

## COURT OF APPEALS OF NEW YORK

People v. Williams<sup>1</sup>  
(decided February 23, 2010)

In a consolidated appeal, five defendants challenged the imposition of Post-Release Supervision (“PRS”) after they completed the terms of their incarceration and were released from prison.<sup>2</sup> Each defendant claimed that this PRS procedure was tantamount to imposing a second punishment for the same crime, prohibited by the Double Jeopardy Clause of both the United States and New York State Constitutions.<sup>3</sup> The defendants argued that once they had been released from confinement, they had established a “legitimate expectation of finality” in the original prison term.<sup>4</sup> The New York Court of Appeals agreed, holding that each defendant had indeed developed a legitimate expectation of finality in the originally imposed sentences upon their release, and that the imposition of PRS, although statutorily required, violated the defendants’ right to be free from multiple punishments.<sup>5</sup>

In 2004, one of the five defendants, Darrell Williams, was sentenced to three years imprisonment for assault in the second degree.<sup>6</sup> As part of the plea deal, his term of imprisonment was to be followed by three years of PRS.<sup>7</sup> Although the court accepted the plea, the judge “did not formally pronounce the term of PRS during the sentencing proceeding.”<sup>8</sup> When Williams was released from

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<sup>1</sup> 925 N.E.2d 878 (N.Y. 2010).

<sup>2</sup> *Id.* at 887.

<sup>3</sup> *Id.* The Fifth Amendment to the United States Constitution states, in part: “No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb.” Article I, section 6 of the New York State Constitution states, in part: “No person shall be subject to be twice put in jeopardy for the same offense.”

<sup>4</sup> *Williams*, 925 N.E.2d at 887.

<sup>5</sup> *Id.* at 891.

<sup>6</sup> *Id.* at 884.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

prison in 2006, the Department of Correction Services (“DOCS”) administratively imposed, as a condition of his release, a three-year term of PRS, and in May 2007, Williams was reincarcerated for violating his PRS.<sup>9</sup> Subsequently, DOCS notified the sentencing court of its failure to properly impose the PRS component and Williams was resentenced to the three-year term of PRS.<sup>10</sup>

Another defendant, Efrain Hernandez, was sentenced to seven years imprisonment after pleading guilty to burglary in the second degree.<sup>11</sup> The requisite component of PRS following imprisonment was not discussed at either the plea proceeding or the sentencing.<sup>12</sup> Upon release from prison in December 2005, DOCS administratively imposed PRS for a term of five years.<sup>13</sup> When Hernandez was found to have violated the conditions of his PRS and was sent back to prison, he was resentenced to a five-year period of PRS pursuant to section 601-d of the New York Correction Law.<sup>14</sup>

A third defendant, Craig Lewis, was convicted of burglary and two counts of criminal contempt, and sentenced to confinement for five years.<sup>15</sup> Although it was required by law, the sentencing court did not impose a period of PRS.<sup>16</sup> Instead, DOCS administra-

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<sup>9</sup> *Williams*, 925 N.E.2d at 884.

<sup>10</sup> *Id.*

[The] [s]upreme [c]ourt concluded that it had the inherent authority to correct the original sentence because it was illegal in the absence of a period of PRS. The court did, however, order that Williams be immediately released from custody on the rationale that he could not have violated PRS before it was a proper component of his sentence.

*Id.* (alteration to the original). Upon appeal, the sentence was affirmed by the appellate division. *Id.* (citing *People v. Williams*, 871 N.Y.S.2d 908 (App. Div. 1st Dep’t 2009)).

<sup>11</sup> *Id.*

<sup>12</sup> *Williams*, 925 N.E.2d at 884.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

[The] [s]upreme [c]ourt determined that there were no legal impediments to the resentencing procedure under *Correction Law § 601-d* because the original sentence was illegal without a term of PRS and Hernandez could not have had a reasonable expectation of finality in that sentence once DOCS informed him that PRS was required.

*Id.* (alteration to the original). “The Appellate Division affirmed, holding that a sentencing court has the inherent power to correct an illegal sentence even if the correction occurs more than one year after conviction.” *Id.* (citation omitted).

<sup>15</sup> *Williams*, 925 N.E.2d at 885.

<sup>16</sup> *Id.*

tively imposed the requisite period of PRS.<sup>17</sup> When Lewis was released from confinement, DOCS initiated resentencing proceedings pursuant to section 601-d of the Correction Law, and he was resentenced to a five-year period of PRS.<sup>18</sup>

A fourth defendant, Danny Echevarria, received an aggregate prison sentence of five years in return for pleading guilty to first degree rape.<sup>19</sup> Like the other defendants, the requisite period of PRS was not discussed during his plea proceeding and it was not formally imposed at sentencing as part of the original sentence.<sup>20</sup> However, his attorney did reference PRS during his sentencing proceeding.<sup>21</sup> In addition, prior to Echevarria's release from prison, "he signed a DOCS certificate acknowledging a term of PRS."<sup>22</sup> After violating his PRS on several occasions, Echevarria was reincarcerated and DOCS initiated resentencing proceedings so that Echevarria would be formally sentenced to PRS.<sup>23</sup>

The fifth defendant, Edwin Rodriguez, received seven years imprisonment for pleading guilty to second degree burglary.<sup>24</sup> Although a mandatory term of PRS was never formally imposed, "DOCS later informed Rodriguez that he was required to serve five years of PRS" subsequent to his release from prison.<sup>25</sup> Rodriguez was conditionally released from prison in 2007, and was arrested for violating the conditions of his PRS later that same year.<sup>26</sup> Thereafter, DOCS initiated resentencing proceedings and Rodriguez was resentenced to cure the defect in the original sentence.<sup>27</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Williams*, 925 N.E.2d at 885.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

Petitioner commenced a CPLR article 78 proceeding . . . seeking relief in the nature of prohibition to preclude resentencing on jurisdictional and constitutional grounds. In dismissing the petition, the Appellate Division reasoned that . . . Echevarria could not pursue discretionary prohibition relief because he had an adequate remedy at law—a direct appeal from his resentencing.

