioned grounds.” Jurgins, 26 N.Y.3d at 611.

These statements also did not constitute a valid waiver of Mr. Navarro’s jury-trial rights. To be valid, a waiver of the right to a trial by jury in a criminal case must be knowing, voluntary, and intelligent. See People v. Duchin, 12 N.Y.2d 351, 353 (1963). “[N]o particular catechism is required to establish the validity of a jury trial waiver,” People v. Smith, 6 N.Y.3d 827, 828 (2006), but the Appellate Division has repeatedly noted that some explanation by the court is required before it can deem a defendant’s waiver valid, People v. Sistrunk, 210 A.D.3d 596, 597 (1st Dep’t 2022) (acknowledging need for “an appropriate colloquy”); People v. Sanchez, 201 A.D.3d 599, 599 (1st Dep’t 2022) (same for “an appropriate inquiry”). Here, although Mr. Navarro was arraigned on the predicate felony statement, he was affirmatively advised that he was not entitled to have a jury decide any disputed issues regarding such statement. See Altreuter Aff. Ex. 1, at 23 (“If you wish to controvert, that is contest, dispute or deny that statement on any grounds, including a violation of your constitutional rights, you must state the grounds and you’ll be entitled to a hearing before this Court without a jury.” (emphasis added)). In other words, Mr. Navarro could not have knowingly and intelligently waived his right to a jury trial because he was expressly told he had no such right. See, e.g., People v. Bisono, 36 N.Y.3d 1013, 1017–18 (2020) (appeal waivers invalid when plea courts told defendants such waivers constituted complete waiver of right to file direct appeal); People v. McEachern, 163 A.D.3d 850, 850 (2d Dep’t 2018) (appeal waiver invalid when plea court incorrectly told defendant, by virtue of his guilty plea, he was forfeiting his right

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to appeal and that appeals are “limited to trial errors”). Nor could he have been—the statute expressly prohibits jury trials on any issue arising from predicate sentencing. C.P.L. § 400.15(7)(a). In addition, Mr. Navarro did not sign any written waiver—much less one in open court—with respect to his right to a jury trial on the question of tolling.⁴ As a result, Mr. Navarro did not validly waive this right, and his sentence must be vacated.

Lastly, Mr. Navarro could not have been sentenced as a persistent violent felony offender because current New York law prohibits jury trials on predicate sentencing determinations, which renders it unconstitutional. The law provides that any hearing to decide whether a person can be sentenced as a persistent violent felony offender “must be before the court without a jury.” C.P.L. §§ 400.15(7)(a), 400.16(2). Given this express statutory command, this Court cannot convene a jury to decide whether Mr. Navarro can be sentenced as a persistent violent felony offender, he cannot be sentenced as such. See, e.g., Perry, 223 N.Y.S.3d at 888; Gardner, 224 N.Y.S.3d at 325–27; Lopez, 216 N.Y.S.3d at 528–32.

For these reasons, Mr. Navarro’s sentence was illegally imposed and must be set aside pursuant to C.P.L. § 440.20(1).

⁴ The New York Constitution adds additional procedural safeguards to ensure any jury trial waiver is knowing, voluntary, and intelligent—any waiver must be made in writing “signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense.” N.Y. Const. art. I § 2; C.P.L. § 320.10(2). If this signed writing requirement is not satisfied—even if a person orally agrees in open court to waive his right to a jury trial—any purported jury right waiver is invalid. See, e.g., People v. Page, 88 N.Y.2d 1, 9–11 (1996).

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CONCLUSION

For the reasons stated above, this Court should set aside Mr. Navarro's sentence.

Dated: March 24, 2025
New York, New York



TWYLA CARTER, ESQ.
Attorney for Israel Navarro

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM
THE PEOPLE OF THE STATE OF NEW YORK,

v.

ISRAEL NAVARRO,

Defendant.

AFFIRMATION IN SUPPORT
OF MOTION TO SET ASIDE
SENTENCE

Ind. No. 623/20

STATE OF NEW YORK)
)
 ss.:
COUNTY OF NEW YORK)

I, Sylvia Lara Altreuter, affirm under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following statements are true. I understand that this document may be filed in an action or proceeding in a court of law.

1. I am a staff attorney with the Criminal Appeals Bureau of The Legal Aid Society. I represent Israel Navarro on appeal from a judgment of this Court, rendered on May 4, 2022, under Indictment Number 623/20. Mr. Navarro was convicted of second-degree assault (Penal Law § 120.05(2)), upon his guilty plea, and sentenced as a persistent violent felony offender to thirteen years to life in prison.

2. I make this affirmation in support of Mr. Navarro's motion to set aside his sentence based on my review of Mr. Navarro's case records and his Department of Correction and Community Supervision ("DOCCS") and Correctional Health Services records, as well as my discussions with Mr. Navarro over the last eighteen months.

The Proceedings in Mr. Navarro's Case Thus Far.

3. Mr. Navarro was charged in this case after he stabbed his then-girlfriend on January 31, 2020. At the time, Mr. Navarro was on parole from a 1988 conviction under Indictment Number

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9328/86 of two counts of second-degree murder, for which he was serving a sentence of twenty-five years to life in prison. After his arraignment, Mr. Navarro was remanded to Rikers Island.

4. On April 12, 2022, Mr. Navarro pleaded guilty to second-degree assault (Penal Law § 120.05(2)) and was arraigned as a persistent violent felony offender. A copy of the transcript of this proceeding is attached as Exhibit 1. A copy of the predicate felony statement is attached as Exhibit 2.

5. On May 4, 2022, Mr. Navarro was sentenced, as a persistent violent felony offender, to thirteen years to life in prison. A copy of the transcript of his sentencing is attached as Exhibit 3.

6. Mr. Navarro perfected his direct appeal in the Appellate Division, Second Department, on May 17, 2024. On appeal, Mr. Navarro sought vacatur of his plea or, in the alternative, reduction of his sentence as unduly harsh and excessive. The Second Department affirmed his conviction on December 11, 2024. See People v. Navarro, 233 A.D.3d 803 (2d Dep’t 2024). Mr. Navarro’s leave application is currently pending before Chief Judge Wilson. No prior request for the relief sought here has been made.

Mr. Navarro’s Health Is Failing.

7. Mr. Navarro, now seventy years old, is suffering from increasingly serious health problems, which are compounded by the prison system’s inability to provide him adequate medical care. Excerpts from his DOCCS medical records are attached as Exhibit 4.

8. Mr. Navarro is going deaf and now wears hearing aids in both ears. One hearing aid broke over a year ago, and DOCCS has not fixed it or provided him with a new, working hearing aid. See Ex. 4, at 4, 8, 24, 28, 33. He struggles to hear instructions from the correction officers and, sometimes, to understand me when I speak with him. He has hung a sign in his cell explaining he is hard of hearing so correction officers know he cannot hear instructions, but they ignore it.

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9. Mr. Navarro is also going blind. He has been diagnosed with cataracts in both eyes, but he has received no medical treatment for them. See id. at 8, 35. His vision is increasingly blurry, which makes it difficult for him to read and see. He has not seen a specialist or received any care for his cataracts.

10. Mr. Navarro has severe osteoarthritis in his left shoulder and right knee. See id. at 17, 34. He experiences daily pain in his shoulder that makes it difficult for him to lift his arm. See id. at 5–7, 11, 13, 27, 32. He also experiences daily severe pain in his knee that makes it difficult for him to move and walk, which is being treated with steroid injections. See id. at 9, 13, 15–19, 29–31, 34. He expects to undergo physical therapy and potentially surgery.

11. Mr. Navarro contracted COVID-19 three times when he was detained at Rikers Island from 2020 to 2022. He still experiences extreme fatigue, brain fog, memory loss, and sometimes, blackouts.

12. Mr. Navarro suffers from myriad other ailments. He has hypertension, for which he takes Lisinopril and Amlodipine. See id. at 1, 10, 12, 14, 17, 26. He wears a full set of dentures. Id. at 1, 25. He takes Finasteride and Flomax for an enlarged prostate. See id. at 20, 23. He experiences foot edema and other side effects from diabetes. Id. at 21–22. On or about March 21, 2025, one of the veins in Mr. Navarro's leg burst and he had to be taken to the hospital and then placed on bed rest.

13. Mr. Navarro also has a history of severe illness when incarcerated at earlier points. He was diagnosed with tuberculosis in 1992 and was treated for Hepatitis C in 2002 and 2015. See id. at 1–3, 25, 36.

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Mr. Navarro Is Striving to Live a Peaceful and Productive Life in Prison.

14. Over the last three years, Mr. Navarro has focused on work, his sobriety, and following prison rules. He has found solace in his faith, and he tries to model behavior for younger people in prison and advocate for others who are struggling.

15. He works in the industry program in prison, where he cleans and assembles wood furniture. He has received uniformly positive reports from officers about his work ethic and professionalism, copies of which are attached here as Exhibit 5. One officer observed Mr. Navarro “takes pride in producing good work.” Ex. 5, at 10.

16. In the last three years, Mr. Navarro has only accrued two disciplinary tickets. The records of these two, tier two, tickets are attached as Exhibit 6.

17. The first ticket followed a heated argument between Mr. Navarro and another incarcerated person on June 6, 2023. There were no reports of any injuries to anyone. See Ex. 6, at 1–6. Mr. Navarro pleaded guilty and lost ten days of recreation, packages, commissary, and phone access. See id. at 1–2. Mr. Navarro and the other person work together in industry, and they work alongside each other peaceably.

18. The second ticket arose from Mr. Navarro’s adjustment to medication-assisted treatment (“MAT”). Mr. Navarro has also been participating in MAT after a lifelong battle with addiction. See generally Ex. 4. At one point, he was taking suboxone daily, and he struggled with the side effects—On September 18, 2023, he spit out the suboxone instead of taking it to avoid the extreme fatigue he knew would follow. Ex. 6, at 12. He was cited for possessing contraband and smuggling, and he was punished with the loss of fifteen days of recreation, packages, and commissary. Id. at 7. Mr. Navarro was then switched to monthly buprenorphine injections, to

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which he does not experience the same unmanageable side effects; he credits these injections with helping him stay sober.

19. Mr. Navarro no longer wants, as he once did, to be involved in the worst aspects of prison life. Instead, he spends his time working, cooking his own food, listening to the radio, following the news, and crocheting. He also likes to read—especially adventure and mystery novels—but struggles to read now because of his worsening vision.

20. Mr. Navarro also tries to advocate for others in prison. As one example, when one of his friends was publicly named as a potential victim of prosecutorial misconduct, Mr. Navarro helped connect his friend with a public defender. As another example, when two people suffering from serious mental illness were housed near him and visibly unable to care for themselves, Mr. Navarro wrote to DOCCS to advocate for them, not to be punished further, but to receive the care they needed. They were moved shortly thereafter.

21. Mr. Navarro is haunted by his actions, and he is deeply remorseful for harming another person. He understands he needs to stay sober and to think before he acts, and he finds strength to keep going when reading the Bible.

22. For the reasons stated above and in the accompanying memorandum of law, Mr. Navarro was not afforded his constitutional right to have a jury find every fact that enhanced his sentencing range. As a result, Mr. Navarro's sentence is illegal and must be set aside.

Dated: New York, New York
March 24, 2025



SYLVIA LARA ALTREUTER

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Exhibit 1
Transcript of April 12, 2022, Plea

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM: PART SCDV2

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Indictment No.:
623/2020
(Plea)

ISRAEL NAVARRO

Defendant.

Supreme Courthouse
320 Jay Street
Brooklyn, New York 11201
April 12, 2022

B E F O R E: THE HONORABLE ELIZABETH N. WARIN, JUSTICE

13 A P P E A R A N C E S:

HON. ERIC GONZALEZ, ESQ.
District Attorney - Kings County
350 Jay Street
Brooklyn, New York 11201
BY: ANGELINA IBRAGIMOV, ESQ.
Assistant District Attorney

LEGAL AID SOCIETY
Attorney for Defendant
111 Livingston Street
Brooklyn, New York 11201
BY: EMILY POPPISH, ESO.

MARLIN CASSIDY
Senior Court Reporter

1 (Whereupon, the following took place in open
2 court:)

3 THE CLERK: This is number 16 and number 17,
4 Indictment Number 623 of 2020 and SMZ 71143 of '22,
5 Israel Navarro.

6 Appearances, please.

7 MS. POPPISH: Legal Aid Society by Emily
8 Poppish, P-O-P-P-I-S-H.

9 Good afternoon, your Honor.

10 THE COURT: Good afternoon, Ms. Poppish. Good
11 afternoon to you, Mr. Navarro.

12 MS. IBRAGIMOV: Angelina Ibragimov for the
13 People on 623 of 2020.

14 Good afternoon everyone.

15 THE COURT: You can take a seat, if it's more
16 comfortable.

17 I had been informed by the parties prior to
18 the lunch break that we do have a resolution in this
19 matter.

20 Is that accurate, Ms. Poppish?

21 MS. POPPISH: Yes, it is.

22 THE COURT: Have you had enough time to
23 discuss it with your client?

24 MS. POPPISH: Yes, I have.

25 THE COURT: So, People, could you go through

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1 what the proposed plea is.

2 MS. IBRAGIMOV: Yes, your Honor. The proposed
3 plea is count four of the indictment, assault in the
4 second degree, a right to a waiver of appeal, which I
5 handed up to counsel to discuss prior to the call of
6 this case, thirteen years incarceration to life, plus a
7 full order of protection on behalf of the complainant in
8 this case. Also, the defense was provided with a copy
9 of the predicate statement and I am serving a copy,
10 filing a copy with the Court at this time, Judge.

11 THE COURT: And the order of protection here
12 is in favor of Yarellys Diaz, is that correct?

13 MS. IBRAGIMOV: Y-A-R-E-L-L-Y-S, last name
14 D-I-A-Z.

15 THE COURT: By my calculation, on this count
16 of the indictment, the maximum legal sentence would be a
17 minimum of twelve to twenty-five and a maximum of life.
18 Does that comport with everyone's understanding?

19 MS. POPPISH: Yes.

20 MS. IBRAGIMOV: Yes.

21 THE COURT: And as we have just stated, Mr.
22 Navarro stands in front of me as a persistent violent
23 felony offender, correct?

24 MS. POPPISH: Correct.

25 THE COURT: And I am not going to ask you to

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1 stand up every time, Ms. Poppish, you can remain seated.

2 MS. POPPISH: Thank you.

3 THE COURT: I do have the predicate statement
4 here in front of me.

5 People, can you put on the record the reason
6 for offering the plea at this time?

7 MS. IBRAGIMOV: So, Judge, it's my
8 understanding, upon preparation for trial and upon
9 speaking and considering all options, speaking with the
10 complainant in this case, the complainant is amenable to
11 this plea. We have evaluated the case, we believe that
12 this is an appropriate resolution given what the
13 complainant wants as well as taking into account things
14 like the strength of the case so, therefore, Judge, we
15 are amenable to this offer, if the Court is accepting
16 it.

17 THE COURT: And it was previously told to me
18 too, but the defendant's age was also a factor in making
19 this plea offer, correct?

20 MS. IBRAGIMOV: Yes, that is correct as well,
21 thank you.

22 THE COURT: Ms. Poppish, for the record, is
23 that what you are expecting?

24 MS. POPPISH: Yes.

25 THE COURT: And is that acceptable?

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1 MS. POPPISH: Yes.

2 THE COURT: Have you received all discovery in
3 this matter?

4 MS. POPPISH: To my knowledge, yes.

5 THE COURT: And if there is any additional
6 discovery to which you might be entitled, do you waive
7 the right to review any of that?

8 MS. POPPISH: Yes.

9 THE COURT: And was this plea offer
10 conditioned upon any such waiver?

11 MS. POPPISH: No.

12 THE COURT: Now, you have had the opportunity
13 to both review the discovery and discuss it with Mr.
14 Navarro?

15 MS. POPPISH: Yes.

16 THE COURT: And you had meaningful
17 conversations with your client about the plea and the
18 discovery?

19 THE DEFENDANT: Yes.

20 MS. POPPISH: I believe so, yes.

21 THE COURT: Do you have an application?

22 MS. POPPISH: Yes.

23 At this time my client would like to withdraw
24 his previously entered not guilty plea and enter a plea
25 of guilty to the fourth count of the indictment, assault

1 in the second degree, Penal Law 120.05 Sub 2, with the
2 understanding he will be sentenced to thirteen years to
3 life in prison.

4 MS. IBRAGIMOV: Are you consenting as part of
5 the plea to the order of protection in this case?

6 MS. POPPISH: Yes.

7 MS. IBRAGIMOV: Thank you.

8 THE COURT: As far as we can ascertain, that
9 order of protection would also be for life, is that
10 accurate?

11 MS. IBRAGIMOV: Yes, that's accurate, Judge.
12 We will have an end date at sentencing, thank you.

13 THE COURT: Can we swear in the defendant,
14 please.

15 THE CLERK: Does he need a Spanish
16 interpreter?

17 THE COURT: I don't think so.

18 Do you have that indication?

19 THE CLERK: Yes.

20 THE COURT: My Clerk's telling me there was
21 prior indication that Mr. Navarro has previously used a
22 Spanish interpreter. Is that necessary? Or if he would
23 like that, we are more than happy to provide one.

24 MS. POPPISH: I apologize. All of our
25 conversations have been in English. My client is

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1 indicating he would like -- he would like an
2 interpreter.

3 THE COURT: Of course, that's not a problem.
4 We'll call for one right now.

5 (Whereupon, there was a brief pause in the
6 proceedings.)

7 THE CLERK: Can you put your appearance on the
8 record.

9 THE INTERPRETER: Mercedes Fernandez, Spanish
10 interpreter.

11 THE CLERK: This is Indictment 00623 of 2020
12 and SMZ 71143 of '22, Israel Navarro.

13 THE COURT: We do have a Spanish interpreter
14 here now. Out of an abundance of caution let us now
15 repeat what we have already put on the record to make
16 sure that Mr. Navarro understands everything that goes
17 on.

18 People, please put the proposed plea agreement
19 on the record.

20 MS. IBRAGIMOV: Sure.

21 People's offer is assault in the second
22 degree, count four of the indictment, thirteen years to
23 life, a written waiver of appeal, which People have
24 handed over to counsel, and if the interpreter can
25 please interpret it for the defendant, and a full order

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1 of protection for the complainant, Yarellys Diaz,
2 Y-A-R-E-L-Y-S, last name D-I-A-Z.

3 THE COURT: And as Mr. Navarro stands in front
4 of me as a persistent violent predicate, the maximum
5 legal sentence on this assault two felony, which is of
6 course a D level felony, would be minimum of twelve to
7 twenty-five and a maximum of life imprisonment.

8 People, what's the reason for offering this
9 plea agreement?

10 MS. IBRAGIMOV: So, your Honor, taking into
11 account the defendant's age, and in speaking with the
12 complainant, it's the People's position that this is an
13 appropriate offer. At this time the complainant is
14 amenable and we are ready to proceed in this fashion, if
15 the Court will accept.

16 THE COURT: Ms. Poppish, is that what you're
17 expecting?

18 MS. POPPISH: Yes.

19 THE COURT: And is it acceptable?

20 MS. POPPISH: Yes.

21 THE COURT: Have you received all discovery in
22 this case?

23 THE DEFENDANT: Yes.

24 MS. POPPISH: Yes.

25 THE COURT: Do you waive your right to review

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1 any additional discovery that may exist?

2 MS. POPPISH: Yes.

3 THE COURT: Was this plea offer conditioned on
4 that waiver?

5 MS. POPPISH: No.

6 THE COURT: Have you had an opportunity to
7 review the discovery and discuss it with your client?

8 MS. POPPISH: Yes.

9 THE COURT: Have you had meaningful
10 discussions with your client about that discovery and
11 the proposed plea?

12 MS. POPPISH: Yes.

13 THE COURT: Do you have an application at this
14 time?

15 MS. POPPISH: Yes. At this time my client has
16 authorized me to enter a plea of guilty to the fourth
17 count of the indictment, assault in the second degree,
18 Penal Law 120.05 Sub 2, with the understanding that he
19 will be sentenced to a term of imprisonment of thirteen
20 years to life. He also plans to execute the waiver of
21 appeal and he understands that there will be a full and
22 final order of protection.

23 THE COURT: Let's swear in Mr. Navarro,
24 please.

25 THE CLERK: Would you please raise your right

1 hand.

2 Do you solemnly swear or affirm that the
3 answers you are about to give will be the truth, the
4 whole truth and nothing but the truth?

5 THE DEFENDANT: Yes.

6 THE CLERK: Please state -- you can put your
7 hand down.

8 Please state your first and last name for the
9 record.

10 THE DEFENDANT: Israel Navarro.

11 THE CLERK: Is Ms. Poppish, who's sitting next
12 to you, your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: Thank you.

15 Mr. Navarro, I need to ask you some questions
16 before I can accept the proposed plea.

17 If at any time you don't understand something
18 that I say, let me know and I will explain it to you.
19 If at any time you need talk to your attorney before you
20 answer a question, let me know, and I will allow you to
21 do so.

22 Have you spoken with your attorney, Ms.
23 Poppish, about your case?

24 THE DEFENDANT: Yes.

25 THE COURT: And about this plea?

1 THE DEFENDANT: Yes.

2 THE COURT: Have you spoken about waiving your
3 right to go to trial?

4 THE DEFENDANT: Yes.

5 THE COURT: And are you satisfied with your
6 attorney?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And did you hear her just enter a
9 plea of guilty on your behalf?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you understand that by
12 answering my questions now and pleading guilty you are
13 giving up your right to remain silent and not
14 incriminate yourself?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And you've discussed that with
17 your attorney?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Okay.

20 You have been asked to plead guilty to count
21 four of the indictment which charges the crime of
22 assault in the second degree, in violation of Penal Law
23 120.05 Subsection 2, which is a class D violent felony.
24 The accusation in the indictment reads as follows: The
25 defendant, Israel Navarro, on or about January 31st,

1 2020 --

2 THE INTERPRETER: I'm sorry, your Honor, may I
3 have the date again?

4 THE COURT: January 31st, 2020, in the County
5 of Kings, with intent to cause physical injury to
6 Yarellys Diaz, you caused such injury to Yarellys Diaz
7 by means of a deadly weapon or dangerous instrument,
8 namely a knife.

9 All right, Mr. Navarro, how do you plead to
10 that charge, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: And where did this take place?

13 THE DEFENDANT: In Brooklyn.

14 THE COURT: What I'm asking for, was it in
15 someone's house, was it in someone's apartment, was it
16 outside? Where was it?

17 THE DEFENDANT: In my apartment.

18 THE COURT: And what's that exact location?

19 THE INTERPRETER: I'm sorry?

20 THE COURT: What is that location? What is
21 the address?

22 THE DEFENDANT: I don't remember the address.
23 I don't have it.

24 THE COURT: People, can you say what it is,
25 see if that jogs his memory?

1 MS. IBRAGIMOV: Judge, I'm trying to locate
2 the defendant's address in the paperwork that I have
3 before me.

4 THE COURT: So where you were living at the
5 time, Mr. Navarro?

6 THE DEFENDANT: Yes.

7 THE COURT: And the allegations are that you
8 stabbed Ms. Diaz with a knife. Whereabouts did you stab
9 her?

10 THE DEFENDANT: In the stomach.

11 THE COURT: Okay.

12 And are you pleading guilty to this charge
13 because you are in fact guilty?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Is the allocution satisfactory to
16 the People?

17 MS. IBRAGIMOV: Yes, your Honor, thank you.

18 THE COURT: Mr. Navarro, by pleading guilty
19 here today you are giving up the right to have a trial.
20 At a trial you would be presumed innocent, the People
21 would have to prove the charge against you beyond a
22 reasonable doubt, your lawyer could cross-examine the
23 witnesses against you, you could call your own
24 witnesses, and you could either remain silent or testify
25 in your own defense. By pleading guilty here today you

Proceeding

1 are giving up those rights. Do you understand that?

2 THE DEFENDANT: Uh-huh.

3 THE COURT: I need a yes or no.

4 THE DEFENDANT: Yes.

5 THE COURT: Is that what you want to do?

6 Do you want to waive those trial rights?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And do you understand that a plea
9 of guilty here in front of me today has the same legal
10 effect as if you went to trial and were found guilty?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Usually, when you plead guilty,
13 you still have the separate and distinct right to appeal
14 your conviction. So, a waiver of the right to appeal is
15 separate and distinct from a waiver of trial and other
16 rights by a plea of guilty.

17 Here, as a condition of the plea agreement,
18 you are being asked to waive your right to appeal. An
19 appeal is a proceeding before a higher level court. On
20 appeal your attorney could argue that an error took
21 place in this court which requires a modification or
22 reversal of a conviction. A reversal would require new
23 proceedings in this court or a dismissal. An attorney
24 would be appointed to represent you for appeal if you
25 couldn't afford one.

Proceeding

1 Do you understand all of that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, by waiving your right to
4 appeal, you can still file a notice of appeal with this
5 Court and the D.A. but by this waiver you are giving up
6 the right to have the higher level court consider most
7 of the claims of error and to consider whether the
8 sentence I impose is excessive or should be modified.

9 So, because of this waiver your conviction would
10 normally be final.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: The limited number of claims that
14 would survive the waiver of right to appeal are: The
15 voluntariness of this plea, the validity and
16 voluntariness of this waiver, the legality of the
17 sentence and the jurisdiction of this Court.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Have you spoken to Ms. Poppish
21 about waiving your right to appeal?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And are you willing to do so here
24 today in return for the plea and sentence agreement?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: And do you waive your right to
2 appeal voluntarily and of your own free will?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Have you reviewed the written
5 waiver of right to appeal with your attorney?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you understand it?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did your attorney answer any
10 questions you may have about that waiver?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Ms. Poppish, have you explained
13 the waiver of right to appeal to your client?

14 MS. POPPISH: Yes, your Honor.

15 THE COURT: Are you confident that he
16 understands the waiver?

17 MS. POPPISH: Yes, your Honor.

18 THE COURT: Mr. Navarro, do you understand
19 that by signing this written waiver and agreeing to
20 waive your right to appeal your conviction will be
21 final?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Then if you haven't already signed
24 the waiver, I am going to ask you to do that now.

25 MS. IBRAGIMOV: Judge, if I may just note,

Proceeding

1 prior to us finding that an interpreter was needed, we
2 provided a English Waiver of Right to Appeal. I want to
3 confirm that the defendant was advised and that the
4 waiver was interpreted by the interpreter for purposes
5 of this plea.

6 THE COURT: Mr. Navarro, was the content of
7 the --

8 THE INTERPRETER: Can you repeat?

9 THE COURT: Was the content of the written
10 waiver explained to you with the assistance of an
11 interpreter?

12 MS. POPPISH: No.

13 THE INTERPRETER: I didn't do it.

14 MS. POPPISH: No.

15 THE COURT: I am going to hand it back to you
16 and have the interpreter go over the written waiver with
17 Mr. Navarro.

18 MS. POPPISH: He is asking to read it. You
19 want me to do it in Spanish?

20 THE COURT: What I would like is to have the
21 interpreter interpret the English written waiver to Mr.
22 Navarro.

23 (Whereupon, there was a brief pause in the
24 proceedings.)

25 THE COURT: Mr. Navarro, have you had the

1 waiver translated to you in Spanish?

2 THE DEFENDANT: Yes, ma'am. Yes, your Honor.

3 THE COURT: Any questions or issues with the
4 waiver?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: If you understand that fully, I am
7 going to ask you to sign the waiver there at the bottom.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Based on the defendant's responses
10 to my questions and his signature that I see here on the
11 Waiver of Right to Appeal, I do find that he has
12 knowingly and voluntarily waived his right to appeal
13 this matter and I am approving the waiver.

14 All right, Mr. Navarro, as a condition of your
15 plea of guilty and your waiver of right to appeal I have
16 committed to sentence you to an indeterminate sentence
17 of thirteen years to life.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay.

21 Now, this commitment to a particular sentence
22 I've just explained is based on what I know now about
23 you and this case. Between today and the date of
24 sentence I will be provided with a presentence report
25 and that may provide additional information about you in

Proceeding

1 this case. If after reviewing that material I am
2 prepared to impose the promised sentence, that is what I
3 will do. If, however, I receive new information from
4 the presentence report that makes me change my mind and
5 decide not to impose the promised sentence, I will tell
6 you that and would then allow you to withdraw your
7 guilty plea and go to trial.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: But that is only true if I decide
11 that I'm not able to impose the promised sentence based
12 on new information that I've learned.

13 Understood?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Okay.

16 I must also advise you, if you are not a
17 citizen, pleading guilty to this charge may subject you
18 to negative consequences, including automatic
19 deportation, exclusion from admission to this country
20 and/or denial of naturalization.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor. I'm Puerto
23 Rican, your Honor.

24 THE COURT: I still have to ask these
25 questions. I get in trouble if I don't ask these

1 questions.

2 Counsel, you discussed with your client any
3 adverse immigration consequences?

4 MS. POPPISH: Yes.

5 THE COURT: Now I must also advise you that
6 conviction of a felony that will result in a loss of
7 your right to vote while you are serving the felony
8 sentence in a correctional facility and the right to
9 vote would be restored upon your release.

10 Understood?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, there are some conditions you
13 must comply with between now and the time of sentence.
14 You must meet with a Probation officer who's going to be
15 assigned to prepare the presentence report. I want you
16 to comply with that and meet with them and answer all
17 their questions. Also, between now and the date of
18 sentence you must lead a law abiding life, that means no
19 new arrest.

20 Understood?

21 THE DEFENDANT: Yes.

22 THE COURT: If I find probable cause or
23 otherwise find that you committed an offense between
24 today and the date of sentence, you will be in violation
25 of this condition.

Proceeding

1 Do you understand all of that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: If you fail to comply with any one
4 or more of these conditions, I do not have to impose the
5 promised sentence and I will not allow you to withdraw
6 your plea of guilt and I can sentence you to any legally
7 permissible sentence on your plea.

8 Understood?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And if that happens and I impose a
11 different sentence, your Waiver of Right to Appeal still
12 applies to that sentence as well.

13 Understood?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Finally, if you voluntarily fail
16 to appear or refuse to return to court for your
17 sentencing, I can still decide to sentence you in your
18 absence.

19 Do you understand that as well?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Other than the sentence promise
22 that I have explained to you here today, has anyone made
23 any other promise to get you to plead guilty?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Has anyone threatened you, forced

Proceeding

1 you or pressured you to plead guilty against your will?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have I or your attorney or any
4 anybody else said anything to you to have you plead
5 guilty against your will?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Are you pleading guilty
8 voluntarily and of your own free will?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Now, finally, do you understand
11 that if you are ever convicted of another crime in the
12 future, this conviction can be used to impose an
13 additional or harsher punishment for that new crime?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Based on Mr. Navarro's sworn
16 testimony before me today I do find that his plea is
17 knowing, intelligent and voluntary. Accordingly, I'm
18 accepting the plea and entering it on the record.

19 Now, we do have the predicate statement here
20 which we can either arraign him on now or at the time of
21 sentencing.

22 We may as well do it now.

23 MS. POPPISH: Yes, please.

24 THE COURT: Go ahead.

25 THE CLERK: You have been provided with a

Proceeding

1 statement by the District Attorney's Office according to
2 Article 400 of the Criminal Procedure Law and Article 70
3 of the Penal Law which states that you have been
4 convicted and sentenced on a prior violent felony, you
5 have been convicted of the crime of manslaughter in the
6 first degree, a violent felony, and sentenced on
7 September 22nd, 1980 in Supreme Court, New York County,
8 under Indictment Number 4709 of '79, and of murder in
9 the second degree, a felony, sentenced on February 8th,
10 1988, in Kings County Supreme Court under Indictment
11 Number 9328 of 1986.

12 You may admit, deny --

13 THE INTERPRETER: I'm sorry.

14 (Whereupon, there was a brief pause in the
15 proceedings.)

16 THE CLERK: You may admit, deny or stand mute
17 as to whether you are the person who was convicted and
18 sentenced on those violent felonies as recited in the
19 statement. If you wish to controvert, that is contest,
20 dispute or deny that statement on any grounds, including
21 a violation of your constitutional rights, you must
22 state the grounds and you'll be entitled to a hearing
23 before this Court without a jury.

24 Have you received a copy of the statement?

25 THE DEFENDANT: Yes. Yes, your Honor.

Proceeding

1 THE CLERK: Have you discussed this matter
2 with your attorney?

3 THE DEFENDANT: Yes, your Honor.

4 THE CLERK: Do you admit that you are the
5 person who was convicted on those felonies?

6 THE DEFENDANT: Yes, your Honor.

7 THE CLERK: Do you wish to challenge the
8 constitutionality of the prior convictions?

9 THE DEFENDANT: What?

10 THE CLERK: Do you wish to challenge the
11 constitutionality of the prior convictions?

12 THE DEFENDANT: No, your Honor.

13 THE CLERK: Judge, the defendant has been
14 arraigned a predicate.

15 THE COURT: Thank you so much. I am ordering
16 a presentence report. We are going to set a date for
17 sentencing. We also need to do the recognizance hearing
18 very briefly. Are you standing up on that as well, Ms.
19 Poppish?

20 MS. POPPISH: Yes.

21 THE COURT: Let's just pick a date for
22 sentencing then we can call the other one too.

23 I think -- let's see. I could do it -- I
24 could fit you in sometime the week of the 22nd or I can
25 put it out further if you'd like, Ms. Poppish. I can do

Proceeding

1 the week of May 23rd or the 31st. What looks good for
2 you?

3 MS. POPPISH: May 5th.

4 THE COURT: That works, right?

5 THE CLERK: Yes.

6 THE COURT: May 5th, 2022, that is going to be
7 back in SCDV2, on for sentencing.

8 MS. IBRAGIMOV: Judge, may I ask for a Monday
9 or Wednesday in May, please, the 2nd or the 4th?

10 MS. POPPISH: 4th is fine.

11 THE COURT: Which do you prefer?

12 MS. POPPISH: Can we do the 4th?

13 THE COURT: I have a big calendar that day,
14 just so you know.

15 MS. POPPISH: The 2nd, if it's more convenient
16 for the Court.

17 THE COURT: I am here, it's whether or not you
18 have to wait.

19 MS. POPPISH: I don't mind waiting.

20 THE COURT: May 4th, 2022, SCDV2, on for
21 sentencing.

22 (Whereupon, the proceeding was concluded.)

23 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF
24 THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
PROCEEDING.

25 

MARLIN CASSIDY
Senior Court Reporter

App. 57

Exhibit 2
Predicate Felony Statement

App. 58

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS: CRIMINAL TERM

Indictment NO.: 623-2020

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

-against-

ISRAEL NAVARRO

a/k/a:

STATEMENT

PURSUANT TO CPL ARTICLE 400
(CPL Section 400.15, 400.16, 400.21)

Defendant

PLEASE TAKE NOTICE that upon information presently available the District Attorney of the County of Kings hereby charges that the Defendant has previously been convicted of :

| CRIME | PREDICATE VFC | DATE OF SENTENCE | JURISDICTION | INDICTMENT NUMBER |
|----------------|------------------|---------------------|------------------------|----------------------|
| MANSLAUGHTER 1 | Y | 09/22/80 | Supreme Court New York | 4709-79 |
| MURDER 2 | N | 02/08/88 | Supreme Court Kings | 9328-86 |

Each conviction shown above which occurred within the State of New York is for a felony, and each such conviction which occurred in another jurisdiction is for an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized in this State.

Each conviction designated above as a "Predicate VFC" is a predicate violent felony conviction as defined in paragraph (b) of subdivision one of Penal Law Section 70.04.

In addition, each sentence was imposed upon the defendant not more than ten years before January 31, 2020 the date of commission of the present felony except as indicated below.*

*Where sentence upon a prior Felony conviction has been imposed more than ten years before the commission of the present felony, the ten year statutory period has been extended by a total of 13991 days representing the period of time between the commission of both crimes during which the defendant was incarcerated for any reason.

