

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 86-108

TITLE GARY HILTON, SUPERINTENDENT, NEW JERSEY STATE PRISON,
ET AL., Petitioners V. DANA BRAUNSKILL

PLACE Washington, D. C.

DATE March 25, 1987

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IN THE SUPREME COURT OF THE UNITED STATES

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GARY HILTON, SUPERINTENDENT, NEW :

JERSEY STATE PRISON, ET AL., :

Petitioners :

v. : No. 86-103

DANA BRAUNSKILL :

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Washington, D.C.

Wednesday, March 25, 1987

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:12 o'clock a.m.

APPEARANCES:

JOHN G. HOLL, ESQ., Trenton, N.J.;

on behalf of Petitioners

MARK H. FRIEDMAN, ESQ., East Orange, N.J.;

on behalf of Respondent

C O N T E N T S

ORAL ARGUMENT OF

PAGE

JOHN G. HOLL, ESQ.,

on behalf of the Petitioners

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MARK H. FRIEDMAN, ESQ.,

on behalf of the Respondent

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1 court should take into account, as well as the
2 dangerousness of the Petitioner.

3 Initially, I would note with respect to the
4 factor of likelihood of success on appeal, that issue I
5 don't think was considered by the Carter court. The
6 Carter court concentrated exclusively on dangerousness.

7 QUESTION: You mean the Carter court did not
8 explicitly reject --

9 MR. HOLL: Yes.

10 QUESTION: -- likelihood of success on
11 appeal?

12 MR. HOLL: That's correct. And I think the
13 rationale of the Carter decision, which is something
14 that we take issue with but I'll get into later, even if
15 you apply the rationale of the Carter decision, which is
16 the federal courts can only take into account what it
17 perceives as a federal interest, if you apply that
18 rationale you would see that the chances of state
19 success on appeal is also a federal interest.

20 We have the state as a party in a federal
21 action. The Respondent is a party in a federal action.
22 There is an appeal to a federal court. So the outcome
23 of that appeal is certainly an issue which the federal
24 courts have an interest in, and should be an appropriate
25 factor under 23(c) even if you accept the Carter

1 analysis.

2 However, we don't think that the Carter court
3 interpreted 23(c) properly. We think that there are a
4 number of reasons to reject the narrow interpretation
5 that the Carter court adopted here.

6 The first one is, the Carter court held that
7 the only interest, the only factor, is a probability of
8 flight. We think that the language of the rule, which
9 is extremely broad and which says that a petitioner is
10 presumed to be released -- it doesn't specifically use
11 the word of presumption of release, but the state would
12 concede that the rule does contain a presumption of
13 release.

14 The presumption of release is there when a
15 petitioner is successful in district court, but it can
16 be overcome. He shall be released unless a court shall
17 order otherwise.

18 In those instances -- that's kind of broad
19 language right there. It's extremely broad language,
20 and we don't think there's any reason to believe that it
21 narrowly confines the federal courts to the probability
22 of flight.

23 QUESTION: You're here arguing for the state,
24 I take it.

25 MR. HOLL: That's correct, Justice White.

1 QUESTION: And you want to -- you've convicted
2 a person and you don't want him at large until there is
3 some final ruling on the habeas corpus.

4 MR. HOLL: Yes, that's correct, Justice
5 White.

6 QUESTION: Does New Jersey have a
7 post-conviction relief?

8 MR. HOLL: Yes, we do.

9 QUESTION: Well, let's suppose that a
10 convicted defendant files for state habeas or state
11 collateral relief, and he wins in the lower court and
12 then he's on appeal in the state system. Now, I
13 understand the state law to be that only flight is to be
14 considered.

15 MR. HOLL: No, I don't believe that is the
16 state of the law in New Jersey. We have a rule called
17 bail pending appeal.

18 QUESTION: So you think -- wasn't there an
19 amicus who claimed that that's the rule?

20 MR. HOLL: I believe that -- I'm not sure
21 there was an amicus that claimed that that was the rule
22 in this case, Justice White.

23 We have a rule, a New Jersey court rule which
24 was adopted by the New Jersey Supreme Court, which is
25 entitled bail pending appeal. And it permits a court to

1 take into account the dangerousness.

2 QUESTION: Oh, it does specifically?

3 MR. HOLL: Yes, it does specifically.

4 QUESTION: That's bail pending appeal of a
5 direct conviction?

6 MR. HOLL: Yes. And there are no cases as to
7 whether or not that rule applies to a --

8 QUESTION: Collateral.

9 MR. HOLL: -- a collateral proceeding. But
10 it's our position that it is the rule which is most
11 analogous.

12 QUESTION: Well, why shouldn't we really know
13 that for a certainty before we decide what the rule that
14 the federal court should apply in this case? It seems
15 to me if there's any interest in holding this prisoner,
16 it's a state interest, not a federal interest, and that
17 if the states would not -- if the state would in fact
18 let this individual out pending appeal from a state
19 habeas corpus, I see no reason whatever why the federal
20 court should do otherwise.

21 MR. HOLL: Well, I think that there is a
22 reason here. The state courts have already found this
23 man to be dangerous and they have incarcerated him.
24 They have already made that finding.

25 QUESTION: No, no. You mistake me. I'm

1 saying if the New Jersey Supreme Court itself would not
2 feel offended by a New Jersey lower court releasing an
3 ineividual when the lower court finds that he's entitled
4 to state habeaus, I don't know why a federal court
5 should be any more stingy with this man's freedom,
6 because the only interest in holding him is a state
7 interest.

8 If the state itself would let him go, I see no
9 reason why the federal court shoulin't let him go. So
10 don't we have to know what the New Jersey rule is?

11 MR. HOLL: I don't think you have to know to
12 decide this case, because I think that would frustrate a
13 federal interest in the uniform application of the
14 habeas rule, and it would permit perhaps a state to come
15 up with a rule --

16 QUESTION: He hasn't been convicted of a
17 federal crime, right? He's been convicted of a state
18 crime?

19 MR. HOLL: That's correct.

20 QUESTION: So the only reason he should be
21 held in prison at all is a state reason, it seems to
22 me.

23 MR. HOLL: Well, I think that the law of New
24 Jersey is rather clear, first of all, that he would --
25 that a court would be permitted to keep him incarcerated

1 pending his state habeas proceeding pursuant to that
2 rule.