*Id.* (citing *People v. Echevarria*, 869 N.Y.S.2d 837 (App. Div. 4th Dep't 2008))

<sup>24</sup> *Williams*, 925 N.E.2d at 885.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* The appellate division affirmed. *Id.* (citing *People v. Rodriguez*, 874 N.Y.S.2d 117

Under New York law, the inclusion of a period of PRS to follow a determinate prison sentence is required by section 70.45 of the New York Penal Law, or Jenna's Law, which was adopted by the New York Legislature in 1998.<sup>28</sup> The statute mandates "that postrelease supervision is a mandatory component of all determinate prison sentences."<sup>29</sup> The legislative intent behind its adoption "was to abolish parole and institute determinate terms of imprisonment for certain felony offenses."<sup>30</sup> In addition, this PRS is designed to help newly released individuals assimilate back into society.<sup>31</sup> Under the statute, the Board of Parole is responsible for the establishment and imposition of conditions of an individual's PRS.<sup>32</sup> Some of the general conditions may include: regular visits and reports to the assigned parole officer, the inability to travel outside the state, and a general compliance with federal and state laws.<sup>33</sup> The released defendants are potentially subject to unannounced visits by the assigned parole officer, which may result in searches of the person, residence, or property.<sup>34</sup> A violation of any condition of PRS during the imposed period may subject a defendant to a period of further imprisonment.<sup>35</sup>

The newly enacted statute requires that the period of PRS be formally pronounced during the sentencing proceeding and a failure of the sentencing court to properly pronounce PRS renders the sentence illegal.<sup>36</sup> According to the New York Court of Appeals, such illegal sentences may not be corrected by DOCS because the department did not have the authority to perform the inherently judicial

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(App. Div. 1st Dep't 2009)).

<sup>28</sup> *Williams*, 925 N.E.2d at 881; N.Y. PENAL LAW § 70.45 (McKinney 2010) ("When a court imposes a determinate sentence it shall in each case state not only the term of imprisonment, but also an additional period of post-release supervision . . .").

<sup>29</sup> *Williams*, 925 N.E.2d at 881.

<sup>30</sup> *Id.*

<sup>31</sup> *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision*, N.Y. DIV. OF PAROLE, at 3 (Nov. 2010), <https://www.parole.state.ny.us/pdf/handbook-nov2010.pdf>.

<sup>32</sup> See N.Y. PENAL LAW § 70.45(3) (McKinney 2010) ("The board of parole shall establish and impose conditions of post-release supervision in the same manner and to the same extent as it may establish and impose conditions in accordance with the executive law upon persons who are granted parole or conditional release.").

<sup>33</sup> *New York State Parole Handbook*, *supra* note 31, at 21.

<sup>34</sup> *Id.*

<sup>35</sup> N.Y. PENAL LAW § 70.45(1) (McKinney 2010).

<sup>36</sup> *Williams*, 925 N.E.2d at 881.

function of sentencing.<sup>37</sup> Because the failure to formally pronounce the period of PRS was becoming commonplace, in 2008, the New York State Legislature “enact[ed] *Correction Law [section] 601-d* to provide a mechanism for courts to consider resentencing defendants serving determinate sentences” in cases where the courts failed to properly pronounce the PRS during the original sentencing proceeding.<sup>38</sup>

The appellants in *People v. Williams*<sup>39</sup> challenged the constitutionality of the new resentencing procedure as a violation of the Double Jeopardy Clause of both the United States Constitution and the New York Constitution.<sup>40</sup> Upon appeal, each claimed that because they had completed their terms of imprisonment, they all acquired a “‘legitimate expectation of finality’ in the[ir] sentences.”<sup>41</sup> Therefore, the appellants maintained that imposing the requisite PRS after their release from prison was a multiple punishment prohibited by the Double Jeopardy Clause.<sup>42</sup>

New York’s highest court recognized the illegality of each of the defendant’s original sentences and noted the inherent ability of sentencing courts to correct the illegal sentences beyond the one-year term for appeal set forth in section 440.40 of the New York Criminal Procedure Law.<sup>43</sup> As the majority stated in its decision, “criminal defendants . . . are presumed to be aware that [under New York Law] a determinate prison sentence without a term of PRS is illegal and, thus, may be corrected by the sentencing court at some point in the future.”<sup>44</sup> Because the sentence is illegal and subject to correction, “a defendant cannot claim a legitimate expectation that the originally-

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<sup>37</sup> *Id.* (citing *Garner v. N.Y. Dep’t of Corr. Servs.*, 889 N.E.2d 467, 468 (N.Y. 2008)).

<sup>38</sup> *Id.* (alteration to the original). See N.Y. CORRECT. LAW § 601-d (Consol. 2010).

<sup>39</sup> 925 N.E.2d 878.

<sup>40</sup> *Id.* at 887. The Fifth Amendment to the United States Constitution states, in part: “No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb.” Article I, section 6 of the New York Constitution states, in part: “No person shall be subject to be twice put in jeopardy for the same offense.” In addition to the double jeopardy challenges, the defendants also raised statutory challenges to their resentencing proceedings. *Williams*, 925 N.E.2d at 886.

<sup>41</sup> *Williams*, 925 N.E.2d at 887 (alteration to the original).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 889.

