

Excessive Sentencers

Using Appellate Decisions to
Enhance Judicial Transparency

Collaborative Report

**THE CENTER ON
RACE
INEQUALITY
& THE LAW**
NYU SCHOOL OF LAW

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Contents

Executive Summary	2
1. Introduction	3
2. Appellate Decisions as Data: A New Paradigm for Evaluating the Judiciary	4
3. Understanding New York Sentencing	5
4. Excessive Sentences as a Proxy for the Exercise of Extremely Punitive Discretion	7
5. How Lengthy Must a Sentence Be to Be Found Excessive?	10
6. Findings	12
6.1. Excessive Sentencing Findings: Rare and Powerful a Signal of Sentencing Anomalies	12
6.2. Excessive Sentencing Findings By Judge	15
6.3. The Implications of Automatic Lowering in Sentencing: More Punitiveness?	17
7. Excessive Sentences Are an Insufficient Gauge of the Leniency or Severity of New York’s Criminal Legal System	18
8. Recommendations	20
9. Conclusion	21
Appendix: Data & Methodology	23
Challenges in Contextualizing Judicial Behavior	26
Limitations: The Improbable Possibility of Influence of Off-Record Information in Appellate Decisions	27
About	30

Executive Summary

Increased focus on state judiciaries has significant potential to improve the criminal legal system. Recognizing the need for evaluation metrics for judges, this report pioneers a data-driven, evidence-based approach to assessing the judiciary. We analyze written appellate decisions to quantify individual trial court judges' decisions and impacts. This methodology transforms complex judicial texts into accessible data, creating metrics of judicial performance for use by policymakers and the public.

This report introduces 'excessive sentence findings' as a method to assess individual judges' decisions and their impact. In New York, appellate courts review sentences for excessiveness and can reduce them in the "interest of justice," a rare and clear signal—from highly-respected institutional actors—that a lower court judge made an exceptionally troubling choice. We identify lower court judges with sentences reduced by appellate courts for being excessive and calculate the total number of years reduced from those sentences.

The study reveals patterns of repeated excessive sentencing by a number of specific judges, raising questions about judicial accountability in New York.

Key Findings:

- Sixty-five lower court judges engaged in excessive sentencing more than once between 2007 and 2023.
- The 12 judges with five or more most excessive sentence findings had their sentences reduced by a total of 1,246 years.
- Two judges had a total of 39 excessive sentence findings between them, with the appellate court reducing a total of 684.5 years from the sentences they imposed.

Recommendations:

- New York's court system should increase its transparency by releasing detailed, judge-level sentencing data.
- New York's court system should publish annual reports summarizing excessive sentence findings and detailing the judges involved, the legal arguments made, and the appeal outcomes.

1. Introduction

“The state Court System is firmly committed to maintaining a transparent judiciary for all New Yorkers” – Al Baker, spokesperson for the New York Office of Court Administration (2023).¹

Increased focus on state courts holds significant potential to shape reforms of the criminal legal system. Systemic injustices, such as mass incarceration and racial disparities, remain pressing both nationally and in New York, where about 75% of those incarcerated are Black or brown,² and where the per capita prison population ranks higher than any major Western democracy.³ Since state courts oversee over 99% of new criminal cases,⁴ and state court judges wield enormous influence over each case’s outcome, judges hold a crucial role in addressing these and other injustices.

Individual judges differ in consistent and predictable ways in how they wield their judicial authority and in their interpretation of the law, as illustrated by the outcomes of recent U.S. Supreme Court cases.⁵ This differentiation has long been acknowledged by researchers,⁶ and leveraged by organizations such as the Federalist Society.⁷ Legal practitioners have also recognized this reality, leading to “judge shopping,” a term used to describe tactical maneuvers, legal and otherwise, that lawyers can take to ensure a case is heard by a judge that

¹ Brian Lee, *Court Watchdogs Target Dearth of Published Criminal Decisions*, New York Law Journal (2023).

² New York State Department of Corrections and Community Supervision, *Under Custody Report: Profile of Under Custody Population* (2019–2021).

³ Emily Widra and Tiana Herring, *States of Incarceration: The Global Context 2021*, Prison Policy Initiative (2021).

⁴ Cf. *CSP STAT Criminal*, Court State Project (~13 million new criminal cases in state courts in 2020) and *Federal Judicial Caseload Statistics 2020*, United States Courts (~93,000 new criminal cases in federal district courts in 2020).