More particularly, the defendant was incarcerated at :

| Correctional Facility | Admission | Release | Correctional Facility | Admission | Release |
|-----------------------|-----------|----------|-----------------------|-----------|----------|
| DOWNSTATE | 12/11/80 | 08/25/86 | NYC | 01/07/87 | 02/15/88 |
| DOWNSTATE | 02/16/88 | 08/13/19 | | | |

*APR 9
A/2/22*

DATED: Brooklyn, New York
February 20, 2020

SC-136B-1-90

ERIC GONZALEZ
DISTRICT ATTORNEY

BY *Olave Albrecht*
. ASSISTANT DISTRICT ATTORNEY

App. 59

Exhibit 3
Transcript of May 4, 2022, Sentencing

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL - Part SCDV2
3 -----X
4 PEOPLE OF THE STATE OF NEW YORK :

5 - against - :

6 ISRAEL NAVARRO, (Sentence)

7 Defendant.

8 -----X
9 Indictment No: 00623-20

10 320 Jay Street
11 Brooklyn, New York
12 May 4, 2022

13 B E F O R E:
14 HONORABLE ELIZABETH WARIN,
15 Supreme Court Justice

16 A P P E A R A N C E S:

17 DISTRICT ATTORNEY - KINGS COUNTY
18 ERIC GONZALEZ, ESQ. - Acting District Attorney
19 BY: ANGELINA IBRAGIMOV, ESQ.
20 Assistant District Attorney
21 On behalf of the People

22 LEGAL AID SOCIETY
23 BY: EMILY S. POPPISH, ESQ.
24 On behalf of the Defendant

25 Maria Leudo - Official Spanish Interpreter

26

27

28

29

30

31

32 Barry Eskenazi - Senior Court Reporter

33

34

35

36 BE

- Proceedings -

1 THE CLERK: This is number 21 on the SCDV 2
2 calendar, indictment number 00623 of 2020, Israel
3 Navarro. Appearances, please.

4 MS. POPPISH: Legal Aid Society by Emily
5 Poppish, P-O-P-P-I-S-H. Good afternoon, your Honor.

6 THE COURT: Good afternoon, Miss Poppish.

7 MS. IBRAGIMOV: Good afternoon, Angelina
8 Ibragimov, for the People.

9 THE COURT: Good afternoon, Miss Ibragimov.
10 And good afternoon to you as well.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: We do have a Spanish interpreter
13 present. Could you put your name on the record, please.

14 THE INTERPRETER: Maria Leudo, L-E-U-D-O,
15 Spanish interpreter.

16 THE COURT: Thank you. We are here for the
17 sentencing today. I did receive a presentence report.
18 And I did also see, most importantly, that Mr. Navarro
19 admitted his guilt.

20 People did you receive the presentence report?

21 MR. POPPISH: I didn't get a copy, but I did
22 speak with my client about his conversation with
23 probation.

24 MS. IBRAGIMOV: We did not receive it.

25 THE COURT: Would you like to see it?

BE

- Proceedings -

1 MS. IBRAGIMOV: Yes.

2 THE COURT: And there was nothing in the
3 presentence report that would make me not go ahead and
4 impose the promised sentence on the plea here. The
5 promise was 13 years to life, with a final order of
6 protection in favor of Yarelys Diaz.

7 People, is there anything that you would want
8 to put on the record regarding the sentence?

9 MS. IBRAGIMOV: One moment, Judge.

10 THE COURT: Sure.

11 (Brief pause.)

12 MS. IBRAGIMOV: Judge, the People have reviewed
13 the presentence report. The defendant does admit his
14 guilt. We do rely on the promise, and I guess we'll
15 address the order of protection whenever the Court sees
16 fit. Now is a good time as to the duration?

17 THE COURT: As to the duration, yes.

18 MS. IBRAGIMOV: Given that his sentence is 13
19 years to life, it's the People's position that the
20 duration should be for the life of the defendant. The
21 minimum amount of time that the order of protection can
22 be in effect would be the 13 years, which is the minimum
23 time that he can be in for, and plus the eight years for
24 the felony, so that would bring this up to 21 years.
25 However, he may or not be paroled at 13 years. He could

BE

- Proceedings -

1 be paroled at 15 years, at 20 years, and even then,
2 Judge, he's paroled, but his sentence is held in
3 abeyance, because upon being paroled, should he violate
4 parole, he then would be facing life. So the maximum is
5 held in abeyance.

6 So the People's position is that the duration
7 of the order of protection should be, he's 67, if I'm not
8 mistaken, should be at least 50 years.

9 (Defense counsel and defendant conferred off
10 the record.)

11 THE COURT: Do you want to weigh in on this,
12 Miss Poppish?

13 MS. POPPISH: We would just be requesting the
14 minimum required by the statute. My client has no
15 intention of contacting the person. We would request the
16 minimum time order of protection, not because he plans
17 to contact her. So the minimum is not really laid out in
18 the statute.

19 THE COURT: I'm not sure. It is certainly
20 complicated, because it starts from the point it's in
21 effect now, during the time of incarceration it's in
22 effect, and then upon release it also is for the next
23 eight years, but then we don't know when he will be
24 released.

25 I have actually looked into this previously.

BE

- Proceedings -

1 There is a Court of Appeals case, People v. Nieves, 2004,
2 which talks about this issue, because on appeal
3 defense had challenged the duration of the order of
4 protection based on the fact in that case the defendant
5 received jail time credit, and therefore was released,
6 the order of protection exceeded the amount. And the
7 Court of Appeals suggested that the best practice would
8 be for defense counsel to return to the sentencing Court,
9 if there is an instance that the order of protection was
10 issued for too long a time, and then the sentencing Court
11 could then adjust the term of the order of protection,
12 which tells us what we might want to do later on, in
13 terms of determining the actual length of the order of
14 protection. So I would suggest the option that I would
15 either make it for the max, so for the remainder of the
16 defendant's life, and then we would change that, if
17 we decide that that's more appropriate.

18 MS. POPPISH: It's not really much of an issue
19 here. They don't have children in common. It was a
20 short relationship. I don't see this becoming an issue.
21 There's been no allegation that he's tried to contact
22 her.

23 THE COURT: But we do have to put something in
24 the order of protection.

25 (Brief pause.)

BE

- Proceedings -

1 THE COURT: My concern is that the mechanisms
2 we have won't be on the actual date, so I would suggest
3 or what I would propose to do is have 50 years and then
4 Miss Poppish will know what to do if she feels the need
5 to address this again.

6 All right, People, is there anything that you
7 would like to say before I impose the promised sentence?

8 MS. IBRAGIMOV: No, Judge.

9 THE COURT: Off the record.

10 (Discussion held off the record.)

11 THE COURT: Miss Poppish, is there anything you
12 would like to say before I impose the promised sentence?

13 MS. POPPISH: I would like to request on behalf
14 of my client that you consider civil judgment on the
15 court surcharges. Being it's a lifetime sentence, he
16 will not ever be able to pay the surcharges. He is
17 indigent. He has no money whatsoever. He has no family
18 on the outside. He has a friend, but he is not a friend
19 that has the means to pay the surcharges in any way. I
20 would just ask that you consider issuing a civil
21 judgment.

22 THE COURT: Enter civil judgment.

23 MS. POPPISH: Thank you.

24 MS. IBRAGIMOV: Judge, I have spoken with
25 A.D.A. Albenda, although the impact notice was not served

BE

- Proceedings -

1 and filed, she had spoken with the complainant, who
2 indicated that she would have wanted to be here, but
3 upon following up with her she has decided not to come
4 in today.

5 THE COURT: Okay, so the People are satisfied
6 that the complainant has been advised of her right to
7 make any statement that she may wish to do so at
8 sentencing and she has declined, is that right?

9 MS. IBRAGIMOV: Yes, your Honor.

10 THE COURT: All right. And now, Mr. Navarro, I
11 will also offer you an opportunity to say anything that
12 you would like. You do not have to say anything, but I
13 will now give you the opportunity to say anything you
14 would like to say before I sentence you.

15 THE DEFENDANT: Yes, your Honor. I just want
16 to say, your Honor, I am sorry. I am old. I went crazy
17 that day. I didn't understand what I did. My mind is
18 all screwed around of what happened that day. I am just
19 sorry for what I did. All I want is a happy life. I
20 never tried to do these things. Thank you.

21 THE COURT: Thank you, Mr. Navarro. I
22 appreciate your words and I do appreciate your remorse.
23 At this time I am prepared to impose the promised
24 sentence, the sentence of 13 years to life in prison.
25 There's a final order of protection that will be issued

BE

- Proceedings -

1 today in favor of Yarelys Diaz that will be imposed for
2 the next 50 years and I'm entering civil judgment to pay
3 the surcharges. Good luck.

4 THE DEFENDANT: Thank you.

5 (Defendant signed forms.)

6 THE COURT: Good luck to you.

7 THE DEFENDANT: Thank you, your Honor.

8 (Whereupon, proceedings were concluded.)

9

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18 I, Barry Eskenazi, Senior Court Reporter, do
19 hereby certify that the foregoing is a true and correct
20 transcript.



21

Barry Eskenazi

22

Senior Court Reporter

23

24

25

BE

App. 68

Exhibit 4

Excerpts from Mr. Navarro's DOCCS Medical Records

1/29/25 9:58:33

NYS DEPARTMENT OF CORRECTIONAL SERVICES
HSC137
HEALTH SERVICES SYSTEM

PAGE 1

PRINTED BY: C010PWB MEDICAL PROBLEM LIST BY TYPE - NO COMMENTS
PRINTED AT: AUBURN GENER (ALL PROBLEM TYPES)

SAME AS REPORT HSC138

DIN: 22B2266 NAME: NAVARRO, ISRAEL NYSID: 04426867L DOB: [REDACTED]/1954
OWN FAC: AUBURN GENER CUR FAC: AUBURN GENER CUR LOC: CELL
CURRENT CLASSIFICATIONS - MEDICAL: 2 04/10/2024 OMH: 6 10/23/2023 CELL-ONLY:

ACTIVE/INACTIVE PROBLEMS

ALLERGIES

| CODE | PROBLEM | PR | DATE IDENTIFIED | S | FACILITY | DIN | a |
|------|-------------------------------|-------|-----------------|---|-----------|---------|---------|
| A010 | ALLERGY-NO KNOWN DRUG ALLERGY | 10 | 10/20/2018 | | OTISVILLE | 88A1362 | |
| B000 | ALLERGY-EGGS | 10000 | 10/20/2018 | | OTISVILLE | Y | 88A1362 |

*** TYPE TOTAL: 2

MEDICAL CONDITIONS

| CODE | PROBLEM | PR | DATE IDENTIFIED | S | FACILITY | DIN | a |
|------|--|----|-----------------|---|--------------|---------|---------|
| 9602 | OPIOID USE DISORDER | 05 | 05/31/2022 | | AUBURN GENER | 22B2266 | |
| 3062 | INJECTABLE BUPRENORPHINE | 24 | 02/20/2024 | | AUBURN GENER | Y | 22B2266 |
| V523 | SPECIAL ISSUE BOOTS | | 08/25/2023 | | AUBURN GENER | 22B2266 | |
| 600- | PROSTATIC HYPERPLASIA BENIGN | | 11/17/2022 | | AUBURN GENER | 22B2266 | |
| 0400 | COVID-19 TESTED | | 09/23/2022 | I | AUBURN GENER | 22B2266 | |
| 0402 | COVID-19 NEGATIVE | | 09/23/2022 | | AUBURN GENER | 22B2266 | |
| V528 | DENTURE FULL | | 06/06/2022 | | ELMIRA RECEP | 22B2266 | |
| V998 | VACCINE REFUSAL | | 06/06/2022 | | ELMIRA RECEP | Y | 22B2266 |
| 3048 | SUBSTANCE ABUSE/HABIT/ADDICTION NOS | | 06/06/2022 | | ELMIRA RECEP | Y | 22B2266 |
| 3670 | REFRACTIVE ERRORS REQ GLASSES | | 06/06/2022 | | ELMIRA RECEP | 22B2266 | |
| 401- | HYPERTENSION UNCOMPLICATED | | 06/06/2022 | | ELMIRA RECEP | 22B2266 | |
| 455- | HEMORRHOIDS | | 06/06/2022 | | ELMIRA RECEP | 22B2266 | |
| 5640 | CONSTIPATION CHRONIC NOS | | 06/06/2022 | | ELMIRA RECEP | 22B2266 | |
| 7260 | SHOULDER SYNDROMES | | 06/06/2022 | | ELMIRA RECEP | Y | 22B2266 |
| 3061 | BUPRENORPHINE TREATMENT | | 05/31/2022 | I | GRNHVN INTKE | 22B2266 | |
| 0402 | COVID-19 NEGATIVE | | 05/30/2022 | I | GRNHVN INTKE | 22B2266 | |
| V629 | REFUSAL OF CARE | | 08/12/2019 | | FISHKILL GEN | Y | 88A1362 |
| V680 | LETTER/FORMS/PRESCRIPTION WO EXAM | | 08/11/2019 | | FISHKILL GEN | Y | 88A1362 |
| V996 | INFLUENZA VACCINE REFUSAL | | 12/05/2018 | | FISHK SHU200 | 88A1362 | |
| V996 | INFLUENZA VACCINE REFUSAL | | 10/18/2017 | C | VNCNT GEN | 88A1362 | |
| 0728 | HEPATITIS C SUSTAINED VIRAL RESPONSE | | 02/03/2016 | C | VNCNT GEN | Y | 88A1362 |
| 0706 | HEPATITIS C RX COMPLETED | | 10/14/2015 | C | VNCNT GEN | 88A1362 | |
| 0703 | HEPATITIS C RX INITIATED | | 07/22/2015 | I | C VNCNT GEN | 88A1362 | |
| 279- | HIV LABTEST NEGATIVE | | 05/29/2015 | C | VNCNT GEN | 88A1362 | |
| V529 | DENTURE PARTIAL | | 07/10/2012 | | ELMIRA GENER | Y | 88A1362 |
| 279- | HIV LABTEST NEGATIVE | | 05/14/2011 | | GRT MEAD GEN | 88A1362 | |
| V998 | VACCINE REFUSAL | | 01/27/2010 | | FISHKILL GEN | Y | 88A1362 |
| 0729 | HEP C TREATMENT FAILURE VS REINFECTION | | 11/19/2009 | I | FISHKILL GEN | Y | 88A1362 |
| 0706 | HEPATITIS C RX COMPLETED | | 10/16/2009 | I | FISHKILL GEN | Y | 88A1362 |
| V629 | REFUSAL OF CARE | | 02/24/2009 | | FISHKILL GEN | Y | 88A1362 |
| 0703 | HEPATITIS C RX INITIATED | | 11/21/2008 | I | FISHKILL GEN | Y | 88A1362 |
| V559 | S/P LIVER BIOPSY | | 09/24/2008 | | FISHKILL GEN | Y | 88A1362 |
| 0726 | HEPATITIS C GENOTYPE KNOWN | | 09/10/2008 | | FISHKILL GEN | Y | 88A1362 |
| 0519 | CHICKENPOX HISTORY OF | | 03/18/2008 | | OTISVILLE | | 88A1362 |

* MEDICAL PROBLEM LIST REPORT CONTINUES ON NEXT PAGE

1/29/25 9:58:33

NYS DEPARTMENT OF CORRECTIONAL SERVICES
HEALTH SERVICES SYSTEM

PAGE

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PRINTED BY: CO10PWB MEDICAL PROBLEM LIST BY TYPE - NO COMMENTS
PRINTED AT: AUBURN GENER (ALL PROBLEM TYPES)

SAME AS REPORT HSC138

DIN: 22B2266 NAME: NAVARRO, ISRAEL NYSID: 04426867L DOB: [REDACTED]/1954
OWN FAC: AUBURN GENER CUR FAC: AUBURN GENER CUR LOC: CELL
CURRENT CLASSIFICATIONS - MEDICAL: 2 04/10/2024 DMH: 6 10/23/2023 CELL-ONLY:

ACTIVE/INACTIVE PROBLEMS

MEDICAL CONDITIONS

(CONTINUED)

| CODE | PROBLEM | DATE | DIN | a | |
|------|--|------------|--------------|---|---------|
| PR | IDENTIFIED | S | FACILITY | C | ENTRY |
| 071- | HEPATITIS B IMMUNE | 04/22/2005 | GRN HAVN GEN | Y | 88A1362 |
| 07AI | HEPATITIS A IMMUNE | 09/30/2003 | FISHKILL GEN | Y | 88A1362 |
| 0701 | HEPATITIS C DISEASE | 06/14/2002 | GRN HAVN GEN | Y | 88A1362 |
| 520- | TEETH & SUPPORT STRUCTURE DISEASES NOS | 06/28/2001 | GRN HAVN GEN | Y | 88A1362 |
| 279- | HIV LABTEST NEGATIVE | 02/10/1993 | AUBURN GENER | Y | 88A1362 |
| 279- | HIV LABTEST NEGATIVE | 11/12/1992 | AUBURN GENER | Y | 88A1362 |
| 316- | SERIOUS MENTAL DISORDER NOS | 02/16/1988 | DWNSTATE GEN | Y | 88A1362 |

*** TYPE TOTAL: 41

SCREENING/ROUTINE HEALTH

| CODE | PROBLEM |
|------|-------------------------------|
| V750 | ECG ROUTINE SCREENING |
| V764 | RECTAL DIGITAL EXAM ROUTINE |
| V70- | PHYSICAL EXAM ROUTINE |
| V70- | PHYSICAL EXAM ROUTINE |
| V70- | PHYSICAL EXAM ROUTINE |
| V750 | ECG ROUTINE SCREENING |
| V70- | PHYSICAL EXAM ROUTINE |
| V750 | ECG ROUTINE SCREENING |
| V70- | PHYSICAL EXAM ROUTINE |
| V750 | ECG ROUTINE SCREENING |
| V767 | COLONOSCOPY ROUTINE SCREENING |
| V70- | PHYSICAL EXAM ROUTINE |
| V70- | PHYSICAL EXAM ROUTINE |
| V70- | PHYSICAL EXAM ROUTINE |

| PR | DATE | DIN | a | |
|------------|----------------|----------|---------|-------|
| IDENTIFIED | S | FACILITY | C | ENTRY |
| 07/29/2024 | AUBURN GENER | 22B2266 | | |
| 11/17/2022 | AUBURN GENER | 22B2266 | | |
| 06/06/2022 | ELMIRA RECEP | 22B2266 | | |
| 06/18/2019 | FISHKILL GEN | 88A1362 | | |
| 06/27/2017 | C VNCNT GEN | 88A1362 | | |
| 06/09/2017 | C VNCNT GEN | 88A1362 | | |
| 07/02/2015 | C VNCNT GEN | 88A1362 | | |
| 06/04/2015 | C VNCNT GEN | 88A1362 | | |
| 01/26/2013 | ELMIRA GENER | 88A1362 | | |
| 11/27/2009 | FISHKILL GEN | Y | 88A1362 | |
| 11/13/2007 | OTISVILLE | 88A1362 | | |
| 10/28/2007 | OTISVILLE | 88A1362 | | |
| 12/19/2006 | FISHKILL GEN | Y | 88A1362 | |
| 12/11/2006 | OTISVILLE | 88A1362 | | |
| 04/20/2005 | I GRN HAVN GEN | 88A1362 | | |
| 06/12/2002 | I GRN HAVN GEN | 88A1362 | | |

*** TYPE TOTAL: 16

IMMUNIZATIONS

| CODE | PROBLEM |
|------|--------------------------------|
| 4872 | INFLUENZA VACCINE REFUSED |
| 4871 | INFLUENZA VACCINE |
| 04P1 | PFIZER COVID-19 VACCINE/DOSE 1 |
| 4871 | INFLUENZA VACCINE |
| 4871 | INFLUENZA VACCINE |
| 4871 | INFLUENZA VACCINE |

| PR | DATE | DIN | a | |
|------------|--------------|----------|---------|-------|
| IDENTIFIED | S | FACILITY | C | ENTRY |
| 11/14/2023 | AUBURN GENER | 22B2266 | | |
| 11/17/2022 | AUBURN GENER | 22B2266 | | |
| 11/12/2021 | GRNHVN INTKE | Y | 22B2266 | |
| 11/05/2018 | OTISVILLE | 88A1362 | | |
| 10/14/2016 | C VNCNT GEN | 88A1362 | | |
| 10/28/2015 | C VNCNT GEN | 88A1362 | | |

* MEDICAL PROBLEM LIST REPORT CONTINUES ON NEXT PAGE

1/29/25 9:58:33

NYS DEPARTMENT OF CORRECTIONAL SERVICES

HSC137

HEALTH SERVICES SYSTEM

PAGE

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PRINTED BY: CO10PWB MEDICAL PROBLEM LIST BY TYPE - NO COMMENTS

PRINTED AT: AUBURN GENER

(ALL PROBLEM TYPES)

SAME AS REPORT HSC138

DIN: 22B2266 NAME: NAVARRO, ISRAEL

NYSID: 04426867L DOB: [REDACTED]/1954

OWN FAC: AUBURN GENER CUR FAC: AUBURN GENER CUR LOC: CELL

CURRENT CLASSIFICATIONS - MEDICAL: 2 04/10/2024 OMH: 6 10/23/2023 CELL-ONLY:

ACTIVE/INACTIVE PROBLEMS

IMMUNIZATIONS

(CONTINUED)

| CODE | PROBLEM | DATE | DIN |
|------|---------------------------|------------|---------|
| PR | IDENTIFIED | S | ENTRY |
| 4871 | INFLUENZA VACCINE | 10/01/2014 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 11/08/2012 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 10/09/2011 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 11/10/2010 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 11/24/2009 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 12/31/2008 | 88A1362 |
| 1364 | TD VACCINE/BOOSTER | 06/23/2008 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 11/12/2007 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 01/04/2007 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 12/01/2005 | 88A1362 |
| 07B3 | HEPATITIS B VACCINE/DOSE3 | 04/07/2005 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 01/27/2005 | 88A1362 |
| 07B2 | HEPATITIS B VACCINE/DOSE2 | 07/20/2004 | 88A1362 |
| 07B1 | HEPATITIS B VACCINE/DOSE1 | 05/06/2004 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 12/05/2003 | 88A1362 |
| 07B3 | HEPATITIS B VACCINE/DOSE3 | 10/10/2003 | 88A1362 |
| 07A2 | HEPATITIS A VACCINE/DOSE2 | 09/30/2003 | 88A1362 |
| 07B2 | HEPATITIS B VACCINE/DOSE2 | 05/09/2003 | 88A1362 |
| 07A1 | HEPATITIS A VACCINE/DOSE1 | 04/01/2003 | 88A1362 |
| 07B1 | HEPATITIS B VACCINE/DOSE1 | 04/01/2003 | 88A1362 |
| 4871 | INFLUENZA VACCINE | 12/27/2002 | 88A1362 |

*** TYPE TOTAL: 27

TB RELATED PROBLEMSCODE PROBLEM

| | |
|------|--------------------------------------|
| 0017 | TB, NEGATIVE QUANTIFERON |
| 0017 | TB, NEGATIVE QUANTIFERON |
| 0017 | TB, NEGATIVE QUANTIFERON |
| 0061 | TB, PREVENTIVE RX, INITIATED |
| 0030 | TB, CXR, NORMAL |
| 0013 | TB, POSITIVE PPD, 10-14MM INDURATION |
| 0010 | TB, NEGATIVE PPD |

| CODE | PROBLEM | DATE | DIN |
|------|--------------------------------------|------------|---------|
| PR | IDENTIFIED | S | ENTRY |
| 0017 | TB, NEGATIVE QUANTIFERON | 03/28/2024 | 22B2266 |
| 0017 | TB, NEGATIVE QUANTIFERON | 02/14/2023 | 22B2266 |
| 0017 | TB, NEGATIVE QUANTIFERON | 01/29/2022 | 22B2266 |
| 0061 | TB, PREVENTIVE RX, INITIATED | 12/18/1992 | 88A1362 |
| 0030 | TB, CXR, NORMAL | 12/14/1992 | 88A1362 |
| 0013 | TB, POSITIVE PPD, 10-14MM INDURATION | 12/11/1992 | 88A1362 |
| 0010 | TB, NEGATIVE PPD | 12/05/1991 | 88A1362 |

*** TYPE TOTAL: 7

TOTAL PROBLEMS: 93

* END OF MEDICAL PROBLEM LIST BY TYPE FOR THIS DIN *

App. 72

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|-----------------|----------|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| NAVARRO, ISRAEL | 22B 2266 | | AVBVRW |

Subjective: I/I wrote to SC inquiring about the status of his HA being repaired.

Last Name NAVARRO

DIN 22B 2266 Location E-2-26

Date 12/26/24 Time AM ORCAH

Objective: being repaired.

Provider Orders:

I/I states left them to be fixed 12 months ago.

Assessment: I/I have appt 10/2/24 w/ Dr. GULLO -

However post clinic comment states he did not bring is device to visit.

Plan: email sent to clarify - awaiting confirmation

Signature/Provider # Khattinne Hlet RN Transcribing Order/Provider #/Date/Time _____

Subjective:

Last Name _____

DIN _____ Location _____

Date _____ Time _____

Objective:

Provider Orders:

Assessment:

Plan:

Signature/Provider # 4 RN Transcribing Order/Provider #/Date/Time _____

Continue entry into next box if necessary.

App. 73

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | | | | |
|---|--|-----|----------|---------------|----------|---------------|
| Name | Navarro, Israel | DIN | 22B22110 | Date of Birth | 54 | Facility Name |
| Subjective: | Brixadi Inj along given SQ + LUE | | | Last Name | Navarro | |
| | | | | DIN | 22B22110 | Location |
| | | | | Date | 11/27/24 | Time |
| Objective: | Provider Orders: | | | | | |
| <ul style="list-style-type: none"> I IT c/o LUE pain States been going on for a year, unable to lift arm above head very painful waits | | | | | | |
| Assessment: | <p>Assessment: to lift arm above head very painful waits</p> <p>Provider: Courtney Fedyshyn, NP CPT: 1295165041 NPI: F339601 DEA: MG3510585</p> | | | | | |
| Plan: | Chart to provider | | | | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | | | | |
| Subjective: | <p>NP note</p> <p>1/1 requesting MRI of L shoulder (per above note), has been referring PT for shoulder, stating not helping his pain, will obtain X-ray & NPs to discuss findings. Cont. o PT</p> | | | | | |
| Object: re: | <p>Provider Orders:</p> <p>① shoulder X-ray NPs to discuss</p> | | | | | |
| Assessment: | | | | | | |
| Plan: | | | | | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | | | | |

Continue entry into next box if necessary.

App. 74

FORM 3105 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | | | | | |
|--|---|-----|-----------|---------------|------|---------------|-----|
| Name | INNWarren, Israel. | DIN | Q2B221010 | Date of Birth | 15/1 | Facility Name | 4CF |
| Subjective: | Last Name _____ | | | | | | |
| Objective: | DIN _____ Location _____ | | | | | | |
| Assessment: | Date 10/30/24 Time 9am | | | | | | |
| Plan: | Provider Orders: | | | | | | |
| <p>Signature/Provider # <u>KLattimore</u> RN Transcribing Order/Provider #/Date/Time _____</p> <p>Subjective: 11/1 seen @ sick call - requesting SC - reporting "bleeding" Last Name <u>Navarro</u> 11/1 reports Vomiting - bright red blood DIN <u>22B221010</u> Location <u>E-226</u></p> <p>Objective: BM - bright red blood. denies coffee ground stool/vomit. States apoplectic WNL. Reports no of hemorrhoids. Date <u>11/7/24</u> Time <u>am sick call</u></p> <p>Assessment: States lt. shoulder pain & whining pain + Provider Orders: VS: 150/80 80 20, Reg, easy + BS x 4 spad Abd. nm tender nm distended ACX 3 - pecti dolor value</p> <p>Plan: denies ibuprofen usage. States not feeling well. Requesting visit. Chat to provider</p> <p>Signature/Provider # <u>KLattimore HIC</u> 11/1 to be seen by provider</p> | | | | | | | |
| Subjective: | Last Name <u>Navarro</u> | | | | | | |
| Objective: | DIN <u>22B221010</u> Location <u>E-2-26</u> | | | | | | |
| Assessment: | Date <u>11/8/24</u> Time <u>930am</u> | | | | | | |
| Plan: | Provider Orders: - Miralax 17g Use 17g in 8oz H2O QD pm xenting - Ibuprofen 600 mg + po QID pm x1yr - Pantoprazole 40mg + po QD x1yr | | | | | | |
| <p>Called down to discuss coughing sputum with blood in it and blood in stools. He reports he has blood on toilet paper, not in stools. He reports sputum had blood in it but did not cough up just blood. Reports he thinks he has hemorrhoids. Using hemorrhoid ointment based on symptoms and hx of ibuprofen use suspect possible peptic ulcers as well as hemorrhoids from constipation.</p> <p>Due to constant shoulder pain will order ibuprofen 800mg</p> <p>flu pxn</p> <p>Signature/Provider # <u>M. Wall NPC 425</u> RN Transcribing Order/Provider #/Date/Time _____</p> | | | | | | | |

Continue entry into next box if necessary.

| | | | |
|---|--|-----------------------|----------------------------|
| Name Navarro, Israel | DIN 22B2266 | Date of Birth 1/54 | Facility Name Auburn:CF |
| Subjective: • Not up dressed/ready light on per security | Last Name <u>NAVARRO</u> DIN <u>22B2266</u> Location <u>E.2.26</u> Date <u>10/17/24</u> Time <u>6:30AM</u> | | |
| Objective: • Not seen & SC | Provider Orders: | | |
| Assessment: Flu pen | | | |
| Plan: | | | |
| Signature/Provider # <u>Khattimah 4167</u> RN Transcribing Order/Provider #/Date/Time | | | |

| | | | |
|--|--|--|--|
| Subjective: • SC | Last Name <u>NAVARRO</u> DIN <u>22B2266</u> Location <u>E.2.26</u> Date <u>10/25/24</u> Time <u>7:00</u> | | |
| Objective: • request renewal of block shower last day is 10/25/24 | Provider Orders: | | |
| Assessment: Lt shoulder is ROM, pain movement denies any injuries/ incidents, states has slowly gotten worse over time. • Stretches but states is immobilized by pain. requesting NPS visit to assist | Provider Orders: Chart to provider | | |
| Plan: Khattimah 4167 | RN Transcribing Order/Provider #/Date/Time | | |
| Signature/Provider # <u>Khattimah 4167</u> RN Transcribing Order/Provider #/Date/Time | | | |

| | | | |
|---|--|--|--|
| Subjective: • Np. note | Last Name <u>NAVARRO</u> DIN <u>22B2266</u> Location <u>E.2.26</u> Date <u>10/28/24</u> Time <u>1630</u> | | |
| Objective: • C/o Worsening shoulder pain, wants block shower, NPS in | Provider Orders: N.P.S | | |
| Assessment: Plan: Oly 395 | | | |
| Signature/Provider # <u>Khattimah 4167</u> RN Transcribing Order/Provider #/Date/Time | | | |

App. 76

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|----------------------|---|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Israel Navarro | 22B2266 | 11/15/54 | ACR |
| Subjective: | Last Name <u>Navarro</u> DIN <u>22B2266</u> Location <u>BT</u> Date <u>8/31/24</u> Time <u>16:06 AM</u> | | |
| Objective: | BP: 123/62 ; P: 50 - Rr: 14k spor: 961 - B/E: n/n; Cataract+ | | |
| Assessment: | Current BP Regim Ati 140-6 month Audiology report Rx 144 10.00 | | |
| Plan: | Signature/Provider # <u>R</u> RN Transcribing Order/Provider #/Date/Time _____ | | |
| Subjective: | Last Name <u>Navarro</u> DIN <u>22B2266</u> Location <u>E-2-6</u> Date <u>8/8/24</u> Time <u>9A</u> | | |
| Objective: | Provider Orders: LVA prepped using alcohol and aseptic technique | | |
| Assessment: | Brixadi 96mg injected SQ LVA. tolerated S 90 | | |
| Plan: | Lot PK2992 Exp 10312025 | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time <u>8/8/24 9A</u> | | |

Continue entry into next box if necessary.

| | | |
|--|---|---------------|
| Name | DIN | Facility Name |
| Subjective: | Last Name | |
| Objective: | Provider Orders: | |
| Assessment: | | |
| Plan: | | |
| Signature/Provider # <u>K. Lattimore RN 467</u> RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: | Last Name <u>Navarro</u> | |
| Objective: | DIN <u>22B2266</u> Location <u>E-2-6</u> Date <u>7/26/24</u> Time <u>7:15 AM</u> | |
| Assessment: | Provider Orders: <u>Block shaver permit xP days</u> | |
| Plan: | | |
| Signature/Provider # <u>J.W. Alloupeyds</u> RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: | Last Name <u>Navarro</u> | |
| Objective: | DIN <u>22B2266</u> Location <u>E-2-6</u> Date <u>7/29/24</u> Time <u>95CA</u> | |
| Assessment: | Provider Orders: <u>HR 46</u> | |
| Plan: | <u>no clo</u> <u>CTP</u> | |
| Signature/Provider # <u>J.W. Alloupeyds</u> RN Transcribing Order/Provider #/Date/Time | | |

| | | | |
|---|---|-----------------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 1/44 | Albion |
| Subjective: | Last Name <u>Navarro</u> | | |
| | DIN | Location <u>E-2-6</u> | |
| Objective: | Date <u>4/14/11</u> Time <u>0911</u> | | |
| <p>St. 180 BP: 170/90</p> <p>→ B shoulder pain — will start PTH —</p> <p>→ N/AIDS</p> | <p>Provider Orders:</p> <p>Ibuprofen 600 mg x 3 month</p> <p>PTH - D</p> | | |
| Assessment: | BP high today - increase shoulder | | |
| Plan: | <p>Lisinopril — 1/4 n in ↑ Lisinopril 20 mg</p> <p>in a few months ↑ PO 3 day - & by</p> | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: | <p>HCC takes Lisinopril 20mg PO daily denies smoking CV: S1 S2 - R2R2</p> | | |
| | <p>Last Name <u>Navarro</u> DIN <u>22B2266</u> Location <u>E-2-6</u> Date <u>5/16/11</u> Time <u>1120</u></p> | | |
| Objective: | <p>* borderline - did not take this morning.</p> | | |
| 148/80 Wt 185 980/76 | <p>Provider Orders:</p> <p>HCC - 1mo</p> <p>monitor - may need increase in Lisinopril, weekly x monthly</p> <p>RN BP checks monthly</p> <p>RN weekly BP check x 1mo</p> | | |
| Assessment: | <p>WT 185 HCC - 1mo</p> | | |
| Plan: | <p><u>ST 444</u> <u>4/16/11</u></p> | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |

| | | | |
|--|---|---------------------|-----------------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 1/54 | Albion |
| Subjective: | Last Name <u>Navarro</u> | | |
| Sick Call C/o left shoulder pain. Adx x3, up and c steady gait | | DIN <u>22B2266</u> | Location <u>E-2-6</u> |
| Objective: | Date <u>4/16/24</u> Time <u>6A</u> | | |
| Bp easy, reg. rate, speech clear, appear NAD. | | | |
| Assessment: | 1/1 removed shirt c some difficulty removing left arm from sleeve. No abnormalities or deformities noted @ this time. 1/1 unable to extend left arm across chest to touch it arm, unable to fully extend left arm upward. Tx shoulder syndrome. denies any recent injuries. States Iuprofen didn't help c pain in past. | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: | Last Name <u>Navarro</u> | | |
| 1/1 give Iuprofen & analgesic balm to help c pain management. | | DIN <u>22B2266</u> | Location <u>E-2-6</u> |
| Objective: | Date <u>4/16/24</u> Time <u>6A</u> | | |
| Assessment: | Provider Orders: Iuprofen 8pk Use Analgesic Balm as 1 tube/ divided | | |
| Plan: | | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: | Last Name <u>Navarro</u> | | |
| Brixadi | | DIN <u>22B2266</u> | Location <u>E-2-6</u> |
| 1/1 presents for monthly Brixadi injection. | | Date <u>4/19/24</u> | Time <u>930A</u> |
| Objective: | Provider Orders: | | |
| LVA prepped using alcohol and aseptic technique | | | |
| Assessment: | Brixadi 96mg injected SO LVA. | | |
| Plan: | 1/1 tolerated s 90 Lot PK2992 Exp 10312025 | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |

Continue entry into next box if necessary.

App. 80

FORM 3105B (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | | | | | |
|--|--|-----|---------|------|---|---------------|-----------|
| Name | Navarro Israel | DIN | 22B2200 | Date | 3/22/24 | Facility Name | 54 ACE |
| Subjective: | <p><u>MAT</u> tolerating current dose of Brixadi recent increased dose</p> | | | | Last Name | Navarro | |
| Objective: | <p>Injection APPROX 2 days ago - cont.</p> | | | | DIN | 22B2200 | Location |
| Assessment: | | | | | Date | 3/22/24 | Time 1235 |
| Plan: | | | | | <p>Provider Orders: - HCC - 1mo - MAT - 3mo - ECG</p> | | |
| <p>158190 <u>HCC</u> / rx Lisinopril. States does not take everyday, takes when "I feel I need it" counseled to take everyday. CV: S1 S2 RRB BP 158190</p> | | | | | | | |
| <p>WT 185 *HCC - 1mo</p> | | | | | | | |
| <p>Signature/Provider # <u>LP, Yorkhei</u> RN Transcribing Order/Provider #/Date/Time <u>4/4/24</u></p> | | | | | | | |
| Subjective: | | | | | Last Name | | |
| Objective: | | | | | DIN | | |
| Assessment: | | | | | Date | | |
| Plan: | | | | | <p>Provider Orders:</p> | | |
| <p>Signature/Provider # <u>12</u> RN Transcribing Order/Provider #/Date/Time</p> | | | | | | | |

Continue entry into next box if necessary.