<sup>44</sup> *Id.* (citing *People v. Sparber*, 889 N.E.2d 459, 466 (N.Y. 2008)) (alteration to the original).

imposed, improper sentence is final for all purposes.”<sup>45</sup> However, it was the majority’s opinion that “there must be a temporal limitation on . . . [the criminal court’s] jurisdiction over all persons who were once sentenced for criminal acts.”<sup>46</sup> Accordingly, the temporal limitation imposed on the court’s power to increase sentences turns on whether the defendants acquired a legitimate expectation of finality in their sentences.<sup>47</sup> The court went on to state that “once the initial sentence has been served and the direct appeal has been completed (or the time to appeal has expired),” even if the initial sentence was illegal, the defendant had a legitimate expectation of finality in the sentence.<sup>48</sup>

The majority in *Williams* rejected the People’s argument that no such expectation should have arisen “because [the] defendants were released from custody . . . [prior to serving their entire] terms of imprisonment,” as provided by the statute, “which withholds credit for the unserved portion of a prison term until PRS is successfully completed.”<sup>49</sup> Furthermore, the court rejected the People’s second argument, that “before defendants were released from prison, [they] were aware that they had to serve PRS” because of certain writings executed by the defendants regarding their respective PRS requirements and that “any expectations [the] defendants may have had regarding the finality of the originally-imposed illegal sentences were neither legitimate nor reasonable.”<sup>50</sup> The *Williams* majority rejected these arguments based in part on recent decisions which held that “‘sentencing is a uniquely judicial responsibility’ . . . [and] the administrative imposition by DOCS of [PRS] . . . is a nullity and cannot negate [the] defendant’s reasonable expectation that, once completed, the imposed sentence will not be increased.”<sup>51</sup> Thus, the New York Court of Appeals concluded that the defendants had indeed acquired a legitimate expectation of finality in their originally imposed sen-

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<sup>45</sup> *Id.* at 889-90 (citing *United States v. Fogel*, 829 F.2d 77 (D.C. Cir. 1987)).

<sup>46</sup> *Williams*, 925 N.E.2d at 890 (alteration to the original).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* See N.Y. PENAL LAW § 70.45(5)(a) (McKinney 2010).

<sup>50</sup> *Williams*, 925 N.E.2d at 890. The People further asserted that defendant Williams’ legitimate expectations were undermined based upon the fact that he had agreed to post release supervision as part of his plea agreement. *Id.*

<sup>51</sup> *Id.* (quoting *Sparber*, 889 N.E.2d at 464) (alteration to the original) (internal citations omitted).

tences upon their release from imprisonment, and that resentencing them to a formally-imposed term of PRS ran afoul of the Fifth Amendment's double jeopardy protections against multiple punishments.<sup>52</sup>

However, two dissenting justices<sup>53</sup> had difficulty with the majority's reasoning, arguing that the majority had misapplied the principle of a "legitimate expectation of finality."<sup>54</sup> Justice Pigott urged that "[a] defendant cannot acquire a legitimate expectation of finality from the mere fact that he has been released from prison."<sup>55</sup> He argued that it defied logic for a defendant, who was presumed to be aware that the originally-imposed sentence was illegal and thus subject to correction, to acquire a legitimate expectation that the original illegal sentence was final.<sup>56</sup> Justice Pigott's dissent stood for the position that, upon correction of the sentence in a resentencing proceeding, "a court does not violate a defendant's double jeopardy protections when it merely 'set[s] aside what it had no authority to do and substitutes directions required by law.'"<sup>57</sup> In a separate dissenting opinion, Justice Smith maintained that the majority had falsely "creat[ed] a 'legitimate expectation of finality' test for double jeopardy upon resentencing," and that double jeopardy issues surrounding the resentencing of defendants had been mostly eliminated by the Supreme Court.<sup>58</sup> Accordingly, both dissenters would have found that the correction of the defendants' imprisonment sentences to impose mandatory PRS was in compliance with the defendants' double jeopardy protections.<sup>59</sup>

The majority in *Williams* was not persuaded by the reasoning

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<sup>52</sup> *Id.* at 891.

<sup>53</sup> *Id.* at 893-95 (Smith, J., dissenting); *Williams*, 925 N.E.2d at 895-99 (Pigott, J., dissenting).

<sup>54</sup> *Id.* at 893-94 (Smith, J., dissenting). "The majority's holding that 'there is a legitimate expectation of finality once the sentence has been served and the direct appeal has been completed . . . ' fundamentally misunderstands the concept of an expectation of finality in double jeopardy jurisprudence." *Id.* at 897-98 (Pigott, J., dissenting).

<sup>55</sup> *Id.* at 897.

<sup>56</sup> *Id.* at 896.

<sup>57</sup> *Williams*, 925 N.E.2d at 896 (quoting *Bozza v. United States*, 330 U.S. 160, 167 (1947)) (alteration in the original).

<sup>58</sup> *Id.* at 893-95 (Smith, J., dissenting) (alteration to the original). Justice Smith interpreted the Supreme Court's ruling in *DiFrancesco* as "largely eliminating double jeopardy issues in resentencing cases." *Id.* at 894 (citing *DeWitt v. Ventetoulo*, 6 F.3d 32, 34 (1st Cir. 1993); *United States v. Lundien*, 769 F.2d 981, 986 (4th Cir. 1985)).

<sup>59</sup> *See id.* at 895; *see also id.* at 898 (Pigott, J., dissenting).

of the dissenting justices and, ruling as a matter of federal law, the New York Court of Appeals sustained the defendants' double jeopardy challenges to their resentencing procedures, holding as follows:

[O]nce a defendant is released from custody and returns to the community after serving the period of incarceration that was ordered by the sentencing court, and the time to appeal the sentence has expired or the appeal has been finally determined, there is a legitimate expectation that the sentence, although illegal under the Penal Law, is final and the *Double Jeopardy Clause* prevents a court from modifying the sentence to include a period of postrelease supervision.<sup>60</sup>

The intent behind the Double Jeopardy Clause of the Fifth Amendment was to "protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense."<sup>61</sup> Throughout the history of double jeopardy jurisprudence, the United States Supreme Court has interpreted the clause to encompass three distinct protections.<sup>62</sup> However, the double jeopardy challenges presented in *Williams* are relevant only to the third category of protection: the multiple punishments doctrine, or "the right not to be punished more than once for the same crime."<sup>63</sup> A seminal case where the Supreme Court dealt with the multiple punishment protec-

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<sup>60</sup> *Williams*, 925 N.E.2d at 891 (majority opinion).