3 But aside from that, the federal courts -- if
4 you reach a -- if you take the position that the
5 decision whether or not, that a federal court makes to
6 release a defendant is based on the state rule, then
7 you're not going to have a uniform application of the
8 federal habeas corpus laws, because it's the federal
9 court which releases him pursuant to a federal statute.

10 QUESTION: On the other hand, if you take the
11 position that it depends on federal law you're not going
12 to have -- it's sort of an Erie question. You're not
13 going to have uniform application within the state. If
14 you apply for state habeas corpus and the state gives it
15 to you, you're free pending the appeal. But if you
16 apply for federal habeas corpus and you win, the federal
17 court holds you.

18 So it's like Erie. Do you want uniformity
19 within the state or do you want uniformity nationwide?

20 MR. HOLL: I think the answer is that in this
21 case and in all cases the state courts will have
22 considered the same claims that are being raised on
23 habeas and will already have made the decision that the
24 individual involved is dangerous and should be
25 incarcerated.

1 So I think that's the rationale behind it.

2 QUESTION: Mr. Holl, at least I'm along with
3 Justice Scalia. Can you brief that and send it in to
4 us?

5 MR. HOLL: Sure, Your Honor. We'd be happy to
6 accommodate the Court on that issue.

7 QUESTION: I mean, I would like to know
8 personally. I'd like to know what the New Jersey law
9 is.

10 MR. HOLL: Well, this issue has been
11 researched. There are no cases directly on point as to
12 whether or not our bail pending appeal rule applies to a
13 state collateral proceeding.

14 QUESTION: I'm talking about the New Jersey
15 law.

16 MR. HOLL: That's correct. And there are no
17 cases, but we think that the most analogous rule --

18 QUESTION: Have you researched it?

19 MR. HOLL: Yes, we have, Justice Marshall.

20 QUESTION: Where is he now?

21 MR. HOLL: This man, I don't know, Your Honor,
22 Justice Blackmun, I don't know. He is not
23 incarcerated. He has been released.

24 QUESTION: Well, the state did not seek cert
25 in the Carter case, did it?

1 MR. HOLL: I don't believe the Carter case is
2 -- oh, you mean in the Carter case at issue here? Yes,
3 I believe that's correct, that the state did not seek a
4 writ of certiorari.

5 QUESTION: Do you know why?

6 MR. HOLL: That case was handled by the
7 Passaic County Prosecutor's Office, which is a separate
8 entity. And I do not know their reasons for not seeking
9 it.

10 QUESTION: It was all over the press. It was
11 all over the press. Was that the reason why?

12 MR. HOLL: Well, that could be the reason why,
13 Justice Marshall.

14 QUESTION: Mr. Holl, are you suggesting that
15 because of the delicate relationship of the federal
16 habeas procedures to state convictions, there might be a
17 federal interest apart from a state interest in seeing
18 that the man is delivered over if it were reversed on
19 appeal?

20 MR. HOLL: I think that there are federal
21 interests here, there's no question about that. There
22 are a number of federal interests, including and I think
23 the most important one is the interest in comity between
24 the federal and state systems here.

25 The deference that would be provided by a rule

1 permitting a court to take dangerousness into account
2 would result in less of a strain on the federal-state
3 comity relationship.

4 QUESTION: Well, Mr. Holl, do you think that
5 there is some appropriate inquiry in the federal court
6 to try to preserve the status quo pending an appeal?

7 MR. HOLL: Yes, I do.

8 QUESTION: In which the court might consider
9 the likelihood of success on appeal and the fact that
10 the defendant was incarcerated, and so forth?

11 MR. HOLL: I believe that's a very important
12 interest here. An important federal interest in comity
13 is to maintain the status quo and to take into account
14 all factors that are relevant to this decision as to
15 whether or not to stay.

16 There's no good reason in law or justice, and
17 the courts are required under Section 2243 of the habeas
18 corpus law to dispose of these matters as law and
19 justice require. That's a broad standard.

20 QUESTION: Dangerousness and likelihood of
21 success, and they find this man is very -- they think
22 he's very dangerous, but that he's almost sure to win on
23 appeal. What are they supposed to do with him?

24 MR. HOLL: I think if we have an instance
25 where the state does not have a substantial case on

1 appeal and all we had is a dangerous individual who was
2 being held under an unconstitutional conviction --

3 QUESTION: Well, it hasn't been finally
4 decided.

5 MR. HOLL: It hasn't been finally decided.

6 QUESTION: But the district court says,
7 somebody says, very good likelihood of success on
8 appeal.

9 MR. HOLL: Likelihood of success on behalf of
10 the prisoner?

11 QUESTION: Yes.

12 MR. HOLL: In that case I think that if the
13 state can't make an issue, a showing that it also has a
14 substantial case --

15 QUESTION: That's what I mean, yes.

16 MR. HOLL: -- a substantial case on the
17 merits, if we can't make that showing and all we have is
18 a dangerous fellow, I don't think we have been able to
19 -- there is a presumption there that he shall be
20 released, and I don't think we've been able to overcome
21 it purely on the grounds of dangerousness.

22 QUESTION: So it really turns on the
23 likelihood of success.

24 MR. HOLL: I think likelihood of success is
25 the more significant factor.

1 QUESTION: But Carter said you can't consider
2 that at all?

3 MR. HOLL: No, that's not what Carter said.

4 QUESTION: Oh, it isn't?

5 MR. HOLL: Carter said that you can't consider
6 dangerousness. It did not discuss that issue.

7 QUESTION: Has the Court of Appeals said that
8 the only thing you can consider is the likelihood of
9 flight?

10 MR. HOLL: That is what that -- yes, that is
11 correct.

12 QUESTION: So that -- when did they say that?

13 MR. HOLL: They said that in the decision in
14 Carter.

15 QUESTION: Well, that excludes likelihood of
16 success.

17 MR. HOLL: That's correct. I guess you could
18 make that. I'm not so sure that the Court of Appeals
19 even considered, though, the likelihood of success as a
20 factor. And that's why I believe that, even if they
21 used their same rationale that they used in Carter, that
22 the federal courts only take into account the --

23 QUESTION: Well, the dangerousness then is a
24 red herring.

25 MR. HOLL: No.

1 QUESTION: Because if there's a likelihood of
2 success, you're going to -- if he's likely to prevail in
3 the appellate court, he's going to get out whether he's
4 dangerous or not. And if he hasn't got any likelihood
5 of success, he's going to stay in even if he isn't
6 dangerous.