App. 81

FORM 3105B (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|----------------------|---|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Naavarro, J. | 22B2266 | [REDACTED] | 5f Auburn |
| Subjective: | Sc - No Chart found - I IT States | | |
| Objective: | I IT States Having pain left Shoulder - Has x from 6/7/22 for left Shoulder Syndrome. | | |
| Assessment: | I IT Did have PT 10/6/23, 11/1/23 then Refused following 6 Appts for PT - Had labs 3/4/24 that was | | |
| Plan: | PT for his knee. I IT has full ROM and moving D arm and shoulder motion x I IT States was lifting lots. SNC, not to lift till better | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | 3/2/24 6AM | |
| Subjective: | Last Name _____ DIN _____ Location _____ Date _____ Time _____ | | |
| Objective: | Provider Orders: | | |
| Assessment: | _____ | | |
| Plan: | _____ | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | 13 | |

Continue entry into next box if necessary.

App. 82

FORM 3105B (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | | | | | |
|---|--|-----|---------|---------------|----|---------------|--|
| Name | Navarro, Great | DIN | 22B2266 | Date of Birth | 54 | Facility Name | 210 |
| Subjective: | i/i requesting the renewal of his block shower's and | | | | | | Last Name <u>Navarro</u> |
| Objective: | | | | | | | DIN <u>22B2266</u> Location <u>E-2-6</u> |
| Assessment: | | | | | | | Date <u>1/23/24</u> Time <u>AMSC</u> |
| Plan: | | | | | | | Provider Orders: |
| <p>Signature/Provider # <u>D. DADABR 137</u> RN Transcribing Order/Provider #/Date/Time _____</p> <p>Subjective: block shower renewal x 90 days</p> <p>Objective: (await MRI results) ↳ not scheduled yet</p> <p>Assessment: Lisinopril renewal</p> <p>Plan: Block shower permit x 90 days</p> <p>Lisinopril 10mg PO daily x 1 year</p> | | | | | | | |
| <p>Signature/Provider # <u>TH Whithell</u> RN Transcribing Order/Provider #/Date/Time 14 _____</p> | | | | | | | |

Continue entry into next box if necessary.

App. 83

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|---|--|--|-----------------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B22166 | 194 | Auburn |
| Subjective: <u>Sick Call</u> | Last Name <u>Navarro</u> | | |
| I/I seen on E block for sick | | DIN <u>22B22166</u> | Location <u>E-2-6</u> |
| Coll: Complaints of bilateral knee pain | | Date <u>7/25/23</u> | Time <u>6A</u> |
| Objective: that has been on going for "several months. I/I noted to ambulate with steady gait, bending knees without grimace. States he was told he would see a provider and questioning when that would be. Writer educated him that she understood he was in pain and his desire for answers however there are often I/I's in the prison and a limited amount of providers. | Provider Orders: | | |
| Assessment: No further reassess. I/I she would inquire about his appr/meds: Sure one is scheduled and seek sick call response. Declined ibuprofen/tylenol | | | |
| Plan: Flu with medical plan. | | | |
| Nursing Dx: actively in tolerance | | | |
| Signature/Provider # <u>DRD</u> | | RN Transcribing Order/Provider #/Date/Time | |
| Subjective: <u>NPS</u> | Last Name <u>Navarro</u> | | |
| 7/25 - 6 bilateral knee | | DIN <u>22B2266</u> | Location <u>E-3-6</u> |
| Objective: Pain - Soon to Start | Date <u>7/1/23</u> - Time <u>1312</u> - | | |
| BP: <u>120/80</u> Wt: <u>189</u> | Provider Orders: Voltaren 1g. x3 months | | |
| Physical therapy - will need MR: | | | |
| Assessment: <u>R knee - first d/t</u> | MR - <u>R knee -</u> | | |
| Plan: <u>Severity - Start on</u> | <u>Block showers</u> | | |
| <u>Levodopa/Carbidopa/NAc -</u> | | <u>x 3 weeks -</u> | |
| | | <u>x 6 months -</u> | |
| Signature/Provider # <u>DRD</u> | | RN Transcribing Order/Provider #/Date/Time | |

App. 84

FORM 310SB1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|---|--|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navaro, Israel | 22B2266 | 1954 | Cubum CF |
| Subjective: | Last Name <u>Navaro</u> DIN <u>22B2266</u> Location <u>E-2-6</u> Date <u>6/26/23</u> Time <u>0105a</u> | | |
| Objective: | Provider Orders: | | |
| Assessment: | Provider Orders: | | |
| Plan: | | | |
| Signature/Provider # <u>Emeller 139</u> RN Transcribing Order/Provider #/Date/Time _____ | | | |
| Subjective: | Last Name <u>Navarro</u> DIN <u>22B2266</u> Location <u>E-2-6</u> Date <u>6/26/23</u> Time <u>905A</u> | | |
| Objective: | Provider Orders: | | |
| Assessment: | Provider Orders: | | |
| Plan: | | | |
| Signature/Provider # <u>Kmarshall 98</u> RN Transcribing Order/Provider #/Date/Time _____ | | | |

Continue entry into next box if necessary.

App. 85

FORM 3105 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|--|--|---|--|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 154 | Arbasa |
| Subjective: <i>ESC seen in first aid pt alleged</i> | Last Name | | |
| <i>attack from another</i> | DIN | 22B2266 | Location |
| Objective: <i>1. Superficial abrasions to back of head,</i> | Provider Orders: | | |
| <i>corner of R. eye, upper lip</i> | BP 142/78 | | |
| Assessment: <i>2 chin. - No treatment initiated.</i> | AR 96 | | |
| Plan: <i>Revised heel areas clean & dry & fly to see prn.</i> | R16 | | |
| | SP02 98%, 70 981 | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: <i>MAT tolerating current dose, no cravings. Cont regimen.</i> | Last Name | Navarro | |
| Objective: <i>HCC rx for Lisinopril 10mg po daily - states he ran out & has not taken in</i> | DIN | 22B2266 | Location E-2-10 |
| Assessment: <i>approx 1 wk.</i> | Date | 6/17/23 | Time 1320 |
| Plan: <i>*counseled - resume BP med, *RN BP check x 1 *HCC - 1mo</i> | Provider Orders: | <ul style="list-style-type: none"> - HCC - 1mo - RN BP x 1 | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: <i>NPS reports bil. knee pain w/ no assoc injury</i> | Last Name | Navarro | |
| Objective: <i>L > R chart notes hx of chronic joint pain. There is no knee swelling or</i> | DIN | 22B2266 | Location E-2-10 |
| Assessment: <i>obvious injury, on exam L knee pain ↑ w/ flexion.</i> | Date | 6/17/23 | Time 1320 |
| Plan: <i>*possible arthritis?</i> | Provider Orders: | <ul style="list-style-type: none"> - XR - PTH - Motrin 600mg PO Q8H PRN pain x 3 mo - NPS | |
| Signature/Provider # | 17 | NPS F/U | RN Transcribing Order/Provider #/Date/Time |

Continue entry into next box if necessary.

App. 86

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|----------------------|---|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 19/01/00 | WRF |
| Subjective: | Last Name <u>Navarro</u> DIN <u>22B2266</u> Location <u>D-7-24</u> Date <u>6/5/23</u> Time <u>1041</u> | | |
| Objective: | <u>SICK CALL</u> <u>GO Bil. knee pain</u> <u>Assessed at Sick call</u> <u>room knees are swollen</u> - <u>knee sleeves</u> <u>could benefit from knee</u> <u>sleeves, appt put in</u> <u>computer</u> for <u>to see NP</u> | | |
| Assessment: | Provider Orders: <u>Permit</u> | | |
| Plan: | <u>Chart to provider</u> <u>Knee sleeves</u> - <u>NP-Not</u> <u>Knees - swollen</u> - <u>pain - aching</u> for <u>knee sleeves</u> - <u>per RN request</u> - <u>read knee sleeve</u> <u>permit</u> <u>R. Hefner</u> <u>18</u> | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |

Continue entry into next box if necessary.

App. 87

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|--|--|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 154 | Auburn |
| Subjective: renewal | Last Name <u>Navarro</u> DIN <u>22B2266</u> Location _____ Date <u>5/11/23</u> Time <u>1221</u> | | |
| Objective: | Provider Orders: 1. Buprenorphine/Naloxone 8mg/2mg SL tabs daily x 30 days RN | | |
| Assessment: | | | |
| Plan: | Signature/Provider # <u>W. Godfrey</u> RN Transcribing Order/Provider #/Date/Time <u>OKS 198 5/11/23 1240</u> | | |
| Subjective: <u>SICK CALL</u> | Last Name <u>Navarro</u> DIN <u>22B2266</u> Location <u>D-7-24</u> Date <u>5/21/23</u> Time <u>10am</u> | | |
| Objective: <u>C/O Bil knee pain, both knees assessed at sick call, no swelling</u> | Provider Orders: RN: T/I given Ibu x 8 to H to rest, keep elevated if does not improve, come back to sick call and will put an apt. | | |
| Assessment: <u>1m</u> | | | |
| Plan: <u>to sick call and will put an apt.</u> | | | |
| Signature/Provider # <u>ABM/BS</u> | RN Transcribing Order/Provider #/Date/Time <u>19</u> | | |

Continue entry into next box if necessary.

App. 88

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | | | | | |
|----------------------|---|-----|---------|--|--|---------------|--------|
| Name | Navarro, Alvaro | DIN | 22B2266 | Date of Birth | 1/14/54 | Facility Name | Albion |
| Subjective: | NP-Note | | | Last Name | Navarro | | |
| | | | | DIN | 22B2266 | Location | D-7-24 |
| Objective: | Discussed Several things - wome | | | Date | 3/14/23 | Time | 1023 |
| Assessment: | wt: 178 BP: 140/80 lab SIBs - c/o sexual side effects of Flomax - needs to refill Finasteride | | | Provider Orders: | SIBs - Flomax refill Finasteride | | |
| Plan: | refill Finasteride - due to Coloscopy - for Coloscopy - MAT to consider q | | | | | | |
| Signature/Provider # | J. L. G. 6/23 | | | RN Transcribing Order/Provider #/Date/Time | | | |
| Subjective: | MAT | | | Last Name | Navarro | | |
| Objective: | 11 due for Suboxone renewal | | | DIN | 22B2266 | Location | D-7-24 |
| Assessment: | S Current dose Suboxone 16mg/4mg Q Day | | | Date | 5/1/23 | Time | 730 A |
| Plan: | S CTP for review | | | Provider Orders: | | | |
| Signature/Provider # | Ks 198 | | | RN Transcribing Order/Provider #/Date/Time | 5/1/23 730 A | | |

Continue entry into next box if necessary.

App. 89

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|----------------------|--|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B22606 | 1954 | Auburn |
| Subjective: | Last Name <u>Navarro</u> - DIN <u>22B22606</u> - Location <u>D-7-74</u> Date <u>12/13/12</u> - Time <u>022</u> Provider Orders: <u>flu HCC -</u> | | |
| Objective: | Presents for HCC - w/ B/L edema ↓ pretibial pitting +2 128/80 Severe - noted melanocytic 179- derm pathology - no spec - labs - diabetes as origin - NPS - | | |
| Assessment: | Also c/o Urinary issues (Nocturia) Likely new diabetes BP 88/58 w/ edema - with ↓ Norvasc (Discontinue) increase lisinopril ↓ start Glomax to supplement the lisinopril - | | |
| Plan: | | | |
| Signature/Provider # | <u>R. Styler 449</u> RN Transcribing Order/Provider #/Date/Time _____ | | |
| Subjective: | Last Name _____ DIN _____ Location _____ Date _____ Time _____ | | |
| Objective: | Provider Orders: _____ | | |
| Assessment: | | | |
| Plan: | | | |
| Signature/Provider # | <u>21</u> RN Transcribing Order/Provider #/Date/Time _____ | | |

Continue entry into next box if necessary.

App. 90

FORM 3105BI (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|---|--|--|------------------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 1/15/41 | Auburn |
| Subjective: | Last Name <u>Navarro</u> | | |
| I/I not seen this AM r/t not awake, dressed, lights on Per Policy. | | DIN <u>22B2266</u> | Location <u>B-7-24</u> |
| Objective: | Provider Orders: | | |
| Per Sick Call slip states Problems w/ foot swelling and black discoloration. | | Date <u>12/18/2022</u> Time <u>0719</u> | |
| Assessment: | | | |
| UTA | | | |
| Plan: | Sick call response sent to I/I to return to sick call for further evaluation | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time | | |
| Subjective: | Last Name <u>Navarro, Israel</u> | | |
| I/C: I/I States | | DIN <u>22B2266</u> | Location <u>D-7-24</u> |
| Objective: | Provider Orders: | | |
| Swelling feet & turning colors - unable/not wanting to show this winter-feet. | | Date <u>12/12/22</u> | Time <u>0615</u> |
| Assessment: | Has HCC scheduled 12/13/22 - Please Address them. | | |
| Plan: | | | |
| Signature/Provider # | 22 | RN Transcribing Order/Provider #/Date/Time | |
| 12/12/22 - 282 | | | |

Continue entry into next box if necessary.

App. 91

FORM 3105B1 (11/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|---|--|--|-----------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 54 | Auburn |
| Subjective: | Last Name Navarro | | |
| Several issues - HCC - deferred - has urinary frequency - BRBPE? | | DIN 22B2266 | Location D-7-24 |
| Objective: | Date 11/17/22 Time 1423 | | |
| Constipation - Consents to Am lactin 12g- DRE - FOBT done simultaneously | | Provider Orders: Prostrium x 6 month | |
| Assessment: | + (however prostate enlarged) Proscar - 5mg + po q day x 11 yr | | |
| Plan: | will start finasteride - Prostrium PFT's Flecyclidine for lower legs, labs labs | | |
| Signature/Provider # 1234567890 | | RN Transcribing Order/Provider #/Date/Time | |
| Subjective: | Last Name NAVARRO | | |
| IT IT handed in occult cards that were given to him by the provider. | | DIN 22B2266 | Location D-7-24 |
| Objective: | Date 11/21/22 Time 1pm | | |
| Assessment: | Provider Orders: | | |
| Plan: | | | |
| Signature/Provider # 1234567890 | | RN Transcribing Order/Provider #/Date/Time | |

Continue entry into next box if necessary.

App. 92

FORM 3105B1 (3/1/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

| | | | |
|----------------------|---|--|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 2262266 | 54 | 06 |
| Subjective: | Last Name <u>Navarro</u> DIN <u>2262266</u> Location <u>D-75</u> Date <u>7/11/22</u> Time <u>7A</u> | | |
| SC | Provider Orders: <u>Ref to provider</u> | | |
| Objective: | I I needs hearing Aid batteries | | |
| Assessment: | traffed in 7/11/22 | | |
| Plan: | | | |
| Signature/Provider # | 317 | RN Transcribing Order/Provider #/Date/Time | 7/11/22 |
| Subjective: | Last Name <u>Navarro</u> DIN <u>2262266</u> Location <u>D-75</u> Date <u>7/11/22</u> Time <u>1242</u> | | |
| NP-Note | Provider Orders: <u>batteries</u> | | |
| Objective: | Needs AA batteries Size # 312 - 2 wyr | | |
| Assessment: | | | |
| Plan: | | | |
| Signature/Provider # | 24 | RN Transcribing Order/Provider #/Date/Time | |

Continue entry into next box if necessary.

Name Navarro Israel DIN 22R2210 DOB 11/81 Facility Auburn
Date of Assessment 7/1/22 Allergies Eggs

Section A: General Health- Inquiry and Response from the inmate (Adolescents only: Height: _____ Weight: _____)

| Questions- Check each box with the appropriate response | | No | Yes | If yes, MUST be specified |
|---|---|----|-----|---------------------------------|
| Do you have any current health problem or complaints? | | | X | HTN |
| Do you take any medications, prescribed or OTC? | | | X | SC med(s) (medical) / MTH(meds) |
| Have you ever had chicken pox? | | | X | |
| Do you presently have any of these symptoms... | Vision or your eyes? | | X | glasses |
| | Hearing or your ears? | | / | |
| | Teeth or your mouth? | | X | full dentures |
| | Cough/phlegm? | | / | |
| | Blood in phlegm? | | / | |
| | Weakness? | | / | |
| Weight loss? | | / | | |
| Loss of appetite? | | / | | |
| Sweating at night? | | / | | |
| Other? | | / | | |
| Do you have a living will/health care proxy/ advance directive? | | | / | |
| If no, would you like information? | | | / | |
| Have you ever had... | TB? | | / | |
| | Hepatitis? | | X | HepC |
| | Any sexually transmitted disease? | | / | |
| | HIV? | | / | |
| | Do you want an HIV test or information? | | / | |
| Are you currently being treated, or have ever been treated for gender dysphoria or have a desire to become or be treated as another gender? | | | / | |
| Have you ever abused alcohol or other drugs? | | | / | |
| If yes, have you had alcohol or substance abuse treatment? | | | / | |
| For females only: Is there a possibility that you are pregnant? | | | / | |

Section B: General Health Appearance- Observations

| Questions: | No | Yes | If yes, MUST be specified |
|--|----|-----|---------------------------|
| Are there any body deformities or amputations? | / | | |
| Does the inmate need an assistive device to ambulate? | / | | |
| Are there any skin discolorations (e.g. bruises)/lack of turgor? | / | | |
| Are there any lesions or rashes? | / | | |
| Are there any cuts or evidence of trauma? | / | | |
| Are there any recent tattoos? | / | | |
| Are there any needle marks? | / | | |

Comments: _____

Referrals: No referrals needed at this time Referral to Dentist Referral to Clinician: _____
(For all transfers or SHU/Separate KL Unit admissions)

Ronelle Suhann RN

Signature of RN

25

Provider #

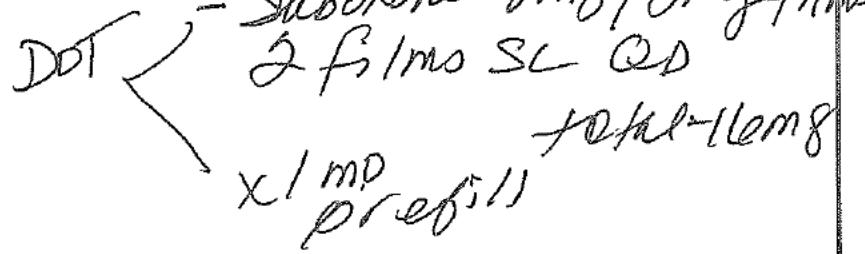
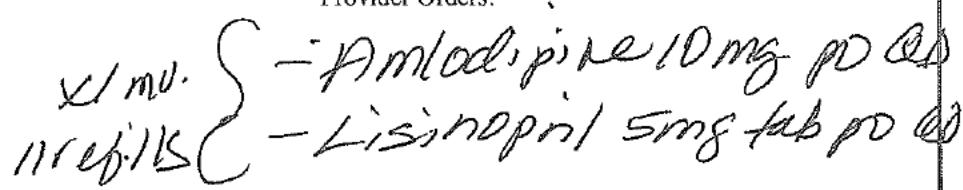
1910

7/1/22

Date

6:15pm

Time

| | | | |
|----------------------|--|---------------|---------------|
| Name | DIN | Date of Birth | Facility Name |
| Navarro, Israel | 22B2266 | 151 | 110 |
| Subjective: | Last Name <u>Navarro, I</u> DIN <u>22B2266</u> Location _____ Date <u>06/02/22</u> Time <u>1430</u> | | |
| Objective: | Provider Orders: | | |
| Assessment: | Suboxone 8mg/2mg films 2 f/1ms SC QD X 1 MD pref/11 total 16mg | | |
| Plan: |  | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time _____ | | |
| Subjective: | Last Name <u>Navarro, Israel</u> DIN <u>22B2266</u> Location _____ Date <u>06/02/22</u> Time <u>1440</u> | | |
| Objective: | Provider Orders: | | |
| Assessment: | Amlodipine 10mg po QD Lisinopril 5mg tab po QD | | |
| Plan: |  | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time _____ | | |
| Subjective: | Last Name _____ DIN _____ Location _____ Date _____ Time _____ | | |
| Objective: | Provider Orders: | | |
| Assessment: | | | |
| Plan: | | | |
| Signature/Provider # | RN Transcribing Order/Provider #/Date/Time _____ | | |

Claxton Hepburn Medical Campus
214 King Street
Ogdensburg, NY 13669
Telephone: 315-393-3600

NAVARRO, ISRAEL
DOB: [REDACTED] 1954, MRN: DOC 22B2266 Account:
Ordering Physician:
Accession Number(s): DOC564

Exam: XR SHOULDER COMPLETE 73030 LT - Exam Date: 12/10/2024 8:00 EST

DIN: DOC 22B2266

FACILITY: AUBURN

PHYSICIAN: CORTNEY FEDYSHYN NP

HISTORY: LT SHOULDER PAIN UNABLE TO RAISE ABOVE HEAD

DATE OF EXAMINATION: 12/10/2024 8:00 EST

HISTORY: Pain

TECHNIQUE: 3 views of the left shoulder were obtained.

FINDINGS:

Severe osteoarthritic changes of glenohumeral joint and moderate osteoarthritis of the acromioclavicular joint is noted. There is no acute fracture or dislocation. Left upper lobe is clear.

IMPRESSION:

Osteoarthritic changes as described above.

Electronically signed in PS360 by: Ali Gharagozloo, M.D. 12/11/2024 8:56 EST

Sk 12/11/24

REVIEWED BY (init.) DATE

NO ACTION IS REQUIRED AT THIS TIME
 REPORT TO SICK CALL
 FOLLOW UP WILL BE ARRANGED WITH A PRIMARY PROVIDER
 FOLLOW UP WILL BE ARRANGED WITH A SPECIALIST
 NOTIFICATION FORM COMPLETED AND DISTRIBUTED

NAVARRO, ISRAEL DOB: [REDACTED] 1954 Account:

Page 1 of 1

NAME: NAVARRO, ISRAEL

DIN: 22B2266 DOB: [REDACTED]/1954

CURRENT FAC: AUBURN GENER

REFERRING FAC : AUBURN GENER

REFERRAL NUMBER: 24270794.01M

REFERRAL DATE : 08/08/24 08:01A TELEMED: N<N>

REFERRAL TYPE : FOLLOW-UP

TYPE OF SERVICE: AUDIOLOGY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ROUTINE

INTERPRETER:

MEDICAL HOLD: NO TYPE: REASON CODE: EXP.DATE:
TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA
SENSORIAL IMPAIRMENT:

REFERRED BY: SARAH LOMBARDO, NP APPPOINTMENT: 10/02/24 08:00A

REVIEWED BY: SARAH LOMBARDO, NP POS: AUBURN CF

PROV: GULLO, JOSEPH-AUD

REASON FOR CONSULTATION:

USER: 08/13/24 07:48A C010SKL

(HEARING AID ISSUES, BATTERIES HAVE BEEN REPLACED, STILL NOT WORKING CORRECT)
(LY)
()
()
()

=====
ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S:

He did not have his hearing aids with
him today.

O:

Per: forward hearing aids to my office so
I can evaluate them

Paul C

WBB 10/08/24
DONE

A:

P:

Dr Gullo, wants Navarro to bring down
hearing aid for replacement. Please add followup

CONSULTANT SIGNATURE:

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY

DATE: 10/22/24

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE
INMATE'S NYSDOCS PHYSICIAN.

J. W. [Signature]

NAME: NAVARRO, ISRAEL

DIN: 22B2266 DOB: [REDACTED]/1954
CURRENT FAC: AUBURN GENER
REFERRAL NUMBER: 24211251.01M
REFERRAL TYPE : FOLLOW-UP
REFERRAL STATUS: SCHEDULED
INTERPRETER:

REFERRING FAC : AUBURN GENER
REFERRAL DATE : 06/21/24 06:
TYPE OF SERVICE: PAIN THERAPY
URGENCY OF CARE: ASSIGNED

REFERRAL NUMBER: 24211251.01M
REFERRAL TYPE : FOLLOW-UP
REFERRAL STATUS: SCHEDULED
INTERPRETER:

MEDICAL HOLD: NO TYPE: REASON CODE: EXP. DATE:
TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA
SENSORIAL IMPAIRMENT:
REFERRED BY: SARAH LOMBARDO, NP APPOINTMENT: 08/29/24 11:00A
REVIEWED BY: SARAH LOMBARDO, NP POS: WALSH RMU
PROV: THIYAGARAJAH, AATHIRAYEN

REASON FOR CONSULTATION: USER: 06/21/24 06:14A C010SKL
C FOLLOW UP IN THREE MONTHS AFTER RIGHT KNEE STEROID INJECTION GIVEN ON 6/20/
C 24, RIHGT KNEE OA, WORKING WITH PHYSICAL THERAPY AS WELL
C
C
C

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

5

- * Verbal content
- Witness:
A: Baker
Nurse

(R) Knee Pain 7/10 > 2 yrs
→ Post steroid injection 6/20/24
had > 50% relief for 2 months
Ortho MD requested synvisc 61-F-20
to be injected. ~~we~~ ^{ONE} we ordered the injection
which was received today

IM was injected with
Synvisc ONE 6mL today

skin anesthesia with 3mL 1% lidocaine
subcutaneously. Used 22G needle 1½ inch.
Tolerated procedure. No complication.

before/after
cleansed
sterile technique

10

1 ICE pack 5-10 min x 2hrs for heel pain
FU ORTHO PRN

CONSULTANT SIGNATURE:

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY Returned from outside medical trip for:

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE INMATE'S NYSDOCS PHYSICIAN. Any problems with the trip no/yes

Consult reviewed for STAT orders no/; ..

NAME: NAVARRO, ISRAEL

DIN: 22B2266 DOB: [REDACTED] /1954
CURRENT FAC: AUBURN GENER
REFERRAL NUMBER: 24183723.01M
REFERRAL TYPE: INITIAL
REFERRAL STATUS: SCHEDULED
INTERPRETER:REFERRING FAC : AUBURN GENER
REFERRAL DATE : 05/30/24 06:47A TELEMED: N<N>
TYPE OF SERVICE: PAIN THERAPY
URGENCY OF CARE: SOONMEDICAL HOLD: NO TYPE: REASON CODE: EXP. DATE:
TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA
SENSORIAL IMPAIRMENT:
REFERRED BY: SARAH LOMBARDO, NP
REVIEWED BY: SARAH LOMBARDO, NP
APPOINTMENT: 06/20/24 11:00A
POS: WALSH RMU
PROV: THIYAGARAJAH, AATHIRAYEN

REASON FOR CONSULTATION:

(MRI SHOWS HIGH GRADE PARTIAL TO NEAR FULL-THICKNESS CHONDRAL LOSS OVER THE)
 (MEDIAL FEMORAL CONDYLE AND TIBIAL PLATEAU OF THE RIGHT KNEE WITH LOW GRADE)
 (CHONDRAL WEAR OVER THE RIGHT PATELLAR APEX YIELDING REACTIVE MARROW EDEMA.)
 (ORTHO RECOMMENDS SYNVISC 1 6 CC INJECTION, PLEASE APPROVE AND SCHEDULE)
 ()

=====
ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

(R) Knee pain 6-7/10 >2 yrs

S:

-difficulty standing, walking
Tried + Failed Tylenol, NSAIDs
PFT so far. Seen by ortho md.O: A. 03 antalgic gait
(R) knee Rom painfully & fed
MMT 5/5- MRC 2+

MRI (R) knee 3/2024

Partial tear
High grade chondral
tearA: (R) knee pain
(R) knee OT.

ORDERED PT RN Today

P: Today → No Synvisc ONE in stock here @ Walsh Clinic
will do steroid shot. Informed verbal consent obtained
in presence ofancrd+ nurse RN
Dexamethasone 20mg administered
with 5cc 1% lidocaine using
sterile technique
START PT RN (R) knee
FU 3MCONSULTANT SIGNATURE: A. A. Thiayagaran DATE: 6/20/24
IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BYREVIEWED BY (init) S. A. Thiayagaran DATE* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE
INMATE'S NYSDOCS PHYSICIAN.NO ACTION IS REQUIRED AT THIS TIME REPORT TO SICK CALL

30

FOLLOW UP WILL BE ARRANGED WITH A PRIMARY PROVIDER
 FOLLOW UP WILL BE ARRANGED WITH A SPECIALIST
 NOTIFICATION FORM COMPLETED AND DISTRIBUTED

App. 99

Mitchell Rubinovich, M.D.
107 E. Chestnut Street, Suite 106, Rome, NY 13440
PHONE: 315-338-9200 FAX: 315-338-9202

5/23/2024

Auburn Correctional Facility
Richard Slagle, NP
135 State Street
Auburn NY 13024-9000

RE: Israel Navarro
DIN#: 22B2266

Dear Mr Slagle:

Thanks for sending Israel in to see me today. He is a 70-year-old gentleman with progressive right knee pain. There is no history of trauma or injuries. He has never had any surgery on the knee. The pain is getting worse. It is now a 6/10. It bothers him walking. It bothers him trying to sleep at night. He has had an MRI of the knee. There are no tears of the menisci. There is almost complete loss of articular surface in the medial compartment of the right knee. The lateral compartment is fairly well preserved.

On physical exam, he has moderate varus deformity of both knees, worse on the right than the left. He is quite tender at the medial side of the right knee. Range of movement goes from 5 degrees to 85 degrees. There is no instability. Pulses, sensation, tone, and reflexes are normal.

I think that we are dealing with osteoarthritis of the right knee. I have discussed various options with Israel. I think at this point, we should start with a gel injection. I would inject him with 6 mL of Synvisc One. If you could obtain the material and send it with him back to the clinic, I would be happy to inject it for him here in the clinic.

Sincerely,

Mitchell Rubinovich, MD
MR/dat

***** Document e-signed by Mitchell Rubinovich, M.D. on Thursday, June 6, 2024 at 6:24:30 PM *****

NAME: NAVARRO, ISRAEL

DIN: 22B2266 DOB: [REDACTED] /1954
CURRENT FAC: AUBURN GENER

REFERRING FAC : AUBURN GENER

REFERRAL NUMBER: 24143962.01M

REFERRAL DATE : 04/29/24 09:06A TELEMED: N<N>

REFERRAL TYPE : INITIAL

TYPE OF SERVICE: PHYSICAL THERAPY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ROUTINE

INTERPRETER:

MEDICAL HOLD: NO TYPE: REASON CODE: EXP. DATE:
TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: RICHARD SLAGLE, FNP

APPOINTMENT: 06/12/24 08:00A

REVIEWED BY: RICHARD SLAGLE, FNP

POS: AUBURN CF

PROV: KERR, JAMES-PTH

REASON FOR CONSULTATION:

USER: 04/29/24 09:06A C010RHS

(LEFT SHOULDER PAIN WITH LIMITED ROM; >90 ABDUCTION, POOR INTERNAL ROTATION W)
(ITH LIMITED STRENGTH, PAIN WAKES HIM UP AT NIGHT. REQUESTING PT EVALUATE AN)
(D TREAT.)

()

()

=====
ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S: 70 y.o. ♂ 5'10", 180 lbs (6 mos.)

No action

CC - pain E/o shr & activity

F/u appt

O: X-rays -

Procedure

Observation: ✓

New labs

Pain: tenderness, posterior > lateral aspects

New consult

A: Pern: (2) Shld. Rhy 95° & Abd 80° & ER 60° & IR 40° *

Script

Date 6/12/24 Signature R. S. G. un

Resist. Tests: (2) Shld. Rhy 4/5 Abd 3/5 ER 4/5 IR 4/5

P: Tests: (1) Impingement, (2) Global stress

Goals
(1) ↓ pain
(2) ↑ ROM
(3) ↑ StrengthTx1
(1) Modulating pro
(2) stretching/ROM
(3) PCE's

CONSULTANT SIGNATURE:

DATE: 6/12/24

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY 1 - 1

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE
INMATE'S NYSDOCS PHYSICIAN.

NAME: NAVARRO, ISRAEL

DIN: 22B2266 DOB: [REDACTED] /1954
CURRENT FAC: AUBURN GENER

REFERRING FAC : AUBURN GENER

REFERRAL NUMBER: 24144911.01M

REFERRAL DATE : 04/29/24 12:41P TELEMED: N<N>

REFERRAL TYPE : INITIAL

TYPE OF SERVICE: AUDIOLOGY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ROUTINE
INTERPRETER:MEDICAL HOLD: NO TYPE: REASON CODE: EXP.DATE:
TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: RICHARD SLAGLE, FNP

APPOINTMENT: 05/15/24 08:00A

REVIEWED BY: RICHARD SLAGLE, FNP

POS: AUBURN CF

PROV: GULLO, JOSEPH-AUD

REASON FOR CONSULTATION:

USER: 04/29/24 12:41P C010RHS

I/I WEARS HEARING AIDS. RIGHT AID REPORTEDLY BROKEN. REQUESTING EVALUATION
 BY AUDIOLOGY

=====
ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S:

He did not have his brother hearing aid
with him today.

O:

Re: He will bring instrument down to medical.
please forward brother hearing instrument
to my office so I can evaluate it

A:

for repair

No action
 F/u appt
 Procedure
 New labs
 N/A & consult

(P) placed
on call
out to
collect
hearing
aid

Dr. 5/15/24, mature ~~5/15/24~~ ~~5/15/24~~

P:

CONSULTANT SIGNATURE:

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY

DATE: 5/15/24

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE
INMATE'S NYSDOCS PHYSICIAN.

NAME: NAVARRO, ISRAEL

DIN: 22B2266 DOB: [REDACTED]/1954
CURRENT FAC: AUBURN GENER
REFERRAL NUMBER: 23241597.01M
REFERRAL TYPE: INITIAL
REFERRAL STATUS: SCHEDULED
INTERPRETER:REFERRING FAC : AUBURN GENER
REFERRAL DATE : 08/01/23 02:45P TELEMED: N<N>
TYPE OF SERVICE: MAG.RESON.IMAG.-KNEE
URGENCY OF CARE: ROUTINEMEDICAL HOLD: YES TYPE: 1 REASON CODE: 99 EXP.DATE: 2024-08-17
TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA
SENSORIAL IMPAIRMENT:
REFERRED BY: RICHARD SLAGLE, FNP
REVIEWED BY: RICHARD SLAGLE, FNP
APPOINTMENT: 02/26/24 03:15P
POS: UPSTATE UNIV HOSPACOM GEN
PROV: DEPT OF RADIOLOGY/DIAG IMREASON FOR CONSULTATION: USER: 08/08/23 09:31A C010RHS
(RIGHT KNEE PAIN AND IMMObILITY. STARTING PT. X-RAY NON-SIGNIFICANT. POOR MO)
(MENT THROUGHOUT FLEXION AND EXTENSION. PAIN. NO SWELLING NO CREPITUS. REQ)
(UESTING MRI OF THE RIGHT KNEE WITHOUT CONTRAST. PAIN AT THE MEDIAL JOINT LI)
(NE, SUSPECT MCL PATHOLOGY. UNABLE TO ASSESS INSTABILITY.)
()=====
ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

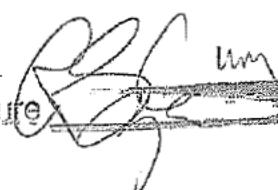
CONSULTANT REPORT:

S:

MRI Right Knee completed 2/26/24
5pm. Tech: Jr Lassot RT(R)(NR)

O:

A:

- No action
- F/M appt
- Procedure
- New labs
- New consult
- Script
- Date 4/16/24 Signature 

P:

CONSULTANT SIGNATURE: _____ DATE: ____/_____
IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY ____/____/____* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE
INMATE'S NYSDOCS PHYSICIAN.