<sup>61</sup> *Green v. United States*, 355 U.S. 184, 187 (1957).

The underlying idea . . . is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

*Id.* at 187-88.

<sup>62</sup> *Williams*, 925 N.E.2d at 887. As the majority in *Williams* noted:

The United States Supreme Court has construed this language to cover three distinct protections: (1) the right to be free from a second trial following an acquittal for the same crime; (2) the right to be free from a second trial following a conviction for the same offense; and (3) the right not to be punished more than once for the same crime.

*Id.*

<sup>63</sup> *Id.* "[T]he *Double Jeopardy Clause of the Fifth Amendment* has application to the States through the *Fourteenth Amendment*." *United States v. DiFrancesco*, 449 U.S. 117, 131 n.12 (1980) (citing *Benton v. Maryland*, 395 U.S. 784 (1969)).



tion was *Ex parte Lang*.<sup>64</sup> In that case, which was decided in 1874, the defendant was sentenced to a year in jail and a two-hundred dollar fine for the crimes he committed.<sup>65</sup> The punishment for his offense, however, authorized imprisonment *or* a fine, but not both.<sup>66</sup> The Supreme Court found that “the imposition of the second sentence violated the Double Jeopardy Clause because, after paying the fine specified in the original sentence, no other penalty could be legally imposed upon the defendant.”<sup>67</sup> The Court reasoned that once a defendant has completed a legal punishment for a crime, the Double Jeopardy Clause prevented the Court from imposing additional punishment.<sup>68</sup> However, following *Ex parte Lang*, the issue remained unsettled whether a defendant may, after the commencement of a sentence, be subject to further resentencing.<sup>69</sup>

In 1947, the Supreme Court addressed whether the Double Jeopardy Clause prohibited resentencing a defendant once he began serving the sentence in *Bozza v. United States*.<sup>70</sup> In *Bozza*, the defendant’s offense carried a minimum mandatory sentence of a one hundred dollar fine *and* a term of imprisonment.<sup>71</sup> However, at his sentencing proceeding, the judge only mentioned imprisonment.<sup>72</sup> Later that same day, he was brought back before the judge, informed of the error, and his sentence was amended to include the mandatory fine.<sup>73</sup> On appeal, the defendant argued that adding a fine to his prison sentence after he began to serve the sentence constituted a violation of the Double Jeopardy Clause.<sup>74</sup> The Supreme Court, finding no constitutional violation, held that “[t]he sentence, as corrected, imposes a valid punishment for [his] offense instead of an invalid punishment” and the Double Jeopardy clause “does not require that sentencing should be a game in which a wrong move by the judge means im-

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<sup>64</sup> 85 U.S. 163 (1874).

<sup>65</sup> *Id.* at 175.

<sup>66</sup> *Id.*

<sup>67</sup> *Williams*, 925 N.E.2d at 887 (citing *Ex Parte Lang*, 85 U.S. at 176).

<sup>68</sup> *Ex parte Lang*, 85 U.S. at 176 (“[W]hen the [defendant] . . . , by reason of a valid judgment, had fully suffered one of the alternative punishments to which alone the law subjected him, the power of the court to punish further was gone.”) (alteration to the original).

<sup>69</sup> *Williams*, 925 N.E.2d at 888.

<sup>70</sup> 330 U.S. 160.

<sup>71</sup> *Id.* at 165.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 165-66.

<sup>74</sup> *Id.* at 166.

munity for the prisoner.”<sup>75</sup>

Thus, the Court in *Bozza* determined that resentencing a defendant to correct an *illegal* sentence, once the sentence had begun, did not trigger a double jeopardy violation. However, if strictly construed by its facts, the holding in *Bozza* does not give adequate guidance to resentencing proceedings that take place more than one day after the original sentence is commenced.

In *United States v. DiFrancesco*,<sup>76</sup> decided in 1980, the Supreme Court expanded its holding in *Bozza* beyond same-day sentencing corrections.<sup>77</sup> While reviewing whether a federal statute violated the Fifth Amendment, the Court determined “[t]he *Double Jeopardy Clause* does not provide the defendant with the right to know at any specific moment in time what the exact limit of his punishment will turn out to be.”<sup>78</sup> Citing *Bozza*, the Court maintained that the jurisprudence surrounding sentencing suggested “that a sentence does not have the qualities of constitutional finality that attend an acquittal,” and therefore, were not subject to the more rigid protections afforded to the prohibition against multiple trials.<sup>79</sup> Instead, the Court reasoned that the Double Jeopardy Clause will limit the courts’ ability to increase a sentence when the defendant has an expectation of finality in the original sentence.<sup>80</sup> Ultimately, the Supreme Court in *DiFrancesco* found that the defendant had not acquired the requisite expectation of finality that would protect him from being subjected to further resentencing.<sup>81</sup> Although it was never succinctly stated by the Court in its opinion, the decision in *DiFrancesco* has been interpreted by the courts as setting forth the “legitimate expectation of finality” principle applicable to double jeopardy challenges to resentencing procedures.<sup>82</sup>

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<sup>75</sup> *Bozza*, 330 U.S. at 166-67.

<sup>76</sup> 449 U.S. 117.

<sup>77</sup> *Id.* at 137.

<sup>78</sup> *Id.* “The Organized Crime Control Act of 1970 . . . authorizes the imposition of an increased sentence upon a convicted dangerous special offender . . . and grants the United States the right, under specified conditions, to take that sentence to the Court of Appeals for review . . . .” *Id.* at 118-20 (internal citations omitted).

<sup>79</sup> *Id.* at 137-38.

<sup>80</sup> *Id.* at 136.