7 MR. HOLL: We think that it is a weighing
8 process here. We think the courts have to weigh whether
9 the state or the Respondent has a substantial case on
10 the issue, not necessarily a likelihood that it's more
11 likely than not. We're not getting involved in a
12 numbers game.

13 We're more interested in, if the state can
14 show it has a substantial case on the merits of an
15 appeal and it can also show there is dangerousness, we
16 think those two factors should be taken into account and
17 considered and weighed.

18 In some cases the courts will find that the --

19 QUESTION: Can I interrupt you for a second
20 and ask you about this particular case, prompted by
21 Justice Blackmun's question. As I understand, this man
22 is on parole now, and he's already had his habeas corpus
23 petition. He was successful on the appeal on that, so
24 there obviously is likelihood -- was he not?

25 MR. HOLL: No.

1 QUESTION: Wasn't the writ, the issuance of
2 the writ affirmed by the Court of Appeals?

3 MR. HOLL: Yes, it was, but then the state
4 made a motion before the Court of Appeals to
5 reconsider. And that motion has been granted by the
6 Third Circuit.

7 QUESTION: Oh, I see.

8 MR. HOLL: And the prior order which affirmed
9 the district court's decision has been vacated. So
10 there is no order in effect from the Third Circuit.

11 QUESTION: Specifically what order are we
12 being asked to review? Is it the en banc order of the
13 Third Circuit refusing to grant a stay?

14 MR. HOLL: Yes.

15 QUESTION: And the reasons for that really are
16 not terribly clear from the order. The only thing they
17 really recite in there is that the motion was filed on
18 May 16th and the man is scheduled to be released from
19 custody on May 20th, petition is denied.

20 MR. HOLL: That's correct.

21 QUESTION: So is it not possible that they
22 denied the motion thinking that, since he's going to be
23 at large anyway, that there's no point in granting a
24 stay?

25 MR. HOLL: Well, I don't think that's the

1 reason that they adopted that or they made that
2 decision.

3 QUESTION: Could we reverse that now and tell
4 them they must enter a stay at this point, when the
5 man's at large on parole?

6 MR. HOLL: I think that in the courts below
7 there is not a sufficient record, unfortunately, because
8 of the -- some factors just simply haven't been
9 considered. The district court wouldn't consider
10 likelihood of success.

11 QUESTION: Well, what relief can you get in
12 this case from this Court now?

13 MR. HOLL: I think what we're asking from this
14 Court is a decision on the law that these are --

15 QUESTION: Totally unrelated to this
16 Petitioner? Just you want a general pronouncement of
17 the law?

18 MR. HOLL: No, because the state went before
19 the district court --

20 QUESTION: Right.

21 MR. HOLL: -- and attempted to --

22 QUESTION: And he didn't give you a stay.

23 MR. HOLL: That's right.

24 QUESTION: He said -- for one thing, he said,
25 he doesn't really look all that dangerous, because you

1 misrepresented his criminal record in the district
2 court. And anyway, and in addition, under Carter I
3 couldn't consider dangerous anyway.

4 MR. HOLL: And he also said that he would not
5 take into account the state's chances of success.

6 QUESTION: He didn't write an opinion. This
7 was kind of a colloquy.

8 And then you go to the Court of Appeals and
9 they say: Well, he's going to be released in four days
10 anyway, so we can't grant a stay.

11 MR. HOLL: There's a factual --

12 QUESTION: So what are we -- I mean, what
13 order do you expect this Court to enter now?

14 MR. HOLL: We would ask that the case be
15 remanded all the way back to the district court.

16 QUESTION: And what should the district court
17 do then?

18 MR. HOLL: The district court should be
19 instructed to take into account factors such as the
20 Petitioner's --

21 QUESTION: For what purpose? The man's at
22 large.

23 MR. HOLL: The man is at large because he was
24 released under an erroneous standard of law.

25 QUESTION: I thought he has also been

1 paroled.

2 MR. HOLL: No. He has an additional --

3 QUESTION: He's been released because of the
4 order of the district court?

5 MR. HOLL: Yes.

6 QUESTION: I misunderstood. I'm sorry, I
7 apologize. I thought that he also -- hadn't he been up
8 for parole in August of '86?

9 MR. HOLL: Well, there was a
10 misunderstanding. In the record now before the Third
11 Circuit, there is a letter from the New Jersey Parole
12 Board which indicates that the Petitioner has an
13 additional -- the Respondent has an additional six or
14 seven months to serve on his sentence should he be sent
15 back, should the order of the district court --

16 QUESTION: I'm sorry, I'm sorry. I
17 misunderstood.

18 QUESTION: I come back to Carter, however, and
19 don't understand why the state didn't seek cert on that
20 when factually it's a much better case than this one.

21 MR. HOLL: That was a decision, I'm sure there
22 were a number of factors that went into that decision,
23 Justice Blackmun. The state, I know, is also pursuing
24 the appeal on the Carter case on the merits before the
25 Third Circuit. I don't think it's been decided yet.

1 QUESTION: What you're saying, I take it, is
2 in the case where perhaps the state -- where the
3 district court orders release on habeas, the state has a
4 plausible case on appeal but not an overwhelming one,
5 there a very dangerous habeas petitioner probably should
6 not be released, one who is not found dangerous probably
7 should be released?

8 MR. HOLL: That's correct. That's basically
9 what we're saying. We're saying that dangerous is an
10 appropriate factor, because in some cases the state's
11 case on appeal will be more or less substantial, in that
12 range where it should be considered and also would
13 justify the weighing of the dangerousness of the
14 prisoner.

15 QUESTION: Well, if he's real dangerous you
16 couldn't keep him more than that six months could you?

17 MR. HOLL: That's correct, that's correct.

18 QUESTION: So that's what is before us, six
19 months?

20 MR. HOLL: That's correct.

21 QUESTION: I'm reading an amicus brief. It
22 says that the state of New Jersey has declared as a
23 matter of state policy that the potential dangerousness
24 of an accused defendant cannot be the basis for
25 incarcerating him before trial. That's State against

1 Johnson.

2 MR. HOLL: That is correct, Justice White. We
3 do not have in our state a pretrial --

4 QUESTION: But you think the rule is different
5 once there's a conviction and there's an appeal?

6 MR. HOLL: That's correct.

7 QUESTION: And that there's a specific rule on
8 that?

9 MR. HOLL: Yes, there is.

10 QUESTION: And the only issue now that is
11 undecided is about state collateral?

12 MR. HOLL: That's right. The issue is, does
13 our rule of bail after conviction apply to state
14 collateral proceedings. There are no cases, but we
15 believe it does.