App. 103
STATE OF NEW YORK – DEPARTMENT OF CORRECTIONS & COMMUNITY SUPERVISION
PHYSICAL EXAM

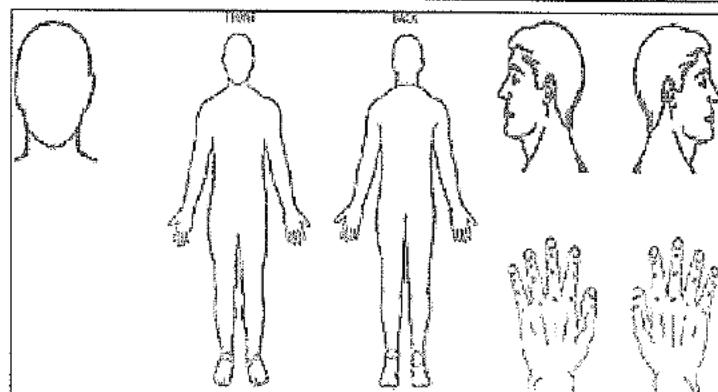
| | | | |
|------------------------------|--|--------------------|----------------------|
| Name: <i>Israel Navarro</i> | DIN: <i>22B2266</i> | DOB: <i>5/5/54</i> | Facility: <i>ACI</i> |
| Date of Exam <i>09/03/24</i> | Reason for exam: <input type="checkbox"/> Initial <input checked="" type="checkbox"/> Update | | |

| Vision | Uncorrected | Corrected | Gross Hearing | Normal | Abnormal | Hearing Aid |
|--------|-------------|--------------|---------------|-------------------------------------|----------|-------------|
| Right | | <i>20/10</i> | Right | <input checked="" type="checkbox"/> | | |
| Left | | <i>20/10</i> | Left | <input checked="" type="checkbox"/> | | |

Current Complaint(s): None Yes (Specify- Use Form 3105 for additional information)

Any abnormal finding or declination of examination must be documented. All declinations must be accompanied by Form 3195 Refusal of Medical Examination and/or Treatment

| Examination | Normal | Abnormal | Declined* |
|-----------------|-------------------------------------|-----------------|-----------|
| Behavior | <input checked="" type="checkbox"/> | | |
| Speech | <input checked="" type="checkbox"/> | | |
| Gait | <input checked="" type="checkbox"/> | | |
| Head | <input checked="" type="checkbox"/> | | |
| Eyes | <input checked="" type="checkbox"/> | <i>cataract</i> | |
| Ears | <input checked="" type="checkbox"/> | | |
| Nose | <input checked="" type="checkbox"/> | | |
| Throat | <input checked="" type="checkbox"/> | | |
| Neck | <input checked="" type="checkbox"/> | | |
| Breasts | <input checked="" type="checkbox"/> | | |
| Lungs | <input checked="" type="checkbox"/> | | |
| Chest | <input checked="" type="checkbox"/> | | |
| Heart | <input checked="" type="checkbox"/> | | |
| Lymph Nodes | <input checked="" type="checkbox"/> | | |
| Musculoskeletal | <input checked="" type="checkbox"/> | | |
| Spine | <input checked="" type="checkbox"/> | | |
| Neurologic | <input checked="" type="checkbox"/> | | |
| Extremities | <input checked="" type="checkbox"/> | | |
| Abdomen | <input checked="" type="checkbox"/> | | |
| Skin | <input checked="" type="checkbox"/> | | |
| Groin | <input checked="" type="checkbox"/> | | |
| Rectal | <input checked="" type="checkbox"/> | <i>defecat.</i> | |
| Genitalia | <input checked="" type="checkbox"/> | | |
| Females: LMP | <input checked="" type="checkbox"/> | | |



Abnormal Finding(s)/Diagnosis: *WNL*

General Appearance: *WNL*
ABD x 3

Physical Limitation(s): *—*

Check here if additional information is noted on AHR Form 3105 (AHR Progress Note)

Hepatitis C Screening Offered? Yes No Unknown Medical Classification Level 1 2 3

Provider Signature *SV 144*

144 Provider # *09/03/24* Date *2-4p* Time

APPENDIX 104
NEW YORK STATE DEPARTMENT OF CORRECTIONS & COMMUNITY SUPERVISION
MEDICAL HISTORY

Israel Navarro

| | | | | | | |
|--|--|--|---|--|------|-------|
| Name: <i>Israel Navarro</i> | DIN: <i>22-B0266</i> | DOB: <i>54</i> | Facility: <i>ART</i> | | | |
| Gender Identity: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Transgender | | Race: <input type="checkbox"/> Black <input type="checkbox"/> White <input type="checkbox"/> Hispanic <input type="checkbox"/> Other | | | | |
| Marital Status: <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced | | Religion: <i>Protestant</i> Birthplace: | | | | |
| Requires language or sign language interpreter services? <input type="checkbox"/> No <input type="checkbox"/> Yes Language: | | | | | | |
| <input checked="" type="checkbox"/> All applicable Asthma Bleeding disorder Cancer Cardiovascular Chickenpox Diabetes Gastrointestinal Hepatitis <i>Hep C treated</i> HIV + Hypertension Impaired - Hearing Impaired - Vision Measles Mental Health Dx <i>STOP</i> MRSA/VRE Mumps Polio Seizure Sickle Cell STDs Tuberculosis Other: | Yes | No | Family Hx | | | |
| | <input checked="" type="checkbox"/> Check all applicable | | | | | |
| Other Health Statuses <i>Implant</i> <i>Metal in body</i> <i>Orthotics</i> <i>Prosthetics</i> Immunizations <i>Hepatitis A--#1</i> <i>Hepatitis A--#2</i> <i>Hepatitis B- #1</i> <i>Hepatitis B--#2</i> <i>Hepatitis B--#3</i> <i>Influenza</i> <i>MMR</i> <i>PCV 13</i> <i>PPSV 23</i> <i>Tdap</i> Review of Ancillary Tests <i>Labs</i> <i>Relevant</i> <i>X-Ray</i> <i>EKG</i> | Other Risk Factors | | | | | |
| | Equipment | Tattoos | | | | |
| Sexual activity with: <i>Men</i> <i>Women</i> <i>Prostitutes</i> <i>Multiple Partners</i> | Yes | No | Date | | | |
| | Substance History <input type="checkbox"/> Alcohol <input checked="" type="checkbox"/> Tobacco <input type="checkbox"/> Cocaine <input type="checkbox"/> Heroin <input type="checkbox"/> IV drug abuse <input type="checkbox"/> Synthetics <input type="checkbox"/> Other: | | | | | |
| Notes/Comments: <i>Lisinopril</i> <i>Docosate</i> <i>Thioguanine</i> <i>Suboxone</i> | Result | Follow up | | | | |
| | STOP If yes, specify: Pregnancy Test Other: | | | | | |
| Surgical History | | | Medication Hx: | | | |
| Name/Type of Surgery | Date | Performed at: | Name | Freq. | Dose | Route |
| <input type="checkbox"/> No surgical Hx | | | <input type="checkbox"/> No medication Hx | | | |
| <input type="checkbox"/> Allergies (food and/or medications) to: | | | | <input type="checkbox"/> Latex allergy | | |
| <input type="checkbox"/> No Known Allergies | | <input type="checkbox"/> Check here if additional information is noted on the AHR Form 3105 | | | | |

Provider Signature *[Signature]*

Provider # *144*

Date *01/13/24*

Time *2:07*

**This information is protected by PHL Law 27F prohibiting further disclosure.
 A general authorization is not sufficient for release**

App. 105

Exhibit 5
Mr. Navarro's Industry Program Evaluations

PROGRAM PROGRESS REPORT

Ann. 106

CORRECTIONAL FACILITY

AUBURN

NAME OF PROGRAM

INDUSTRY

NAME: NAVARRO, ISRAEL

DIN 2282266

HOUSING UNIT

DATE:

7/11/24

CHECK ONE:

PAY INCREASE

H.S. DIPLOMA/EQUIV. YES NO

PAY DECREASE

READ/MATH LEVEL

GENERAL EVALUATION

DATE ENTERED PROG.

FINAL EVALUATION

PAY ITEM NUMBER

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | | ✓ | | | |
| INTEREST IN PROGRAM ASSIGNMENT | | ✓ | | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| ATTITUDE TOWARD PEERS | | ✓ | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | | ✓ | | | |
| QUALITY OF WORK | | ✓ | | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

USES TOOLS PROPERLY AND SAFELY, GOOD BUILDING SKILLS

LIST JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

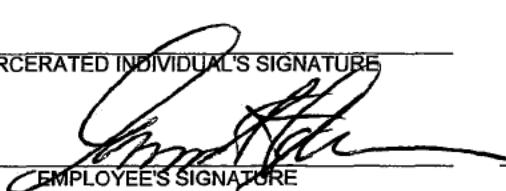
67002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

TAKES INITIATIVE, SELF-DIRECTED, GOOD ATTENDANCE

INCARCERATED INDIVIDUAL'S SIGNATURE



EMPLOYEE'S SIGNATURE

178 II
TITLE

m.w.

7/11/24
DATE

App 107
PROGRAM PROGRESS REPORT

CORRECTIONAL FACILITY

AUBURN

NAME OF PROGRAM

INDUSTRY

NAME: NARRO, ISRAEL

DIN 22B2266

HOUSING UNIT

DATE: 5/28/24

CHECK ONE:

PAY INCREASE

H.S. DIPLOMA/EQUIV. YES NO

PAY DECREASE

READ/MATH LEVEL

GENERAL EVALUATION

DATE ENTERED PROG.

FINAL EVALUATION

PAY ITEM NUMBER

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | | ✓ | | | |
| INTEREST IN PROGRAM ASSIGNMENT | | ✓ | | | |
| INITIATIVE AND INITIATIVE | | ✓ | | | |
| ATTITUDE TOWARD PEERS | | ✓ | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | | ✓ | ✓ | | |
| QUALITY OF WORK | | ✓ | | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

GOOD SKILLS, USES TOOLS PROPERLY AND SAFELY

LIST JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

GOOD ATTENDANCE, SELF-DIRECTED, KNOWS MOST WOOD ASSEMBLER
TASKS, TAKES INITIATIVE

Incarcerated Individual's Signature

Employee's Signature

ITS II

Title

n.w.

5/28/24

Date

App. 108
PROGRAM PROGRESS REPORTCORRECTIONAL FACILITY AUBURN NAME OF PROGRAM INDUSTRYNAME: NAVARRO, ISRAEL DIN 2282266 HOUSING UNIT _____ DATE: 4/3/24

CHECK ONE:

PAY INCREASE _____

H.S. DIPLOMA/EQUIV. YES _____ NO _____

PAY DECREASE _____

READ/MATH LEVEL _____

GENERAL EVALUATION X

DATE ENTERED PROG. _____

FINAL EVALUATION _____

PAY ITEM NUMBER _____

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | | ✓ | | | |
| INTEREST IN PROGRAM ASSIGNMENT | | ✓ | | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| ATTITUDE TOWARD PEERS | | ✓ | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | ✓ | | | | |
| ABILITY TO FOLLOW DIRECTIONS | ✓ | | | | |
| QUALITY OF WORK | ✓ | | | | |
| DISPLAYS SELF CONTROL | ✓ | | | | |
| DEPENDABILITY | ✓ | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

WORKS SAFELY, USES TOOLS SAFELY AND PROPERLY. Good SKILLS

LIST JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER
01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

SELF-DIRECTED. TAKES INITIATIVE. VERY GOOD ATTENDANCE

INCARCERATED INDIVIDUAL'S SIGNATURE

EMPLOYEE'S SIGNATURE

175 II
TITLE

m.w.

4/3/24
DATE

App. 109

FORM 3250 (10/21)

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

PROGRAM PROGRESS REPORT

CORRECTIONAL FACILITY

AUBURN

NAME OF PROGRAM

INDUSTRY

NAME: NAVARRO, ISRAEL

DIN 2282266

HOUSING UNIT

DATE:

CHECK ONE:

PAY INCREASE

H.S. DIPLOMA/EQUIV. YES NO

PAY DECREASE

READ/MATH LEVEL

GENERAL EVALUATION

X

DATE ENTERED PROG.

FINAL EVALUATION

PAY ITEM NUMBER

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | | ✓ | | | |
| INTEREST IN PROGRAM ASSIGNMENT | | ✓ | | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| ATTITUDE TOWARD PEERS | | ✓ | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | | ✓ | | | |
| QUALITY OF WORK | | ✓ | | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

SKILLED WORKER. FOLLOWS SHOP RULES. WORKS SAFELY.

JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

SELF-DIRECTED. ABOVE AVERAGE ATTENDANCE. TAKES INITIATIVE.


INCARCERATED INDIVIDUAL'S SIGNATURE

mw


EMPLOYEE'S SIGNATURE

ITS II

TITLE

2/2/2024

DATE

App. 110
PROGRAM PROGRESS REPORT

CORRECTIONAL FACILITY

AUBURN

NAME OF PROGRAM

INDUSTRY

NAME: NAVAKKO, ISRAEL

DIN 22B2266

HOUSING UNIT

DATE:

CHECK ONE:

PAY INCREASE

H.S. DIPLOMA/EQUIV. YES NO

PAY DECREASE

READ/MATH LEVEL

GENERAL EVALUATION X

DATE ENTERED PROG.

FINAL EVALUATION

PAY ITEM NUMBER

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | ✓ | | | | |
| INTEREST IN PROGRAM ASSIGNMENT | ✓ | | | | |
| EFFORT AND INITIATIVE | ✓ | | | | |
| ATTITUDE TOWARD PEERS | ✓ | | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | ✓ | | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | ✓ | | | | |
| ABILITY TO FOLLOW DIRECTIONS | ✓ | | | | |
| QUALITY OF WORK | ✓ | ✓ | | | |
| DISPLAYS SELF CONTROL | ✓ | | | | |
| DEPENDABILITY | ✓ | | | | |
| APTITUDE / EMPLOYABILITY | ✓ | | | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

WORKS SAFELY. FOLLOWS SHOP RULES. CAPABLE OF DOING MOST TASKS IN FURNITURE PRODUCTION AND ASSEMBLY.

LIC. JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

GOOD WORKER. GOOD ATTENDANCE RECORD. TAKES INITIATIVE AND IS SELF-DIRECTED.

INCARCERATED INDIVIDUAL'S SIGNATURE

m.w

EMPLOYEE'S SIGNATURE

ITSIC
TITLE12/6/23
DATE

App. III
PROGRAM PROGRESS REPORT

01/14/23

CORRECTIONAL FACILITY

AUBURN

NAME OF PROGRAM

INDUSTRY

NAME: NAVARRO, ISRAEL

DIN 22B2266

HOUSING UNIT

DATE: 9/29/23

CHECK ONE:

PAY INCREASE

4.1 → 4.2

H.S. DIPLOMA/EQUIV. YES ____ NO ____

PAY DECREASE

READ/MATH LEVEL

GENERAL EVALUATION

DATE ENTERED PROG.

FINAL EVALUATION

PAY ITEM NUMBER

975007

EFF WK ID 110 - 10/22/23

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | ✓ | | | | |
| INTEREST IN PROGRAM ASSIGNMENT | ✓ | ✓ | | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| ATTITUDE TOWARD PEERS | | ✓ | ✓ | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | | ✓ | | |
| FOLLOWS RULES AND SAFETY PRACTICES | ✓ | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | ✓ | | | | |
| QUALITY OF WORK | | ✓ | | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | ✓ | | |
| APTITUDE / EMPLOYABILITY | | | ✓ | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

GOOD SKILLS. CAN DO A WIDE VARIETY OF TASKS. WORKS SAFELY.

L¹ JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

3002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER.

GENERAL COMMENTS:

GOOD WORKERS. FOLLOWS RULES AND SAFETY GUIDELINES. TAKES INITIATIVE AND IS SELF-DIRECTED.

INCARCERATED INDIVIDUAL'S SIGNATURE

m.w.

INCARCERATED INDIVIDUAL'S SIGNATURE

DATE

EMPLOYEE'S SIGNATURE

TITLE

9/29/23

App. 112

FORM 3250 (10/21)

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

PROGRAM PROGRESS REPORT

6/5/23

CORRECTIONAL FACILITY

AUGURN

NAME OF PROGRAM

INDUSTRY

NAME NAVARRO, ISRAEL

DIN 72B2266

HOUSING UNIT

DATE: 8/1/23

CHECK ONE:

PAY INCREASE

3.2 → 4.1

H.S. DIPLOMA/EQUIV. YES NO

PAY DECREASE

READ/MATH LEVEL

GENERAL EVALUATION

DATE ENTERED PROG.

FINAL EVALUATION

PAY ITEM NUMBER

a75005

EFF Wk 8/14-8/20/23

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | ✓ | | | | |
| INTEREST IN PROGRAM ASSIGNMENT | ✓ | | | | |
| EFFORT AND INITIATIVE | ✓ | | | | |
| ATTITUDE TOWARD PEERS | ✓ | | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | ✓ | | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | ✓ | | | | |
| ABILITY TO FOLLOW DIRECTIONS | ✓ | | | | |
| QUALITY OF WORK | ✓ | | | | |
| DISPLAYS SELF CONTROL | ✓ | | | | |
| DEPENDABILITY | ✓ | | | | |
| APTITUDE / EMPLOYABILITY | ✓ | | | | |

EXPLAIN REASONS FOR ABOVE NOTED PROGRESS OR LACK THEREOF:

KEEPS ON TASK. GOOD SKILLS. ABLE TO DO A WIDE VARIETY OF TASKS. SELF-INITIATIVE. WORKS SAFELY.

List JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

FOLLOWS RULES OF THE SHOP. GOOD WORKER.

INCARCERATED INDIVIDUAL'S SIGNATURE

m.w.

INCARCERATED INDIVIDUAL'S SIGNATURE

EMPLOYEE'S SIGNATURE

TITLE

8/1/23

DATE

INMATE PROGRESS REPORT

App. 114

1/30/23

CORRECTIONAL FACILITY AUBURNNAME: NAVARRO, ISRAELNAME OF PROGRAM INDUSTRY
DIN 22B 2266 HOUSING UNIT _____ DATE: 3/20/23

CHECK ONE:

PAY INCREASE

CURRENT \Rightarrow 3.1 ^{CH}

READING LEVEL _____

PAY DECREASE

1st
lapse in
progress reporting

GED OR H.S. DIP. _____

YES NO

GENERAL EVALUATION _____

DATE ENTERED PROG. 975317

FINAL EVALUATION _____

PAY ITEM NUMBER _____

WK 4/3-4/9/23

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | | ✓ | | | |
| INTEREST IN PROGRAM ASSIGNMENT | | ✓ | | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| ATT. TOWARD PEERS | | ✓ | | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | | ✓ | | | |
| QUALITY OF WORK | | ✓ | | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN INMATE'S ACCOMPLISHMENTS WHILE IN YOUR PROGRAM OR WORK DETAIL:

CONTINUES TO IMPROVE WITH TASKS ASSIGNED. DOES ABOVE AVERAGE WORK. VERY GOOD ATTENDANCE. CAN BUILD A WIDE VARIETY OF ITEMS.

1ST JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

CAPABLE WORKERS. FOLLOWS RULES AND USES MACHINERY SAFELY. WORKS WELL WITH OTHERS.

INMATE'S SIGNATURE

EMPLOYEE'S SIGNATURE

175 II

TITLE

M.W.

3/20/23

DATE

App. 115

FORM 3250 (7/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

11/28

INMATE PROGRESS REPORT

| CORRECTIONAL FACILITY <u>AUBURN</u> | | NAME OF PROGRAM <u>INDUSTRY</u> | | | |
|---|-----------|---|--------------------|---------------|------|
| NAME: <u>NAVARRO, ISRAEL</u> | | DIN <u>22-B 2266</u> | HOUSING UNIT _____ | | |
| CHECK ONE: | | DATE: _____ | | | |
| PAY INCREASE <u>X 1.2 → 4.8 (.420)</u> | | READING LEVEL <u>denied previous bids</u> | | | |
| PAY DECREASE <u>4.3 (.45)</u> | | GED OR H.S. DIP. YES <u> </u> NO <u> </u> | | | |
| GENERAL EVALUATION <u>② Auburn 90 1/2 454</u> | | DATE ENTERED PROG. <u>0175314</u> <u>0175303</u> | | | |
| FINAL EVALUATION <u>③ Green 100% 454</u> | | PAY ITEM NUMBER <u>EFFMC 1130-215123</u> | | | |
| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
| ATTENDANCE / PUNCTUALITY | | ✓ | | | |
| INTEREST IN PROGRAM ASSIGNMENT | | ✓ | | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| ATTITUDE TOWARD PEERS | | | ✓ | | |
| ATTITUDE TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | | | ✓ | | |
| QUALITY OF WORK | | | ✓ | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN INMATE'S ACCOMPLISHMENTS WHILE IN YOUR PROGRAM OR WORK DETAIL:

HAS CONTINUED LEARNING WOOD FURNITURE PRODUCTION AND ASSEMBLY. DOES GOOD WORK ABLE TO WORK ON SOME TASKS ALONE, WITH MINIMAL DIRECTION.

LIST JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER

01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

HARD WORKER. FOLLOWS SAFETY RULES AS THEY PERTAIN TO HIS PARTICULAR SITUATION. TAKES PRIDE IN PRODUCING GOOD WORK.

Isra

INMATE'S SIGNATURE

11/28

John

EMPLOYEE'S SIGNATURE

ITSE
TITLE

1/9/23
DATE

Demica Stallion

9/5/23

CORRECTIONAL FACILITY AUBURN NAME OF PROGRAM INDUSTRY
 NAME: NAVARRO, ISRAEL DIN 22B2266 HOUSING UNIT _____ DATE: 11/17/22

CHECK ONE:

PAY INCREASE X 1.1 → 1.2

READING LEVEL _____

PAY DECREASE _____

GED OR H.S. DIP. YES NO

GENERAL EVALUATION _____

DATE ENTERED PROG. 9/5/23

FINAL EVALUATION _____

PAY ITEM NUMBER 975314Off Wk 11/28-12/4/22

| | EXCELLENT | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | POOR |
|------------------------------------|-----------|---------------|---------|---------------|------|
| ATTENDANCE / PUNCTUALITY | | | ✓ | | |
| INTEREST IN PROGRAM ASSIGNMENT | | | ✓ | | |
| EFFORT AND INITIATIVE | | ✓ | | | |
| A. TOWARD PEERS | | | ✓ | | |
| A. TOWARD AUTHORITY FIGURES | | ✓ | | | |
| FOLLOWS RULES AND SAFETY PRACTICES | | ✓ | | | |
| ABILITY TO FOLLOW DIRECTIONS | | | ✓ | | |
| QUALITY OF WORK | | | ✓ | | |
| DISPLAYS SELF CONTROL | | ✓ | | | |
| DEPENDABILITY | | ✓ | | | |
| APTITUDE / EMPLOYABILITY | | ✓ | | | |

EXPLAIN INMATE'S ACCOMPLISHMENTS WHILE IN YOUR PROGRAM OR WORK DETAIL:

HAS LEARNED SEVERAL ASPECTS OF PRODUCTION PROCESSES. DOES GOOD WORK

LIST JOB TITLES, OR SPECIAL SKILLS ACQUIRED:

03002 - INDUSTRIAL CLEANER
01607 - WOOD FURNITURE ASSEMBLER

GENERAL COMMENTS:

GOOD WORKER TAKES PRIDE IN WORK. GETS ALONG WITH OTHER WORKERS.
FOLLOWS SAFETY RULES AS THEY PERTAIN TO HIM.



INMATE'S SIGNATURE

11/17/22



EMPLOYEE'S SIGNATURE

IT8 II

TITLE Connie Hall

11/17/22

DATE

App. 117

Exhibit 6
Mr. Navarro's Disciplinary Records

App. 118

06/07/2023
DCP004

NYS DEPT OF CORRECTIONS & COMMUNITY SUPERVISION
DISCIPLINARY HEARING DISPOSITION RENDERED

PAGE X

AUBURN GENER

TAPE NUMBER SD# 24

DIN: 22B2266 NAME: NAVARRO, ISRAEL

LOCATION: 0E-02-06S

INCIDENT DATE & TIME: 06/06/2023 05:49 PM TIER 2

REVIEW DATE: 06/07/2023 BY: LT DUTTON, R E

DELIVERY DATE & TIME: 6/7/23 9:55 AM BY: CO O'HARA

HEARING START DATE & TIME: 6/15/23 10:30 AM BY: LT HARIBOLD

HEARING END DATE & TIME: 6/15/23 10:07 AM BY: LT HARIBOLD

DOES THIS MISCONDUCT MEET THE CRITERIA FOR WORKPLACE VIOLENCE? Y (N)

CHARGE

NUMBER DESCRIPTION OF CHARGES

REPORTED BY

DISPOSITION

104.11 VIOLENT CONDUCT

CO EMERSON

Guilty

100.13 FIGHTING

Guilty

106.10 REFUSING DIRECT ORDER

Guilty

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE (\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE I/I. SANCTION DATES BELOW ARE SUBJECT TO REVIEW/CHANGE, AND WILL BE CONSECUTIVELY ADDED TO ANY SIMILAR CURRENT SANCTION.

| PENALTY CODE | DESCRIPTION | PENALTY MO DAYS | START DATE | RELEASE DATE | SUSPEND MO DAYS | DEFERRED RESTITUTION MO DAYS | \$\$\$\$. c |
|--------------|-------------|-----------------|------------|--------------|-----------------|------------------------------|-----------------------|
| D000 | Loss Rec | 10 | 6/15/23 | 6/15/23 | 1 | ↑ | ↑ |
| E000 | " PKGS | | | | | ↓ | ↑ |
| F000 | " Community | | ↓ | ↓ | | ↓ | |
| G000 | " Phones | ↓ | ↓ | ↓ | | ↓ | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

App. 119

06/07/2023
DCP004

NYS DEPT OF CORRECTIONS & COMMUNITY SUPERVISION
DISCIPLINARY HEARING DISPOSITION RENDERED

PAGE

DIN: 22B2266 NAME: NAVARRO, ISRAEL

HEARING DATE: 6/18/23

SHU CELL INELIGIBLE

A. STATEMENT OF EVIDENCE RELIED UPON:

Your admission of guilt

B. REASONS FOR DISPOSITION:

To impose upon you all rules of
the facility must be followed

C. SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS

N/S

App. 120

06/07/2023
DCP004

NYS DEPT OF CORRECTIONS & COMMUNITY SUPERVISION
DISCIPLINARY HEARING DISPOSITION RENDERED

PAGE

DIN: 22B2266 NAME: NAVARRO, ISRAEL

HEARING DATE: 6/19/21
SHU CELL INELIGIBLE

B. -SUPPLEMENTAL-BATA-ENTRY:

1. IF FOUND GUILTY OF ASSAULT (100.10; 100.11; 100.12):
WAS WEAPON USED? (Y/N) WHAT TYPE?
DID AN INJURY OCCUR? (Y/N) SEVERITY (1-4)? *N/A*
2. IF FOUND GUILTY OF A SEX OFFENSE (101.10):
CHOOSE ONE: FORCE/ATT FORCE ENCOURAGE/SOLICIT CONSENSUAL *N/A*
3. IF FOUND GUILTY OF THREATS (102.10):
CHOOSE ONE: NON-VIOLENT VIOLENT *N/A*
4. IF FOUND GUILTY OF VIOLENT CONDUCT (104.11).
CHOOSE ONE: THREAT OF VIOLENCE ACT OF VIOLENCE *N/A*
5. IF FOUND GUILTY OF DEMONSTRATION (104.12):
CHOOSE ONE: LEAD/ORGANIZED PARTICIPATED *N/A*
6. IF FOUND GUILTY OF INTERFERENCE (107.10):
CHOOSE ONE: PHYSICAL VERBAL *N/A*
7. IF FOUND GUILTY OF DRUG POSSESSION (113.25)
CHOOSE ONE: POSSESSION ONLY MAKE/DISTRIBUTE/SELL/EXCHANGE *N/A*

App. 121

06/07/2023
DCP004

NYS DEPT OF CORRECTIONS & COMMUNITY SUPERVISION
DISCIPLINARY HEARING DISPOSITION RENDERED

PAGE

DIN: 22B2266 NAME: NAVARRO, ISRAEL

HEARING DATE: 6/19/23

SHU CELL INELIGIBLE
SUPERINTENDENT HEARING DISPOSITION RENDERED

| CHARGE | DESCRIPTION OF CHARGES | 5 YEAR PRIORS | 10 YEAR PRIORS |
|--------|------------------------|------------------|-------------------|
| 104.11 | VIOLENT CONDUCT | 0 | 0 |
| 100.13 | FIGHTING | 0 | 0 |
| 106.10 | REFUSING DIRECT ORDER | 0 | 0 |

AT THE TIME OF THE HEARING, WAS THIS I/I HOUSED IN A SHU CELL: YES NO

THE SANCTIONS IMPOSED ARE WITHIN THE PUBLISHED GUIDELINES

OR

 I HAVE IMPOSED SANCTIONS THAT HAVE DEPARTED UPWARD FROM THE PUBLISHED GUIDELINES, FOR THE FOLLOWING REASON(S):

- OVERALL CLIMATE OF FACILITY
- SEVERITY OF OFFENSE
- LOCATION OF OFFENSE
- MANNER OFFENSE WAS COMMITTED
- RISK TO SECURITY
- RISK TO PERSONAL SAFETY
- PROPERTY DAMAGE - RESTITUTION
- DISCIPLINARY HISTORY
- OTHER - EXPLAIN: _____

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: 6/19/23

CT. Hartman
HEARING OFFICER SIGNATURE

J. Harriet
I/I SIGNATURE

6/19/23 10:36 AM
DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

P FOR TIER II HEARING - APPEAL TO SUPERINTENDENT WITHIN 72 HOURS

FOR TIER III HEARING - APPEAL TO COMMISSIONER WITHIN 30 DAYS

SUCCESSFUL PRINT COMPLETION

App. 122

FORM 2171A (10/14)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Side 1

Auburn

Correctional Facility

2

INMATE MISBEHAVIOR REPORT • INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

| | | |
|---|-----------------------|--------------------------|
| 1. NAME OF INMATE (Last, First) • NOMBRE DEL RECLUSO (Apellido, Nombre) | NO. • NÚM. | HOUSING LOCATION • CELDA |
| Navarro, I | 22 B2266 | D-7-24 |
| 2. LOCATION OF INCIDENT • LUGAR DEL INCIDENTE | INCIDENT DATE • FECHA | INCIDENT TIME • HORA |
| D-7 Company | 6/6/23 | 5:49 pm |

| |
|------------------------------------|
| 3. RULE VIOLATION(S) • VIOLACIONES |
| 106.10 direct order |
| 100.13 fighting |
| 104.11 violent conduct |

| |
|--|
| 4. DESCRIPTION OF INCIDENT • DESCRIPCIÓN DEL INCIDENTE |
| At approximately 5:49 pm on 6/6/23 I C.O G. Emerson observed I/I Miller, I (22B4385) exchange closed fist blows to the upperbody and head area with I/I Navarro, I (22B2266) while waiting to be dropped for chow on D-7 Company. At that time a code 1 was called and I issued several direct orders to break it up. Once staff responded both I/I's stopped fighting and complied with staff directions. |

| | | | |
|---------------------|--|-------------------|----------------|
| REPORT DATE • FECHA | REPORTED BY • NOMBRE DE LA PERSONA QUE HACE EL INFORME | SIGNATURE • FIRMA | TITLE • TÍTULO |
| 6/6/23 | G. Emerson | G. Emerson | C.O |

| | |
|--|------------------|
| 5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) | SIGNATURES: |
| ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay) | FIRMAS: 1. _____ |
| 2. _____ | 3. _____ |

NOTE: Fold back Page 2 on dotted line before completing below.

| | |
|---|---|
| 6. WERE OTHER INMATES INVOLVED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> IF YES, GIVE NAME & # | Miller, I (22B4385) |
| ¿HUBO OTROS RECLUSOS ENVUeltos? SI <input type="checkbox"/> NO <input type="checkbox"/> DE SER SÍ DÉ LOS NOMBRES Y DIN | |
| 7. AT THE TIME OF THIS INCIDENT: (A) WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> (B) WAS INMATE HOUSED IN A SHU CELL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | (A) ESTUVO EL RECLUSO CONFINADO/RESTRINGIDO PREVIO AL INCIDENTE? SI <input type="checkbox"/> NO <input type="checkbox"/> (B) ESTUVO EL RECLUSO EN UNA CELDA DEL SHU? SI <input type="checkbox"/> NO <input checked="" type="checkbox"/> |
| (C) AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> | |
| ¿SE CONFINÓ/RESTRINGÓ AL RECLUSO COMO RESULTADO DE ESTE INCIDENTE? SI <input type="checkbox"/> NO <input type="checkbox"/> | |
| 8. WAS INMATE MOVED AT ANOTHER HOUSING UNIT? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> | |
| ¿MUDARON AL RECLUSO A OTRA UNIDAD DE VIVIENDA? SI <input type="checkbox"/> NO <input type="checkbox"/> | |
| IF YES, (a) CURRENT HOUSING UNIT | E-2-6 |
| DER SER SÍ, (a) UNIDAD DE VIVIENDA ACTUAL | |
| (b) AUTHORIZED BY _____ | |
| (b) AUTORIZADO POR _____ | |
| 9. WAS PHYSICAL FORCE USED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> (IF YES, FILE FORM 2104) | |
| ¿SE USÓ FUERZA FISICA? SI <input type="checkbox"/> NO <input type="checkbox"/> (DER SER SÍ, SOMETA EL FORMULARIO No. 2104) | |

AREA SUPERVISOR ENDORSEMENT

Signature

App. 123

6/07/23 NYS DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
DCP100 HEARING RECORD SHEET - AUBURN GENERAL

REVIEW OFFICER LT DUTTON, R E
REVIEW DATE 06/07/23 TIER 2
C.R. DATE NONE M.E. DATE LIFE

1) NAME NAVARRO, ISRAEL DIN 22B2266 LOCATION 0E-02-06S
2) INCIDENT DATE 06/06/23 INCIDENT TIME 05:49 PM
3) INCARCERATED INDIVIDUAL WAS NOT CONFINED
4) INCARCERATED INDIVIDUAL RELEASED AT REVIEW
5A) SERVING OFFICER CO O'HARA SERVING DATE/TIME 6/7/23 9:55A
5B) RELEASED FROM PREHEARING CONFINEMENT? NO DATE AUTHORIZED 7/7
6) ASSISTANT YES NO NAME N/A
7) REPRESENTATIVE YES NO NAME N/A
8) HEARING EXTENSION NUMBER N/A (IF APPLICABLE)
9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO I/I
PURSUANT TO DIRECTIVE 4937 OR 4938
TEST REQUEST FORMS N/A TEST PROCEDURE FORMS N/A
TEST RESULT FORMS N/A ATTACHMENT A N/A OTHER (SPECIFY)
10) INCARCERATED INDIVIDUAL IS ENGLISH SPEAKING
A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO I/I? N/A
B) INTERPRETER AT HEARING all
11) HEARING BEGIN:DATE 6/15/23 TIME 10A END:DATE 6/15/23 TIME 10:07
12) CHARGES: SPECIFY I/I'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING
CHARGE INCARCERATED INDIVIDUAL'S
NUMBER DESCRIPTION OF CHARGES REPORTED BY PLEA
104.11 VIOLENT CONDUCT CO EMERSON Guilty
100.13 FIGHTING CO EMERSON Guilty
106.10 REFUSING DIRECT ORDER CO EMERSON Guilty

SIGNATURE OF INCARCERATED INDIVIDUAL I. Navarro
DATE 6/14/23 TIME

13) WITNESSES: IF NONE REQUESTED, CHECK HERE X

| | | |
|---------------------------------|-------------------------|-------------------------|
| A) REQUESTED BY I/I | TESTIFIED | IN I/I'S PRESENCE |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| B) REQUESTED BY HEARING OFFICER | TESTIFIED | IN I/I'S PRESENCE |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| _____ | Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |

NOTE IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE
PRESENCE OF THE I/I CHARGED, AND/OR THE I/I IS NOT PERMITTED TO
REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT
DETERMINATION MUST BE GIVEN TO THE I/I AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE: LT. HANTMAN

AUBURN GENER

TAPE NUMBER

DIN: 22B2266 NAME: NAVARRO, ISRAEL

LOCATION: DE-02-06S

SHU CELL INELIGIBLE
INCIDENT DATE & TIME: 09/18/2023 01:00 PM TIER 2

REVIEW DATE: 09/18/2023 BY: LT SIRVENT, J A

DELIVERY DATE & TIME: 9/19/2023 9:30 AM BY: Co. Oltars

HEARING START DATE & TIME: 9/25/23 9:30 am BY: LT Brown

HEARING END DATE & TIME: 9/25/23 9:30 am BY: Lt. Bryan

| CHARGE NUMBER | DESCRIPTION OF CHARGES | REPORTED BY | DISPOSITION |
|------------------|------------------------|----------------|-------------|
| 113.23 | CONTRABAND | CO DENNIS, J E | S |
| 114.10 | SMUGGLING | ----- | S |
| 106.10 | REFUSING DIRECT ORDER | ----- | WCA |

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE I/I. SANCTION DATES BELOW ARE SUBJECT TO REVIEW/CHANGE, AND WILL BE CONSECUTIVELY ADDED TO ANY SIMILAR CURRENT SANCTION.

| Penalty Code | Description | Penalty Mo Days | Start Date | Release Date | Suspend Mo Days | Deferred Mo Days | Restitution \$\$\$\$. cc |
|-----------------|---------------|--------------------|---------------|-----------------|--------------------|---------------------|---------------------------------|
| D000 | Loss Rec | 15 | 9/25/23 | 10/10/23 | | | |
| E000 | Loss Packages | 15 | 9/25/23 | 10/10/23 | | | |
| F000 | Loss Gaming | 15 | 9/25/23 | 10/10/23 | | | |