<sup>81</sup> *DiFrancesco*, 449 U.S. at 139. The defendant was “aware that a dangerous special offender sentence is subject to increase on appeal. His legitimate expectations are not defeated if his sentence is increased on appeal . . . .” *Id.* at 137.

<sup>82</sup> See *infra* notes 86-91, 102-104, and accompanying text.

As the majority in *Williams* noted in its decision, the Supreme Court has not evaluated the legitimate expectation of finality principle in cases where a defendant completed an originally *illegal* sentence and was subsequently resentenced to the proper punishment.<sup>83</sup> However, although not binding precedent, the federal courts have decided similar issues surrounding resentencing proceedings that may be applied to the issue presented in *Williams*.<sup>84</sup>

For example, in *United States v. Rourke*,<sup>85</sup> the defendant's sentence was corrected by adding the requisite parole term that was discussed during the plea agreement, but was not formally announced at sentencing.<sup>86</sup> On appeal to the Tenth Circuit, the defendant argued that the resentencing that imposed the mandatory parole term constituted a double jeopardy violation.<sup>87</sup> The Tenth Circuit, however, emphasized that the omission of the mandatory parole term from the original sentence rendered it *illegal*.<sup>88</sup> As a result, the court found that "[a] defendant cannot acquire a legitimate expectation of finality in a sentence which is *illegal*, because such a sentence remains subject to modification."<sup>89</sup> Accordingly, "[b]ecause [the defendant] lacked a reasonable expectation of finality in his original sentencing," resentencing the defendant to cure the *illegal* sentence did not violate the prohibition of double jeopardy, "even though [the defendant's] sentence was increased."<sup>90</sup>

A similar challenge was presented in *United States v. Warner*,<sup>91</sup> another case in which a sentencing court failed to impose a mandatory parole term at the sentencing proceeding.<sup>92</sup> The district

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<sup>83</sup> *Williams*, 925 N.E.2d at 888.

<sup>84</sup> See *infra* notes 86-104 and accompanying text.

<sup>85</sup> 984 F.2d 1063 (10th Cir. 1992).

<sup>86</sup> *Id.* at 1065.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 1066 (emphasis added).

<sup>89</sup> *Id.* (citing *Bozza*, 330 U.S. at 166-67) (emphasis added).

<sup>90</sup> *Rourke*, 984 F.2d at 1066 (alteration to the original).

<sup>91</sup> 690 F.2d 545 (6th Cir. 1982).

<sup>92</sup> *Id.* at 555.

21 U.S.C. § 841(b) (1) (A) requires the imposition of a special parole term of at least six years whenever a defendant with a prior conviction is sentenced to a term of imprisonment. Since [the defendant] had a prior conviction under 21 U.S.C. § 841, the district court was required to sentence [the defendant] to a six year special parole term.

*Id.* (alteration to the original).

court later included the mandatory special parole term in its judgment and commitment order.<sup>93</sup> Rejecting Warner's challenge that the imposition of the special parole term violated his protection against multiple punishments, the Sixth Circuit cited a history of federal jurisprudence that "has held that the *Double Jeopardy Clause* does not prohibit amending a sentence to add a mandatory special parole term."<sup>94</sup>

While these decisions further support the rule that a defendant cannot claim a legitimate expectation of finality in a *illegal* sentence, it must be noted, however, that in both *Rourke* and *Warner*, the imposition of the mandatory parole terms had been added prior to the defendants' completion of their respective sentences.<sup>95</sup> On the other hand, in *Williams*, the period of PRS to cure the *illegal* sentence was not formally imposed on all five defendants until after they were released from prison.<sup>96</sup>

In light of this distinction, it is important to revisit the federal cases that involve double jeopardy challenges to resentencing proceedings commenced after the initial sentences were completed to determine whether this factor will disrupt the rule pertaining to illegal sentences. For example, in *United States v. Arrellano-Rios*,<sup>97</sup> the Ninth Circuit rejected the government's request for a remand to re-evaluate sentences that were already affirmed upon appeal and had been completed by the defendant.<sup>98</sup> The Ninth Circuit held that "increasing a *legal* sentence that already has been fully served would violate the *Double Jeopardy Clause*."<sup>99</sup> Although the federal court declined to decide at "what [precise] point, in the service of a defendant's legal sentence, a reasonable expectation of finality arises," the court found "that the expectation has arisen, and jeopardy has attached, upon its completion," and "reaffirm[ed] the rule that increasing a *legal* sentence after it has been fully served violates the *Double Jeopardy Clause*."<sup>100</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> See *Rourke*, 984 F.2d at 1065; *Warner*, 690 F.2d at 555.

<sup>96</sup> *Williams*, 925 N.E.2d at 883-84.

<sup>97</sup> 799 F.2d 520 (9th Cir. 1986).

<sup>98</sup> *Id.* at 523.

<sup>99</sup> *Id.* at 524-25 (emphasis added).

<sup>100</sup> *Id.* at 524-25 (emphasis added).

Similarly, in *United States v. Daddino*,<sup>101</sup> the Seventh Circuit also found that once “[the defendant] had completed service of his incarceration and paid all fines and restitution, . . . [he had] acquired a legitimate expectation of finality in both the length of his incarceration and the amount of his fines and restitution.”<sup>102</sup> Thus, the resentencing of the defendant to impose an increased imprisonment term, or increasing the amount of fines or restitution after he completed an otherwise legal sentence, constituted a multiple punishment prohibited by the Double Jeopardy Clause.<sup>103</sup>

While the holdings in *Arrellano-Rios* and *Daddino* may suggest that the completion of a term of imprisonment may give rise to an expectation of finality, it must not be overlooked that both defendants were handed sentences that on the outset were each legally valid punishments.<sup>104</sup> As such, the circuit courts were not required to incorporate the implications of an *illegal* sentence on each defendant’s respective expectation of finality.