16 QUESTION: Thank you.

17 MR. HOLL: The decision in Carter which estops
18 a federal court from considering these factors does
19 serious damage to comity. The state, when it has a
20 dangerous individual, is going to be forced, if the
21 federal courts are not going to consider these factors,
22 to retry a dangerous individual rather than risk being
23 released pending appeal if a court won't take that into
24 account in many cases.

25 And therefore, we won't be able to pursue our

1 appeal. If we have to -- if we go back and retry an
2 individual under the same kind of an order that was
3 entered here by the district court, then we don't have a
4 right to appeal. Obviously we won't be permitted to
5 pursue a retrial in the state court and a federal appeal
6 at the same time.

7 This puts us in a very unpleasant situation.

8 QUESTION: You put yourself in that
9 situation.

10 MR. HOLL: Well, we've been put in that
11 situation.

12 QUESTION: You put yourself in that
13 situation. What are you complaining about?

14 MR. HOLL: Well, we have not put ourselves in
15 that situation.

16 QUESTION: Well, you didn't bring the Carter
17 case up here.

18 MR. HOLL: The Carter case eventually could
19 get here. I don't know whether it will. There is a
20 pending Carter case, and whether that issue remains a
21 part of it I don't know. I'm not familiar with the
22 ongoing Carter case other than that issue.

23 QUESTION: You haven't read the newspapers
24 recently?

25 MR. HOLL: I'm sorry?

1 QUESTION: You haven't read the newspapers
2 recently? That's where the Carter case has been all
3 along.

4 MR. HOLL: I haven't seen anything in recent
5 days about the Carter case. I don't believe that the
6 state of New Jersey has put itself in this position.
7 We've been put in this position by the order of the
8 federal district court, forcing us into, he has to be
9 tried or he has to be released.

10 If we want to pursue an appeal of that
11 decision because we think it isn't a correct decision,
12 then this man will be released.

13 QUESTION: Well, I don't understand. Even if
14 you decided to retry him, you wouldn't be able to hold
15 him, would you? You just told me you don't have any
16 pretrial detention.

17 MR. HOLL: That's unclear. I think pursuant
18 -- that brings up the practice of the issuance of
19 conditional writs by the federal courts. The federal
20 courts have adopted a procedure in certain cases where
21 they will tell a state, this petitioner has to be
22 retried within a certain amount of time or else he's
23 released, and we will have the order stayed.

24 So they will not -- so they will tell the
25 state to retry this defendant and he will remain

1 incarcerated because the federal court will not sign an
2 order --

3 QUESTION: Only if he can't make bail, I
4 presume. I mean, you're not talking about -- even if
5 you retry him, I presume you would have to release him
6 unless he could make bail on the retrial? Isn't that
7 right? You told me you don't have any pretrial
8 detention in New Jersey.

9 MR. HOLL: The federal court in that case --
10 he remains incarcerated, because the federal court --

11 QUESTION: Without bail?

12 MR. HOLL: -- has not ordered his release.
13 That's why he's still incarcerated. He's still
14 incarcerated because a federal judge -- this is a common
15 practice, this issuance of conditional writs. The
16 federal courts will find that the petitioner was denied
17 a fair trial and they will say to the state: This
18 petitioner has to be retried within a certain amount of
19 time; if you don't, he will be released. But then they
20 will stay that order for the state to appeal, and so
21 there will not be in effect an order of the courts
22 requiring the petitioner to be released.

23 I'd like to reserve my time.

24 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
25 Holl.

1 We'll hear now from you, Mr. Friedman.

2 ORAL ARGUMENT OF

3 MARK H. FRIEDMAN, ESQ.

4 ON BEHALF OF RESPONDENT

5 MR. FRIEDMAN: Mr. Chief Justice, may it
6 please the Court:

7 Although both parties in this case invoke
8 federalism and comity to support their positions, their
9 views of what those phrases mean in the context of Rule
10 23 could not contrast more starkly.

11 The Third Circuit's opinion in Carter versus
12 Rafferty resolves the tension in federal-state relations
13 that is a necessary byproduct of habeas corpus
14 litigation by construing Rule 23 in light of the basic
15 interests that habeas serves, which is the vindication
16 of constitutional rights, along with the unquestioned
17 interest that any court has in seeing that parties,
18 defendants or otherwise, will be available to answer to
19 later court judgments, and by leaving other purely state
20 interests to state courts themselves to resolve under
21 state law, however it may be defined.

22 QUESTION: Mr. Friedman, before you get into
23 your argument could I ask you one sort of basic
24 question. Assuming the state didn't want to appeal and
25 the district court entered one of these 30 day

1 conditional orders that you've got to release him if you
2 don't put him on trial within 30 days, and they do put
3 him on trial within 25 days and they keep him in prison
4 while they're doing this, do you agree that the federal
5 court has power to do that?

6 MR. FRIEDMAN: To keep him in prison during
7 the conditional writ period?

8 QUESTION: Yes.

9 MR. FRIEDMAN: Yes. Over the years, that form
10 of stay has been developed by the federal courts --

11 QUESTION: I understand it's quite common.

12 MR. FRIEDMAN: -- simply to give the case --

13 QUESTION: I just want to be sure you do not
14 challenge that.

15 MR. FRIEDMAN: We do not challenge the
16 practice of conditional writs. We think that the
17 language in Rule 23 that states that he shall be
18 released on a surety unless the court otherwise orders
19 refers to the conditional writs and nothing more. But
20 we do not challenge the right to the 30, 60 days for the
21 state simply to have a reasonable period of time to make
22 up its mind of what it is going to do.

23 Now, if --

24 QUESTION: Why isn't it just as illogical? It
25 seems to me the rule you apply in one situation you

1 ought to apply in the other. Here you have a state that
2 on retrial would not have any preventive detention.
3 What's the justification for the holding that you
4 acknowledge to be legitimate during the 30 day
5 conditional writ period?

