

To be argued by  
DAVID BILLINGSLEY

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent,*

-against-

ANTONIO BENOIT,

*Defendant-Appellant.*

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BRIEF FOR DEFENDANT-APPELLANT  
ANTONIO BENOIT

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Supreme Court of the State of New York  
Appellate Division: First Department

The People of the State of New York,  
Respondent,

— against —

Antonio Benoit,  
Defendant-Appellant.

Ind. No. 5034-2014

PRELIMINARY STATEMENT

This is an appeal from a judgment rendered on November 11, 2017, by the Supreme Court, New York County. Antonio Benoit was convicted after a guilty plea of two counts of Grand Larceny in the Fourth Degree, N.Y. Penal Law § 155.30(1). Mr. Benoit received one-and-one-half to three years of imprisonment on each count, to run consecutively.

Justice Gregory Carro presided over the plea and sentencing. Timely notice of appeal was filed. No stay of execution has been sought. Mr. Benoit is currently serving his term of imprisonment.

## QUESTIONS PRESENTED

1. Was Antonio Benoit's combined consecutive sentence of three to six years' in prison for two incidents of shoplifting unduly harsh and excessive?

## STATEMENT OF FACTS

On November 11, 2015, Antonio Benoit was sentenced to a combined total of three to six years in prison for shoplifting after pleading guilty to stealing merchandise from one Duane Reade and one Rite Aid. Indictment No. 5034-2014 at 1. (hereinafter, “Indictment”). S. 3.<sup>1</sup> On July 23, 2014, Mr. Benoit and a co-defendant, Wilsmino Mathurin entered the pharmacies at 5:55 PM and 7:00 PM respectively, “removed numerous items from the shelves” and “placed the items into the pants of [Mr.] Mathurin.” Presentence Investigation Face Sheet (hereinafter, “PSI”) at 3. The items taken from Duane Reade were valued at \$1,963.27, and the items taken from Rite Aid were valued at \$2204.50. PSI at 3. Mr. Benoit admitted to stealing and stated that the stolen items included “Tylenol.” *Id.* People’s Voluntary Disclosure Form at 1 (hereinafter, “VDF”). On October 28, 2015, Mr. Benoit pled guilty to two counts of Grand Larceny in the Fourth Degree. P. 4-5.

Mr. Benoit had two previous convictions for robbery in the second degree, as well as other misdemeanor convictions. PSI at 3. The court sentenced Mr. Benoit, as a predicate felony offender, to one and a half to

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<sup>1</sup> “S.” refers to sentencing proceedings held on Nov. 17, 2015. “P.” refers to plea proceedings held on Oct. 28, 2015.

three years in prison on each count of Grand Larceny, and ordered the sentences to run consecutively for a total of three to six years of imprisonment. P. 6-7; S. 3.



## ARGUMENT

### POINT

ANTONIO BENOIT'S THREE TO SIX YEAR CONSECUTIVE SENTENCE FOR SHOPLIFTING WAS UNDULY HARSH AND EXCESSIVE GIVEN THE LIMITED IMPACT OF THE CRIME AND THE SIGNIFICANT COST OF THE SENTENCE.

Three to six years in prison for shoplifting from two pharmacies is excessive given the significant disproportionality between the enormous cost of the sentence to the public and the limited economic impact that the offenses had on the business-victims. The court should have sentenced Mr. Benoit to concurrent terms of one-and-one-half to three years of imprisonment.

This Court has “broad, plenary power to modify a sentence that is unduly harsh or severe under the circumstances . . . without deference to the sentencing court.” *People v. Delgado*, 80 N.Y.2d 780, 783 (1992). In determining whether a sentence is excessive, this Court must consider “the nature of the crime, the defendant's circumstances, the need for societal protection, and the prospects for the defendant’s rehabilitation.” *People v. Fernandez*, 84 A.D.3d 661, 664 (1st Dep’t 2011) (internal quotation omitted). The Court should also consider these

factors with a view toward imposing the “minimum amount of confinement” necessary. *People v. Notey*, 72 A.D.2d 279, 282-83 (2d Dep’t 1980) (internal citation omitted).

As of 2015, New York had the highest cost-per-prisoner incarceration rate of any state in the country, spending \$69,355 on each incarcerated person each year. *See* Chris Mai & Ram Subramanian, Vera Institute of Justice, *The Price of Prisons: Examining State Spending Trends, 2010-2015*, at 8 (May 2017).<sup>2</sup> (hereinafter, “Price of Prisons”). That means, under the current terms of Mr. Benoit’s sentence, New York State will spend between \$208,000 and \$416,000 to incarcerate Mr. Benoit for stealing approximately \$4,200 worth of pharmacy merchandise. *See* PSI at 3 (total value of merchandise was \$4,167.77). The cost of Mr. Benoit’s punishment will, therefore, be 50 to 100 times greater than the value of the property he stole. This is excessive.