Although there is no mention by the majority of the New York Court of Appeals in the *Williams* decision, the New York State Constitution also provides double jeopardy protection: article I, section 6 provides that “no person shall be subject to be twice put in jeopardy for the same offense.”<sup>105</sup> However, when confronted with double jeopardy challenges, the New York courts regularly apply federal precedent to resolve the issue.<sup>106</sup> In so doing, New York courts purport to provide the same protections as set forth by the Fifth Amendment.<sup>107</sup>

Prior to *Williams*, when presented with double jeopardy challenges by defendants who were subjected to resentencing proceedings, New York courts have typically applied *DiFrancesco* and ana-

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<sup>101</sup> 5 F.3d 262 (7th Cir. 1993).

<sup>102</sup> *Id.* at 265 (alteration to the original).

<sup>103</sup> *Id.*

<sup>104</sup> See *supra* notes 100-104 and accompanying text.

<sup>105</sup> N.Y. CONST. art. I, § 6.

<sup>106</sup> See generally *People ex rel. Pamblanco v. Rikers Island Corr. Facility*, 868 N.Y.S.2d 505, 510 (Sup. Ct. 2008); *People v. Minaya*, 429 N.E.2d 1161, 1163 (N.Y. 1981).

<sup>107</sup> For example, in *De Canzio v. Kennedy*, the court found “the jeopardy clauses of the Federal and [New York] State Constitutions are ‘to protect the defendant’s basic human right not to be harassed, or perhaps even impoverished, by successive prosecutions for the same offense’ by means of multiple trials [nor] multiple punishments.” 415 N.Y.S.2d 513, 516 (App. Div. 4th Dep’t 1979) (quoting *Matter of Cardin v. Sedita*, 53 A.D.2d 253, 256 (App. Div. 4th Dep’t 1976)) (emphasis added).

lyzed their challenges “on the basis of the defendants’ legitimate expectations.”<sup>108</sup> Utilizing the same test used by the federal courts, the New York courts have reached varying results.

For example, in *People v. Minaya*,<sup>109</sup> which was decided shortly after *DiFrancesco*, the New York Court of Appeals reviewed a defendant’s challenge to his resentencing proceedings where the defendant “plead guilty to attempted robbery in the first degree in exchange for an eight-year” prison term and the sentencing court mistakenly pronounced the maximum sentence to be three years.<sup>110</sup> After the prosecution recognized the error and filed an application with the sentencing court to review the plea agreement and correct the sentence accordingly, the sentencing court found the three-year pronouncement to be erroneous and resentenced the defendant to a term of eight years imprisonment.<sup>111</sup> In finding that there was no double jeopardy violation, the New York Court of Appeals recognized the inherent ability of the sentencing courts to correct clerical errors in sentencing “where it is made . . . to conform the record to the truth.”<sup>112</sup> The court held that “a defendant who is mistakenly sentenced to a lesser term than he agreed to, should [not] immediately upon commencing of the sentence acquire a vested interest in the error so that it would be unfair, under the [D]ouble [J]eopardy [C]lause, to correct the error.”<sup>113</sup> However, although the resentencing proceeding took place several months after the original sentencing, the defendant had not completed his original sentence.<sup>114</sup>

Leading up to the decision in *Williams*, the New York Court of Appeals had not addressed a defendant’s double jeopardy challenge to a resentencing proceeding that sought to correct an illegal sentence after the sentence was already completed. However, the lower state courts have faced the precise issue presented in *Williams*. For example, in *People ex rel. Pamblanco v. Rikers Island Correc-*

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<sup>108</sup> *Pamblanco*, 868 N.Y.S.2d at 510. “There is no bright-line period set by statute or case law that indicates when double jeopardy is violated upon resentencing. Instead, the Supreme Court introduced the more amorphous concept of ‘expectation of finality.’ ” *Id.* at 509 (quoting *DiFrancesco*, 449 U.S. at 139).

<sup>109</sup> 429 N.E.2d 1161 (N.Y. 1981).

<sup>110</sup> *Id.* at 1162.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 1162-63.

<sup>113</sup> *Id.* at 1164 (alteration to the original).

<sup>114</sup> *Minaya*, 429 N.E.2d at 1162.

*tional Facility*,<sup>115</sup> a lower court decision from 2008, a defendant pleaded guilty to robbery in the first degree and was sentenced to six years imprisonment.<sup>116</sup> The sentencing court did not impose PRS at the sentencing proceeding, but DOCS administratively imposed a five-year period of PRS.<sup>117</sup> After the defendant was freed from confinement, the defendant was subsequently reincarcerated for violating the conditions of his PRS.<sup>118</sup> The defendant argued that, although a period of PRS should have been imposed at the original sentencing proceeding, “since it was not imposed at sentenc[ing], the sentence cannot, over a full year after the completion of the imposed sentence, be modified” without violating his double jeopardy rights.<sup>119</sup> The court agreed, finding that the “petitioner had every expectation of finality that his sentence was completed,” and that a resentencing proceeding to impose PRS was barred by the Fifth Amendment.<sup>120</sup> Therefore, the court found the completion of the sentence to be controlling on the defendant’s expectation of finality and that the illegality of the original sentence did not upset this expectation.

However, the following year, in *People v. Thompson*,<sup>121</sup> the same lower court facing a similar challenge reached the opposite outcome. In *Thompson*, the defendant was sentenced to a prison term of seven years upon being convicted of assault in the second degree.<sup>122</sup> Under Jenna’s Law, section 70.45 of the New York Penal Law, the defendant’s determinate prison sentence was required to include a period of PRS following the term of imprisonment.<sup>123</sup> However, the period of PRS was not formally pronounced at his sentencing, which rendered the defendant’s sentence illegal.<sup>124</sup> The New York State Department of Corrections recognized the error and, upon the defendant’s release from prison, released him to the Division of Parole and initiated resentencing proceedings so that the PRS component of his

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<sup>115</sup> 868 N.Y.S.2d 505 (Sup. Ct. 2008).

<sup>116</sup> *Id.* at 506.

<sup>117</sup> *Id.* at 507.