6 MR. FRIEDMAN: Logically, I cannot draw a
7 distinction. It would seem to me the argument would
8 apply to both. But over the years this practice has
9 developed of simply preserving a very short, reasonable
10 period.

11 It would seem to me that certainly in many
12 situations --

13 QUESTION: Well, wait. A very short
14 reasonable period. What happens after the 30 days
15 expires?

16 MR. FRIEDMAN: After the 30 days expires, it
17 depends on what the state has decided to do during that
18 30 days. If it has decided to retry the defendant
19 during the 30 days, in answer to an earlier question,
20 then the jurisdiction of the district court lapses and
21 he moves into the state system to be retried, at which
22 point he could not be held.

23 So before the 30 days if the state moves to
24 retry him, then it is state bail rules that would apply
25 and federal jurisdiction would be divested. If they

1 decide to appeal, then when the 30 days expires without
2 a retrial Carter would dictate he is released on a
3 reasonable surety, unless --

4 QUESTION: I'm not sure you're right about the
5 first part of your answer. If the 30 days does not
6 expire before he's put back on trial, then the
7 conditional writ does not issue as I understand it. The
8 writ says: If you are not put on trial, then you've got
9 to release him.

10 If he is put on trial, that in effect
11 nullifies the force of the writ. So he just stays in
12 jail as I understand it.

13 MR. FRIEDMAN: For the 30 days --

14 QUESTION: Without having to comply with any
15 bail requirements.

16 MR. FRIEDMAN: I apologize for a verbal
17 mistake. A conditional writ is indeed as you said it
18 is, Justice Stevens. It issues if the 30 days expires.
19 During that period before the writ expires, if the state
20 chooses to go to trial, it would be our position, let's
21 say on the twenty-fifth day, he would be under state
22 bail protection.

23 In fact, the action that would signal
24 reinstitution of a state trial proceeding would be a
25 bail hearing, during which, under the New Jersey

1 Constitution, he cannot be held.

2 QUESTION: Why would he need a bail hearing?
3 No writ having issued, he's still --

4 MR. FRIEDMAN: Because by taking the defendant
5 back to trial, the state has acknowledged that its
6 conviction is no longer of any force or effect. The
7 defendant is clearly in that situation in the position
8 of an indicted defendant facing trial.

9 QUESTION: Well now, I understood from the
10 state's representative that that question is not clearly
11 answered --

12 MR. FRIEDMAN: No, Your Honor.

13 QUESTION: -- by New Jersey state law. You
14 take the position that that's what the law surely should
15 be, and the state's attorney takes a different view of
16 it. And I gather we don't have a clear holding.

17 MR. FRIEDMAN: No, Your Honor. I believe that
18 the issue that the state was addressing, in response to,
19 I believe it was, Justice White's question --

20 QUESTION: All right, on state collateral.

21 MR. FRIEDMAN: That's right. And there there
22 is no case law that specifically holds that the rule
23 involving post-conviction bail applies to
24 post-conviction release.

25 QUESTION: Is there clear state case law in

1 the situation of federal habeas collateral relief as to
2 what applies in the state of New Jersey?

3 MR. FRIEDMAN: Are you referring to the
4 situation that Justice Scalia, I believe, referred to
5 earlier, where the defendant is taken to trial because
6 the state chooses not to appeal, or the situation where
7 the state chooses to appeal in the federal courts?
8 Because the answer would be different.

9 QUESTION: Well, I want to know both.

10 MR. FRIEDMAN: I beg your pardon. The answer
11 would not be different.

12 QUESTION: All right. Then what is the
13 answer?

14 MR. FRIEDMAN: If the state decides to take
15 the defendant to trial, to abandon its conviction, then
16 he is now a state indictee who --

17 QUESTION: Do you have New Jersey Supreme
18 Court authority for that? Can you cite cases to me?

19 MR. FRIEDMAN: No, Your Honor. All I can cite
20 is the New Jersey Constitution. My premise in that
21 answer is --

22 QUESTION: Well, you both agree there are no
23 binding decisions, then, of the New Jersey courts on
24 this issue?

25 MR. FRIEDMAN: There is no decision that I'm

1 aware of that expressly addresses the situation of what
2 happens.

3 QUESTION: While I have you interrupted, let
4 me ask you about the situation in the federal habeas
5 proceeding when it results in a determination in favor
6 of the prisoner, and if the state decides to appeal that
7 holding. Do you think there are federal interests at
8 stake that enable the federal court, in deciding whether
9 or not to release the prisoner, to consider the
10 likelihood of success on appeal and so forth?

11 MR. FRIEDMAN: Your Honor, I believe that
12 applying the likelihood of success or the Rule 8 four
13 factors, as the state requests to do, to the release
14 decision would be fundamentally unfair to a defendant
15 and would in a case like this one, particularly a short
16 sentence case, would vitiate the writ itself and its
17 effectiveness.

18 It would damage the federal interest in
19 ensuring that --

20 QUESTION: Well, doesn't the federal
21 government have an interest in being sure that that
22 initial decision was correctly reached and to try to
23 preserve the status quo pending the further resolution
24 of that in federal courts?

25 MR. FRIEDMAN: The status quo that constantly

1 is being referred to by the Petitioners is actually not
2 the status quo, but the status quo ante, as though the
3 judgment didn't exist. Consideration has to be given to
4 the equivalent federal interest that's shared by the
5 federal courts and the defendant in having a writ issue
6 that is effective.

7 Compare, if you will, the situation in a
8 habeas case with the situation that is normally provided
9 under Rule 8, a judgment for money or property, which is
10 the standard Rule 3 situation. If the appellant decides
11 to take appeal after a judgment is given to him, then
12 ordinarily what happens is the money or property is
13 secured by a bond.

14 And the reason that that is done under Rule 8,
15 under Rule 44 of this Court, under Rule 62 of the Civil
16 Rules, is that both parties' interests are protected.
17 The appellant does not have to come up with the money or
18 property immediately, to damage his interests; and the
19 appellee, if he wins the case or she wins the case
20 ultimately, is assured of paying.

21 Try to apply that to a habeas corpus situation
22 involving a man's freedom and it simply does not work.
23 There is no bond, there is no supersedeas bond, there is
24 no amount of money that can replace freedom that is
25 lost.