⁵ See, e.g., *Justice Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

⁶ See, e.g., Adam Bonica and Maya Sen, *Estimating Judicial Ideology*, *The Journal of Economic Perspectives* 35(1):97–118 (2021); Allison P. Harris and Maya Sen, *How Judges’ Professional Experience Impacts Case Outcomes: An Examination of Public Defenders and Criminal Sentencing*, *Journal of Politics* (2024) (forthcoming) (finding correlation between judges’ prior experience and sentencing outcome); Emily Leslie and Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, *The Journal of Law and Economics* 60(3):529–557 (2017) (“the arraignment judge is a stronger predictor of the defendant’s arraignment outcome than of the defendant’s observable characteristics”).

⁷ See, generally, Sohrab Ahmari, *Patrick Deneen and Chad Pecknold, We Know How America Got Such a Corporate-Friendly Court*, New York Times (2022); David Montgomery, *Conquerors of the Courts*, Washington Post Magazine (2019); Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, The New Yorker (2017).

they believe will be more favorable toward their client or cause.⁸

The importance of judges for case outcomes means that voters and judicial selection decision-makers may greatly benefit from more information about individual judges' decisions and impacts. In New York, as in almost all states, judges do not have life tenure and must periodically seek reelection or reappointment. The crucial influence of state court judges on the lives of millions of people makes enhancing public knowledge and oversight of their rulings imperative.

Our report illustrates a practical, replicable approach to achieving such oversight while also revealing the high stakes involved in judicial decisions. We introduce a new metric for evaluating individual judges: excessive sentence findings. In New York, appellate courts possess the authority to review sentences imposed by lower court judges and determine whether they are excessive, unduly harsh, or otherwise improvident. Upon such findings and under their "interest of justice" jurisdiction, judges in New York's intermediate appellate courts can reduce such excessive sentences. Using publicly available appellate decisions, we identify lower court judges who have been found to impose excessive sentences, and we quantify the extent by which their sentences were reduced.

Our findings constitute a data-driven metric for identifying which judges have exercised their discretion in an extremely punitive manner—so much so that multiple appellate judges felt compelled to intervene and override them. Since judicial decisions are public in many U.S. jurisdictions, our method of analyzing these decisions to scrutinize individual judges' decisions and impacts is replicable elsewhere.

2. Appellate Decisions as Data: A New Paradigm for Evaluating the Judiciary

This report introduces an innovative approach to enhancing judicial transparency: extracting quantitative metrics from the text of court decisions. This method enables the rigorous identification of judicial practice patterns at the individual judge, court, and jurisdiction levels. By converting complex judicial texts into accessible data, we produce meaningful and actionable metrics for policymakers and the public.

⁸ Jamiles Lartey, *Trump's Case Highlights a New Era of 'Judge Shopping'*, The Marshall Project (2023); Kevin Breuninger, *Abortion pill ruling puts 'judge shopping' concerns back in spotlight*, CNBC (2023); Nate Raymond, *ABA urges federal judiciary to rein in 'judge shopping'*, Reuters (2023); Tierney Sneed, *Senate Democrat unveils bill aimed to end tactic of judge-shopping to block federal policies*, CNN (2023).

The use of *appellate* court decisions lends an important weight to the data we extract: its legitimacy rests in the judgment of appellate judges, seasoned insiders within the judicial system. Their identification of a ruling as excessive serves as a definitive signal—from highly-respected institutional actors—that a lower court judge made an exceptionally troubling choice.

Our methodology is replicable and adaptable, thanks to the public availability of judicial decisions across U.S. jurisdictions. Our approach provides a model for organizations, decision-makers, and the public to illuminate the decisions and impacts of their judiciaries, enhancing transparency of the judicial branch.

3. Understanding New York Sentencing

This primer offers an overview of New York's sentencing laws and practices, providing essential context for understanding the complexities of judicial sentencing discretion, sentence types, and the factors that influence them, as they relate to excessive sentence findings.

Sentencing Discretion. New York State does not have sentencing guidelines. Instead, for felony convictions, the law sets out minimum and maximum sentences that depend on the severity of the felony conviction and the defendant's prior criminal record. When a person is convicted at trial, the judge has discretion to determine the length of the sentence to be imposed, within the bounds of the minimum and maximum lengths allowed.