DIN: 22B2266 NAME: NAVARRO, ISRAEL

HEARING DATE: 9/25/23
SHU CELL INELIGIBLE

A. STATEMENT OF EVIDENCE RELIED UPON:

- Your address of G-14
- The witness report written by Co Detainee I found to be credible and accurate
- The Charge of 106.10 Disc order I find you never on the day we not-judged on the witness report. However for future reference it is implied as a Disc order to take all measures [Based on the need Staff and witness at need involved]

B. REASONS FOR DISPOSITION:

- to deter future acts of misconduct and allow you to meet your correctional goals

C. SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS

N/A

DIN: 22B2266 NAME: NAVARRO, ISRAEL

HEARING DATE: 9/25/23

SHU CELL INELIGIBLE
SUPERINTENDENT HEARING DISPOSITION RENDERED

| CHARGE | DESCRIPTION OF CHARGES | 5 YEAR PRIORS | 10 YEAR PRIORS |
|--------|------------------------|------------------|-------------------|
| 113.23 | CONTRABAND | 0 | 0 |
| 114.10 | SMUGGLING | 0 | 0 |
| 106.10 | REFUSING DIRECT ORDER | 1 | 1 |

AT THE TIME OF THE HEARING, WAS THIS I/I HOUSED IN A SHU CELL: YES NO

THE SANCTIONS IMPOSED ARE WITHIN THE PUBLISHED GUIDELINES

OR

I HAVE IMPOSED SANCTIONS THAT HAVE DEPARTED UPWARD FROM THE PUBLISHED GUIDELINES, FOR THE FOLLOWING REASON(S):

- OVERALL CLIMATE OF FACILITY
- SEVERITY OF OFFENSE
- LOCATION OF OFFENSE
- MANNER OFFENSE WAS COMMITTED
- RISK TO SECURITY
- RISK TO PERSONAL SAFETY
- PROPERTY DAMAGE - RESTITUTION
- DISCIPLINARY HISTORY
- OTHER - EXPLAIN: _____

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: _____

HEARING OFFICER SIGNATURE

I/I SIGNATURE

DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

 FOR TIER II HEARING - APPEAL TO SUPERINTENDENT WITHIN 72 HOURS FOR TIER III HEARING - APPEAL TO COMMISSIONER WITHIN 30 DAYS

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9/18/23 NYS DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
DCP100 HEARING RECORD SHEET - AUBURN GENERAL

REVIEW OFFICER LT SIRVENT, J A
REVIEW DATE 09/18/23 TIER 2
C.R. DATE NONE M.E. DATE LIFE

1) NAME NAVARRO, ISRAEL DIN 22B2266 LOCATION 0E-02-06S
 2) INCIDENT DATE 09/18/23 INCIDENT TIME 01:00 PM
 3) INCARCERATED INDIVIDUAL WAS NOT CONFINED
 4) INCARCERATED INDIVIDUAL RELEASED AT REVIEW
 5A) SERVING OFFICER Co D'Haan SERVING DATE/TIME 9/18/23 9:30 AM
 5B) RELEASED FROM PREHEARING CONFINEMENT? Yes
 AUTHORIZED PERSON DATE AUTHORIZED
 6) ASSISTANT YES NO NAME
 7) REPRESENTATIVE YES NO NAME
 8) HEARING EXTENSION NUMBER (IF APPLICABLE)
 9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO I/I
 PURSUANT TO DIRECTIVE 4937 OR 4938
 TEST REQUEST FORMS TEST PROCEDURE FORMS
 TEST RESULT FORMS ATTACHMENT A OTHER (SPECIFY)
 10) INCARCERATED INDIVIDUAL ENGLISH SPEAKING
 A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO I/I?
 B) INTERPRETER AT HEARING
 11) HEARING BEGIN:DATE 9/25/23 TIME 9:30 END:DATE 9/25/23 TIME 9:30
 12) CHARGES: SPECIFY I/I'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING
 CHARGE INCARCERATED INDIVIDUAL'S
 NUMBER DESCRIPTION OF CHARGES REPORTED BY PLEA
 113.23 CONTRABAND CO DENNIS, J E Guilty
 114.10 SMUGGLING CO DENNIS, J E Guilty
 106.10 REFUSING DIRECT ORDER CO DENNIS, J E Not Guilty

SIGNATURE OF INCARCERATED INDIVIDUAL X I. Navarro
 DATE 9/25/23 TIME 9:30

13) WITNESSES: IF NONE REQUESTED, CHECK HERE

A) REQUESTED BY I/I TESTIFIED IN I/I'S PRESENCE

| | |
|-----------------------------|-----------------------------|
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |

B) REQUESTED BY HEARING OFFICER TESTIFIED IN I/I'S PRESENCE

| | |
|-----------------------------|-----------------------------|
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |
| Y <u> </u> N <u> </u> | Y <u> </u> N <u> </u> |

NOTE IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE
 PRESENCE OF THE I/I CHARGED, AND/OR THE I/I IS NOT PERMITTED TO
 REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT
 DETERMINATION MUST BE GIVEN TO THE I/I AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE:

Monday, September 18, 2023

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09/18/23 C010JAS
17:16:46 C010N127

DISCIPLINARY SYSTEM
010 AUBURN GENERAL
TIER LEVEL JUSTIFICATION

KDCPM11

DIN 22B2266 NYSID 04426867L NAME NAVARRO, ISRAEL
INCIDENT DATE: 2023/09/18 INCIDENT TIME: 01:00 PM

TIER LEVEL 2 EXCEEDS GUIDELINES

ENTER 'X' AT (UP TO 3) RELEVANT REASON(S):

- 01 OVERALL CLIMATE OF FACILITY
- 02 SEVERITY OF OFFENSE
- 03 LOCATION OF OFFENSE
- 04 MANNER OFFENSE WAS COMMITTED
- 05 RISK TO SECURITY
- 06 RISK TO PERSONAL SAFETY
- 07 PROPERTY DAMAGE - RESTITUTION
- 08 DISCIPLINARY HISTORY
- 09 OTHER - EXPLAIN

SUPPORTING EXPLANATION:

VERIFY - PRESS ENTER KEY TO STORE SELECTIONS
<ENTER> CONTINUE

Auburn

Correctional Facility

INCARCERATED INDIVIDUAL MISBEHAVIOR REPORT • INFORME DE MAL COMPORTAMIENTO DEL INDIVIDUO ENCARCELADO

| | | |
|---|-----------------------|--------------------------|
| NAME OF INCARCERATED INDIVIDUAL (Last, First) • NOMBRE DEL INDIVIDUO ENCARCELADO (Apellido, Nombre) | DIN | HOUSING LOCATION • CELDA |
| Navarro, Israel | 22B22C66 | E-2-6 cell |
| LOCATION OF INCIDENT • LUGAR DEL INCIDENTE | INCIDENT DATE • FECHA | INCIDENT TIME • HORA |
| First cell - cage area | 9-18-23 | Approx. 1pm |
| RULE VIOLATION(S) • VIOLACIÓN (ES) | | |
| 106.10 - Direct order | 114.10 - Smuggling | |
| 113.25 - Drug possession | | |
| 113.23 - Contraband | | |

DESCRIPTION OF INCIDENT • DESCRIPCIÓN DEL INCIDENTE

During the afternoon MAT program - I was alerted by Officer Hesse that I/I Navarro, I 22B22C66 had spit his meds down the front of his shirt. Upon exiting the med waiting area, I ordered Navarro to submit to a pat frisk. While frisking Navarro's upperbody - I recovered a 1 1/4" x 1 1/4" orange dose of Suboxone - from between his shirts. Area supervisor notified. The above mentioned contraband was identified by FNP. R. Slagle as Suboxone. The contraband was then photographed and secured into the facility evidence drop box - by myself - per directive 41910-A.

Navarro was escorted to his cell and is pending disciplinary. No further action taken.

| | | | |
|---|-----------------------------|--|----------------|
| REPORT DATE • FECHA | REPORTED BY • REPORTADO POR | SIGNATURE • FIRMA | TITLE • TÍTULO |
| 9-18-23 | J. Dennis |  | C.O. |
| ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) | | SIGNATURES: | |
| ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay) | | FIRMAS: 1 | 3. _____ |
| 2. _____ | 3. _____ | | |

D. Hold back Page 2 on dotted line before completing below.

| | |
|---|--|
| WERE OTHER INCARCERATED INDIVIDUALS INVOLVED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF YES, GIVE NAME & DIN _____ | |
| ¿HUBO OTROS INDIVIDUOS ENCARCELADOS ENVUELTOS? SÍ <input type="checkbox"/> NO <input type="checkbox"/> DE SER SÍ DÉ LOS NOMBRES Y DIN _____ | |
| AT THE TIME OF THIS INCIDENT: AL MOMENTO DE ESTE INCIDENTE: | |
| 1) WAS INCARCERATED INDIVIDUAL UNDER PRIOR CONFINEMENT/RESTRICTION? ¿ESTUVO EL INDIVIDUO ENCARCELADO CONFINADO/RESTRINGIDO PREVIO AL INCIDENTE? | |
| 2) WAS INCARCERATED INDIVIDUAL HOUSED IN A SHU CELL? ¿ESTUVO EL INDIVIDUO ENCARCELADO EN UNA CELDA DEL SHU? | |
| 3) AS A RESULT OF THIS INCIDENT, WAS INCARCERATED INDIVIDUAL CONFINED/RESTRICTED? ¿SE CONFINÓ/RESTRINGÓ AL INDIVIDUO ENCARCELADO COMO RESULTADO DE ESTE INCIDENTE? | |
| YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> SÍ <input type="checkbox"/> NO <input checked="" type="checkbox"/> OR <input type="checkbox"/> | |
| WAS INCARCERATED INDIVIDUAL MOVED AT ANOTHER HOUSING UNIT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ¿MUDARON AL INDIVIDUO ENCARCELADO A OTRA UNIDAD DE VIVIENDA? SÍ <input type="checkbox"/> NO <input checked="" type="checkbox"/> | |
| IF YES, (a) CURRENT HOUSING UNIT _____ (b) AUTHORIZED BY _____ DER SER SÍ, (a) UNIDAD DE VIVIENDA ACTUAL _____ (b) AUTORIZADO POR _____ | |
| WAS PHYSICAL FORCE USED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> (IF YES, FILE FORM 2104) ¿SE USÓ FUERZA FISICA? SÍ <input type="checkbox"/> NO <input checked="" type="checkbox"/> (DER SER SÍ, SOMETA EL FORMULARIO 2104) | |
| AREA SUPERVISOR ENDORSEMENT  ENDOSO DEL SUPERVISOR DEL ÁREA _____ | |

App. 130

SUPREME COURT OF THE STATE OF NEW YORK

KINGS COUNTY, CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK,

v.

ISRAEL NAVARRO,

Defendant.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Sylvia Lara Altreuter, affirm under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

On March 24, 2025, I served Mr. Navarro's motion to set aside his sentence, with its supporting affirmation and memorandum of law, upon the Office of the New York State Attorney General by first-class mail to 28 Liberty Street, 16th Floor, New York, New York 10005, to the attention of the Managing Attorney's Office.

Dated: New York, New York

March 24, 2025

AFFIRMATION OF SERVICE
UPON NEW YORK STATE
ATTORNEY GENERAL

Ind. No. 623/20



SYLVIA LARA ALTREUTER

App. 131

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM
THE PEOPLE OF THE STATE OF NEW YORK,

V.

ISRAEL NAVARRO,

Defendant.

AFFIRMATION OF SERVICE

Ind. No. 623/20

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Sylvia Lara Altreuter, affirm under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

On March 24, 2025, I served Mr. Navarro's motion to set aside his sentence, with its supporting affirmation and memorandum of law, upon the Brooklyn District Attorney's Office by email to motionservice@brooklynda.org and upon Mr. Navarro by first-class mail. The District Attorney's Office has consented to be served exclusively by electronic mail.

Dated: New York, New York
March 24, 2025



SYLVIA LARA ALTREUTER

App. 132

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART SCDV2 (Warin, J.)

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ISRAEL NAVARRO,

Defendant.

AFFIRMATION IN
OPPOSITION TO
MOTION TO SET ASIDE
SENTENCE

Kings County
Indictment Number
623/2020

I, SHLOMIT HEERING, an attorney admitted to practice law in the State of New York, and an assistant district attorney in the Kings County District Attorney's Office, affirm this 23rd day of May 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following statements are true, and I understand that this document may be filed in an action or proceeding in a court of law.

1. I am submitting this affirmation in opposition to the defendant's motion, dated March 24, 2025, to set aside his sentence pursuant to C.P.L. § 440.20, in which he argues that his enhanced sentence was unconstitutional because his adjudication as a persistent violent felony offender required a jury determination of the periods of incarceration related to his recidivist status.

2. I make the statements in this affirmation on information and belief, based upon my review of the records and files of the

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Kings County District Attorney's Office and the files of the Supreme Court, Kings County.

3. On January 31, 2020, at approximately 4:00 p.m., inside his apartment located at 347 Hancock Street in Brooklyn, the defendant repeatedly stabbed his intimate partner, Yarelys Diaz, with a knife. Diaz was able to flee and a third party called 911. Police officers arrested the defendant at the crime scene.

4. Following the defendant's attack, Diaz was covered in blood and was transported to a local hospital where she underwent emergency surgery for a punctured abdomen and over forty knife wounds to her abdomen, chest, neck, face, back, and arms. In a videotaped statement to law enforcement, the defendant admitted to stabbing Diaz with a kitchen knife after an argument.

5. For these acts, the defendant was charged, under Kings County Indictment Number 623/2020, with Attempted Murder in the Second Degree (P.L. §§ 110.00/125.25[1]), Assault in the First Degree (P.L. § 120.10[1]), two counts of Assault in the Second Degree (P.L. § 120.05[1], [2]), Assault in the Third Degree (P.L. § 120.00[1]), and Criminal Possession of a Weapon in the Fourth Degree (P.L. § 265.01[2]).

6. On April 12, 2022, the defendant pleaded guilty to Assault in the Second Degree (P.L. § 120.05[2]). The defendant

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agreed to enter the plea in exchange for a promised term of imprisonment of thirteen years to life (P. 3, 7-9, 11-12, 18, 22).¹

7. Before the defendant entered his guilty plea, the People provided the defense and the court with a copy of the predicate felony statement pursuant to C.P.L. § 400.16 (P. 3). That statement showed the following: (1) that the defendant was convicted of Manslaughter in the First Degree under New York County Indictment Number 4709/79, and that he was sentenced for that crime on September 22, 1980; (2) that the defendant was convicted of Murder in the Second Degree under Kings County Indictment Number 9328/86, and that he was sentenced for that crime on February 8, 1988; and (3) that the defendant was incarcerated for all but approximately five months between December 11, 1980, and August 13, 2019 (see Statement Pursuant to C.P.L. § 400.16 [attached hereto as People's Exhibit 1]). Defense counsel acknowledged that the defendant was a persistent violent felony offender (P. 3).

8. After the defendant entered the guilty plea, the following colloquy occurred with regard to the predicate felony statement:

THE CLERK: You have been provided with a statement by the District Attorney's Office according to Article 400 of the Criminal Procedure Law and Article 70 of the Penal Law which states that you have been convicted and

¹ Numbers preceded by "P." refer to pages of the plea transcript dated April 12, 2022. Numbers preceded by "S." refer to pages of the sentencing transcript dated May 4, 2022.

sentenced on a prior violent felony, you have been convicted of the crime of manslaughter in the first degree, a violent felony, and sentenced on September 22nd, 1980 in Supreme Court, New York County, under Indictment Number 4709 of '79, and of murder in the second degree, a felony, sentenced on February 8th, 1988, in Kings County Supreme Court under Indictment Number 9328 of 1986.

You may admit, deny -

THE INTERPRETER: I'm sorry.

(Whereupon, there was a brief pause in the proceedings.)

THE CLERK: You may admit, deny or stand mute as to whether you are the person who was convicted and sentenced on those violent felonies as recited in the statement. If you wish to controvert, that is contest, dispute or deny that statement on any grounds, including a violation of your constitutional rights, you must state the grounds and you'll be entitled to a hearing before this Court without a jury.

Have you received a copy of the statement?

THE DEFENDANT: Yes. Yes, your Honor.

THE CLERK: Have you discussed this matter with your attorney?

THE DEFENDANT: Yes, your Honor.

THE CLERK: Do you admit that you are the person who was convicted on those felonies?

THE DEFENDANT: Yes, your Honor.

THE CLERK: Do you wish to challenge the constitutionality of the prior convictions?

THE DEFENDANT: What?

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THE CLERK: Do you wish to challenge the constitutionality of the prior convictions?

THE DEFENDANT: No, your Honor.

THE CLERK: Judge, the defendant has been arraigned a predicate.

THE COURT: Thank you so much.

(P. 22-24).

9. On May 4, 2022, the court sentenced the defendant to the promised term of incarceration of thirteen years to life and issued an order of protection (S. 7-8).

10. The defendant appealed from his judgment of conviction. The defendant claimed that his guilty plea was not knowing, voluntary, and intelligent and that his sentence was unduly harsh and excessive.

11. On December 11, 2024, the Appellate Division, Second Department, affirmed the defendant's conviction. People v. Navarro, 233 A.D.3d 803 (2d Dep't 2024). The court found that the defendant's sentence was not excessive and that the defendant's claim that his guilty plea was not knowing, voluntary, and intelligent was both unpreserved and meritless. Id. at 804.

12. On January 7, 2025, the defendant applied for leave to appeal to the Court of Appeals. The People opposed the application by letters dated March 3 and March 24, 2025. The defendant's application is currently pending.

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13. On March 24, 2025, the defendant filed his present motion to set aside his sentence. Relying on the United States Supreme Court's decision in Erlinger v. United States, 602 U.S. 821 (2024), the defendant claims that the procedure set forth in the Criminal Procedure Law for determining whether a defendant qualifies for an enhanced sentence based on prior felony convictions is unconstitutional. In particular, the defendant argues that a jury, rather than a judge, must determine whether the periods during which the defendant was incarcerated between his commission of the prior felonies and his commission of the instant felony bring the sentences on the prior felonies within the statutorily required time frame to qualify him as a persistent violent felony offender. See P.L. § 70.08(1) (referencing P.L. § 70.04[1][b]).

For the reasons set forth in the accompanying memorandum of law, this Court should deny the defendant's motion to set aside his sentence without a hearing.

Dated: Brooklyn, New York
May 23, 2025

Shlomit Heering
Shlomit Heering
Assistant District Attorney
(718) 250-3236

App. 138

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART SCDV2 (Warin, J.)

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ISRAEL NAVARRO,

Defendant.

Kings County
Indictment Number
623/2020

MEMORANDUM OF LAW

THE DEFENDANT'S CLAIM THAT, UNDER THE UNITED STATES SUPREME COURT DECISION IN *ERLINGER v. UNITED STATES*, HE WAS ENTITLED TO A JURY DETERMINATION OF WHETHER HE QUALIFIED AS A PERSISTENT VIOLENT FELONY OFFENDER IS WAIVED AND MERITLESS.

On April 12, 2022, the defendant was adjudicated a persistent violent felony offender because the court determined that he had previously been convicted of two predicate violent felony offenses and had been sentenced on those prior convictions within ten years before he committed the felony in this case, after excluding the periods during which he was incarcerated between his commission of the first prior felony and his commission of the present crime. The defendant's adjudication as a persistent violent felony

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offender authorized the trial court to impose on him an enhanced sentence. See P.L. § 70.08.¹

The defendant contends that that a jury must determine whether a defendant qualifies for an enhanced sentence as a persistent violent felony offender and that the procedure set forth in the Criminal Procedure Law, which requires a judge to make that determination, is unconstitutional under the decision of the United States Supreme Court in Erlinger v. United States, 602 U.S. 821 (2024). In Erlinger, the Supreme Court addressed a constitutional challenge to the federal Armed Career Criminal Act ("ACCA"), which exposes a defendant to enhanced sentencing if the defendant has three prior convictions for certain offenses that were "committed on occasions different from one another." 602 U.S. at 825 (quoting 18 U.S.C. § 924[e][1]). The Supreme Court held that, for the purposes of the ACCA, the Fifth and Sixth Amendments require a unanimous jury -- rather than a judge -- to

¹ P.L. § 70.04(1)(b) sets forth the requirements that a prior felony must meet to qualify as a predicate felony for a persistent violent felony offender adjudication (see § 70.08[1]). It states, in relevant part, that the sentences on the prior felonies must have been imposed not more than ten years before the commission of the instant felony, and that, in calculating the ten year period, any period during which the defendant was incarcerated for any reason between the commission of the prior felonies and the commission of the instant felony is excluded and the ten-year period is extended by the time served under such incarceration (the "look-back" requirement). C.P.L. § 400.16 (incorporating C.P.L. § 400.15) requires a judge to determine whether a defendant's prior felonies meet this requirement.

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decide whether the defendant's past offenses were committed on separate occasions. Id. at 835, 849. Erlinger relied on the Supreme Court's prior ruling in Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that the Constitution requires that any fact -- other than the fact of a prior conviction -- that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. See 530 U.S. at 476-77, 490.

The defendant's contention that a jury must determine whether a defendant qualifies as a persistent violent felony offender should be rejected for several reasons. First, the defendant waived his claim by waiving his constitutional right to a jury trial when he pleaded guilty. Second, the defendant's Erlinger claim is meritless because New York's multiple-felony-offender sentencing statutes are constitutional and because, at the defendant's plea proceeding, he effectively admitted the facts necessary to adjudicate him a persistent violent felony offender. Third, any Erlinger error would have been harmless. Therefore, for each of these reasons, the defendant's motion to set aside the sentence should be denied without a hearing, pursuant to Criminal Procedure Law § 440.30(4)(a), because his moving papers "do not allege any ground constituting legal basis for the motion."

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(i) The Defendant Waived His Claim by Waiving His Constitutional Right to a Jury Trial When He Pledged Guilty.

The defendant pleaded guilty, explicitly waiving his constitutional right to a trial (P. 13-14). The defendant now claims that his right to a jury trial encompassed a right to have his persistent-violent-felony-offender status adjudicated by a jury because, according to the defendant, the periods during which he was incarcerated are facts that are "not subject to the Almendarez-Torres exception" (Def. Memo. of Law at 5-7). The defendant waived that claim because he waived his constitutional right to a jury trial when he pleaded guilty without any limitation or qualification.² See People v. Rivera, 221 N.Y.S.3d 894, 897-98 (Sup. Ct. N.Y. Cnty. 2024) (by waiving right to jury and agreeing to bench trial, defendant waived claim that Erlinger requires jury determination of persistent-violent-felony-offender

² While the defendant in Erlinger pleaded guilty (602 U.S. at 826), there is no indication that the government in that case argued that the defendant's waiver of his right to a jury trial at the time of his plea waived his claim that his sentencing violated that right. On the contrary, in Erlinger, the government agreed with the merits of the defendant's claim in the federal Court of Appeals, supported his petition for certiorari in the United States Supreme Court, and agreed with his position in that Court as well. Id. at 827-28. Thus, the government apparently "forfeit[ed] or waive[d] the waiver" of the defendant's claim (see Garza v. Idaho, 586 U.S. 232, 238-39 [2019]), and consequently, in Erlinger, the Supreme Court had no occasion to address the question of whether the defendant's waiver of his right to a jury trial at the time of his guilty plea waived his claim. See United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483, 490 n.3 (2001) (Supreme Court had "no occasion to consider" question that "was not argued").

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status); but see People v. Sabater, 225 N.Y.S.3d 563, 567-69 (Sup. Ct. N.Y. Cnty. 2024).

The defendant argues that his waiver of his right to a jury trial did not encompass a waiver of a right to have a jury determine whether he qualified as a persistent violent felony offender because the court never informed him that he had such a right and, instead, informed him that if he wished to controvert the content of the predicate felony statement, then he would be entitled to a hearing before the court, without a jury, on whether he qualified as a persistent violent felony offender (see Def. Memo. of Law at 8-9). The defendant's argument should be rejected because the court informing the defendant that he was entitled to a hearing without a jury on whether he qualified as a predicate felony offender has no bearing on whether his waiver of his right to a jury trial encompassed the right to have a jury make such a determination.

The defendant also argues that a written waiver of his right to a jury trial on the issue of tolling was required under the New York State Constitution and under C.P.L. § 320.10 (see Def. Memo. of Law at 9, n.4). That argument should be rejected. Article 1, Section 2 of the New York State Constitution "gives to a defendant who elects to stand trial the right to obtain a trial before the court without a jury, provided he waives his right to a trial by jury in writing in open court," but that section "is not applicable

to a plea of guilty by which a defendant elects not to litigate his guilt." People v. Hardy, 53 A.D.2d 647, 648 (2d Dep't 1976) (citations omitted; emphasis added); see People v. Cobaugh, 60 A.D.3d 1348, 1349 (4th Dep't 2009) (rejecting defendant's claim that waiver of jury trial by oral guilty plea violated state Constitution, and citing Hardy). Subsection 1 of C.P.L. § 320.10 states that most defendants "may at any time before trial waive a jury trial and consent to a trial without a jury in the superior court" (emphasis added), and subsection 2 of that section, on which the defendant relies, states that such a waiver must be in writing. That provision clearly does not apply to a guilty plea, where the defendant chooses to proceed without any form of trial.

Insofar as the defendant may argue that, because Erlinger was decided after he pleaded guilty, his express waiver of the constitutional right to a jury trial did not constitute a waiver of his claim that he was constitutionally entitled to have his persistent-violent-felony-offender status adjudicated by a jury, that argument should be rejected. The defendant's claim that he was entitled to a jury determination of his persistent-violent-felony-offender status rests on a principle that was established by the Supreme Court's decision in Apprendi -- that the Constitution requires that any fact (other than the fact of a prior conviction) that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved

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beyond a reasonable doubt. See Apprendi, 530 U.S. at 476-77, 490. In Erlinger, the Supreme Court characterized the case as being "as nearly on all fours with Apprendi and Alleyne [v. United States, 570 U.S. 99 (2013)] as any we might imagine." 602 U.S. at 835. Because the principle on which the defendant's claim rests was established in 2000, when Apprendi was decided, and Erlinger merely applied the Apprendi principle, there is no reason to doubt that, when the defendant pleaded guilty in 2022, his waiver of his constitutional right to a jury trial was understood to encompass a waiver of any right, based on Apprendi, to a jury determination of certain facts necessary for sentence enhancement. See Rivera, 221 N.Y.S.3d at 898 (rejecting defendant's "claim of surprise" -- which was based on fact that Erlinger was decided after defendant's waiver of a jury trial -- because the underlying constitutional principle relied on by defendant was established in 2000 in Apprendi).

In the defendant's case, his express and unqualified waiver of his constitutional right to a jury trial constituted an "appropriate waiver" of his alleged right to a jury determination of his persistent-violent-felony-offender status. See Blakely v. Washington, 542 U.S. 296, 310 (2004).

(ii) The Defendant's Claim is Meritless.

The defendant's claim that his sentencing as a persistent violent felony offender was unconstitutional is meritless for two

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independent reasons. First, following the Supreme Court's decision in Apprendi -- which the Supreme Court explicitly cited as the basis for its decision in Erlinger -- the New York Court of Appeals has repeatedly found New York's multiple-felony-offender sentencing scheme to be constitutional. Second, during the plea proceeding, the defendant effectively admitted the facts necessary to qualify him as a persistent violent felony offender, and consequently, Apprendi and Erlinger did not require a jury finding on those facts.

First, Erlinger relied on the Supreme Court's prior rulings in Apprendi and Alleyne. See Erlinger, 602 U.S. at 835. In Apprendi, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment, taken together with the Sixth Amendment right to a jury trial, requires that any fact -- other than the fact of a prior conviction -- that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. 530 U.S. at 476-77, 490 (citing Jones v. United States, 526 U.S. 227, 243 n.6 [1999]). The Court explained that the "fact of a prior conviction" exception was based on its prior decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), which held that a statute authorizing an enhanced sentence for a recidivist based on a judge's determination of the fact of the defendant's prior conviction does not violate the Constitution, because the fact of a prior

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conviction is not an element of a crime that must be proved to a jury beyond a reasonable doubt. Apprendi, 530 U.S. at 487-90 (citing Almendarez-Torres).

Since Apprendi was decided, the New York Court of Appeals has repeatedly held that New York's multiple-felony-offender sentencing scheme is constitutional, because all of the findings of fact that a court must make before it can impose an enhanced sentence fall within the "fact of a prior conviction" exception to Apprendi and, therefore, may be found by a judge rather than a jury. See, e.g., People v. Garvin, 30 N.Y.3d 174, 189 (2017); People v. Prindle, 29 N.Y.3d 463, 466-67 (2017) (citing cases); People v. Bell, 15 N.Y.3d 935, 936 (2010) (Almendarez-Torres "permits sentencing proceedings in which the fact of previous criminal convictions is found by a court sitting without a jury").

Erlinger did not call into question the decisions of the New York Court of Appeals upholding the constitutionality of New York's multiple-felony-offender sentencing statutes. Indeed, Erlinger expressly declined to disturb the Almendarez-Torres "fact of a prior conviction" exception. See 602 U.S. at 838 ("[N]o one in this case has asked us to revisit Almendarez-Torres. Nor is there need to do so today."). Consequently, Erlinger also did not disturb the decisions that, relying on the Almendarez-Torres exception, have upheld the constitutionality of New York's multiple-felony-offender sentencing statutes. See, e.g., Garvin,

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30 N.Y.3d at 189; Prindle, 29 N.Y.3d at 465-66, 471; People v. Battles, 16 N.Y.3d 54, 59 (2010); People v. Porto, 16 N.Y.3d 93, 102 (2010); Bell, 15 N.Y.3d at 935-36; People v. Leon, 10 N.Y.3d 122, 126 (2008); People v. Rivera, 5 N.Y.3d 61 (2005); People v. Rosen, 96 N.Y.2d 329 (2001); People v. Pitts, 227 A.D.3d 421, 422 (1st Dep't 2024); People v. Highsmith, 21 A.D.3d 1037, 1038-39 (2d Dep't 2005); People v. Goston, 9 A.D.3d 905, 907 (4th Dep't 2004); People v. Simmons, 298 A.D.2d 468, 469 (2d Dep't 2002); see also Portalatin v. Graham, 624 F.3d 69, 93 (2d Cir. 2010) (en banc) (holding, on habeas review, that New York courts did not unreasonably apply Supreme Court precedent in determining that

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persistent felony offender sentencing scheme does not violate Sixth Amendment).³

Additionally, the Supreme Court characterized Erlinger as being "as nearly on all fours with Apprendi and Alleyne as any [case] we might imagine." Erlinger, 602 U.S. at 835. By that statement, the Supreme Court effectively acknowledged that Erlinger did not announce a new rule of law, but instead merely applied the Apprendi rule. See People v. Williams, Ind. 503/2010, at 16-17 (Sup. Ct. Queens Cnty. Jan. 31, 2025) (Erlinger does not require that facts under the Almendarez-Torres exception must now be placed before a jury and proved beyond a reasonable doubt, and

³ The defendant acknowledges that this Court does not have the authority to overrule Almendarez-Torres, but asserts that "it must be overruled in light of Apprendi and its progeny (Def. Memo of Law at 5 n.2 [citing Erlinger, 602 U.S. at 850-51 (Thomas, J., dissenting)]). Binding precedent from the Court of Appeals upholding the constitutionality of New York's multiple-felony-offender sentencing scheme must not be disregarded merely because the defendant thinks that "it must be overruled" (see id.). See Rivera, 5 N.Y.3d at 67 ("Although a majority of the present Justices of the Supreme Court have expressed disagreement with Almendarez-Torres, we recognize that Court's obvious prerogative to overrule its own decisions and we therefore follow Almendarez-Torres until the Supreme Court rules otherwise" [citations omitted]); see also Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 136 (2023) (where Supreme Court precedent "has direct application in a case," lower court "should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions," "even if the lower court thinks the precedent is in tension with some other line of decisions" [quotation marks and internal citation omitted]).

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Erlinger did not expand the Apprendi doctrine); People v. Taylor, 224 N.Y.S.3d 345, 351 (Sup. Ct. Nassau Cnty. 2024) ("As the Supreme Court made clear [in Erlinger], Erlinger does not state a new rule of U.S. Constitutional law at all. Rather, it simply reiterates the rule announced in Apprendi . . ." [emphasis in original]).

Furthermore, the statutory scheme that was at issue in Erlinger is materially different from New York's multiple-felony-offender sentencing scheme. In Erlinger, the Supreme Court addressed a statutory scheme necessitating a factual inquiry that fell outside the Almendarez-Torres exception. See 602 U.S. at 839-42. The defendant in Erlinger specifically controverted the government's allegation that his prior crimes occurred on "occasions different from one another" under the ACCA. Id. at 827. The inquiry at issue was "fact-laden," concerning details such as the "exact times and locations of the defendant's past crimes," and often included a "qualitative assessment" of the character and relationship of the offenses or an inquiry into whether the crimes shared "a common scheme or purpose." Id. at 834, 840-41 (citation omitted).

In contrast, New York's persistent-violent-felony-offender sentencing statutes require no such fact-laden inquiry to determine whether a defendant's prior convictions qualify the defendant for an enhanced sentence. Instead, in a case such as this, the inquiry is whether, after excluding the periods during

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which the defendant was incarcerated, the sentence on his first prior offense was imposed no more than ten years before the commission of the instant crime. That inquiry is based solely on the dates of the sentences on the prior convictions, the date of commission of the instant crime, and the dates of the beginning and end of the periods of incarceration. See P.L. §§ 70.04(1) (b), 70.08(1). Contrary to the defendant's contention (see Def. Memo. of Law at 5-7), findings about the length of a defendant's prior periods of incarceration -- for purposes of determining whether, after excluding those periods, the defendant's prior felony convictions are within the ten-year look-back period -- fall within the Almendarez-Torres exception to Apprendi. See People v. Jackson, 225 N.Y.S.3d 903, 910 (Sup. Ct. Queens Cnty. 2025) ("facts necessary to determine tolling under the New York State persistent violent felony sentencing scheme continue to fall within the Almendarez-Torres exception").

The Court of Appeals has rejected the claim that, in light of Apprendi, defendants are constitutionally entitled to have a jury determine the length of periods of incarceration for purposes of tolling the ten-year look-back period. In Porto, the Court of Appeals rejected as meritless the defendant's Apprendi challenge to New York's persistent-violent-felony-offender statutes (16 N.Y.3d at 102), despite the defendant's argument that the Constitution required a jury to make findings about the defendant's

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prior periods of incarceration for purposes of tolling. See Brief for Defendant-Appellant at *39-*40, People v. Porto, 16 N.Y.3d 93 (2010), 2010 WL 5596787 (APL 2010-0219) (May 2010). In Bell, too, the Court of Appeals -- citing Almendarez-Torres -- rejected a constitutional challenge to the persistent-violent-felony-offender sentencing scheme (15 N.Y.3d at 935-36), despite the defendant's similar argument regarding tolling. See Brief for Defendant-Appellant at *33-*36, People v. Bell, 15 N.Y.3d 935 (2010), 2010 WL 5596773 (APL 2010-0214) (May 28, 2010). Given that the Supreme Court in Erlinger found the case to be "nearly on all fours with Apprendi and Alleyne" and expressly declined to disturb the Almendarez-Torres exception (602 U.S. at 835, 838), Porto and Bell constitute controlling authority that require rejecting the defendant's claim that he was constitutionally entitled to have a jury determine the length of his periods of incarceration with respect to tolling. See Taylor, 224 N.Y.S.3d at 356, 362 (Erlinger is not new law, does not "speak to tolling," and does not "overrule New York precedent applying Apprendi and its progeny"; "Given the long history of NY courts upholding the persistent violent felony offender sentencing scheme in cases where the sentencing court has made a tolling determination as part of its adjudication, coupled with the fact that Erlinger does NOT clearly overrule New York precedent on this issue, trial courts

in this state remain bound by NY appellate precedent on this issue.”).

Thus, Erlinger did not alter or expand the Apprendi rule, but rather merely applied that rule to a specific fact pattern. In any event, even if Erlinger had broken new ground, its holding would not affect the validity of New York’s multiple-felony-offender sentencing scheme, because Erlinger did not address the kinds of facts relied on by that scheme. In Erlinger, the Supreme Court held that a “‘judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense. . . . He can do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.’” 602 U.S. at 840 n.3 (quoting Mathis v. United States, 579 U.S. 500, 511-12 [2016]; omission in Erlinger). In other words, Erlinger addressed only the proper scope of a sentencing judge’s inquiry into the manner in which a defendant committed a predicate offense.⁴

A judicial determination of the length of a defendant’s periods of incarceration for the purpose of tolling the ten-year

⁴ The defendant’s contention that, in making a finding related to tolling, “‘the court did more than Almendarez-Torres allows’” (Def. Memo. of Law at 7 [quoting Erlinger, 602 U.S. at 839]) overstates Erlinger’s holding. The sentencing court is limited to determining the elements of prior convictions only to the extent that it inquires into the manner in which the defendant committed the prior crimes.