1 QUESTION: What about the standard for
2 granting a stay by the appellate court, where you also
3 have, you know, likelihood of success as a significant
4 factor? It's not the only one.

5 MR. FRIEDMAN: But as I was indicating, Mr.
6 Chief Justice, the entry of a stay has to be tailored to
7 protect the interests of both parties. That cannot be
8 done if the stay proceeding is applied to Rule 8 in a
9 situation like this, where what will inevitably happen
10 in this case if enlargement was stayed was he would have
11 served his entire unconstitutionally obtained sentence
12 even if he won the appeal.

13 The compromise to be adopted, I would submit,
14 is the line taken by the Sixth Circuit in Jago versus
15 District Court of Northern Ohio and in Hill versus Rose,
16 where the Rule 8 procedure was used to stay the judgment
17 ordering a retrial or holding a statute
18 unconstitutional, but where deference was given to the
19 fact that the defendant's interests were not damaged
20 because he would be out.

21 QUESTION: Well, that's just making the writ
22 conditional. That's the appellate court making it
23 conditional.

24 MR. FRIEDMAN: No, Your Honor, I don't think
25 so, because when the period would end the defendant

1 would still be out through a surety. It is conditional
2 -- his freedom is conditional on his ability to be
3 retried is conditional on his winning the appeal. But I
4 do not think it is the same doctrinal basis as the
5 conditional writ.

6 QUESTION: Well, supposing that a district
7 court finds, yes, I'm going to enlarge this petitioner
8 on habeas. I find that I'm not at all sure what I did
9 is right; I think there's a very substantial chance of
10 success on appeal. I think he's extremely dangerous to
11 the community.

12 You say the district court does not even have
13 the discretion to say the guy doesn't get out on
14 appeal?

15 MR. FRIEDMAN: I say that the district court
16 does not have the discretion to hold a man because he is
17 dangerous.

18 QUESTION: Well, I gave you a hypothesis. Is
19 the answer, your answer, that the district court does
20 not even have the discretion to detain that man?

21 MR. FRIEDMAN: He does not have the discretion
22 to detain that man, or he should not have the discretion
23 to detain that man based primarily on likelihood of
24 success, which is apparently what the Petitioners have
25 shifted their focus to.

1 On the dangerousness question --

2 QUESTION: I gave you a hypothesis that he was
3 found to be very dangerous, the district court has
4 granted the habeas, but finds there is a good deal of
5 chance of success on appeal.

6 Now, does the district court in that case have
7 any discretion to deny release?

8 MR. FRIEDMAN: No, I would say he does not, or
9 he should not. If Your Honors decide he has, then so be
10 it. But the fact is he should not have.

11 QUESTION: And the Court of Appeals could not
12 issue a stay --

13 MR. FRIEDMAN: The Court of Appeals --

14 QUESTION: -- based on the fact that the state
15 may very well prevail on appeal?

16 MR. FRIEDMAN: No, Your Honor. As I said, the
17 answer --

18 QUESTION: No what? The court has no power to
19 do that?

20 MR. FRIEDMAN: Should not have the power to do
21 that, to hold him for likelihood under Rule 23. As
22 indicated in the Jago case, because to do so -- as I
23 say, you have to take --

24 QUESTION: And likewise, this Court would have
25 no power to stay a particular proceeding pending review

1 here of a habeas?

2 MR. FRIEDMAN: This Court, it would seem to
3 me, would have the power to stay if the judgment
4 resulted in the order releasing him, but not the
5 release. Under Rule 23, those are two separate tracks.
6 That will be my position.

7 QUESTION: Well, but if you have power to stay
8 the order ordering release, that would have the effect
9 of staying the release. And it seems to me quite clear
10 that an appellate court does have such power. We do
11 that sort of thing all the time. We think there's an
12 arguably erroneous order entered by a district court,
13 when I was on the Court of Appeals we would stay the
14 order.

15 MR. FRIEDMAN: Your Honor, if --

16 QUESTION: It seems to me there are two
17 separate questions here. One is what is the power of
18 the district court, which is what most people have been
19 talking about; the other is what is the power of the
20 Court of Appeals.

21 And it seems to me really you have a very
22 difficult burden of convincing us that the Court of
23 Appeals would not have the power to stay that order.

24 MR. FRIEDMAN: What I'm trying to do to
25 discharge that burden, Justice Stevens, is make a

1 distinction between the release decision and the stay of
2 the underlying order that held that the conviction was
3 obtained unconstitutionally.

4 I think that the existence of the rule does
5 mean that a stay of one in a habeas, in a unique habeas
6 situation, does not necessarily apply to the other,
7 because the defendant's interest in custody,
8 particularly in a short sentence case like this,
9 particularly in a case where the appeal would be going
10 on long after he was released under regular parole rules
11 in New Jersey, would mean that he would have, if the
12 release decision was held to be stayed as opposed to
13 simply the judgment, he would have no remedy at all.

14 QUESTION: I don't think there is such a
15 distinction.

16 MR. FRIEDMAN: It's a difficult distinction
17 and it's an unusual one. But as I say, courts have made
18 the distinction.

19 QUESTION: I think it's a nonexistent
20 distinction. There is no release decision apart from
21 the judgment ordering release. That's what the release
22 decision is. You don't have an abstract thing, I think
23 you let him out of jail. You enter an order that
24 compels something.

25 I just don't think you can divide those two

1 into two separate things.

2 MR. FRIEDMAN: Well, I don't --

3 QUESTION: We review orders, Courts of Appeals
4 review orders entered by district courts. They don't --
5 I suppose they could enter an injunction against a
6 release. That's quite different from the stay of an
7 order.

8 MR. FRIEDMAN: Well then, Your Honor, if Your
9 Honors are to hold that they can take into consideration
10 the release decision, I would at least have Your Honors
11 consider the unique posture of a habeas petitioner. His
12 burden, his position, is so different from a typical
13 civil appellant that the distinction between the release
14 order and the judgment, which as I say does have
15 precedent in cases like *Jaco and Hill versus Rose*, is
16 well suited to the habeas context, because without
17 release from custody the chances are he would have no
18 remedy whatsoever, even if the federal courts, even if
19 this court or the circuit courts --

20 QUESTION: Well, that really isn't correct in
21 this case. He had four more years of parole to serve,
22 didn't he?

23 MR. FRIEDMAN: No, Your Honor, he did not.

24 QUESTION: I guess I'm mixed up.

25 And at least he would expunge his record from

1 the improper conviction. That's not a trivial matter.