Example of sentencing discretion: If a person is convicted of Criminal Possession of a Weapon in the Second Degree (a class-C violent felony) and has no prior felony convictions, the judge can impose a sentence ranging between 3.5 and 15 years in prison.

Determinate and Indeterminate Sentences:⁹ In New York, felony sentences typically fall into one of two categories, depending on the crime charged and the defendant's record of previous felony convictions. For a determinate sentence, the judge imposes a fixed term of incarceration. Typically, the defendant will be released to community supervision after serving six-sevenths of this term (about 85 percent). On the other hand, for an indeterminate sentence, the judge imposes both minimum and maximum terms of incarceration. The defendant is required to serve the minimum term before they become eligible for parole. If parole is denied, the defendant will usually not be released to community supervision until serving two-thirds of the maximum term.

⁹ See, generally, P.L. §§ [70.00](#), [70.02](#), [70.04](#).

Example of a determinate sentence: A judge imposes a determinate sentence of 14 years in prison. The imprisoned person would typically be released after serving six-sevenths of that sentence, or 12 years.

Example of an indeterminate sentence: A judge imposes an indeterminate sentence of 5 to 15 years in prison. The imprisoned person would be eligible for parole after serving the minimum 5 years. If parole is not granted at the 5-year mark, or at any time before reaching two-thirds of the maximum sentence, the imprisoned person will be released to community supervision after serving two-thirds of the maximum sentence, in this case 10 years.

Example of an indeterminate sentence involving a life sentence: A judge imposes an indeterminate sentence of 25 years to life in prison. The imprisoned person will be eligible for parole after serving 25 years. However, unlike the previous scenario, there is no defined two-thirds release date for parole.

Concurrent and Consecutive Sentences:¹⁰ In certain cases, when a person is convicted of multiple crimes, the judge has the discretion to decide whether the sentence for each conviction will run concurrently or consecutively.

Example of a concurrent sentence: A person is convicted of two felonies. The judge imposes *concurrent* sentences of 7 years on one and 5 years on the second. Consequently, the person's aggregate sentence is 7 years, and they would typically be eligible for release after serving six-sevenths of their term, or 6 years.

Example of a consecutive sentence: A person is convicted of two felonies. The judge imposes *consecutive* sentences of 7 years on one and 5 years on the second. Consequently, the person's aggregate sentence is 12 years, and they would typically be eligible for release after serving six-sevenths of their aggregate term, or about 10 years and 3 months.

Automatic Lowering of Sentence Length: In cases where a judge imposes consecutive sentences, the length of the aggregate sentence may be automatically lowered by the operation of P.L. § 70.30(1)(e).¹¹ This law sets maximum terms of imprisonment for individuals convicted of multiple crimes and sentenced to consecutive terms, taking into consideration the severity of the offenses and the length of the aggregate sentence, among other factors. If the aggregate sentence exceeds a certain threshold, it is automatically lowered. This adjustment is not made by the judge who imposed the sentence, but rather by the Department of

¹⁰ See, generally, P.L. § 70.25.

¹¹ P.L. § 70.30(1)(e).

Corrections and Community Supervision, as required by statute.¹²

Example of automatic sentence adjustment: A judge imposes two consecutive terms of 15 years each on two class-C violent felony charges, for an aggregate sentence of 30 years in prison. Due to the operation of law under P.L. § 70.30(1)(e), this sentence will be automatically reduced to 20 years in prison.

Persistent Felony Offender Status:¹³ If a person is convicted of a felony and has previously been convicted on separate occasions of two or more felonies, each leading to a sentence of over a year, a judge has the discretion to adjudicate them as a “persistent felony offender.” Once a person is adjudicated as a persistent felony offender, the judge has authority to impose an indeterminate sentence, with life imprisonment as the maximum term. People adjudicated as persistent felony offenders do not qualify for automatic sentencing limitations under P.L. § 70.30(1)(e).¹⁴

Example of persistent felony offender status: A person, who has previously been sentenced to over a year in prison for felonies on two separate occasions, is convicted of Grand Larceny in the Fourth Degree, a class-E non-violent felony. Because of their multiple prior felony convictions, the judge can choose to adjudicate them as a persistent felony offender. Without such an adjudication, the maximum sentence for the class-E felony is 2 to 4 years in prison. But with the persistent felony offender adjudication in place, the judge can sentence the person to 15 years to life in prison.