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look-back period does not concern the manner in which the defendant committed the prior crimes that constitute the basis for a sentence enhancement and, therefore, is consistent with the principle applied in Erlinger. That principle does not entitle a defendant to a jury determination of facts that "are part of the mechanical operation of the criminal justice system such as the date that a Defendant may have been incarcerated (or was released from custody)" for a prior conviction. Jackson, 225 N.Y.S.3d at 910. The date on which a defendant entered or was discharged from a correctional facility, like the date on which a conviction occurred, is unrelated to the manner in which the offense underlying that conviction was committed. Id.; see also Rivera, 221 N.Y.S.3d at 899-900 (Erlinger does not apply to findings of fact necessary to apply tolling provision of P.L. § 70.04[1] [b]; "there is no logical distinction . . . between a judicial finding of the fact of a prior conviction, which can be made by the judge without controversy -- and the fact of a prior incarceration (and the relevant dates), which triggers the Tolling Provision" [emphasis in original; citation omitted]); People v. Vidal Carrion, Kings Cnty. Ind. No. 15847-1995, Decision and Order at 8-9 (Sup. Ct. Kings Cnty. May 2, 2025) (Tully, J.) (Erlinger does not require a jury to determine the existence of prior convictions or the tolling periods); People v. James Lumpkin, Kings Cnty. Ind. No. 70292-21, Decision and Order at 7 (Sup. Ct. Kings Cnty. Apr.

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4, 2025) (Tully, J.) (same); but see People v. Rodney, 224 N.Y.S.3d 332 (Sup. Ct. N.Y. Cnty. 2024); People v. Gardner, 224 N.Y.S.3d 321 (Sup. Ct. Queens Cnty. 2024); People v. Perry, 223 N.Y.S.3d 879 (Sup. Ct. Kings Cnty. 2024); People v. Banks, 218 N.Y.S.3d 519 (Sup. Ct. N.Y. Cnty. 2024); People v. Lopez, 216 N.Y.S.3d 518 (Sup. Ct. N.Y. Cnty. 2024).

Moreover, the defendant has not overcome the presumption of constitutionality that attaches to all legislative enactments. “[L]egislative enactments are entitled to a strong presumption of constitutionality, and courts strike them down only as a last unavoidable result after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible.” Stefanik v. Hochul, 43 N.Y.3d 49, 57 (2024) (internal quotation marks and citation omitted). The presumption places a “heavy burden” on the party seeking to invalidate the statute. People v. Bright, 71 N.Y.2d 376, 382 (1988). Under this burden, “the invalidity of the law must be demonstrated beyond a reasonable doubt.” People v. Tichenor, 89 N.Y.2d 769, 773 (1997) (citation omitted); see also People v. Scalza, 76 N.Y.2d 604, 607 (1990).

Additionally, when, as in this case, a party challenges the constitutionality of a statute in a court of original jurisdiction, the burden is even greater. A court of first instance should not declare “‘an act of the Legislature unconstitutional except in

rare cases where life and liberty is involved and invalidity of the act is apparent on its face.'" Richman v. Richman, 41 A.D.2d 993, 994 (3d Dep't 1973) (citation omitted); see also People v. Pace, 444 N.Y.S.2d 529, 531 (Sup. Ct. Kings Cnty. 1981) ("a court of original jurisdiction should never declare a law unconstitutional unless such conclusion is inescapable" [citations omitted]), rev'd on other grounds, 101 A.D.2d 336 (2d Dep't 1984), aff'd, 65 N.Y.2d 684 (1985). Instead, the constitutional question should generally be left to the appellate courts. Pace, 444 N.Y.S.2d at 531. "This rule avoids, where possible, the uncertainty and confusion which may follow a trial judge's finding of unconstitutionality." People v. Lopez, 484 N.Y.S.2d 974, 979 (Sup. Ct. Kings Cnty. 1985). As set forth above, the defendant has failed to meet his burden in this case.

Consequently, Erlinger is entirely consistent with the decisions of the New York Court of Appeals upholding the constitutionality of New York's multiple-felony-offender sentencing statutes. Accordingly, those decisions are binding on this Court and require rejection of the defendant's claim that his sentence as a persistent violent felony offender was "unauthorized, illegally imposed or otherwise invalid as a matter of law." See C.P.L. § 440.20(1).

The second reason why the defendant's Erlinger claim is without merit is that, at the plea proceeding, the defendant

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admitted, or is deemed to have admitted, the facts necessary to adjudicate him a persistent violent felony offender. Apprendi held that “[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.” United States v. Booker, 543 U.S. 220, 244 (2005) (emphasis added); see also Blakely, 542 U.S. at 303 (“the ‘statutory maximum’ for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant” [emphasis in original]).

Before the defendant entered his guilty plea, he was provided with a written statement, pursuant to C.P.L. Article 400, that set forth information regarding his alleged predicate violent felony convictions, including the crimes of which he had been convicted, the dates of the sentences, the courts and counties of the convictions, and the indictment numbers for the convictions (see Statement Pursuant to C.P.L. § 400.16; P. 3). The predicate felony statement also specified, in accordance with the requirements of C.P.L. § 400.16(2) (incorporating C.P.L. § 400.15[2]), the dates of the defendant’s admission to and release from custody for the periods during which he was incarcerated between the commission of the first predicate felony and the commission of the present

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felony, as well as the place of imprisonment for each period of incarceration (see Statement Pursuant to C.P.L. § 400.16). The court clerk read aloud the portion of the predicate felony statement stating that the defendant had been convicted of first-degree manslaughter under New York County Indictment Number 4709/79 and sentenced for that crime on September 22, 1980, and that he had been convicted of second-degree murder under Kings County Indictment Number 9328/86 and sentenced for that crime on February 8, 1988 (P. 23; see Statement Pursuant to C.P.L. § 400.16).

The clerk informed the defendant:

You may admit, deny or stand mute as to whether you are the person who was convicted and sentenced on those violent felonies as recited in the statement. If you wish to controvert, that is contest, dispute or deny that statement on any grounds, including a violation of your constitutional rights, you must state the grounds and you'll be entitled to a hearing before this Court without a jury.

(P. 23). The clerk then conducted the following colloquy with the defendant:

[THE CLERK:] Have you received a copy of the statement?

THE DEFENDANT: Yes. Yes, your Honor.

THE CLERK: Have you discussed this matter with your attorney?

THE DEFENDANT: Yes, your Honor.

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THE CLERK: Do you admit that you are the person who was convicted on those felonies?

THE DEFENDANT: Yes, your Honor.

THE CLERK: Do you wish to challenge the constitutionality of the prior convictions?

THE DEFENDANT: What?

THE CLERK: Do you wish to challenge the constitutionality of the prior convictions?

THE DEFENDANT: No, your Honor.

(P. 23-24) .

Thus, the defendant admitted, or is deemed to have admitted, the facts that qualified him to be sentenced as a persistent violent felony offender. He acknowledged that he had been convicted of first-degree manslaughter under New York County Indictment Number 4709/79 and sentenced on September 22, 1980, and that he had been convicted of second-degree murder under Kings County Indictment Number 9328/86 and sentenced on February 8, 1988. He is also deemed to have admitted the periods of incarceration specified in the predicate felony statement, because he did not controvert those allegations. See C.P.L. § 400.15(3) ("Uncontroverted allegations in the statement shall be deemed to have been admitted by the defendant."); P.L. § 70.08(1) (b) (incorporating P.L. § 70.04[1][b]). The defendant admitted or declined to dispute those facts knowing that doing so would affect his sentence, at a proceeding where he had every incentive to raise

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a factual dispute, and with the benefit of discussion of the matter with his attorney and a panoply of procedural protections giving him ample notice and an opportunity to be heard. See C.P.L. § 400.15(3)-(7).

Because the defendant effectively admitted those facts, there was no contested issue that needed to be resolved to determine that he would be sentenced as a persistent violent felony offender, and the Sixth Amendment posed no barrier to the use of those facts as a basis to enhance his authorized sentence. See Lumpkin, Kings Cnty. Ind. No. 70292-21, Decision and Order at 8-9 (finding that defendant waived Erlinger challenge to his persistent-violent-felony-offender adjudication and enhanced sentence by failing to controvert dates of his prior convictions or People's calculations of his periods of incarceration); People v. Enrique Rivera, Kings Cnty. Ind. No. 1453-05, Decision and Order at 4 (Sup. Ct. Kings Cnty. Mar. 27, 2025) (King, J.) (finding that defendant's conviction falls within the Almendarez-Torres exception to Apprendi and that any jury finding was unnecessary because defendant admitted the facts necessary to qualify him as a second felony offender).⁵

⁵ Copies of the unpublished decisions in Williams, Carrion, Lumpkin, and Enrique Rivera are being served and filed with this response.

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(iii) Any Error Would Have Been Harmless.

Any Apprendi error in the procedure by which the defendant was adjudicated a persistent violent felony offender would have been harmless. The record makes clear beyond a reasonable doubt that a rational jury would have found the fact of the defendant's predicate violent felony convictions, and that sentencing on those convictions occurred within the applicable statutory period.

The date of the defendant's commission of his present crime, January 31, 2020, was proved by his plea allocution in this case. As for his two predicate violent felony convictions, the defendant's criminal history report dated February 1, 2020 -- prepared by the New York State Division of Criminal Justice Services (see Exec. Law § 837[4][a], [6], [7]) -- shows those convictions and the dates on which he committed and was sentenced for those crimes (see Criminal History Report at 4-7 [attached hereto as People's Exhibit 2]).

With respect to proof that, accounting for tolling for the defendant's periods of incarceration, he was sentenced for his predicate violent felony convictions within the ten-year look-back period preceding his commission of the present crimes, the criminal history report also shows that the defendant was incarcerated in state prison between December 11, 1980, and August 25, 1986 (more than five and a half years), and between February 16, 1988, and August 13, 2019 (approximately thirty-one and a half years) (see

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Criminal History Report at 4-7). The defendant's time served in state prison showed that he was only at liberty for (at most) approximately three years between the date that he committed the first prior offense and the date that he committed the instant offense -- bringing the sentence dates on his two prior felonies well within the ten-year look-back period.

Accordingly, even if the defendant had disputed the facts necessary to adjudicate him a persistent violent felony offender (which he did not do here), the People could have proved those facts beyond a reasonable doubt by relying on the criminal history report and other official records. See Jackson, 225 N.Y.S.3d at 910 ("certain facts about a conviction, such as the duration of the sentence and the length of a defendant's incarceration, would appear to be open, notorious and on a secure record, and are the types of records that may be judicially noticed. As such they are possessed of substantial trustworthiness, emanating as they do from official court and correctional records") (internal quotation marks and citation omitted).

For this reason as well, the defendant's C.P.L. § 440.20 motion should be denied. See Washington v. Recuenco, 548 U.S. 212, 218-22 (2006) (Apprendi violations are subject to harmless error analysis); People v. Kozlowski, 11 N.Y.3d 223, 250 (2008) (same); see also Erlinger, 602 U.S. at 849-50 (Roberts, C.J., concurring) (Erlinger error is subject to harmless error review);

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United States v. Campbell, 122 F. 4th 624, 630-33 (6th Cir. 2024) (holding, based on the "whole record," that Erlinger error was harmless beyond a reasonable doubt); United States v. Saunders, 2024 U.S. App. LEXIS 26805, at *5-*10 (2d Cir. Oct. 21, 2024) (summary order) (Erlinger error was harmless "because the record makes clear beyond a reasonable doubt that a rational jury would find that Saunders committed the three prior violent offenses on separate occasions"); People v. Gomez, 236 A.D.3d 603, 604-05 (1st Dep't 2025) (where defendant alleged Erlinger error, holding that Apprendi violations are subject to harmless error review and finding any alleged error harmless).

* * * *

Accordingly, for all of the above reasons, the defendant's motion to set aside his sentence should be denied without a hearing.

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CONCLUSION

THE DEFENDANT'S MOTION TO SET ASIDE HIS
SENTENCE SHOULD BE DENIED WITHOUT A HEARING.

Dated: Brooklyn, New York
May 23, 2025

Respectfully submitted,

ERIC GONZALEZ
District Attorney
Kings County

LEONARD JOBLOVE
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SHLOMIT HEERING
Assistant District Attorneys
of Counsel

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PEOPLE'S EXHIBIT 1

(Statement Pursuant to C.P.L. § 400.16)

People v. Israel Navarro
Kings Co. Ind. No. 623/2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM

Indictment NO.: 623-2020

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

-against-

ISRAEL NAVARRO

a/k/a:

STATEMENT

PURSUANT TO CPL ARTICLE 400
(CPL Section 400.15, 400.16, 400.21)D e f e n d a n t

PLEASE TAKE NOTICE that upon information presently available the District Attorney of the County of Kings hereby charges that the Defendant has previously been convicted of :

| CRIME | PREDICATE VFC | DATE OF SENTENCE | JURISDICTION | INDICTMENT NUMBER |
|----------------|---------------|------------------|------------------------|-------------------|
| MANSLAUGHTER 1 | Y | 09/22/80 | Supreme Court New York | 4709-79 |
| MURDER 2 | N | 02/08/88 | Supreme Court Kings | 9328-86 |

Each conviction shown above which occurred within the State of New York is for a felony, and each such conviction which occurred in another jurisdiction is for an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized in this State.

Each conviction designated above as a "Predicate VFC" is a predicate violent felony conviction as defined in paragraph (b) of subdivision one of Penal Law Section 70.04.

In addition, each sentence was imposed upon the defendant not more than ten years before January 31, 2020 the date of commission of the present felony except as indicated below.*

*Where sentence upon a prior Felony conviction has been imposed more than ten years before the commission of the present felony, the ten year statutory period has been extended by a total of 13991 days representing the period of time between the commission of both crimes during which the defendant was incarcerated for any reason.

More particularly, the defendant was incarcerated at :

| Correctional Facility | Admission | Release | Correctional Facility | Admission | Release |
|-----------------------|-----------|----------|-----------------------|-----------|----------|
| DOWNSTATE | 12/11/80 | 08/25/86 | NYC | 01/07/87 | 02/15/88 |
| DOWNSTATE | 02/16/88 | 08/13/19 | | | |

*AGG
1/12/22*

DATED: Brooklyn, New York
February 20, 2020

ERIC GONZALEZ
DISTRICT ATTORNEY

BY *Olave Albee*
ASSISTANT DISTRICT ATTORNEY

Date Received: 2/19/20



OFFICE OF THE
District Attorney
KINGS COUNTY

SECOND FELONY OFFENDER WORK SHEET

| | | | |
|-----------------------------------|----------------------------------|----------------------|-------|
| 623-2020 - Indictment # | ISRAEL NAVARRO Defendant Name | 2/27/20 Next Date | Judge |
| Date of Birth: <u>████████/54</u> | | | |
| Date of Crime: <u>1/31/20</u> | | | |
| Date of Arrest: <u>2/1/20</u> | | | |
| FBI ID: <u>392972M8</u> | | | |
| NYSID: <u>4426867L</u> | | | |

Prior Indictment #: 4709-79 Jurisdiction: Supreme Court

Date of Indictment: 11/03/79 Name Used: NAVARRO, ISRAEL
Date of disposition: 9/22/80 NYS ID: 4426867L
Disposition: MANSLAUGHTER 1 Judge: ?
Sentence Date: 9/22/80 Term: 5-15 YEARS

Charges: MANSLAUGHTER 1, MURDER 2, CPW 2, CPW 3

** VOID INSUFFICIENT TOLL TIME **

Predicate VFC: Y

Prior Indictment #: 9328-86 Jurisdiction: Supreme Court

Date of Indictment: 12/30/86 Name Used: NAVARRO, ISRAEL
Date of disposition: 12/29/87 NYS ID: 4426867L
Disposition: MURDER 2 Judge: R. MOSKOWITZ
Sentence Date: 2/8/88 Term: 25 YRS-LIFE

Charges: MURDER 2(2)

** 2 COUNTS OF MURDER 2 ** NO A FELONIES ARE VIOLENT **

Predicate VFC: N

For special information:



OFFICE OF THE
District Attorney
KINGS COUNTY

Defendant's Record of Incarceration

| ISRAEL NAVARRO | | 392972M8 | 623-2020 | | | | |
|----------------|-----------|-------------|---------------------------|-----------|------------|-----------|----------|
| | Defendant | FBI ID | Current indictment number | | | | |
| # | Indict # | Description | Jail Name | Id Name | Number | Admission | Release |
| 1 | 4709-79 | State jail | DOWNSTATE | DIN | 80A4356 | 12/11/80 | 08/25/86 |
| 2 | 9328-86 | City jail | NYC | Book&Case | 1478700043 | 01/07/87 | 02/15/88 |
| 3 | 9328-86 | State jail | DOWNSTATE | DIN | 88A1362 | 02/16/88 | 08/13/19 |
| Jail Days | | | | | | | |
| 2084 | | | | | | | |
| 405 | | | | | | | |
| 11502 | | | | | | | |

Total Days in Jail : 13991

Time needed (days): 10724

Previous Felony Sentence Date (PFSD): 09/22/80

Ten Years After PFSD: 09/22/90

Current Crime Date: 01/31/20

Days between "Ten Years After" and "Current Crime Date": 10724

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PEOPLE'S EXHIBIT 2

(Criminal History Report)

People v. Israel Navarro
Kings Co. Ind. No. 623/2020

Fingerprint Report App. 169e Summary

NYSID: 04426867L ORI: NY0303079 NYCPD PCT 079

NYSID: 04426867L **FBI Number:** 392972M8 **Current Transaction Name:** ISRAEL NAVARRO
Fax Number: K3624 **Current Arrest Number:** K20604818 **DOB:** [REDACTED] 1954
Probation Client ID#: **III Status:** Criminal record in other states or in multiple FBI files for NYS

● Alerts

* See **Additional Information** at the bottom of this response for more banners pertaining to the criminal history

Violent Felony offense(s) on file

Currently under Parole Supervision by Brooklyn I

DNA PROFILE IS ON FILE IN THE DNA DATABANK If more information is required call DCJS Office of Forensic Services at 1-800-262-3257

● New York State Arrest/Conviction/Warrant Information

Total Arrests: 4

Date of Earliest Arrest: November 03, 1979

Latest Prior Arrest Date: December 27, 1986

| | |
|------------------------|---|
| Total Arrests: | 4 |
| Felony: | 3 |
| Violent Felony: | 3 |
| Firearm: | 0 |
| Misdemeanor: | 0 |
| Other: | 1 |

| | |
|---------------------------------|---|
| Total Arraigned Arrests: | 0 |
| Felony: | 0 |
| Violent Felony: | 0 |
| Firearm: | 0 |
| Misdemeanor: | 0 |
| Other: | 0 |

| | | |
|----------------------------|---|----------------|
| Total Open Cases: | 2 | Cycles (max 5) |
| Felony: | 2 | 4,2 |
| Violent Felony: | 2 | 4,2 |
| Misdemeanor: | 0 | |
| Other: | 0 | |
| Open ACD: | 0 | |
| Non Docketed Cases: | 2 | 4,2 |

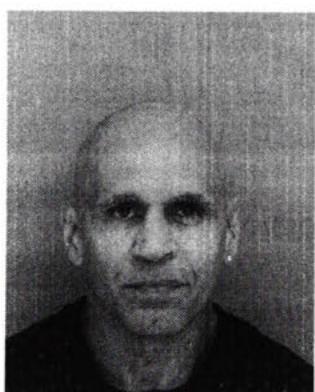
| | | |
|---------------------------|---|----------------|
| Total Convictions: | 2 | Cycles (max 5) |
| Felony: | 2 | 3,1 |
| Violent Felony: | 2 | 3,1 |
| Firearm: | 0 | |
| Misdemeanor: | 0 | |
| Other: | 0 | |
| YO Adjud.: | 0 | |

| | | |
|----------------------------------|---|----------------|
| Warrant Information: | | Cycles (max 5) |
| Failure to Appear Counts: | 0 | |
| Total Open: | 0 | |
| Active NYC: | 0 | |

| | | |
|----------------------------------|---|----------------|
| DOC Classification: | | Cycles (max 5) |
| Escape Charges: | 0 | |
| Sex Offender Convictions: | 0 | |
| Probation Revoc: | 0 | |
| Parole Revoc: | 1 | 1 |

NOTE: Summary Information may not reflect official actions. DCJS strongly urges the recipient to review the enclosed criminal history record information.

● Identification Information



Name:
ISRAEL NAVARRO

Date of Birth:

[REDACTED] 1954 [REDACTED], 1954

Sex:
Male

Race:
White

Ethnicity:
Hispanic

[REDACTED], 1954

Skin Tone:
Light/Medium / Light / Medium

Eye Color:
Brown

Hair Color:
Unknown

Height:
5' 09"

Weight:
150

SSN:
[REDACTED] 8908

Place of Birth :

Puerto Rico

New York

New Jersey

Latest Arrests(Max 10):

| Arrest Date | Name | Date of Birth | Address |
|-------------------|----------------|---------------|-------------------------------------|
| February 01, 2020 | ISRAEL NAVARRO | ████████ 1954 | 347 HANCOCK STREET, BROOKLYN, NY |
| December 27, 1986 | ISRAEL NAVARRO | ████████ 1954 | 28 COVERT ST, BROOKLYN, NY |
| July 28, 1980 | ISRAEL NAVARRO | ████████ 1954 | 249 ELDRIDGE ST, NEW YORK, NY |
| November 03, 1979 | ISRAEL NAVARRO | | 249 ELDRIDGE ST, NEW YORK, NY |

Fingerprint Response

ORI: NY0303079
NYCPD PCT 079
NYSID: 04426867L

[Identification](#) [Summary](#) [Criminal History](#) [Job/License](#) [Wanted](#) [Missing](#)

• Transaction Data



Name: ISRAEL NAVARRO
Transaction ID: 34962305
Agency ORI: NY0303079
SSN:
Type of Submission: ARREST
Date Fingerprinted: February 01, 2020
Reason Fingerprinted: Adult Arrest

Arrest/Charge Information

Arrest Date: February 01, 2020 12:28 pm (12:28:00)

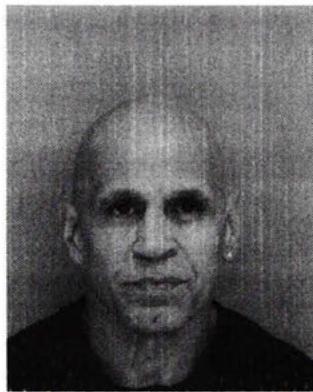
Name: ISRAEL NAVARRO
Date of Birth: ██████████ 1954
US Citizen:
Sex: Male
Race: White
Ethnicity: Hispanic
Height: 5' 09"
Weight: 150
Age at time of crime/arrest: 65
Address: 347 HANCOCK STREET, BROOKLYN, NY
Fax Number: K3624
Place of Arrest: NYCPD 79
Arrest Type: Unknown
Date of Crime: January 31, 2020
Place of Crime: NYCPD 79
Criminal Justice Tracking No.: 69283042N
Arresting Agency: NYCPD PCT 079
Arresting Officer ID: 944338
Arrest Number: K20604818
Arraignment: Kings County Criminal Court
Arrest Charges:
 -- Attempted Murder: Intention
 PL125.25 Sub 01 Class B Felony Degree 2 NCIC 999
 -- Assault-1st: Intent To Cause Serious Injury With Weapon

PL120.10 Sub 01 Class B Felony Degree 1 NCIC 1399
-- Criminal Possession Weapon-4th:Firearm/Weapon App. 171
PL265.01 Sub 01 Counts: 3 Class A Misdemeanor Degree 4 NCIC 5212

Transaction Status Information

| Activity | Date/Time | Elapsed |
|------------------------------|-------------------------------|-----------------------|
| Initial Transaction Received | February 01, 2020 01:36:56 pm | |
| Online Data Received | February 01, 2020 01:36:56 pm | |
| Transaction Completed | February 01, 2020 01:40:26 pm | 0 Hour(s) 3 Minute(s) |
| Rapsheet Produced | February 01, 2020 01:40:29 pm | |

NYS Criminal History Information



Date September 09, 2019

Name:
ISRAEL NAVARRO

Date of Birth: [REDACTED] 1954 [REDACTED] 1954

Place of Birth :
Puerto Rico New York New Jersey

Address:
347 HANCOCK STREET, BROOKLYN, NY
20 MONROE ST, BROOKLYN, NY
28 COVERT ST, BROOKLYN, NY
240 E 194TH ST, BRONX, NY
249 ELDRIDGE ST, NEW YORK, NY

| | | | |
|----------------------------|-------------------------------|-------------------------------|--|
| Sex: Male | Race: White | Ethnicity: Hispanic | Skin Tone: Light/Medium / Light / Medium |
| Eye Color: Brown | Hair Color: Unknown | Height: 5' 09" | Weight: 150 |

SSN: [REDACTED]-8908

NYSID#:

04426867L

III Status:

FBI#:

392972M8

NCIC Classification#:

2621PMPOPO2617PIPIPI

Criminal record in other states or in multiple FBI files for NYS

US Citizen:

Cycle 4 Violent Felony Offense

Arrest/Charge Information

Arrest Date: February 01, 2020 12:28 pm (12:28:00)

| | |
|-------------------------------------|----------------------------------|
| Name: | ISRAEL NAVARRO |
| Date of Birth: | [REDACTED] 1954 |
| US Citizen: | |
| Sex: | Male |
| Race: | White |
| Ethnicity: | Hispanic |
| Age at time of crime/arrest: | 65 |
| Address: | 347 HANCOCK STREET, BROOKLYN, NY |

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Fax Number: K3624
Place of Arrest: NYCPD 79
Arrest Type: Unknown
Date of Crime: January 31, 2020
Place of Crime: NYCPD 79
Criminal Justice Tracking No.: 69283042N
Arresting Agency: NYCPD PCT 079
Arresting Officer ID: 944338
Arrest Number: K20604818
Arraignment: Kings County Criminal Court

Arrest Charges:

| | | | | | | | |
|---|----------|--------|-----------|---------|-------------|-----------|-----------|
| -- Assault-1st:Intent To Cause Serious Injury With Weapon | PL120.10 | Sub 01 | Class B | Felony | Degree 1 | NCIC 1399 | |
| -- Attempted Murder:Intention | PL125.25 | Sub 01 | Class B | Felony | Degree 2 | NCIC 999 | |
| -- Criminal Possession Weapon-4th:Firearm/Weapon | PL265.01 | Sub 01 | Counts: 3 | Class A | Misdemeanor | Degree 4 | NCIC 5212 |

No Court Reported Information

↓ Cycle 3 ↑
Violent Felony Offense

Arrest/Charge Information

Arrest Date: December 27, 1986 10:30 am (10:30:00)

Name: ISRAEL NAVARRO
Date of Birth: [REDACTED] 1954
US Citizen:
Sex: Male
Ethnicity: Hispanic
Age at time of crime/arrest: 32
Address: 28 COVERT ST, BROOKLYN, NY
Fax Number: K747
Place of Arrest: Kings County, NY
Date of Crime: December 27, 1986
Place of Crime: Kings County, NY
Criminal Justice Tracking No.: 10017076H
Arresting Agency: NYCPD PCT 083
Arresting Officer ID: 872109
Incident Number: 25620836
Arrest Number: K86072111
Arrest Charges:
-- Murder:Intention
PL125.25 Sub 01 Class A Felony Degree 2 NCIC 999

Court Case Information

--Court: Kings County Supreme Court Case Number: 9328-86(K)

December 27, 1986

Charge Not Considered By Grand Jury

-- Murder:Intention
PL125.25 Sub 01 Class A Felony NCIC 999

February 08, 1988

Convicted Upon Verdict After Trial

-- Murder 2nd Degree: With Intent
PL125.25 Counts: 2 Class A Felony NCIC 999

Sentenced to: Term: 25 Year(s) to Life Concurrent

Sentence Date:

Incarceration Admission Information

Admission Date: February 16, 1988
Admission Reason: New Commitment
Agency: NYS DOCCS Downstate Correctional Facility
State Inmate ID No.: 88A1362
Sentence to: Term: 25 Year(s) to Life;
Max Expiration Date: LIFE
Inmate Name: ISRAEL NAVARRO

Incarceration Release Information

Release Date: August 13, 2019
Release Reason: Paroled to Division of Parole
Agency: NYS DOCCS Fishkill Correctional Facility
Name: ISRAEL NAVARRO
Inmate ID Number: 88A1362

Parole Release Information

Received by Parole on: August 13, 2019
Release Type: Initial Release to Parole
Max Expiration Date: LIFE
Supervision Office: Brooklyn I
Parole ID Number: 88A1362
Name: ISRAEL NAVARRO

⬇ Cycle 2 ⬆
Violent Felony Offense

Arrest/Charge Information

Arrest Date: July 28, 1980 09:00 am (09:00:00)

Name: ISRAEL NAVARRO
Date of Birth: [REDACTED] 1954
US Citizen:
Sex: Male
Ethnicity: Hispanic
Age at time of crime/arrest: 26
Address: 249 ELDRIDGE ST, NEW YORK, NY
Fax Number: B15054
Place of Arrest: Queens County, NY
Date of Crime: July 21, 1980
Place of Crime: Queens County, NY
Criminal Justice Tracking No.: 06000917R
Arresting Agency: NYPD PCT 114
Arresting Officer ID: 3415
Arrest Number: 11416959
Arraignment: Queens County Criminal Court
Arrest Charges:
 -- Assault -2nd Degree
 PL120.05 Class D Felony Degree 2 NCIC 1399
 -- Criminal Possession Weapon - 4th Degree
 PL265.01 Class A Misdemeanor Degree 4 NCIC 5212

No Court Reported Information

Cycle 1 ⬆

Arrest/Charge Information

Arrest Date: November 03, 1979 12:00 am (00:00:00)

Name: ISRAEL NAVARRO

Release Reason: Other Paroled (other agency or unspecified)
Agency: NYS DOCCS Downstate Correctional Facility
Inmate ID Number: 80A4356

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Parole Release Information

Received by Parole on: August 25, 1986
Release Type: Initial Release to Parole
Max Expiration Date: October 31, 1994
Supervision Office: Brooklyn I
Parole ID Number: 80A4356
Name: ISRAEL NAVARRO

Parole Discharge Information

Discharged from Parole on: April 07, 1988
Discharge Type: Revoked-PV (Parole Violation)
Parole ID Number: 80A4356

● Other History Related Information

There is no Other History Related Information associated with this history.

● Job/License Information

There is no Job/License Information associated with this history.

● Wanted Information

There is no NYS Wanted Information associated with this history.

● Missing Person Information

There is no NYS Missing Information associated with this history.

● Additional Information

Sentencing - Where an individual is sentenced June 1, 1981 or later on more than one charge within a docket, the sentence may be considered to be concurrent unless identified as consecutive.

Courts Please Note: Pursuant to CPL 160.40 (02) one copy of a fingerprint based rapsheet must be provided to the Defense Attorney.

Summary Counts: The Transaction data may also be included in a cycle in the rap. If it is included, information from the transaction will be used in calculating the Summary section. If it is not included in any of the cycles then the transaction information will not be part of the Summary section data.

WARNING: Release of any of the information presented in this computerized Case History to unauthorized individuals or agencies is prohibited by federal law TITLE 42 USC 3789g(b).

This report is to be used for this one specific purpose as described in the Use and Dissemination Agreement your agency has on file with DCJS. **Destroy after use and request an updated rap sheet for subsequent needs.**
All information presented herein is as complete as the data furnished to DCJS.

New York State Division of Criminal Justice Services

Alfred E. Smith Building, 80 South Swan St.
Albany, New York 12210. Tel:1-800-262-DCJS

Michael C.Green, Executive Deputy Commissioner of the NYS Division of Criminal Justice Services

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UNPUBLISHED DECISIONS

App. 177

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM : PART K-15

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Indictment #
503/2010

-against-

DECISION AND
ORDER

PAUL WILLIAMS,

Motion to Set Aside
Sentence Pursuant to
CPL §440.20

Defendant.

-----X

For Defendant:

Paul Williams, pro se

For the People:

Melinda Katz, District Attorney, Queens County
(ADA William H. Branigan, of Counsel)

Summary of the Court's Decision: **Defendant's motion to set aside his sentence pursuant to CPL §440.20 is denied.**

MICHAEL J. YAVINSKY, J.

Defendant, Paul Williams, has filed a pro se motion, dated November 6, 2024 (but received by the Court on November 18, 2024), to set aside his sentence pursuant to CPL §440.20, arguing that the *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024), renders his sentence illegal because his second violent felony offender status and related tolling determinations were determined by a judge rather than a jury. The People have filed an Affirmation in Opposition, dated January 2, 2025, in which they oppose the requested relief. The

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Defendant submitted a reply dated January 15, 2025 (but received by the Court on January 30, 2025). The Court decides the motion as follows:

FACTUAL AND LEGAL HISTORY

Incident, Arrest, Trial, and Sentence

On August 22, 2009, the Defendant, who went by the nickname “Essay”, lost hundreds of dollars at an outdoor dice game in Far Rockaway, Queens. The Defendant began to argue with the other players and simulated that he had a gun in his pocket. Another dice player actually produced a handgun and told the Defendant: “not over here”. The Defendant left the game but returned in his vehicle about five minutes later. As he drove up the block, one of the dice game participants shot at the Defendant and the Defendant returned fire out of his car window but did not hit anyone.

On September 14, 2009, the Defendant returned to the scene of the dice game and used a rifle to fire at least 29 bullets into a crowd of approximately 60 people. Mr. Todd Jamison was shot in the leg, which had to be amputated and replaced by a prosthetic.

Another individual named Ronald Washington was struck in the back, arm, and legs by the bullets the Defendant had fired. His lungs were punctured, and his femur was fractured. Mr. Washington told the paramedics that he was going to die and that he needed to get to the hospital. While he was being treated in the back of

an ambulance, Washington told a detective that “...Essay did it.” Washington was treated at Jamaica Hospital and emergency surgery was performed on his chest. The doctors could not treat his broken leg because his medical condition was too grave. The next day, while in the intensive care unit, Washington – who was unable to speak – made a non-verbal identification of the Defendant in a photo array. Three days later, Washington suffered a stroke and was pronounced brain-dead. He died on September 21, 2009.

The Defendant fled New York and could not be located for six months. He was eventually apprehended on an unrelated charge in North Carolina and extradited to New York. The Defendant was arrested and charged, under Queens County Indictment 503/2010, with Murder in the Second Degree (PL §125.25), Attempted Murder in the Second Degree (PL §110/125.25), Assault in the First Degree (PL §120.10), and two counts of Criminal Possession of a Weapon in the Second Degree (PL §265.03[1][b] and [3]).

On March 2, 2012, the Defendant proceeded to a jury trial presided over by the Honorable Gregory Lasak. At trial, Mr. Jamison and Mr. Jermaine Joseph testified that on August 22, 2009, the Defendant was playing dice for several hours in a neighborhood game in front of 13-15 Augustina Avenue in Far Rockway, Queens. They further testified that the Defendant lost between \$500 and \$900 and got into an argument with a man named Rich. The Defendant grabbed Rich by the

App. 180

collar and acted as though he had a handgun. Another man actually produced a handgun and told the Defendant: "not over here". The Defendant left and walked towards his car.

Joseph testified that the Defendant returned five minutes later, driving slowly up the block. Before the Defendant reached the dice game, someone named Lloyd shot at the Defendant's car and the Defendant returned fire from his window. Joseph testified that cars were hit, but no people were injured. On September 14, 2009, the Defendant returned to the scene of the dice game and used a rifle to fire at least 29 rounds into a large crowd of People.

The jury convicted the Defendant of Murder in the Second Degree, Attempted Murder in the Second Degree, and Assault in the First Degree. The Defendant moved, pursuant to CPL §330.30, to set aside the verdict, arguing that: 1) the trial court had improperly admitted the dying declarations and uncharged crimes evidence about the August 29, 2009 shoot-out, and 2) the evidence was insufficient to establish the Defendant's identity as the shooter. The court denied the Defendant's motion.

At sentence, the Defendant was arraigned on a predicate felony offender statement which stated that on May 28, 1996 the Defendant was convicted, under United States indictment 95CR806 of Robbery of a Mail Carrier and that on September 26, 1996 the Defendant was sentenced to a period of incarceration of

six years and six months imprisonment. The Defendant admitted, on the record, that he was the person named in the predicate felony offender statement and that he did not wish to challenge the constitutionality of that conviction. The Defendant was then sentenced, as a second violent felony offender, to an aggregate prison term from fifty years to life.