<sup>118</sup> *Id.* at 506.

<sup>119</sup> *Id.* at 509.

<sup>120</sup> *Pamblanco*, 868 N.Y.S.2d at 509.

<sup>121</sup> No. 4609/99, 2009 N.Y. Misc. LEXIS 265, at \*1 (Sup. Ct. Feb. 11, 2009).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at \*3.

<sup>124</sup> *Id.* at \*4.

sentence could be formally pronounced.<sup>125</sup> On appeal, the defendant argued that because he had completed his sentence of imprisonment, imposing PRS after his release violated his constitutional protection against multiple punishments.<sup>126</sup> Denying his motion to preclude resentencing, the court reasoned that “[t]he *Double Jeopardy Clause* does not provide a blanket prohibition against the imposition of additional punishment in a resentencing proceeding when such additional punishment could lawfully have been imposed as part of the original sentence.”<sup>127</sup> The lower court recognized that a defendant’s double jeopardy protection in relation to his resentencing proceeding turns on whether “a defendant ha[d] acquired] a legitimate expectation of finality [in his sentence, and if so,] then an increase in that sentence is prohibited.”<sup>128</sup> The court found, however, that the defendant could not have had a legitimate expectation of finality in his sentence because it was *illegal* from the outset and even his completion of the sentence would not create this expectation.<sup>129</sup> Thus, the court in *Thompson* found the illegality of the sentence to be controlling, and even though the sentence was complete, the defendant could not have acquired the requisite expectation of finality in the sentence that would prevent further resentencing to cure the defect.<sup>130</sup>

After evaluating the federal and New York State judicial history surrounding double jeopardy challenges to resentencing proceedings, it is reasonable to conclude that the majority in *Williams* was prudent in applying the “legitimate expectation of finality” criteria set forth in *DiFrancesco* when evaluating the defendants’ challenges to their respective resentencing to include PRS. However, the double jeopardy challenge in *Williams* actually involved two distinct issues which have only been evaluated by the federal courts and the United States Supreme Court separately.<sup>131</sup> There was no binding legal

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<sup>125</sup> *Id.* \*1-2.

<sup>126</sup> *Thompson*, 2009 N.Y. Misc. LEXIS 265, at \*6.

<sup>127</sup> *Id.* at \*6-7.

<sup>128</sup> *Id.* at \*8 (“[T]he legitimacy of a defendant’s expectation of finality in the severity of a sentence is dependent upon objective circumstances or the absence thereof of a factual or legal nature which raise the possibility that the original sentence may be modified at a later time.”).

<sup>129</sup> *Id.* at \*10 (“Regardless of a defendant’s personal hope or subjective belief, such illegal lenience is an objective legal circumstance which undermines the constitutionally recognizable legitimacy of his expectation of finality.”).

<sup>130</sup> *See id.*

<sup>131</sup> *See supra* notes 85-103 and accompanying text.



precedent involving post release sentencing where both the initial sentence was illegal and the defendant had been released from imprisonment.<sup>132</sup> The majority in *Williams* focused heavily on the defendants' completion of their terms of imprisonment and found this factor to be dispositive, rather than the illegality of the sentence, when evaluating the expectations of the defendants.<sup>133</sup>

In its majority opinion, the New York Court of Appeals set forth in great detail the legislative and legal history upon which it based its decision, including the newly enacted statute, Jenna's Law, and recent cases decided by the federal courts.<sup>134</sup> However, the focus by the majority in *Williams* on the defendants' release from imprisonment failed to give proper weight to the crucial fact that they all were originally handed sentences which were *illegal* at their onset. Although the court did concede the existence of this fact,<sup>135</sup> it ultimately erred by not adequately recognizing the impact the *illegal* sentence made on a double jeopardy challenge to resentencing. Inasmuch as a double jeopardy challenge to resentencing turns on a defendant's legitimate expectation of finality in his sentence, the defendant's legitimate expectation turns on the legality of the original sentence itself. The precedents surrounding multiple punishment protection in resentencing cases have consistently distinguished between whether the original sentence imposed was legal or *illegal*, with the latter *illegal* sentences crucial to shaping the defendant's expectations.<sup>136</sup>

It is presumed that all defendants are aware of the laws relevant to their case; thus they are presumed to be aware of an *illegal* sentence.<sup>137</sup> This presumption has repeatedly led the courts to determine that a defendant who has been given an *illegal* sentence is unable to acquire a legitimate expectation of finality that would prohibit resentencing to correct it, regardless of how long after the original sentencing the resentencing took place.<sup>138</sup> The majority in *Williams*, while recognizing this, nonetheless felt that the ability of the courts to

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<sup>132</sup> See *supra* note 83 and accompanying text.

<sup>133</sup> See *supra* notes 43-48 and accompanying text.

<sup>134</sup> *Williams*, 925 N.E.2d at 881-93.

<sup>135</sup> See *supra* notes 43-46 and accompanying text.

<sup>136</sup> See *supra* notes 70-75, 85-94 and accompanying text.

<sup>137</sup> See *supra* note 44 and accompanying text.

<sup>138</sup> See *supra* notes 70-75, 85-94 and accompanying text.

correct an *illegal* sentence must be limited.<sup>139</sup> The majority concluded that this limitation would manifest at the completion of the sentence, illegality notwithstanding.<sup>140</sup> It is this line of reasoning by the court that departs from the federal precedent surrounding double jeopardy challenges to resentencing.

The Supreme Court has already imposed a temporal limitation in this area by establishing the criteria for “a legitimate expectation of finality.”<sup>141</sup> With it, the Supreme Court has provided for some flexibility in evaluating such circumstances. If the Supreme Court felt that the expectation automatically arises after expiration of the right to appeal and completion of a prison sentence, regardless of the sentence’s legality, then it is reasonable to assume it would have succinctly stated so as to prevent its misapplication. However, presumably the Supreme Court felt such rigidity was not suitable for such determinations. Couldn’t circumstances exist for a defendant to acquire the requisite expectation before such events? And in similar fashion, couldn’t a scenario exist where such events would come to pass and the defendant had yet to acquire expectations of finality?