4. Excessive Sentences as a Proxy for the Exercise of Extremely Punitive Discretion

When a conviction is appealed, a panel of three to five appellate judges can review the legal proceedings that took place at trial and, under their “interest of justice” jurisdiction, reduce the sentence if they deem it to be excessive or unduly harsh.¹⁵ This reduction can involve actions including shortening prison terms, vacating persistent felony offender status, and ordering concurrent, rather than consecutive, sentences.

¹² *People v. Moore*, 61 N.Y.2d 575 (1984); P.L. § 70.30 (McKinney Commentary).

¹³ See, generally, P.L. § 70.10.

¹⁴ *Roballo v. Smith*, 63 N.Y.2d 485 (1984).

¹⁵ C.P.L. §§ 470.15(3)(c), 470.15(6)(b), 470.20(6); *People v. Delgado*, 80 N.Y.2d 780 (1992).

Appellate courts apply a “strong presumption” *against* the use of interest of justice jurisdiction,¹⁶ using it only where there “exist ‘special circumstances deserving of recognition’ ” or otherwise “extraordinary” circumstances.¹⁷ Thus, appellate judges’ decision to reduce a sentence in the interest of justice signals that the original sentence was an exceptionally punitive sentencing anomaly.

In the rare circumstances when appellate judges choose to reduce a sentence, they effectively override the sentencing discretion of the lower court judge.¹⁸ This step signifies their judgment that the lower court judge exercised their discretion in an unreasonably harsh manner—so much so that they had to intervene in the “interest of justice.” While the “abuse of discretion” standard is not used in these findings, the outcome serves as an implicit critique of the lower court judge’s extremely punitive use of discretion.¹⁹

As an illustrative example of appellate intervention, consider *People v. Ortiz*.²⁰ Convicted of manslaughter and weapon possession, Mr. Ortiz faced sentencing by Judge William C. Donnino. The prosecutor urged imposition of a 25-year sentence for manslaughter and 15 years for the weapon charge, to run concurrently, stating, “While I’m mindful of the fact that they can potentially be consecutive sentences, I’m asking that those run concurrent, Judge.”²¹ Ignoring the prosecution’s own request for some leniency, Judge Donnino imposed consecutive terms totaling a 35-year aggregate sentence. On appeal, a panel of four judges deemed this sentence to be excessive and modified it to a concurrent 25-year sentence in the “interest of justice.”

The inference that appellate judges are critically evaluating the lower court judge’s discretion is reinforced by the language used in their rulings. For example, in *People v. Harvey*, the appellate panel reduced the sentence under their “interest of justice” jurisdiction, stating explicitly that the lower court judge had “improvidently exercised [his] discretion” in adjudicating Mr. Harvey as a persistent felony offender.²² Similarly, in *People v. Hodge*, the appellate court

¹⁶ *People v. Epakchi*, 37 N.Y.3d 39 (2021) (Wilson, J., dissenting).

¹⁷ *People v. Marshall*, 106 A.D.3d 1, 11 (1st Dep’t 2013) (quoting *People v. Chambers*, 123 A.D.2d 270, 270 (1st Dep’t 1986)).

¹⁸ See *People v. Ba*, 39 N.Y.3d 1130 (2023) (Troutman, J., concurring) (“The Appellate Division, as New York’s preeminent intermediate appellate court, has long understood its power to modify sentences as an important check on the sentencing court’s own broad discretion.”).

¹⁹ See *People v. Suitte*, 90 A.D.2d 80, 86 (2d Dep’t 1982) (interest of justice jurisdiction permits appellate courts to “substitute [their] discretion for that of a trial court which has not abused its discretion in the imposition of a sentence”).

²⁰ *People v. Ortiz*, 151 A.D.3d 754 (2d Dep’t 2017).

²¹ Several of the details related above are found in the defense’s appellate brief, available on Westlaw at [2017 WL 11085909](#).