2 MR. FRIEDMAN: Yes, Your Honor, where custody
3 is no longer in issue, then this Court has ruled that
4 habeas can reach other things. But as a practical
5 matter, in the real world, for a defendant being held in
6 custody his remedy is what the habeas remedy has always
7 been: release from custody, at least until his order or
8 the basis for the order releasing him from custody is
9 reversed by a higher court of competent jurisdiction.

10 It seems to me that the status quo that the
11 state is arguing from represents nothing more than an
12 absolutely resolute and relentless attempt to ignore the
13 fact that he has received the judgment. And I would ask
14 Your Honor in considering the question of whether a stay
15 that would stay his release and leave him to be paroled
16 while the appeal was still pending is appropriate, given
17 the nature of the habeas case.

18 There is a different track that you can go on
19 that's fair to the interests of both sides. The fact of
20 the matter is the defendant can never get his time back,
21 but the state can.

22 QUESTION: No, but you're arguing whether it's
23 a matter of discretion and so forth. Maybe it wouldn't
24 be fair in, say, 60 percent of the cases. But the
25 question that we're really asked is a question of power,

1 as I understand it, that the district court simply has
2 no power to enter a stay of its own order if he thinks
3 the man is terribly dangerous and that there is a 50-50
4 chance on appeal.

5 MR. FRIEDMAN: Your Honor has to separate the
6 dangerousness component from the likelihood component,
7 because they implicate very different interests. Even
8 if Your Honors rule that the federal courts have and
9 should have the power to stay an order of release based
10 on likelihood of success, the dangerousness component
11 has to be very strictly delineated from it, because the
12 dangerousness to the community is a purely state
13 function and it offends against federalism to allow
14 federal courts to be used as means of defying -- and
15 that is all that they would be used for -- as a means of
16 defying the judgments made by the polity of the states,
17 the constitution and legislatures and voters, that for
18 defendants in a situation similar to this one, that he
19 will be held even though no other state inmate in a
20 comparable situation can be held.

21 QUESTION: But that's on the assumption that,
22 having decided the writ should be issued, he is the
23 functional equivalent of the person who is presumed to
24 be innocent, has never been tried. That's the basis for
25 your argument.

1 MR. FRIEDMAN: From the practical and legal
2 sense, we contend that that is true, although we would
3 say that if the Court decides to liken him instead to a
4 defendant on bail pending appeal, the same underlying
5 bottom line holds.

6 You still have to focus on the fact that he is
7 pending appeal, but it is the state's appeal, because
8 his conviction no longer exists. It has been found by a
9 court of competent jurisdiction to be fatally flawed,
10 hence of no force and effect.

11 QUESTION: Why not liken it instead to a
12 defendant who has been released on state habeas? Isn't
13 that the most precise analogue in the state system?

14 MR. FRIEDMAN: It depends on whether or not
15 you're talking about state habeas by a defendant who
16 remains convicted, getting back to an earlier question
17 that I believe Justice White asked, or a defendant who
18 has been given, been granted a petition for
19 post-conviction relief, which is what it is called in
20 New Jersey, and the state wishes to appeal.

21 There is no case law on the subject as to what
22 happens when a state district court judge grants a
23 petition for post-conviction appeal -- sorry --
24 post-conviction relief. But even there, the precise
25 analogy --

1 QUESTION: I don't care for the moment what
2 the law is. All I'm asking is isn't that the most
3 precise analogue in the state system? I mean, your
4 argument is you should be doing -- you're furthering a
5 state interest, you've said, and you should be doing
6 what the state does.

7 But the closest analogue in the state system
8 is the granting of state habeas, isn't it?

9 MR. FRIEDMAN: Perhaps it is, Your Honor. But
10 we feel that the logic of cases like State against
11 Johnson, the logic of the constitutional provision in
12 New Jersey that assures all defendants not convicted to
13 be bailable on sureties, means that even in that
14 situation while the appeal is pending the analogue, even
15 the state analogue that you've just described, is to a
16 pre-trial defendant.

17 The fact remains there is no conviction to
18 hold him.

19 QUESTION: In the state system, there's a
20 conviction and the defendant appeals, the pretrial rule
21 does not apply there?

22 MR. FRIEDMAN: No, because his conviction is
23 valid.

24 QUESTION: Yes.

25 MR. FRIEDMAN: Under the rule in New Jersey --

1 QUESTION: He's challenging it on appeal.

2 MR. FRIEDMAN: He is challenging it on
3 appeal.

4 QUESTION: And he stays in jail.

5 MR. FRIEDMAN: While his conviction is valid.

6 QUESTION: Yes.

7 MR. FRIEDMAN: Until an appellate court
8 decides that it is not. At that point, we are, I admit,
9 drifting on uncharted seas because we have no New Jersey
10 appellate law that specifically says that. I have the
11 state's word for it in a footnote in their brief that
12 there is no federal law.

13 There is certainly no analogue in the 1984
14 Bail Reform Act that covers that precise situation.
15 Apparently there is no case law.

16 But you have to look again at the state law.
17 Federalism requires that, and it seems to me that in the
18 state like New Jersey, where unconvicted defendants are
19 guaranteed bail until they are convicted, that a state
20 post-conviction relief or a state appellate decision on
21 direct appeal that would vitiate his conviction and set
22 him free --

23 QUESTION: But here the conviction has been
24 upheld all through the New Jersey courts, hasn't it?

25 MR. FRIEDMAN: It has.

1 QUESTION: It's not as if they have thought
2 there was reversible error in the case.

3 MR. FRIEDMAN: All that proves, it seems to
4 me, with respect, Mr. Chief Justice, is that the state
5 judgment has gotten all the deference it deserves up to
6 the point at which a federal district court judge, a
7 judge of competent jurisdiction, no matter how much the
8 attorney general's representatives denigrate that
9 judgment, that the state has been given all the
10 deference it deserves by having the state be the first
11 line of defense, if you will, for the vindication of
12 constitutional rights.