The Defendant's Direct Appeal

On February 10, 2021, the Defendant perfected his appeal through counsel. The Defendant argued that: 1) all of the decedent's verbal and non-verbal statements were improperly admitted as dying declarations; 2) the court improperly admitted evidence of the August 29, 2009 dice game; 3) the prosecutor's remarks during her opening statement and summation were improper; and 4) his sentence was excessive. On January 26, 2022, the Appellate Division, Second Department affirmed the Defendant's conviction, holding that the dying declarations were properly admitted as was the uncharged crime evidence of the August 29, 2009 shoot-out (*People v Williams*, 201 AD3d 969 [2d Dept 2022]). Furthermore, the court held that most of the prosecutor's comments were fair comment on the evidence or rhetorical comments, and that the Defendant's sentence was not excessive (*id.* at 971). The Court of Appeals denied the Defendant leave to appeal (*People v Williams*, 38 NY3d 955, 165 NYS3d 458, 185 NE3d 980 [2022]).

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The Defendant's First Motion to Vacate Judgment Pursuant to CPL §440.10

The Defendant filed a pro se motion dated October 4, 2019 to vacate his judgment pursuant to CPL §440.10. Because all of the Defendant's claims were record based and the Defendant's appeal was pending, this Court denied the Defendant's motion with leave to refile after his appeal was decided.¹

The Coram Nobis Petition

On August 31, 2022, the Defendant filed a Writ of Error Coram Nobis with the Appellate Division, Second Department, claiming that he had received ineffective assistance of appellate counsel. He argued that his appellate counsel was ineffective for failing to appeal on the basis that his trial counsel was ineffective. The People filed a response on October 27, 2022. This motion is still pending with the Second Department.

The Defendant's Second Motion to Vacate Judgement Pursuant to CPL §440.10

On August 20, 2022, the Defendant filed a second motion to vacate his judgment and set aside his sentence pursuant to CPL §440.10, arguing that he received ineffective assistance from his two trial attorneys. The Defendant contended that his trial attorneys neglected to object to Mr. Joseph's and Mr. Jamison's testimony on the ground that their testimony was hearsay. Furthermore,

¹ See this Court's Decision and Order dated May 20, 2021.

the Defendant asked this Court to overlook the procedural bars to his motion in the interest of justice and for good cause shown. This Court denied the Defendant's motion because there were several mandatory bars to his motion. This Court also considered the merits of the Defendant's motion in the interest of justice and found that the Defendant's attorneys were effective. The Court held that the Defendant's allegation that he did not receive effective assistance of counsel was based upon his misapprehension of rule of evidence regarding hearsay.²

The Defendant's Current Motion to Set Aside His Sentence Pursuant to CPL §440.20

The Defendant has now moved pro se to vacate his sentence pursuant to CPL §440.20, arguing that the United States Supreme Court's holding in *Erlinger*, *supra*, renders his sentence illegal because his status as a second violent felony offender, as well as related tolling determinations, were determined by a judge, not a jury. The People's affirmation in opposition, dated January 2, 2025, argues that the Defendant's motion should be denied because *Erlinger* is not retroactive and does not apply to the Defendant's sentence.

² See this Court's Decision and Order dated January 27, 2023.

CONCLUSIONS OF LAW

There has been substantial historical discussion about the constitutional right to a jury trial and how that right must be protected by a sentencing court in a criminal case. In recent history, the issue became most prominently discussed by the Supreme Court of the United States when it decided *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). In *Apprendi*, the Court struck down a New Jersey statutory sentencing scheme that permitted a judge to impose a higher level of punishment if they found, by a preponderance of the evidence, that a Defendant's motivation or "purpose" in unlawfully possessing a weapon was to intimidate the victim based upon a racial bias. (This, of course, followed a jury's verdict where, beyond a reasonable doubt, it was proven that the Defendant had unlawfully possessed a weapon.) In striking down the New Jersey statutes, the Supreme Court of the United States ruled that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt" (*id.* at 490, 120 S.Ct. 2348).

In *Apprendi*, the U.S. Supreme Court discussed an exception they referenced – the fact of a prior conviction could be found by a sentencing judge, without a jury – which they had established before *Apprendi* in the case of *Almendarez-Torres v. United States, supra*. In *Almendarez-Torres*, the Court evaluated a

federal statutory scheme that authorized a sentencing judge to impose a higher sentence to a previously deported alien who had unlawfully reentered the United States where that individual was initially deported due to a prior conviction for commission of an aggravated felony. The Court made clear that, in upholding the federal statutory scheme at issue, although “[a]n indictment must set forth each element of the crime that it charges . . . it need not set forth factors relevant only to the sentencing of an offender found guilty of the charged crime” (*Almendarez-Torres* at 528, 118 S.Ct. 1219).

Although this Defendant was sentenced as a second violent felony offender and not as a persistent violent felony offender, there have been several challenges to New York’s persistent violent felony offender statutes which are analogous to the Defendant’s challenge to the trial court’s determination that he was a second violent felony offender. The New York Court of Appeals has addressed constitutional challenges to New York’s persistent felony sentencing structure on several occasions under the theory that the sentencing structure violated the constitutional safeguards discussed in *Apprendi* and its progeny. Each time the Court of Appeals has addressed this issue it has found that New York’s persistent felony sentencing structure was constitutional in that regard. For example, in *People v Rosen*, 96 NY2d 329, 728 NYS2d 407, 752 NE2d 844 (2001), the Court of Appeals rejected the Defendant’s challenge to New York’s persistent felony

sentencing structure because it violated the constitutional protections outlined in *Apprendi*. In so ruling, the Court analyzed that:

Under New York law, to be sentenced as a persistent felony offender, the court must first conclude that defendant had previously been convicted of two or more felonies for which a sentence of over one year was imposed. Only after it has been established that defendant is a twice prior convicted felon may the sentencing court, based on the preponderance of the evidence, review “[m]atters pertaining to the defendant's history and character and the nature and circumstances of his criminal conduct * * * established by any relevant evidence, not legally privileged” to determine whether actually to issue an enhanced sentence (CPL §400.20[5]). It is clear from the foregoing statutory framework that the prior felony convictions are the sole determinate of whether a defendant is subject to enhanced sentencing as a persistent felony offender. Then, the court must consider other enumerated factors to determine whether it “is of the opinion that a persistent felony offender sentence is warranted” (CPL §400.20[9]).

(*Rosen* at 334-5, 410, 847). Further, the Court found that “the sentencing court [was] only fulfilling its traditional role – giving due consideration to agreed-upon factors – in determining an appropriate sentence within the permissible statutory range” (*id.*, 728 NYS2d 407, 752 NE2d 844, *citing People v Farrar*, 52 NY2d 302, 305–6, 437 NYS2d 961, 419 NE2d 864 [1981]). “Defendant had no constitutional right to a jury trial to establish the facts of his prior felony convictions” (*id.*, 728 NYS2d 407, 752 NE2d 844, *citing Apprendi* at 488, 120 S.Ct. 2348). Finally, the Court of Appeals interpreted *Apprendi*'s holding to mean that “[t]he Supreme Court has clearly established that facts regarding “recidivism increasing the maximum penalty need not be so charged” (*id.* at 335, 728 NYS2d 407, 752 NE2d 844).

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In addition, the Supreme Court of the United States has navigated a number of post-*Apprendi* challenges following *Rosen* which included a variety of challenges to both state and federal sentencing schemes (see *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 [2002]; *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 [2004]; *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 [2005]; *Cunningham v. California*, 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856 [2007]; *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 [2013]; *Descamps v. United States*, 570 U.S. 254, 133 S.Ct. 2276, 186 L.Ed.2d 438 [2013]; *Hurst v. Florida*, 577 U.S. 92, 136 S.Ct. 616, 193 L.Ed.2d 504 [2016]), and without question each of those decisions have made their way into New York state appellate caselaw in challenges to a New York Defendant's sentencing under our persistent felony sentencing structure (see *People v Rivera*, 5 NY3d 61, 800 NYS2d 51, 833 NE2d 194 [2005]; *People v Quinones*, 12 NY3d 116, 879 NYS2d 1, 906 NE2d 1033 [2009]; *People v Bell*, 15 NY3d 935, 915 NYS2d 208, 940 NE2d 913 [2010]; *People v Frazier*, 16 NY3d 36, 916 NYS2d 574, 941 NE2d 1151 [2010]; *People v Battles*, 16 NY3d 54, 917 NYS2d 601, 942 NE2d 1026 [2010]; *People v Giles*, 24 NY3d 1066, 2 NYS3d 30, 25 NE3d 943 [2014]; *People v Prindle*, 29 NY3d 463, 58 NYS3d 280, 80 NE3d 1026 [2017]; *People v Garvin*, 30 NY3d 174, 66 NYS3d 161, 88 NE3d 319 [2017]). In each of those decisions, our Court of Appeals has found the persistent

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felony sentencing structure to be constitutional. While it appears that only *Bell, supra*, dealt with the persistent violent felony offender sentencing scheme, one common denominator running through all the Court of Appeals' decisions analyzing both portions of the persistent felony sentencing structure is that the exception to *Apprendi* found in *Almendarez-Torres* is applicable when evaluating the constitutionality of the New York's persistent felony sentencing scheme.

Interestingly, the Second Circuit Court of Appeals had an opportunity in 2010 to analyze the constitutionality of New York's persistent felony sentencing scheme in light of *Apprendi* and its progeny in *Portolatin v Graham*, 624 F3d 69 (2d Cir. 2010), *cert denied* 562 U.S. 1304, 131 S.Ct. 1693, 179 L.Ed.2d 646 (2011). While *Portolatin* analyzed New York's persistent felony sentencing structure, the Second Circuit did note the role that *Almendarez-Torres* played in its decision. The Second Circuit supported the New York Court of Appeals' conclusion that, under the *Almendarez-Torres* exception to *Apprendi*, the fact of a prior conviction was not required to be decided by a jury as they upheld New York's persistent felony sentencing scheme:

The exception for prior convictions preserved the Court's earlier holding in *Almendarez-Torres v United States*, which affirmed the constitutionality of the use of recidivism as a judicially determined "sentencing factor" authorizing an enhanced sentence. *See* 523 U.S. 224, 247, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). There, the Court rejected the argument that 8 U.S.C. §1326(b)(2) violated a defendant's right to a jury trial because it authorized an enhanced penalty for any alien caught reentering the United States after being deported, if the initial deportation "was subsequent to a

conviction for commission of an aggravated felony.” 8 USC §1326(b)(2); *see id.* at 226–28, 118 S.Ct. 1219, 140 L.Ed.2d 350. According to the Court, “the sentencing factor at issue here—recidivism—is a traditional, if not the most traditional, basis for a sentencing court’s increasing an offender’s sentence.

In reaffirming the constitutionality of the use of recidivism as a judicially-found sentencing factor, the Supreme Court has since emphasized that the existence of procedural safeguards embedded in prior criminal proceedings, as well as the lack of dispute or uncertainty as to the “fact” of a prior conviction, “mitigate[] the due process and Sixth Amendment concerns otherwise implicated in allowing a judge to determine a ‘fact’ increasing the punishment beyond the maximum of a statutory range.” *Apprendi*, 530 U.S. at 488, 120 S.Ct. 2348, 147 L.Ed.2d 435 (emphasis added). To be sure, “[t]he Court’s repeated emphasis on the distinctive significance of recidivism leaves no question that the Court regarded that fact as potentially distinguishable for constitutional purposes from other facts that might extend the range of possible sentencing.” *Jones v. United States*, 526 U.S. 227, 249, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999); see also *Parke v. Raley*, 506 U.S. 20, 26, 113 S.Ct. 517, 121 L.Ed.2d 391 (1992) (acknowledging that recidivism has formed the basis for sentencing enhancements “dat[ing] back to colonial times,” and that recidivist sentencing laws were “currently ... in effect in all 50 states”)

(*Portalatin* at 80). Although not dispositive, the *Portalatin* court, just as the Court of Appeals has repeatedly done, acknowledged the existence of the *Almendarez-Torres* exception to *Apprendi* and that the New York State Court of Appeals’ interpretation of that exception passed constitutional muster.

Then, on June 21, 2024, the U.S. Supreme Court decided *Erlinger v. United States* and held that “virtually ‘any fact’ that ‘increases the prescribed range of penalties to which a criminal defendant is exposed’ must be resolved by a unanimous jury beyond a reasonable doubt [or freely admitted in a guilty plea]”

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(*Erlinger* at 834, 144 S.Ct. 1840, quoting *Apprendi* at 490, 120 S.Ct. 2348). In *Erlinger*, the Supreme Court of the United States analyzed the enhanced federal sentencing scheme found in 18 USC § 924(e)(1), otherwise known as the Armed Career Criminal Act [ACCA]. That statute increased the maximum penalty a Defendant could face if the Defendant had three prior qualifying convictions that were “committed on occasions different from one another.” Mr. Erlinger argued that, under an *Apprendi* analysis, the Fifth and Sixth Amendments entitled him to have a jury decide whether his burglaries occurred on different occasions or not, and the Supreme Court of the United States agreed. A jury was required to unanimously decide, beyond a reasonable doubt, whether Mr. Erlinger's ACCA predicates were “committed on occasions different from one another.”

However, in striking down the judicial fact-finding that occurred in Mr. Erlinger's sentencing, the Supreme Court of the United States acknowledged that “[i]n *Almendarez-Torres*, the Court permitted a judge to undertake the job of finding the fact of a prior conviction – and that job alone” (*id.*, 602 U.S. at 1853, 144 S.Ct. 1840). In considering what that entailed, the Court further analyzed that “to conduct the narrow inquiry *Almendarez-Torres* authorizes, a court may need to know the jurisdiction in which the defendant's crime occurred and its date in order to ascertain what legal elements the government had to prove to secure a conviction in that place at that time” (*id.*, 602 U.S. at 1854, 144 S.Ct. 1840). In

making that narrow inquiry, the Court acknowledged that a sentencing court may be called upon to review official records involving prior convictions (referred to by the U.S. Supreme Court as “*Shepard* documents”) to determine the dates and elements of previous convictions. While making clear that there are constitutional limits on the use of such records, the Court explained that “[i]n particular, a judge may not use information in *Shepard* documents to decide ‘what the defendant . . . actually d[id],’ or the ‘means’ or ‘manner’ in which he committed his offense in order to increase the punishment to which he might be exposed” (*id.*, 602 U.S. at 1855, 144 S.Ct. 1840, quoting *Mathis v United States*, 579 U.S. 500, 510-511, 136 S.Ct. 2243, 195 L.Ed.2d 604 [2016]).

It is hard to think of an area of New York state sentencing that has been litigated as much as the statutory scheme for persistent felony sentencing. Every single challenge to its constitutionality has failed, and yet not one reported case of appellate authority before *Erlinger* has found that the tolling provisions found in PL §§70.04(2)(b)(4) & (5) were constitutionally infirm under *Apprendi*. That is because the facts that must be decided by a jury under *Apprendi* are facts concerning the *manner* in which the instant or underlying offense was committed (see e.g. *Mathis*, 579 U.S. at 511–2, 136 S.Ct. 2243 [“That means a judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense.”]). However, the existence of a conviction – the

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“‘who, what, when, and where’ of a prior conviction”, as it was referred to in *People v Leon*, 10 NY3d 122, 126, 855 NYS2d 38, 884 NE2d 1037 (2008) – need not be put before a jury as it is a fact which falls within the exception laid out by the U.S. Supreme Court in *Almendarez-Torres*.

While it is true that the *Erlinger* court said “any fact” which increases a Defendant’s sentence must be placed before a jury and proven beyond a reasonable doubt, it said so while explicitly (a) citing to *Mathis*, which emphasized that the “facts” which the *Apprendi* doctrine references to are facts involving the *manner* in which the Defendant committed a crime if it has an impact on sentencing, and (b) maintaining the *Almendarez-Torres* exception to the *Apprendi* rule (“No one in this case has asked us to revisit *Almendarez-Torres*. Nor is there need to do so today ... It persists as a ‘narrow exception’ permitting judges to find only ‘the fact of a prior conviction’” [*Erlinger*, 602 U.S. at 1853-4, 144 S.Ct. 1840, quoting *Alleyne*, *supra*]). It is, therefore, reasonable to presume that the *Erlinger* court did not mean to infer that facts falling within the *Almendarez-Torres* exception must now be placed before a jury and proven beyond a reasonable doubt. It is also reasonable to presume that, while the *Erlinger* court was very clear to not expand the *Almendarez-Torres* exception to *Apprendi*, it also gave no indication that it was expanding the *Apprendi* doctrine to include facts which are part of the mechanical operation of the criminal justice system such as the date that a Defendant may have

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been incarcerated (or was released from custody) for any constitutionally obtained conviction. Accordingly, the Court finds that *Erlinger* does not affect the Defendant's status as a second violent felony offender.

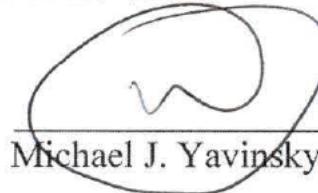
Even if an appellate court should find, in the future, that *Erlinger* does apply to New York State's predicate felony sentencing statutes, *Erlinger* is a new rule which is not retroactive to cases on collateral review (*People v Baret*, 23 NY3d 777, 992 NYS2d 738, 16 NY3d 1216 [2014]; *see People v Eastman*, 85 NY2d 265, 624 NYS2d 83, 648 NE2d 459 [1995]); *People v Rodney*, -- NYS3d --, 2024 NY Slip Op 24304 [Sup Ct, NY County 2024] [Mandelbaum, J.] [“*Erlinger* ... may not be applied retroactively to cases on collateral review”]). Accordingly, the Defendant's motion to set aside his sentence based upon *Erlinger v. United States* is denied.

CONCLUSION

For the above-stated reasons, the Defendant's motion to set aside his sentence pursuant to CPL §440.20 is denied.

This constitutes the decision and order of the Court.

Dated: Queens, New York
January 31, 2025



Michael J. Yavinsky, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 29

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

VIDAL CARRION,

Motion to Set aside Sentence
DECISION AND ORDER

IND. NO. 15847-1995

Defendant.

JANE C. TULLY, J.:

By a *pro se* motion, dated October 28, 2024, the defendant moves pursuant to CPL 440.20, to set aside his sentence or, in the alternative for an evidentiary hearing on the grounds that his sentence was illegal.

Relying on the Supreme Court's decision in *Erlinger v United States*, 602 US 821 (2024), the defendant argues that his enhanced sentence was unconstitutional because a jury, rather than a judge, was required to determine the necessary facts with respect to his adjudication as a persistent violent felony offender.

The People oppose the defendant's motion.

This Court has reviewed and considered the submitted papers and attached exhibits. For the reasons stated below, the defendant's motion is **DENIED in its entirety, without a hearing.**

FACTUAL AND PROCEDURAL BACKGROUND

The defendant was charged with assault in the first degree, attempted murder in the first degree, attempted murder in the second degree, attempted aggravated assault on a police officer, attempted assault in the first degree, two counts of robbery in the first degree, robbery in the second degree, criminal possession of a weapon in the second degree, criminal possession of a

weapon in the third degree, reckless endangerment in the first degree, and unlawful wearing of a body vest. The charges arose from an incident, in which it was alleged that on December 21, 1995, the defendant left his job at the Met Supermarket located at 1410 Saint John's Place in Brooklyn, after an argument with his supervisor. The defendant returned to the supermarket, dressed in a bulletproof vest, and armed with a .357 magnum caliber gun. The defendant threatened to kill the manager and assistant manager. The manager took the gun from the defendant, but a second individual, also armed with a gun, retrieved the gun from the manager and returned the gun to the defendant. The second individual removed money from the cash register, while the defendant fired the gun. The defendant fired his gun into a customer's back and permanently paralyzed the customer. When the police arrived on the scene, the defendant fired the gun at the police and grazed one of the police officers.

On September 13, 1996, the defendant was convicted, after a jury trial, of attempted aggravated assault on a police officer, attempted murder in the second degree, robbery in the first degree, criminal possession of a weapon in the second degree, and reckless endangerment in the first degree. Prior to sentencing, the People filed a predicate felony statement pursuant to CPL 400, which detailed the defendant's prior convictions as follows:¹

- 1) Assault in the second degree, under Kings County Ind. No. 2121/82. The defendant was sentenced on November 30, 1982.
- 2) Attempted criminal possession of a weapon in the third degree, under Kings County Ind. No. 361/84. The defendant was sentenced on January 7, 1985.
- 3) Criminal sale of a controlled substance, under Kings County Ind. No. 2228/94. The defendant was sentenced on March 21, 1994.

¹ People's Exhibit 1

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The predicate felony statement also detailed the admissions and release dates for when the defendant was incarcerated between November 30, 1982, and December 28, 1995.

On October 24, 1996, the defendant appeared for sentencing. After being advised by the clerk of the court, of his prior convictions, the defendant acknowledged receipt of the predicate felony statement. The defendant admitted to each of his prior convictions and indicated that he did not wish to challenge the constitutionality of the convictions (S. 3).² At that time, defense counsel explained that although the defendant admitted to the prior convictions, the defendant “does not admit that he is a mandatory persistent. It is our position that he is not actually a mandatory but rather a discretionary persistent.” Defense counsel asserted that the defendant had not been incarcerated on certain dates and maintained that the incarcerated periods on matters where the defendant was acquitted or on charges that were dismissed should not be used to toll the ten-year look back period. The People responded by pointing to the certificates of dispositions, which showed that the defendant had been incarcerated during certain periods. The People explained that the defendant was on a work release program when he committed his present crimes, and that the time served in such a program counted as incarceration. The People also maintained that even excluding the defendant’s time in the work release program, the tolling periods were sufficient.

After hearing from each party, the sentencing court indicated that it had inspected the documents submitted by the People and then adjudicated the defendant a persistent violent felony offender. The court imposed four consecutive terms of imprisonment of twenty-five years to life (Gerges, J., at trial and sentence).

² People’s Exhibit 2, sentencing minutes.

The defendant appealed his judgment of conviction. With respect to his sentence, the defendant claimed that he was incorrectly sentenced as a persistent violent felony offender on his conviction of reckless endangerment in the first degree. On October 25, 1999, in *People v Carrion*, 265 AD2d 564, 565-66 (2d Dept 1999), the Appellate Division, Second Department recognized that “at sentencing, the defendant admitted that he had been convicted of the requisite two prior violent felony offenses and was accordingly adjudicated a persistent violent felony offender” (see Penal Law § 70.08 [1] [a]). Nevertheless, the Appellate Division held that the defendant was improperly sentenced as a persistent violent felony on the reckless endangerment in the first degree and remitted the case for resentencing on that conviction.

On January 20, 2000, the trial court resentenced the defendant to 3 ½ to 7 years on the reckless endangerment in the first-degree conviction, to run consecutively with the three consecutive terms of imprisonment of twenty-five years to life.

On January 27, 2000, the defendant’s application for leave to appeal to the Court of Appeals was denied (see *People v Carrion*, 94 NY2d 877 [2000]).

In a decision dated, July 23, 2002, the defendant’s petition for writ of *habeas corpus* was denied by the United States District Court, Eastern District of New York.

On January 26, 2011, the defendant moved *pro se*, pursuant to CPL 440.20, to vacate his sentence as illegally imposed, asserting that he was improperly sentenced to consecutive prison terms. By a decision dated, July 28, 2011, the court (Gary, J.) denied the defendant’s motion.

By a *pro se* motion, dated February 19, 2021, the defendant moved before this Court to vacate his judgment of conviction. The defendant argued that he suffered from a mental disease or defect and was not competent to stand trial. By a decision and order dated October 4, 2021, this Court determined that the defendant’s claims were procedurally barred. Additionally, this

Court considered the defendant's claims on the merits and held that there was nothing in the record to suggest that the defendant suffered from a mental disease or defect.

By a *pro se motion*, dated November 8, 2023, the defendant once again asserted that he suffered from a mental disease or defect. Additionally, the defendant argues that his trial counsel was ineffective for having failed to present evidence of the defendant's mental disease or defect. By a decision and order dated February 24, 2004, this Court denied the defendant's motion.

On June 21, 2024, the Supreme Court decided *People v Erlinger*. The defendant now asserts that under *Erlinger*, his enhanced sentence is unconstitutional because his adjudication as a persistent violent felony offender should have been determined by a jury.

MOTION TO SET ASIDE SENTENCE

CPL 440.20 (1) provides that a sentence may be set aside only if it is "unauthorized, illegally imposed or otherwise invalid as a matter of law." Under Penal Law § 70.08 (1) (a), a persistent violent felony offender is a person who stands convicted of a violent felony offense (Penal Law § 70.02 [1]) after having previously been subjected to "two or more predicate violent felony convictions" (Penal Law § 70.08 [1] [b]). To determine whether a prior conviction constitutes a predicate violent felony conviction, the sentence on the prior conviction must "have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted" (Penal Law § 70.04 [1] [b] [iv]). In calculating this ten year period, "any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration" (Penal Law § 70.04 [1] [b] [v]). CPL 400.15 and 400.16 set

forth the procedures to be followed for determining whether a defendant is a persistent violent felony offender. The People must file a predicate statement detailing the date and place of each alleged predicate violent felony conviction. If applicable, the predicate statement must also “set forth the date of commencement and the date of termination as well as the place of imprisonment for each period of incarceration to be used for tolling of the ten year limitation” (CPL 400.15[2]). CPL 400.15 (7)(a) provides for a hearing by a court, without a jury, if the defendant contests an allegation in the predicate statement.

Erlinger does not require a jury to determine the existence of prior convictions or the determination of the tolling periods under Penal Law § 70.04 (1) (b) (v)

In *Erlinger v United States*, the Supreme Court analyzed the Armed Career Criminal Act (ACCA), which increased the maximum sentence imposed for an 18 USC § 922(g) conviction “if the defendant has three prior convictions for “violent felon[ies]” or “serious drug offense[s]” that were “committed on occasions different from one another”” (*Erlinger* at 834; quoting 18 USC § 924 [e][1]). The Supreme Court described ACCA’s occasions inquiry as a “fact-laden task” that required examination of whether the crimes were committed close in time, the proximity of their locations, and consideration of whether the offenses were ““similar or intertwined’ in purpose and character” to trigger ACCA’s mandatory minimum, which enhanced the defendant’s sentence (*Erlinger* at 834). It was in this context that the Supreme Court reiterated that under the Fifth and Sixth Amendments, “[v]irtually ‘any fact’ that ‘increases the prescribed range of penalties to which a criminal defendant is exposed’ must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)” (*id.*). In doing so, the Supreme Court pointed out that its holding was based on a principle that had been established in *Apprendi v New Jersey*, 530 US 466, 490 (2000), “a by-now familiar reason: Only

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a jury may find ““facts that increase the prescribed range of penalties to which a criminal defendant is exposed”” (*Erlinger* at 833, quoting *Apprendi*, at 490). In its analysis of the ACCA, the Supreme Court recognized the exception carved out by its decision in *Almendarez-Torres v United States*, 523 US 224 (1998), which permits a Judge to find “the fact of a prior conviction” even though that fact increases a defendant’s punishment (*Erlinger* at 837, 839). The Supreme Court expressly declined to disturb *Almendarez-Torres*, stating that the question about ACCA’s occasion inquiry fell outside of the *Almendarez-Torres* exception (*Erlinger*, at 838-839).

Notably, the Supreme Court made clear that *Almendarez-Torres* did not need to be revisited to determine the matter before it (*Erlinger* at 838-839) because the sentencing court disregarded the constraints of *Almendarez-Torres* and “assume for itself the responsibility of deciding whether Mr. Erlinger’s past offenses differed enough in time, location, character, and purpose to have transpired on different occasions” (*Erlinger* at 840). The Supreme Court also appeared to have limited its holding to the narrow facts presented, noting “[w]hile recognizing Mr. Erlinger was entitled to have a jury resolve ACCA’s occasions inquiry unanimously and beyond a reasonable doubt, we decide no more than that” (*Erlinger* at 835).

Prior to the Supreme Court’s decision in *Erlinger*, the Court of Appeals repeatedly upheld the constitutionality of New York’s multiple felony offender sentencing scheme under *Apprendi* and *Almendarez-Torres* challenges (see *People v Leon*, 10 NY3d 122, 127 [2008] [the defendant was properly adjudicated a persistent violent as the finding of “who, what, when and where” of a prior conviction were so basic as to be “implicit” and within the ability of a sentencing judge]; *People v Bell*, 15 NY3d 935, 936 [2010] [the defendant’s adjudication as a persistent violent felony offender did not require the fact of a prior conviction to be found by a jury]; *People v Prindle*, 29 NY3d 463 [2017] [construction of New York’s persistent felony

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offender statute falls squarely within the exception afforded by *Almendarez-Torres*]).

Following the Supreme Court's decision in *Erlinger*, several trial New York courts addressed the decision's application to the predicate sentencing statutes, with the emphasis on the question of whether a jury rather than a judge is permitted to determine the periods of incarceration which tolls the exclusion of any period of time during which the defendant was incarcerated under Penal Law § 70.04 (1)(b)(v). In *People v Jackson*, 2025 NY Slip Op 25010 (Sup Ct, Queens County 2025), the court held that under *Erlinger*, a jury was not required to determine dates of incarceration or release related to prior convictions for sentencing as a persistent violent felony offender and thereby concluded that "the facts necessary to determine tolling under the New York State persistent violent felony sentencing scheme continue to fall within the *Almendarez-Torres* exception to *Apprendi*"). Similarity, *People v Taylor*, 2024 NY Slip Op 24308 (Sup Ct, Nassau County 2024), held that "[a]s *Erlinger* is not new law, and does not speak to tolling, it does not overrule New York precedent applying *Apprendi* and its progeny to our mandatory persistent violent felony offender statutes." In *People v Rivera*, 2024 NY Slip Op 24278 (Sup Ct, New York County 2024), the court concluded that under *Erlinger*, a judge can determine the fact of a prior conviction and the relevant dates of a defendant's past incarcerations because "it can see no material distinction - certainly not one of a constitutional dimension - between the fact (or dates) of a *prior conviction* and the fact (or dates) of a *prior incarceration...*"

Likewise, this Court has concluded that *Erlinger* does not require a jury to determine the existence of prior convictions or the determination of the tolling periods under Penal Law § 70.04 (1)(b)(v). The decisions from trial courts that have ruled otherwise are from courts of concurrent jurisdiction, and those cases are not binding on this Court. In this case, the sentencing

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court did not engage in the “fact-laden task” that was present in *Erlinger*. Nor did the sentencing court disregard the constraints established in *Almendarez-Torres*, as the court did not consider whether the “offenses differed enough in time, location, character, and purpose to have transpired on different occasions” (*Erlinger*, at 840). On October 24, 1994, the defendant freely admitted to the prior convictions. Prior to sentencing, the People provided certified certificates of dispositions for the periods of time when the defendant was incarcerated. As such, the facts that were necessary for the defendant’s adjudication as a mandatory persistent violent felony offender, the fact of the two prior violent felony convictions and the dates on which the sentences were imposed, the date of commission of the present felony, and the dates when the defendant was incarcerated between the offenses were properly made by the sentencing court.

Erlinger is not retroactive, and the defendant’s predicate status was previously determined on the merits on appeal

The defendant’s application for leave to appeal to the Court of Appeals was denied on January 27, 2000, and therefore, his conviction became final 90 days later, on April 26, 2000, when his time for filing a petition for writ of certiorari in the United States Supreme Court expired (see *Policano v Herbert*, 7 NY3d 588, 593 [2006]). Consequently, even if *Erlinger* had established a new rule that required a jury to determine the defendant’s predicate status, the rule would not apply retroactively to the defendant’s case, because the defendant’s conviction became final before *Erlinger* was decided (see *People v Rodney*, 2024 NY Slip Op. 24304 [Sup Ct, New York County 2024][*Erlinger* was not retroactive and may not be applied retroactively to cases on collateral review]; *People v Taylor*, 2024 NY Slip Op 24308 [same]).

Additionally, the defendant challenged his sentence when he appealed his judgment of conviction to the Appellate Division. Although the Appellate Division remitted his conviction on

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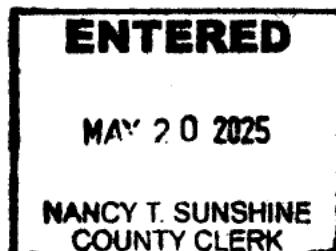
reckless endangerment in the first degree for resentencing, the Appellate Division recognized that “at sentencing, the defendant admitted that he had been convicted of the requisite two prior violent felony offenses and was accordingly adjudicated a persistent violent felony offender” (see Penal Law § 70.08 [1] [a])” (see *Carrion*, 265 AD2d at 565-566). Moreover, at the time of sentencing, the People established the defendant’s dates of incarceration during the relevant periods of time and provided the defendant with a predicate statement indicating those dates. On this record, proof that the defendant was a persistent violent felony offender was overwhelming, there was no significant probability that a jury would have found otherwise (see *People v Crimmins*, 36 NY2d 230, 243 [1975]).

To the extent not specifically discussed, the defendant’s claims and requests for relief have been considered and are denied on both procedural and/or substantive grounds.

Accordingly, the defendant’s motion is **DENIED, in its entirety, without a hearing.**

This constitutes the Decision and Order of the Court.

Dated: Brooklyn NY
May 2, 2025




Hon. Jane C Tully, AJSC

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RIGHT TO APPEAL

You are advised that your right to an appeal from the order determining your motion is not automatic except in the single instance where the motion was made under CPL 440.30(1-a) for forensic DNA testing of evidence. For all other motions under Article 440, you must apply to a Justice of the Appellate Division for a certificate granting leave to appeal. THE APPLICATION MUST BE SENT TO THE APPELLATE DIVISION, SECOND DEPARTMENT, 45 MONROE PLACE, BROOKLYN, NY 11201. In addition, you must serve a copy of your application on the Kings County District Attorney, Renaissance Plaza, 350 Jay Street, Brooklyn, NY 11201. Do NOT send notice of appeal to the Supreme Court Justice who decided this motion.

This application must be filed within 30 days after your being served by the District Attorney or the court with the court order denying your motion. The application must contain your name and address, indictment number, the question of law or fact which you believe ought to be reviewed and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the court.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 29

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JAMES LUMPKIN,

Defendant.

JANE C. TULLY, J.:

The defendant moves, *pro se*, pursuant to CPL 440.20, to set aside his sentence or, in the alternative for a hearing, on the grounds that his sentence was illegally imposed and invalid. Relying on the Supreme Court's decision in *Erlinger v United States*, 602 US 821 (2024), the defendant argues that the determination of his predicate status based on his prior convictions and criminal history should have been placed before a jury.

The People oppose the defendant's motion.

This Court has reviewed and considered the defendant's motion, the People's response, and the defendant's reply.

For the reasons set forth below, the defendant's motion is **DENIED, in its entirety, without a hearing.**

PROCEDURAL BACKGROUND

The defendant was charged with attempted murder in the second degree, attempted assault in the first and second degrees, reckless endangerment in the first degree, two counts of criminal possession of a weapon in the second degree, and criminal use of a firearm in the first and second degrees, based on allegations that on January 7, 2021, at approximately 3:50 p.m., at

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510 Lexington Avenue, in Brooklyn, the defendant shot at the complainant, who was inside a vehicle, striking the complainant's leg.

On December 4, 2023, following a jury trial, the defendant was convicted of attempted assault in the first degree, reckless endangerment in the first degree, two counts of criminal possession of a weapon in the second degree, and criminal use of a firearm in the second degree.

Prior to sentencing, the People filed a predicate felony statement pursuant to CPL 400.16 and 400.15, detailing the defendant's prior convictions as follows:

- 1) Reckless endangerment in the first degree, a nonviolent felony offense, under Kings County Ind. No. 1708/02, for a crime that occurred on March 6, 2002. The defendant was sentenced to a term of imprisonment of three years on July 8, 2002.
- 2) Attempted murder in the second degree, a violent felony offense, under Kings County Ind. No. 494/01, for a crime that occurred on January 12, 2001. The defendant was sentenced to a term of imprisonment of six and one-half years on July 8, 2002.
- 3) Attempted assault in the second degree, a nonviolent felony offense, under Kings County Ind. No. 3449/08, for a crime that occurred on October 16, 2007. The defendant was sentenced to a term of imprisonment of one and one-half to three years on August 10, 2009.
- 4) Criminal contempt in the first degree, a nonviolent felony offense, under Kings County Ind. No. 10994/12, for a crime that occurred on January 11, 2012. The defendant was sentenced to a term of imprisonment of one and one-half to three years on May 27, 2014.
- 5) Assault in the second degree, a violent felony offense, under Kings County Ind. No. 3485/13, for a crime that occurred on March 18, 2013. The defendant was sentenced, as a second violent felony offender, to a term of imprisonment of seven years and three years of post-release supervision on February 5, 2015. On August 5, 2015, the defendant was resentenced to five years of post-release supervision because the post-release supervision imposed on February 5, 2015, was illegal.