²² *People v. Harvey*, 80 A.D.3d 464 (1st Dep’t 2011).

reduced the sentence, inferring that the lower court judge, Robert A. Neary, had “penalized” Mr. Hodge for exercising his right to trial.²³

Supporting evidence underscores the efficacy and reliability of excessive sentence findings for gauging a judge's inclination towards extremely punitive sentencing. For example, judges Edward McLaughlin (now retired) and Vincent M. Del Giudice (currently presiding in Supreme Court in Brooklyn) have the highest numbers of such findings in our dataset (see *Findings* section below). Both have also been singled out by media outlets for their extremely punitive sentencing practices. For example, The Village Voice wrote in 2016:

[Judge McLaughlin is] also known as “the hanging judge.” And while it’s hard to quantify a judicial reputation through any official measure, according to a review by the *Voice* of hundreds of appeals of cases, McLaughlin’s moniker is well earned. . . . “He’s a D.A.’s judge, and he’s the worst,” says Michael Fineman, a criminal defense attorney, echoing sentiments about McLaughlin shared by many defense attorneys who spoke to the *Voice*. . . . Most agree that he is one of the stricter judges. . . . [Another attorney stated], “There are always judges with tough reputations, and everybody who practices in the courts knows who they are — Judge McLaughlin is one of those, so it was a substantial risk to go to trial. He has a reputation for coming down really hard.”²⁴

And Legal Affairs wrote in 2004:

[Judge Vincent] Del Giudice is a no-nonsense law-and-order judge with short-cropped silver hair and a booming voice, who became notorious for his tough sentences. “You go in there and it's like: Abandon all hope,” said one defense lawyer who practices in Brooklyn. . . . Two people who work with the court—Feinstein, the chief Brooklyn district attorney, and John Feinblatt, the city's criminal justice coordinator—said that they think Del Giudice has influenced other judges to give longer sentences. . . .²⁵

And The Independent in 2022 called Del Giudice “Brooklyn’s most tough-on-crime judge”²⁶

²³ *People v. Hodge*, 154 A.D.3d 963 (2d Dep’t 2017) (“Under these circumstances, the sentence of seven years’ imprisonment raises the inference that the defendant was penalized for exercising his right to a jury trial”).

²⁴ Anita Abedian, *The Chamber: In Judge Edward McLaughlin’s Court, the Gavel Comes Down*, The Village Voice (2016).

²⁵ Wendy Davis, *Quick on the Trigger*, Legal Affairs (2004).

²⁶ Theodore Hamm, *Did the NYPD Bungle the Yusuf Hawkins Murder Case?*, The Independent (2022).

Thus, media coverage and the language in appellate decisions both reinforce the validity of using excessive sentence findings as indicators of the exercise of extremely punitive discretion by lower court judges.

5. How Lengthy Must a Sentence Be to Be Found Excessive?

Appellate judges in the First and Second Departments (covering downstate New York, up to Dutchess and Orange counties) do not provide clear guidelines about which sentences are so excessive that they merit reduction. Instead, in the majority of their decisions, the appellate judges, without providing additional information or context, simply rule that the sentences were excessive and specify a reduction.²⁷

Therefore, to understand how lengthy a sentence must be for an appellate court to reduce it, it is helpful to look at sentences that the Appellate Division *declined* to reduce. Consider the following examples:

34 Years to Life for Burglary Despite Mitigating Circumstances

Mr. West was arrested after police officers executed a search warrant in his bedroom and found items from the homes of several people, including jewelry, electronics, and fur coats, among other valuables. He was convicted by a jury of four counts of Burglary in the Second Degree and related charges. Judge Gene Lopez adjudicated Mr. West a persistent felony offender and sentenced him to 34 years to life in prison.

At the time of his arrest, Mr. West lived in a group home for adults with mental health issues. The burglaries for which he was convicted occurred during daytime; none of the victims encountered him at their homes. He had struggled with mental health issues and suffered a difficult childhood: his father died the year he was born, and he lived with his aunt for an extended period of time due to his mother's struggle with substance abuse. The sentence imposed by Judge Lopez meant that Mr. West would be 68 before he was eligible for release on parole.

The Appellate Division, over the dissent of one judge, declined to reduce the sentence.²⁸

²⁷ See, e.g., *People v. Frederick*, 211 A.D.3d 1034 (2d Dep't 2022) ("The sentence imposed was excessive to the extent indicated herein"); *People v. Manning*, 78 A.D.3d 585 (1st Dep't 2010) ("We find the sentence excessive to the extent indicated").

²⁸ *People v. West*, 218 A.D.3d 798 (2d Dep't 2023).