The limited harm of Mr. Benoit’s crime to Walgreens and Duane Reade renders his sentence even more excessive. Walgreens Co., the

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<sup>2</sup> Available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy\\_downloads/the-price-of-prisons-2015-state-spending-trends.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy_downloads/the-price-of-prisons-2015-state-spending-trends.pdf)

parent company of Duane Reade, recorded approximately \$22 billion in gross profit during the fiscal year in which Mr. Benoit committed the offenses. *See Walgreens Boots Alliance Co., 2014 Annual Report* at 36-37 (April 10, 2015) (hereinafter, “Walgreens Co. 2014 Annual Report”).<sup>3</sup> Thus, Walgreens Co.’s loss would have amounted to about 0.00001% of its total profit that year, and about 0.000003% of their \$77 billion in sales revenue. *Id.*; PSI at 3 (Duane Reade merchandise was worth \$1,963.27). Rite Aid fared similarly. Mr. Benoit’s offense cost them 0.00003% of their \$7.6 billion in profit and 0.000008% of their \$27 billion in revenues for the fiscal year in which the crime took place. PSI at 3; Rite Aid Corp., *Annual SEC Report for the Fiscal Year Ended March 3, 2015* at 31-32 (April 23, 2015) (hereinafter, “Rite Aid 2015 Annual Report”).<sup>4</sup>

Given the limited impact of Mr. Benoit’s crime and the significant cost to New York’s taxpayers for his sentence, the imposition of consecutive sentences was excessive and disproportionate. While society certainly has a legitimate interest in protecting businesses from theft,

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<sup>3</sup> Available at <http://investor.walgreensbootsalliance.com/static-files/729d81ff-aff5-4b52-9a91-020e7c1f156d>

<sup>4</sup> Available at <https://content.riteaid.com/www.riteaid.com/w-content/images/company/investors/anrpts/annual15.pdf>

in this case, the effort to deter Mr. Benoit and others from causing minimal economic harm to Duane Reade and Rite Aid comes at an outsized cost to the public.

New York Courts have exercised their interest of justice discretion to reduce consecutive sentences to concurrent sentences in cases involving convictions far more serious than Mr. Benoit's, including cases involving multiple violent felony convictions. *See People v. Colon*, 133 A.D.3d 532, 532 (1st Dep't 2015) (consecutive sentences for murder, robbery, burglary and criminal possession of a weapon order to be served concurrently in the interest of justice); *People v. Charles*, 124 A.D.3d 986, 988 (3d Dep't 2015) (consecutive sentences for multiple counts of rape, criminal sexual act, sexual abuse, and endangering the welfare of a child ordered to run concurrently in the interest of justice). And, even though Mr. Benoit had two prior robbery convictions, PSI at 3, this Court has done the same for people with worse criminal records than Mr. Benoit's, including persistent violent felony offenders. *See People v. Campbell*, 107 A.D.3d 489, 489 (1st Dep't 2013) (concurrent sentences for persistent violent felony offender for multiple counts of

robbery in the first and second degree order to run concurrently in the interest of justice).

This Court has also ordered sentences to run concurrently where, as here, relatively short sentences for lower-level offenses are run consecutively and add up to a significant term of imprisonment that is disproportionate to the crime. *See People v. Villegas*, 135 A.D.3d 445, 445 (1st Dep’t 2016) (consecutive sentences for three counts of criminal contempt in the first degree totaling two and two thirds to eight years in prison ordered to run concurrently in the interest of justice).

Unlike in *Colon*, *Charles* and *Campbell*, Mr. Benoit’s offenses were neither violent nor abusive – he pled guilty to shoplifting. Although he received the minimum sentence on each charge,<sup>5</sup> the trial court doubled Mr. Benoit’s time at enormous expense to the public with little clear benefit, as it did in *Villegas*. A theft of several thousand dollars’ worth of merchandise requires more than a slap on the wrist, but Mr. Benoit – as a predicate felony offender – could have and should have been sentenced to concurrent terms of one-and-a-half to three years in

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<sup>5</sup> *See* N.Y. Penal Law § 155.30(1) (Grand Larceny in the Fourth Degree is a non-violent E felony); N.Y. Penal Law § 70.06 (minimum sentence on non-violent E felonies for predicate felony offenders is indeterminate sentence of one-and-a-half to three years prison).

prison. Such a sentence is far more consistent with and appropriate to Mr. Benoit's record and offense.

Thus, in view of the nature of the crime and the need for societal protection, the "minimum amount of confinement necessary" was concurrent terms of one-and-a-half years in prison. *Notey*, 72 A.D.2d at 282-83. In the interest of justice, this Court should modify Mr. Benoit's sentence accordingly.

## CONCLUSION

For the foregoing reasons, this Court should order Mr. Benoit's sentences to run concurrently.

Dated: New York, New York  
August 17, 2018

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## ADDENDA

Supreme Court of the State of New York  
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The People of the State of New York,  
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— against —

Antonio Benoit

Defendant-Appellant.

Ind. No. 5034-2014

### Statement Pursuant to Rule 5531

1. The indictment number in the court below was 5034-2014.
2. The full names of the original parties were “The People of the State of New York” against “Antonio Benoit” and “Wilsmino Mathurin.”
3. This action was commenced in Supreme Court, New York County.
4. This action was commenced by the filing of an indictment.
5. This is an appeal from a judgment rendered on November 11, 2017, by the Supreme Court, New York County. Antonio Benoit was convicted after a guilty plea of two counts of Grand Larceny in the Fourth Degree, N.Y. Penal Law § 155.30(1). Mr. Benoit received one and one half years' imprisonment on each count, to run consecutively. Justice Gregory Carro presided over the plea and sentencing.
6. Mr. Benoit has been granted leave to appeal as a poor person on the original record and typewritten briefs.



Supreme Court of the State of New York  
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— against —

Antonio Benoit,  
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Ind. No. 5034-2014

Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.
2. Mr. Benoit's brief was prepared with Microsoft Word 2010 with Garamond typeface 14 point in the body and 12 point in the footnotes.
3. The text of the brief has a word count of 1,293, as calculated by the processing system and is 10 pages.