The predicate felony statement detailed the admissions, release dates, and correctional facilities, where the defendant was incarcerated for periods of time between January 16, 2001, and August 11, 2020. Based on the People's calculation, the defendant was incarcerated for

5,504 days between his commission of the first prior violent felony offense on January 12, 2001, and the commission of the instant offense.

On January 12, 2024, the defendant acknowledged receipt of the predicate felony statement. After being advised by the clerk of the court, of his prior convictions for the violent and nonviolent felony offenses in the predicate statement, the defendant sought, through his attorney, to challenge the constitutionality of the prior convictions. Defense counsel explained that it was the defendant's position that all his convictions were unconstitutional, specifically his "2001/2002 conviction" "because it was sent back on appeal based on an illegality having to deal with the post-release supervision" (S. 7). Defense counsel further stated that the defendant believed that he had received ineffective assistance of counsel on two other prior convictions for which he had pled guilty (S. 7, 10). Defense counsel explained that the defendant alleged that he was not aware of what he was pleading guilty to and the consequences of taking those pleas (S.10), that the defendant did not enter into the pleas knowingly, and that those convictions should not serve as the basis to classify him as a mandatory persistent violent offender (S. 19).

After hearing from the parties, this Court reviewed the certificates of disposition that the People provided and concluded that the defendant had been convicted of the crimes detailed in the predicate felony statement. This Court also acknowledged that the defendant had been resentenced under Kings County Ind. No. 3485/13, to correct the post-release supervision and pointed out that the Appellate Division determined that the defendant received the effective assistance of counsel claims on that matter (*see People v Lumpkin*, 154 AD3d 966 [2d Dept 2017]). This Court also noted that on February 5, 2015, under Ind. No. 3485/13, the defendant was arraigned on that predicate felony statement, and the defendant admitted that he was the person convicted of the prior crimes (S. 18). This Court then adjudicated the defendant as a

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mandatory persistent violent felony offender, based on a finding that the defendant had previously been of convicted of two violent felony offenses.

On June 21, 2024, the Supreme Court decided *People v Erlinger*. The defendant maintains that under *Erlinger*, this Court was precluded from making determinations regarding the defendant's prior convictions or incarceration periods because those facts should have been placed before a jury. As such, the defendant maintains that his sentence was unconstitutional and asserts that he should be sentenced as a first-time felony offender.

MOTION TO SET ASIDE SENTENCE

CPL 440.20 (1) provides that a sentence may be set aside only if it is “unauthorized, illegally imposed or otherwise invalid as a matter of law.” Under Penal Law § 70.08 (1) (a), a persistent violent felony offender is a person who stands convicted of a violent felony offense (Penal Law § 70.02 [1]) after having previously been subjected to “two or more predicate violent felony convictions” (Penal Law § 70.08 [1] [b]). To determine whether a prior conviction constitutes a predicate violent felony conviction, the sentence on the prior conviction must “have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted” (Penal Law § 70.04 [1] [b] [iv]). In calculating this ten year period, “any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration” (Penal Law § 70.04 [1] [b] [v]). CPL 400.15 and 400.16 set forth the procedures to be followed for determining whether a defendant is a persistent violent felony offender. The People must file a predicate statement detailing the date and place of each

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alleged predicate violent felony conviction. Moreover, if applicable, the statement must also “set forth the date of commencement and the date of termination as well as the place of imprisonment for each period of incarceration to be used for tolling of the ten year limitation” (CPL 400.15[2]). CPL 400.15 (7)(a) provides for a hearing by a court, without a jury, if the defendant controverts an allegation in the statement.

In *Erlinger*, the Supreme Court analyzed the Armed Career Criminal Act (ACCA), which increased the maximum sentence imposed for an 18 USC § 922(g) conviction “if the defendant has three prior convictions for “violent felon[ies]” or “serious drug offense[s]” that were “committed on occasions different from one another”” (*Erlinger* at 834; quoting 18 USC § 924 [e][1]). The Supreme Court described ACCA’s occasions inquiry as a “fact-laden task” that required examination of whether the crimes were committed close in time, the proximity of their locations, and consideration of whether the offenses were ““similar or intertwined’ in purpose and character” to trigger ACCA’s mandatory minimum, which enhanced the defendant’s sentence (*Erlinger* at 834). It was in this context that the Supreme Court reiterated that “[v]irtually ‘any fact’ that ‘increases the prescribed range of penalties to which a criminal defendant is exposed’ must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)” (*id.*). The Supreme Court pointed out that its holding was based on a principle that had been established in *Apprendi v New Jersey*, 530 US 466, 490 (2000), “a by-now familiar reason: Only a jury may find ““facts that increase the prescribed range of penalties to which a criminal defendant is exposed”” (*Erlinger* at 833, quoting *Apprendi*, at 490). In its analysis of the ACCA, the Supreme Court recognized an exception carved out by its decision in *Almendarez-Torres v United States*, 523 US 224 (1998), which permits a Judge to find “the fact of a prior conviction” even though that fact increases a defendant’s punishment

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(*Erlinger* at 837, 839). Moreover, the Supreme Court expressly declined to disturb *Almendarez-Torres*, stating that the question about ACCA’s occasion inquiry fell outside of the *Almendarez-Torres* exception (*Erlinger*, at 838-839). Notably, the Supreme Court made clear that *Almendarez-Torres* did not need to be revisited to determine the matter before it (*Erlinger* at 838-839) because the sentencing court disregarded the constraints of *Almendarez-Torres* and “assume for itself the responsibility of deciding whether Mr. Erlinger’s past offenses differed enough in time, location, character, and purpose to have transpired on different occasions” (*Erlinger* at 840). The Supreme Court also appeared to have limited its holding to the narrow facts presented, noting “[w]hile recognizing Mr. Erlinger was entitled to have a jury resolve ACCA’s occasions inquiry unanimously and beyond a reasonable doubt, we decide no more than that” (*Erlinger* at 835).

Prior to the Supreme Court’s decision in *Erlinger*, the Court of Appeals repeatedly upheld the constitutionality of New York’s multiple felony offender sentencing scheme under *Apprendi* and *Almendarez-Torres* challenges (see *People v Leon*, 10 NY3d 122, 127 [2008] [the defendant was properly adjudicated a persistent violent as the finding of “who, what, when and where” of a prior conviction were so basic as to be “implicit” and within the ability of a sentencing judge]; *People v Bell*, 15 NY3d 935, 936 [2010] [the defendant’s adjudication as a persistent violent felony offender did not require the fact of a prior conviction to be found by a jury]; *People v Prindle*, 29 NY3d 463 [2017] [construction of New York’s persistent felony offender statute falls squarely within the exception afforded by *Almendarez-Torres*]).

However, since the Supreme Court’s decision in *Erlinger*, several trial courts have addressed its application to the predicate sentencing statutes, with the emphasis on the question of whether a jury rather than a judge is allowed to determine the periods of incarceration which

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tolls the exclusion of any period of time during which the defendant was incarcerated (*see* Penal Law § 70.04 [1] [b] [v]). For example, in *People v Jackson*, 2025 NY Slip Op 25010 (Sup Ct, Queens County 2025), the court held that under *Erlinger*, a jury was not required to determine dates of incarceration or release related to prior convictions for sentencing as a persistent violent felony offender and thereby concluded that “the facts necessary to determine tolling under the New York State persistent violent felony sentencing scheme continue to fall within the *Almendarez-Torres* exception to *Apprendi*”). Similarity, *People v Taylor*, 2024 NY Slip Op 24308 [Sup Ct, Nassau County 2024], held that “[a]s *Erlinger* is not new law, and does not speak to tolling, it does not overrule New York precedent applying *Apprendi* and its progeny to our mandatory persistent violent felony offender statutes.” In *People v Rivera*, 2024 NY Slip Op 24278 (Sup Ct, New York County 2024), the court concluded that under *Erlinger*, a judge can determine the fact of a prior conviction and the relevant dates of a defendant’s past incarcerations because “it can see no material distinction - certainly not one of a constitutional dimension - between the fact (or dates) of a *prior conviction* and the fact (or dates) of a *prior incarceration...*” Likewise, this Court has concluded that *Erlinger* does not require a jury to determine the existence of prior convictions or the determination of the tolling periods under Penal Law § 70.04 [1] [b] [v]).

On January 12, 2024, this Court determined that the defendant was convicted of two prior violent felony offenses. Although the sentence of the defendant’s first violent felony offense, under Kings County Ind. No. 494/01, was imposed more than ten years before the commission of the instant offense, the ten-year period had been sufficiently extended by the defendant’s periods of incarceration. This Court did not consider the “fact-laden task” that was present in *Erlinger*, and did not disregard the constraints under *Almendarez-Torres*. As such, the facts that were

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necessary for the defendant's adjudication as a mandatory persistent violent felony offender, the fact of the two prior violent felony convictions and the dates on which the sentences were imposed, as well as the dates that the defendant was incarcerated between the commission of the first of the two violent felony offenses and the commission of the instant offense were properly made by this Court.

The cases cited by the defendant, *People v Lopez*, 2024 NY Slip Op 24207 [Sup Ct, New York County 2024], and *People v Bank*, 2024 WL 4128665 (Sup Ct, New York County 2024) are from courts of concurrent jurisdiction and are not binding upon this Court. In any event, the defendant had already been adjudicated as a prior violent felony offender under Kings County Ind. No. 3485/13 on February 5, 2015, and that designation is "binding upon th[e] defendant in any future proceeding in which the issue may arise" (CPL 400.15 [8] and 400.16 [2]; *see People v Mezon*, 228 AD2d 621 [2d Dept 1996]).

Additionally, at the hearing on January 12, 2024, the defendant did not contest his criminal history or any relevant periods of incarceration. On February 18, 2025, in *People v Hernandez*, 2025 WL 515364 [2025], the Court of Appeal addressed the defendant's claims that *Erlinger* rendered Penal Law 70.04 unconstitutional and determined that the issue was unpreserved because the defendant did not contest his criminal history. The Court of Appeals also held that the defendant's presentence incarceration time extended the ten-year period and therefore the defendant was properly sentenced as a persistent violent felony offender. Similarly, here, when given the opportunity to controvert the predicate felony statement, the defendant did not challenge the dates of his prior convictions, or the People's calculation of the amount of time that the defendant spent incarcerated during any period. Rather, the defendant argued that one of his convictions was unconstitutional because he had been resentenced because of an error

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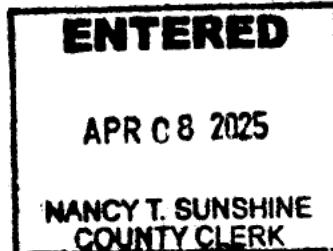
pertaining to the post-release supervision. The defendant also believed that he had received ineffective assistance of counsel on two other prior convictions for which he had pled guilty because he was not aware of what he was pleading guilty to and the consequences of taking those pleas. On this record, this Court finds that the defendant affirmatively waived his rights to challenge his adjudication as a persistent violent felony offender as unconstitutional under *Erlinger*, or the legality of the sentence that stemmed from that adjudication.

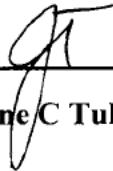
To the extent not specifically discussed, the defendant's claims and requests for relief have been considered and are denied on both procedural and/or substantive grounds.

Accordingly, the defendant's motion is **DENIED, in its entirety.**

The foregoing constitutes the Decision and Order of the Court.

DATED: Brooklyn, NY
April 4, 2025




Hon. Jane C Tully, AJSC

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RIGHT TO APPEAL:

You are advised that your right to an appeal from the order determining your motion is not automatic except in the single instance where the motion was made under CPL 440.30(1-a) for forensic DNA testing of evidence. For all other motions under Article 440, you must apply to a Justice of the Appellate Division for a certificate granting leave to appeal. THE APPLICATION MUST BE SENT TO THE APPELLATE DIVISION, SECOND DEPARTMENT, 45 MONROE PLACE, BROOKLYN, NY 11201. In addition, you must serve a copy of your application on the Kings County District Attorney, Renaissance Plaza, 350 Jay Street, Brooklyn, NY 11201. Do NOT send notice of appeal to the Supreme Court Justice who decided this motion.

This application must be filed within 30 days after your being served by the District Attorney or the court with the court order denying your motion. The application must contain your name and address, indictment number, the question of law or fact which you believe ought to be reviewed and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the court.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17/MISMO

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER
IND-1453-05

ENRIQUE RIVERA,

Defendant.

EDWARD KING, J.

The defendant moves *Pro Se* for an order pursuant to Criminal Procedure Law Section 440.20(3) setting aside his sentence on the ground that it was illegal and invalid. By papers dated January 29, 2025, the People oppose the motion.

On May 13, 2009, the defendant was convicted, following a jury trial, of Manslaughter in the First Degree under Penal Law Section 125.20[1] for stabbing and causing the death of Edgar Ojeda. On June 8, 2009, the defendant was adjudicated a Second Violent Felony Offender and sentenced to an enhanced sentence of a determinate prison term of twenty-five (25) years incarceration and five (5) years post-release supervision. At sentencing, the defendant was provided with a copy of the predicate felony statement pursuant to CPL Section 400.15. The statement indicated the defendant was convicted of Attempted Robbery in the Second Degree under Penal Law 110/160.10 and sentenced to five years' probation on September 3, 1993; and that defendant was convicted of Attempted Criminal Sale of a Controlled Substance in the Third Degree under Penal Law 110/220.39 and sentenced to a term of imprisonment of three to six years on October 7, 1998, (People's Ex. 1).

At sentencing on June 8, 2009, the Hon. Alan Marrus conducted a colloquy with the defendant where he admitted he was convicted of "attempted robbery in the second degree, attempted criminal sale of a controlled substance in the third degree, one in 1993 and the other in 1998 in Kings County" (see People's Ex. 2).

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Defendant appealed the conviction claiming the court erred in failing to submit Manslaughter in the Second Degree as a lesser included offense, and that the sentence was harsh and excessive. The Appellate Division, by order dated November 27, 2012, affirmed defendant's judgment of conviction. *People v Rivera*, 100 AD3d 658 (2d Dep't 2012).

The Court of Appeals granted defendant's application for leave to appeal the order of the Appellate Division on March 1, 2013. *People v Rivera*, 20 NY3d 1103 (2013). By decision and order dated April 8, 2014, the Court of Appeals affirmed the judgment of conviction. *People v Rivera*, 23 NY3d 112 (2014).

By papers dated June 11, 2014, the defendant moved *pro se* to vacate the judgment of conviction, pursuant to CPL 440.10, claiming that his pretrial statements were coerced, and that he was denied a fair trial by the People's delayed disclosure that a witness who did not testify at trial had recanted. By decision and order dated May 12, 2015, the court denied the motion to vacate the judgment of conviction.

By papers dated August 25, 2017, the defendant moved *pro se*, to set aside his sentence, pursuant to CPL 440.20, claiming the imposition of post-release supervision was illegal. On March 29, 2019, defendant's motion was denied. *People v Rivera*, 189 AD3d 1084 (2d Dep't 2020) (affirming denial of motion, *appeal denied*, 36 NY3d 1059 (2021)).

A motion to set aside a sentence by a criminal defendant may be granted on the ground that the sentence was unauthorized, illegally imposed, or otherwise invalid as a matter of law. CPL 440.20(1). After consideration of any changes to the law in issue, the court in the interest of justice and for good cause, may in its discretion grant the motion if it is otherwise meritorious. CPL 440.20(3).

The instant motion was filed on October 23, 2024, pursuant to the recent decision of the United States Supreme Court in *Erlinger v United States*, 602 U.S. 821 (2024), and *People v Lopez*, 85 Misc 3d 171, 172 [Sup Ct 2024], claiming that the procedure set forth in the Criminal Procedure Law for determining whether a defendant qualifies for an enhanced sentence based on prior felony convictions is unconstitutional. Specifically, that every fact of all stages of the criminal proceeding were not conducted before a unanimous jury and that the calculation of the

ten-year period should have been “tolled” by the period of incarceration the defendant served between the commission of the prior and instant felony.

The court in *Erlinger* addressed a constitutional challenge to the federal Armed Career Criminal Act (“ACCA”), which exposed a defendant to enhanced sentencing if the defendant has three prior convictions for offenses “committed on occasions different from one another.” In *Erlinger v United States*, the Supreme Court held that the Fifth Amendment right to due process and the Sixth Amendment right to a jury trial, “placed the jury at the heart of our criminal justice system.” *Erlinger v United States*, 602 US 821, 831, 144 S Ct 1840, 1849, 219 L Ed 2d 451 [2024]. The court determined that certain facts, that are necessary for sentence enhancement must be submitted to the jury and proved beyond a reasonable doubt. *Id.*

The decisions bears on the *Apprendi* ruling, where the Supreme Court held that “other than the fact of a prior conviction, any fact that increases the penalty of a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi v New Jersey*, 530 US 466 (2000). The narrow exception is when the judge “undertake[s] the job of finding the fact of a prior conviction” *Almendarez-Torres v United States*, 523 US 224 (1998). In such instances, a court may “determine what crime, with what elements, the defendant was convicted.” *Mathis v United States*, 579 US 500, 511-512 (2016).

In *Erlinger*, the Supreme Court applied *Apprendi*, to the facts related to the prior conviction. The defendant in *Erlinger*, the court found, was entitled to have a jury determine whether he committed his prior burglaries during a single episode or on separate distinct occasions.

The Court of Appeals has found New York sentencing statutes to be constitutional (*People v Prindle*, 29 NY3d 463, 466 [2017]). In *Prindle*, the Court of Appeals held that the “sole determinant of whether a defendant is subject to recidivist sentencing as a felony offender” is the existence of two prior convictions. *Id.* The court further cautioned that *Apprendi* would be violated if the sentencing statute provide “for an increase to defendant’s punishment – beyond the range authorized by the jury’s finding of guilt or defendant’s admission – based on additional facts found by a judge” (*People v Quinones*, 12 NY3d 116, 123 [2009]).

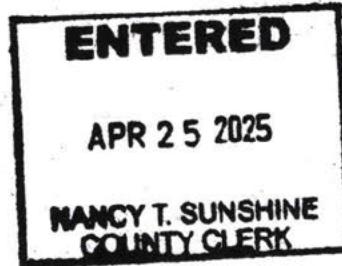
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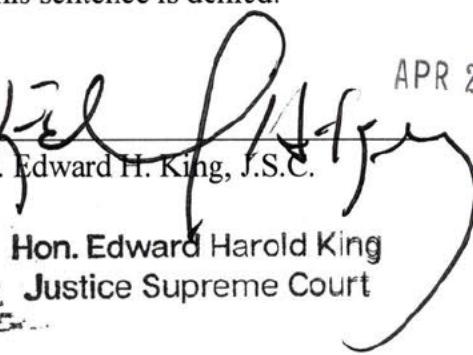
The defendant's conviction falls within the *Apprendi* exception, outlined in *Almendarez-Torres*. The sentencing scheme which found the defendant to be a Second Felony Offender has not been disturbed. The defendant admitted, at sentencing, facts necessary to qualify him as a second felony offender, dispensing the need for a jury finding.

Accordingly, it is therefore

Ordered, that the defendant's motion to set aside his sentence is denied.

Date: March 27, 2025




Hon. Edward H. King, J.S.C.
Hon. Edward Harold King
Justice Supreme Court

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AFFIRMATION OF SERVICE BY E-MAIL

I, Shlomit Heering, an attorney admitted to practice in the State of New York, and an Assistant District Attorney for the Kings County District Attorney's Office, affirm this 23rd day of May 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following statements are true, and understand that this document may be filed in an action or proceeding in a court of law:

On the 23rd day of May 2025, I served the Respondent's Opposition to Motion to Set Aside Sentence in People v. Israel Navarro, Indictment Number 623/2020, by attaching a copy to an email sent to Sylvia Lara Altreuter, Esq., at SAltreuter@legal-aid.org.

Shlomit Heering
Shlomit Heering

Dated: Brooklyn, New York
May 23, 2025

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM
THE PEOPLE OF THE STATE OF NEW YORK,

v.

ISRAEL NAVARRO,

Defendant.

Ind. No. 623/20

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ISRAEL NAVARRO'S MOTION TO SET ASIDE HIS SENTENCE PURSUANT TO C.P.L. § 440.20

TWYLA CARTER, ESQ.
Attorney for Israel Navarro

Sylvia Lara Altreuter, Of Counsel
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PRELIMINARY STATEMENT

Israel Navarro submits this reply in response to the prosecution’s revised opposition to his motion to set aside his sentence pursuant to C.P.L. § 440.20, which was served on May 23, 2025.

REPLY ARGUMENT

Although the prosecution asserts otherwise, Mr. Navarro’s sentence must be vacated because this is one of the “rare cases where life and liberty is involved and invalidity of the act is apparent on its face.” Pros. Mem. at 18 (quoting Richman v. Richman, 41 A.D.2d 993, 994 (3d Dep’t 1973)). Mr. Navarro is seventy years old, going deaf and blind, and suffering from various debilitating ailments. Altreuter Aff. ¶ 7–13. He is also serving a thirteen-years-to-life prison sentence pursuant to the persistent violent felony offender statute, which prohibits a jury trial on the facts underlying the adjudication notwithstanding the U.S. Supreme Court’s ruling that he is entitled to a jury trial on “[v]irtually ‘any fact’ that ‘increase[s]’ his sentencing range. Erlinger v. United States, 602 U.S. 821, 834 (2024) (second alteration in original) (quoting Apprendi v. New Jersey, 530 U.S. 466, 476 (2000)). The prosecution does not dispute that Mr. Navarro’s persistent violent felony offender adjudication increased his sentencing range or that he was denied a jury trial on the facts underlying that adjudication by existing law. As a result, Mr. Navarro’s sentence was illegal and must be set aside.

I. Contrary to the Prosecution’s Characterization, Several Courts Have Found the Persistent Violent Felony Offender Statute Unconstitutional Following Erlinger v. United States.

The prosecution contends Mr. Navarro’s Erlinger claims are “meritless,” Pros. Mem. at 1, 3, 7, but this ignores that numerous New York courts have found, in the wake of the Supreme Court’s decision in Erlinger, that the persistent violent felony offender statute is unconstitutional because it expressly prohibits a trial by jury on tolling when such right is constitutionally guaranteed. Def. Mem. at 6–7 (collecting cases); see also People v. Lopez, Ind. No. 73478/23, at

*6–7 (Sup. Ct., N.Y. Cnty. Mar. 11, 2025) (Edwards, J.).¹ For the reasons set forth in Mr. Navarro’s moving papers and below, Erlinger makes clear that Mr. Navarro’s sentence was illegal and must be set aside.

Principally, the prosecution is wrong that the length of Mr. Navarro’s alleged incarceration from 1980 to 2019 is encompassed by the Almendarez-Torres exception. The Supreme Court’s decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), enunciates “a ‘narrow exception’ permitting judges to find only ‘the fact of a prior conviction’” for the purpose of enhanced sentencing as opposed to submitting the question to a jury. Erlinger, 602 U.S. at 838 (emphasis added) (quoting Alleyne v. United States, 570 U.S. 99, 111 n.1 (2013)). The amount of time Mr. Navarro was incarcerated pursuant to his prior convictions is different than the fact of his prior convictions, especially when considering the Supreme Court’s repeated caution to construe the Almendarez-Torres exception narrowly. See, e.g., Apprendi, 530 U.S. at 489–90 (describing Almendarez-Torres “as a narrow exception to the general rule”).

For one, to reach this conclusion, the prosecution misstates the Erlinger holding. The prosecution asserts “Erlinger addressed only the proper scope of a sentencing judge’s inquiry into the manner in which a defendant committed a predicate offense,” Pros. Mem. at 15, but this is incorrect. The Court-appointed amicus in Erlinger argued the sentencing court could consider so-called Shepard documents, which include court records like plea transcripts and accusatory instruments, to determine whether an enhanced sentence under the ACCA was merited in lieu of allowing the case to go before a jury. 602 U.S. at 839. In ruling on this argument, the Court held that, although a sentencing court could refer to Shepard documents “for the ‘limited function’ of determining the fact of a prior conviction and the then-existing elements of that offense,” id.

¹ This unpublished case is included with Mr. Navarro’s reply.

(quoting Descamps v. United States, 570 U.S. 254, 260 (2013)), such court could not “use Shepard documents or any other materials for any other purpose,” *id.* (emphasis added). In other words, the Erlinger Court made clear that the Almendarez-Torres exception includes only the fact of a prior conviction and its statutory elements, including those alleged in Shepard documents.

For another, the length of a person’s incarceration is not necessarily a ministerial inquiry as the prosecution and other courts have reasoned. Pros. Mem. at 16–17 (collecting cases). The relevant records are not maintained by courts, they are—in Mr. Navarro’s case—maintained by the New York State Department of Corrections and Community Supervision (“DOCCS”) and the New York City Department of Correction (“DOC”). DOCCS in particular has intricate, complex rules governing the calculation of prison sentences. See N.Y.S. Dep’t of Corr. & Cnty. Supervision, Date Computation Manual (2015) (263-page manual on “rules and formulas for computing an inmate’s release dates”), <https://doccs.ny.gov/system/files/documents/2022/01/date-comp-manual-2016.pdf>. And DOCCS does not necessarily honor these rules—in practice, it can and does continue to detain people well past their calculated release dates. See, e.g., People ex rel. Johnson v. Superintendent, 36 N.Y.3d 187 (2020) (describing DOCCS’s policy of indefinitely detaining people subject to the Sexual Assault Reform Act who are unable to afford compliant housing after completion of their sentences). Nor is a person’s release date necessarily determinative of how long they were incarcerated for the purpose of predicate sentencing—certain periods between a person’s DOCCS commitment and release date are excluded from the tolling calculation. See, e.g., People v. Tatta, 196 A.D.2d 328, 331–32 (2d Dep’t 1994) (four years between defendant’s escape from and return to prison did not toll ten-year period established by Penal Law § 70.06(1)(b)(iv)); People v. Cuesta, 28 Misc. 3d 593, 601–02 (Sup. Ct., N.Y. Cnty. 2010) (same for immigration detention); *cf. People v. Leone*, 44 Misc. 3d 306, 311–12 (Monroe Cnty. Ct. 2014) (detention at

DOCCS's Willard Drug Treatment Campus did not toll ten-year period under diversion statute). In other words, the tolling calculation is not necessarily simple or straightforward.

In addition, contrary to the assumptions articulated in the lower court cases upon which the prosecution relies, DOCCS and DOC records are not necessarily “possessed of substantial trustworthiness.” Pros. Mem. at 24 (quoting People v. Jackson, 225 N.Y.S.3d 903, 910 (Sup. Ct., Queens Cnty., 2025)).² Both DOC and DOCCS have been plagued by scandal in recent years, which casts doubt on the credibility of their record-keeping practices. See, e.g., Nunez v. N.Y.C. Dep’t of Corr., 2025 WL 1374584, at *1 (S.D.N.Y. May 13, 2025) (appointing independent federal monitor for DOC to “support remediation of the ongoing violations of the constitutional rights of people in custody in the New York City jails”); Exec. Order No. 47.5 (N.Y. May 9, 2025) (continuing state of “disaster emergency” in state prisons following unauthorized strike by DOCCS correction officers), https://www.governor.ny.gov/sites/default/files/2025-05/eo_47.5.pdf. Mr. Navarro was entitled to cross-examine any DOCCS or DOC witnesses or to attempt to discredit any documents offered by the prosecution—some of which would be over forty years old—before he could be sentenced as a persistent violent felony offender. U.S. Const. amends. VI, XIV; N.Y. Const. art. I, § 6; Delaware v. Van Arsdall, 475 U.S. 673, 678–79 (1986); Chambers v. Mississippi, 410 U.S. 284, 294–95 (1973).

Lastly, the prosecution’s authorities do not support its position. Even assuming, as the prosecution argues, Pros. Mem. at 13–14, that People v. Porto, 16 N.Y.3d 93 (2010), and People v. Bell, 15 N.Y.3d 935 (2010), ruled on this issue even though neither decision mentions tolling, for the reasons articulated by several New York courts, see Def. Mem. at 6–7 (collecting cases), these decisions are called into question by Erlinger.

² See also People v. Carrion, Ind. No. 15847/95, at *9 (Kings Cnty. Sup. Ct. May 2, 2025) (Tully, J.); People v. Lumpkin, Ind. No. 70292/21, at *6–7 (Kings Cnty. Sup. Ct. Apr. 4, 2025) (Tully, J.).

Of the other cases upon which the prosecution relies to demonstrate the constitutionality of the persistent violent felony offender statute, several concern the persistent felony offender statute—that is, the discretionary persistent statute, which contains no tolling provision, rather than the mandatory persistent statute at issue here. Pros. Mem. at 9–10.³ And, of the other cases that concern the correct statute, they appear to not reach the tolling question, but the facts of prior convictions—arguments which are foreclosed by Almendarez-Torres. Id.⁴

Accordingly, the persistent violent felony statute is unconstitutional, and Mr. Navarro’s sentence must be set aside.

II. Mr. Navarro Did Not Waive His Jury-Trial Rights by Pleading Guilty or Freely Admit the Tolling Allegations.

Contrary to the prosecution’s contentions, this Court may reach Mr. Navarro’s Erlinger claims because he did not forfeit his right to a jury trial on his predicate sentencing by pleading guilty, nor did he “freely admit[]” the tolling allegations.

First, with respect to his guilty plea, Mr. Navarro was asked to waive specifically his right to have a trial on the underlying offense, there was no discussion of waiving his right to have a trial on the tolling underlying his predicate sentence. The Court explained:

³ See People v. Garvin, 30 N.Y.3d 174, 189 (2017); People v. Prindle, 29 N.Y.3d 463, 465–66 (2017); People v. Battles, 16 N.Y.3d 54, 59 (2010); People v. Rivera, 5 N.Y.3d 61, 69–70 (2005); People v. Rosen, 96 N.Y.2d 329, 334–35 (2001); Portalatin v. Graham, 624 F.3d 69, 93–94 (2d Cir. 2010) (en banc).

⁴ People v. Leon, 10 N.Y.3d 122, 125–26 (2008) (fact of defendant’s identity encompassed by Almendarez-Torres); People v. Pitts, 227 A.D.3d 421, 422 (1st Dep’t 2024) (finding only “[d]efendant’s challenge to the constitutionality of his second violent felony offender judication is without merit”), leave denied, 2025 WL 1412651 (N.Y. Apr. 15, 2025); People v. Highsmith, 21 A.D.3d 1037, 1038–39 (2d Dep’t 2005) (finding defendant “was not entitled to a jury trial to determine the facts of his prior convictions”); People v. Goston, 9 A.D.3d 905, 907 (4th Dep’t 2004) (finding Apprendi challenge to second violent felony offender sentencing unpreserved and “lacks merit”); People v. Simmons, 298 A.D.2d 468, 469 (2d Dep’t 2002) (“[D]efendant’s contention that his sentencing as a second felony offender violated his constitutional rights to notice and a jury trial pursuant to Apprendi . . . is without merit.”). The cases in which courts have held the opposite, see, e.g., People v. Taylor, 224 N.Y.S.3d 345 (Sup. Ct., Nassau Cnty. 2024), are not binding on this Court.

Mr. Navarro, by pleading guilty here today you are giving up the right to have a trial. At a trial you would be presumed innocent, the People would have to prove the charge against you beyond a reasonable doubt, your lawyer could cross-examine the witnesses against you, you could call your own witnesses, and you could either remain silent or testify in your own defense. By pleading guilty here today you are giving up those rights.

Altreuter Aff. Ex. 1, at 13–14 (emphasis added). That is, the Court’s explanation limited Mr. Navarro’s waiver of a jury trial to “the charge against” him without mentioning a jury trial on his persistent violent felony offender status. In this absence, waiver “cannot” be “presume[d] . . . from a silent record.” Boykin v. Alabama, 395 U.S. 238, 243 (1969). Moreover, as the prosecution acknowledges, the defendant in Erlinger pleaded guilty, Pros. Mem. at 4 n.2, and was not deemed to have waived his jury-trial rights for enhanced sentencing.

Second, as set forth in his moving papers, Mr. Navarro did not “freely admit[]” the tolling allegations because he was told he was not entitled to a jury trial before he purported to admit them. Altreuter Aff. Ex. 1, at 23. Although the prosecution contends that the Court’s statement to Mr. Navarro that he was not entitled to a jury trial on his predicate sentencing “has no bearing” here, Pros. Mem. at 5, that has been contradicted by the Court of Appeals in analogous situations. For example, in People v. Bisono, the Court determined several defendants’ appeal waivers were invalid when they were misinformed about the scope of the appellate rights they were being asked to waive. 36 N.Y.3d 1013, 1017–18 (2020). As another example, in People v. Scott, the Court vacated the defendant’s plea when it preceded by the plea court’s affirmative misstatement that his sentencing exposure was forty-five years when it was twenty years. 2025 WL 835467, at *6 (N.Y. Mar. 18, 2025). Similarly here, Mr. Navarro was affirmatively told he had no right to a jury trial on the facts underlying his predicate sentence, which, as explained above, was not true—as a result, any subsequent purported admission was not “freely” made.

III. This Constitutional Violation Is Not Subject to Harmless-Error Analysis and, in the Alternative, Was Not Harmless.

Finally, this Court should not apply harmless-error analysis to the violation of Mr. Navarro’s constitutional right to a trial by jury, and even if it did, it should not find this error harmless.

As an initial matter, the Erlinger Court did not engage in harmless-error analysis or direct lower courts to do so. 602 U.S. at 825–49. Instead, the Court stated that “[t]here is no efficiency exception to the Fifth and Sixth Amendments” and that “a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers ‘regardless of how overwhelmin[g] the evidence may seem to a judge.’” Id. at 842 (alteration in original) (emphasis added) (quoting Rose v. Clark, 478 U.S. 570, 578 (1986)); but see People v. Gomez, 236 A.D.3d 603, 605 (1st Dep’t 2025) (noting in dicta that Erlinger “violation would be subject to harmless error review”). In keeping with Erlinger, this Court should not apply harmless-error analysis here.

However, even if this Court were to apply harmless-error analysis, the error in Mr. Navarro’s case was not harmless. For one, in the Supreme Court case upon which the prosecution relies, Washington v. Recuenco, 548 U.S. 212, 217–18 (2006), the Court opined that, if a defendant is able to demonstrate state law does not provide an avenue for a jury trial on an Apprendi violation, he “will be able to demonstrate that the . . . violation in this particular case was not harmless.” Applying that reasoning here, and given the prosecution does not dispute that New York law forecloses a jury trial on tolling, C.P.L. §§ 400.15(7)(a), 400.16(2), the error is not harmless in Mr. Navarro’s particular case.

For another, although the prosecution asserts that Mr. Navarro’s criminal history report, see Pros. Ex. 2, is proof of the tolling, this hearsay document would not necessarily be admissible at trial nor would it be sufficient on its own to establish Mr. Navarro’s tolling beyond a reasonable

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doubt. See C.P.L.R. § 4520 (certificates or affidavits by public officers constitute “prima facie evidence of the facts stated”); Rosenfeld v. City of New York, 197 A.D.3d 746, 747–48 (2d Dep’t 2021) (documents were subject to common-law public records hearsay exception but still inadmissible). And Mr. Navarro has not had the opportunity to cross-examine any DOCCS or DOC witnesses who testify to the production of this document; as the Court of Appeals has acknowledged, “[i]n the criminal justice context, cross-examination is universally recognized as a preeminent truth-seeking device.” People v. Rouse, 34 N.Y.3d 269, 275 (2019). In contrast, in the Court of Appeals case upon which the prosecution relies, People v. Kozlowski, 11 N.Y.3d 223, 250 (2008), the Court declined to reach the defendant’s argument that fines were imposed in his case in violation of his right to a jury trial by finding any potential error harmless because the defendant testified to the relevant underlying facts at his jury trial. Here, however, Mr. Navarro did not have the opportunity to testify at trial to the relevant underlying facts because the statute expressly forecloses one. C.P.L. §§ 400.15(7)(a), 400.16(2).

For these reasons and the reasons in his moving papers, Mr. Navarro’s sentence was illegally imposed and must be set aside pursuant to C.P.L. § 440.20(1).

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CONCLUSION

For the reasons stated above and in his moving papers, this Court should set aside Mr. Navarro's sentence.

Dated: June 3, 2025
New York, New York



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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY, CRIMINAL TERM
THE PEOPLE OF THE STATE OF NEW YORK,

v.

ISRAEL NAVARRO,

Defendant.

AFFIRMATION OF SERVICE

Ind. No. 623/20

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Sylvia Lara Altreuter, affirm under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

On June 3, 2025, I served Mr. Navarro's reply in his motion to set aside his sentence upon the Brooklyn District Attorney's Office by email to heerings@brooklynda.org and upon Mr. Navarro by first-class mail. The District Attorney's Office has consented to be served exclusively by electronic mail.

Dated: New York, New York
June 3, 2025



SYLVIA LARA ALTREUTER