13 Once the case is properly in the federal
14 courts, then it is certainly within the power -- as a
15 matter of fact, it is the essence of the power -- of the
16 federal courts to disagree with the state judges and
17 indicate that there have been constitutional violations
18 that require his conviction be vitiated.

19 QUESTION: But I don't think it follows from
20 that that New Jersey would necessarily insist that he go
21 free on his appeal from the federal district court
22 habeas to the Court of Appeals for the Third Circuit.

23 MR. FRIEDMAN: Well, Your Honor, again the New
24 Jersey Constitution says what it says. The fact of the
25 matter is the state has conceded, if I understand your

1 question properly, that there is no preventive detention
2 in New Jersey, except for a convicted offender.

3 QUESTION: But the state is here speaking for
4 New Jersey and saying: We think this fellow ought to be
5 held.

6 MR. FRIEDMAN: I am not entirely certain, Your
7 Honor, that you can say with absolute confidence that
8 the state is speaking for the state of New Jersey on
9 this issue. The fact is that the New Jersey law in this
10 issue --

11 QUESTION: We've held in certainly other cases
12 that the attorney general is presumed to speak for the
13 state.

14 MR. FRIEDMAN: Your Honor, the attorney
15 general is speaking on behalf of the conviction. He
16 represents the state of New Jersey, I don't doubt that.
17 But the fact remains that the position they are taking
18 in this Court is contrary, I would say, to the position
19 of the law in New Jersey on the subject that we're
20 discussing.

21 To that extent, they differ from the state
22 law, and they are asking federal courts to override
23 state law.

24 QUESTION: I don't know that there's any real,
25 anything wrong with saying that on an appeal in the

1 state system from a trial court order giving the
2 defendant collateral relief and the state appealing, I
3 don't know that it's so unreasonable to say that the
4 rule that should apply on enlarging him is the rule that
5 should apply on direct appeal.

6 MR. FRIEDMAN: Your Honor, that would not
7 perhaps be an unreasonable decision for state courts or
8 the state legislature to make.

9 QUESTION: Well, is it unreasonable for a
10 state attorney general to say that's what the rule ought
11 to be?

12 MR. FRIEDMAN: The point is that the attorney
13 general and I both agree that there is no case law
14 either way. What I'm relying on is the case law --

15 QUESTION: What if there was case law in New
16 Jersey that said the rule on an appeal of a collateral
17 judgment is the rule that applies on direct appeal?
18 Then what should a federal court do?

19 MR. FRIEDMAN: The federal court should do
20 precisely what it did in Carter anyway, because the fact
21 is the federal court has its own rules to follow. I do
22 not think that what the state court does should affect
23 what the federal court does, because all that proves is
24 that under certain situations the state can handle the
25 problem of its defendants any way it pleases.

1 And I think that that should certainly not
2 affect whether or not a federal court should grant it in
3 similar situations, since we are talking about
4 concurrent jurisdictions here.

5 Your question raises the ultimate issue in
6 this case, particularly as regards dangerousness. The
7 fact is that there is no roving commission in either the
8 federal courts or the state courts to sweep dangerous
9 people off the streets wherever they find them.

10 Dangerousness and the determination of who shall be held
11 because they're dangerous follows the forms of the law.

12 The area of preventive pretrial detention or
13 the area of detention of unconvicted defendants,
14 whatever analogue you use, is a quintessentially state
15 concern, and Carter pays deference to that state concern
16 by allowing the states to act on this defendant, who is
17 no longer subject to conviction, in any way they please
18 as long as their decision is constitutional.

19 And after all, this Court has not determined
20 whether preventive detention is unconstitutional in any
21 case. But the fact is that the Hobson's choice that
22 their positing because they can't put a dangerous person
23 away simply does not exist, or if it does exist it's
24 because the polity, as I said, of the state of New
25 Jersey, its Constitution and its voters, have determined

1 that that's how they wish to run their affairs in the
2 criminal justice system.

3 The Hobson's choice does not exist in any
4 case. There is nothing about what the federal court
5 would do in the release decision that would prevent this
6 appeal from going forward. And what would simply happen
7 is he would be released on a sufficient surety.

8 If the state instead, as I indicated earlier
9 to Justice Scalia's question, decides that they wish to
10 retry this person, then as Justice Scalia indicated
11 earlier, by submitting the defendant once again to state
12 processes on retrial, they cannot hold him.

13 What avenue is that out of their Hobson's
14 choice? The fact is that the state's right to appeal
15 has ample protection in this Court, in the appellate
16 court, regardless of what happens to this defendant in
17 terms of his custody. Their interests are protected in
18 that sense.

19 Allowing the defendant to be held while the
20 appeal goes on would do nothing more in a case like this
21 one, where we've already passed the first anniversary of
22 this appeal in the Third Circuit, than extinguish the
23 defendant's rights to an effective remedy. And the
24 Court should pay some concern to that, because certainly
25 the state's interests that Petitioners put forth as a

1 party litigant are amply protected without any regard to
2 Rule 23.

3 In closing, Your Honors, we do feel that the
4 Carter decision as we have described it serves the
5 interests of every party properly. It serves the
6 interests of this Court, that this Court has shown in
7 federalism and comity, by allowing the states to act
8 within their proper sphere.

9 It safeguards the rights of the defendant by
10 allowing him to have an efficacious remedy while the
11 appeal is pending. And it would do substantial justice
12 in a case of this kind.

13 If Your Honors intend to depart from Carter, I
14 would submit it should do so by finding an unmistakably
15 federal interest or one that is related to the federal
16 role in habeas cases.

17 Since the state has presented no such interest
18 here, in our judgment, since no interest cognizable by
19 the federal court could justify holding this defendant,
20 whatever the test, we think that the decision of the
21 Third Circuit en banc in refusing to grant a stay or to
22 reconsider the Carter opinion should be affirmed.

23 If Your Honors have no further questions.

24 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
25 Friedman.

1 Mr. Holl, you have four minutes remaining.

2 MR. HOLL: That's all right, Your Honor.

3 CHIEF JUSTICE REHNQUIST: You mean you're
4 waiving your time?

5 MR. HOLL: Yes, thank you.

6 CHIEF JUSTICE REHNQUIST: The case is
7 submitted.

8 (Whereupon, at 12:25 p.m., oral argument in
9 the above-entitled case was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#86-108 - GARY HILTON, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL.,

Petitioners V. DANA BRAUNSKILL

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

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