The issue presented to the New York Court of Appeals in *Williams* was distinctly different than those which preceded the holdings in *Arrellano-Rios* and *Daddino*, which presumably persuaded the court.<sup>142</sup> The sentences in those cases were legally sufficient, while the original sentences in *Williams*, which omitted the mandatory PRS, were *illegal*.<sup>143</sup> It was because the defendants in *Arrellano-Rios* and *Daddino* had completed otherwise legal sentences that they were able to establish legitimate expectations of finality in their respective sentences.<sup>144</sup> As a result, it would seem logical that the opinions in *Rourke* and *Warner* would be more applicable in *Williams* and suggest a holding that the defendants could not have acquired a legitimate expectation of finality in an *illegal* sentence.

Considering, however, that *Rourke* and *Warner* are both also distinguishable because the defendants had yet to complete their orig-

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<sup>139</sup> See *supra* notes 45-46 and accompanying text.

<sup>140</sup> See *supra* notes 47-48 and accompanying text.

<sup>141</sup> See *supra* notes 77-82 and accompanying text.

<sup>142</sup> See *supra* notes 28, 36, 43-48 and accompanying text. Cf. *supra* notes 97-103 and accompanying text.

<sup>143</sup> See *supra* notes 28, 36, 43-48 and accompanying text. Cf. *supra* notes 97-103 and accompanying text.

<sup>144</sup> See *supra* notes 97-103 and accompanying text.

inal sentence,<sup>145</sup> it may be wise to assess other factors to evaluate the defendants' expectations and find neither the completed sentence nor its illegality as the sole controlling factor. In *Williams*, the record suggested that all the defendants were aware of the requisite PRS in addition to their term of imprisonment.<sup>146</sup> If none of the defendants ever claimed to be unaware of the PRS component of their sentences upon imprisonment, or denied being informed of the PRS before being conditionally released, then how could any of the defendants have *reasonably* acquired a legitimate expectation of finality in their sentences and expected that they would not be required to serve the mandatory PRS term? Again, the court disregards these facts and instead holds that a "temporal limitation" in a court's ability to correct mistakes prevents them from becoming consequential.<sup>147</sup>

Indeed, the double jeopardy challenges before the New York Court of Appeals were complex in that the five defendants' completed *illegal* sentences required the application of two established principles that, when handled separately, may direct the court to reach different outcomes. However, the New York lower courts provided an intuitive analysis of the precise issue prior to its culmination before New York's highest court.<sup>148</sup> Specifically, the court in *Thompson* seemed to rule in a manner consistent with the binding double jeopardy jurisprudence. Albeit in no way binding, the *Thompson* decision should have induced a hard look by New York's highest court, considering the issue decided there was nearly identical to the one before it.<sup>149</sup> The decision in *Thompson* becomes even more compelling considering that just prior to it, the same court found for the opposite result while faced with similar facts in *Pamblanco*.<sup>150</sup>

Moreover, the New York legislature has taken several measures to ensure that a period of PRS follows certain sentences of imprisonment.<sup>151</sup> In fact, had the majority not found a constitutional violation, New York law authorized the resentencing of the defendants

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<sup>145</sup> See *supra* notes 85-94 and accompanying text.

<sup>146</sup> See *supra* note 50 and accompanying text.

<sup>147</sup> See *supra* notes 46-48 and accompanying text.

<sup>148</sup> See *supra* text accompanying notes 115-129.

<sup>149</sup> See *supra* notes 121-29 and accompanying text.

<sup>150</sup> See *supra* notes 121-29 and accompanying text. Cf. *supra* text accompanying notes 115-120.

<sup>151</sup> See *supra* notes 28-29, 38 and accompanying text.

to achieve harmony with the legislature's intent.<sup>152</sup> The case law emerging around New York's requirement of mandatory PRS was relatively new when the defendants in *Williams* were sentenced, and practices which were common in the past have subsequently been prohibited by the courts.<sup>153</sup> In light of this, the New York Court of Appeals erred in holding that the resentencing for imposition of PRS was unconstitutional. The courts in all five of these matters were simply trying to correct a mistake caused by continually evolving case law surrounding the PRS requirement. Allowing the defendants to be resentenced to the mandatory PRS did nothing more than place these defendants on the same level with any other defendants who were convicted of the same criminal acts. Neither the United States Constitution nor the New York State Constitution categorically prohibit this equality.

As noted earlier, the United States Supreme Court has failed to rule on whether a defendant who has been released from imprisonment has acquired a legitimate expectation of finality in the sentence that would prevent any further resentencing if the initial sentence was *illegal*.<sup>154</sup> It is also doubtful that the issue presented in *Williams* will be addressed by the United States Supreme Court, since it refused to grant certiorari in the matter.<sup>155</sup> Nonetheless, it would have been appropriate for the Supreme Court to address this issue. The absence of binding precedent surrounding the issue in *Williams* left it susceptible to differing outcomes, as illustrated by the majority and dissenting opinions in *Williams*.<sup>156</sup> Ultimately, in reaching its decision, the New York Court of Appeals in *Williams* has sharply departed from federal precedent surrounding double jeopardy challenges involving *illegal* sentences. Such departures are better suited for the Supreme Court, which is charged with making the final

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<sup>152</sup> See *supra* note 38 and accompanying text.

<sup>153</sup> See *supra* note 37 and accompanying text.

<sup>154</sup> See *supra* text accompanying note 83.

<sup>155</sup> *New York v. Williams*, No. 09-1425, 2010 WL 2070229, at \*1 (U.S. Oct. 4, 2010) *cert. denied*.

<sup>156</sup> See *supra* notes 43-59 and accompanying text.

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determinations on federal constitutional issues.

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