A 15-Year Drug Sentence Followed by Deportation: Upheld Despite Rehabilitation and No Prior Record

Mr. Gonzalez was convicted at trial of Criminal Possession of a Controlled Substance in the First Degree and related charges, having been charged with selling drugs from his apartment and trafficking cocaine to another state. He was initially sentenced to 20 years to life and was later resentenced by Judge Barbara Zambelli under New York's Drug Law Reform Act²⁹ to 15 years in prison.

On appeal from this resentence, Mr. Gonzalez asked that the appellate court reduce his resentence to 8 years, the minimum allowed under the Drug Law Reform Act. Mr. Gonzalez had no prior criminal record. In the five years between his arrest and appeal, he had committed himself to rehabilitation: he participated in educational and vocational training, was placed on the waitlist for the prison's honor block and was otherwise "well-behaved." Moreover, Mr. Gonzalez faced immediate deportation upon his release from prison, regardless of the length of his sentence.

The Appellate Division declined to reduce the sentence.³⁰

First Offense, Life Sentence: 25 Years to Life for Cocaine Possession

Mr. Aleman was convicted of Criminal Possession of a Controlled Substance in the First Degree and related charges, having been charged with possessing 383 kilograms of cocaine in a storage site.

Mr. Aleman had no prior arrests or convictions. Nevertheless, Judge Edward J. McLaughlin sentenced him to 25 years to life in prison. The Appellate Division declined to reduce the sentence.³¹

²⁹ The New York State Legislature passed a series of Drug Law Reform Act "to 'grant relief from what the Legislature perceived as the 'inordinately harsh punishment for low level non-violent drug offenders' that the [New York sentencing laws known as] Rockefeller Drug Laws required." *People v. Paulin*, 17 N.Y.3d 238 (2011). See also Jim Parsons et al., *End of An Era? The Impact of Drug Law Reform in New York City*, Vera Institute of Justice (2015).

³⁰ *People v. Gonzalez*, 25 A.D.3d 620 (2d Dep't 2006); *People v. Gonzalez*, 2006 WL 6081234 (Crim. Ct., New York County 2006); Brief for Defendant-Appellant, [2007 WL 4701359](#) (2007); *People v. Gonzalez*, 53 A.D.3d 507 (2d Dep't 2008); *People v. Gonzalez*, 64 A.D.3d 789 (2d Dep't 2009).

³¹ *People v. Aleman*, 48 A.D.3d 305 (2d Dep't 2008), *rev'd*, 12 N.Y.3d 806 (2009); Brief for

17 Years for Just Over Two Ounces of Cocaine

Mr. Brown was convicted in 2006 for selling just over two ounces of cocaine. Under the then-prevailing drug laws, he was sentenced to 17 years to life in prison. In 2008, Mr. Brown asked the lower court to resentence him under the Drug Law Reform Act.³² In 2009, Judge Margaret Clancy granted Mr. Brown's application and resented him to 17 years in prison.

On appeal of the resentence, Mr. Brown asked for a further reduction of his 17-year sentence to the minimum allowed by law: 15 years. The Appellate Division found that the 17-year sentence was not excessive and denied his appeal.³³

6. Findings

Our dataset includes all appellate decisions in criminal cases issued by the Appellate Division, First and Second Departments, from 2007 to 2023.³⁴ As such, the data covers all intermediary criminal appeals in felony cases originating from New York City, as well as several surrounding counties, including Westchester, Nassau, and Suffolk.³⁵ As described in the Data & Methodology section, we filter these decisions to select those where the Appellate Division reduced the sentence in the interest of justice after a conviction at trial.

6.1. Excessive Sentencing Findings: Rare and Powerful a Signal of Sentencing Anomalies

We identify and include in our data 313 decisions, or findings, of excessive sentences arising from felony convictions after trial. It is helpful to first contextualize this number within the case activity statistics for both the lower courts and the intermediate appellate courts in the First and Second Departments.

Defendant-Appellant, [2008 WL 6002300](#) (2008). The Court of Appeals, New York's highest court, reversed the conviction and ordered a new trial, finding that Judge McLaughlin failed to appropriately address the deadlocked jury at trial. *People v. Aleman*, 12 N.Y.3d 806 (2009).

³² For more information about New York's Drug Law Reform Act, see footnote 29, *supra*.

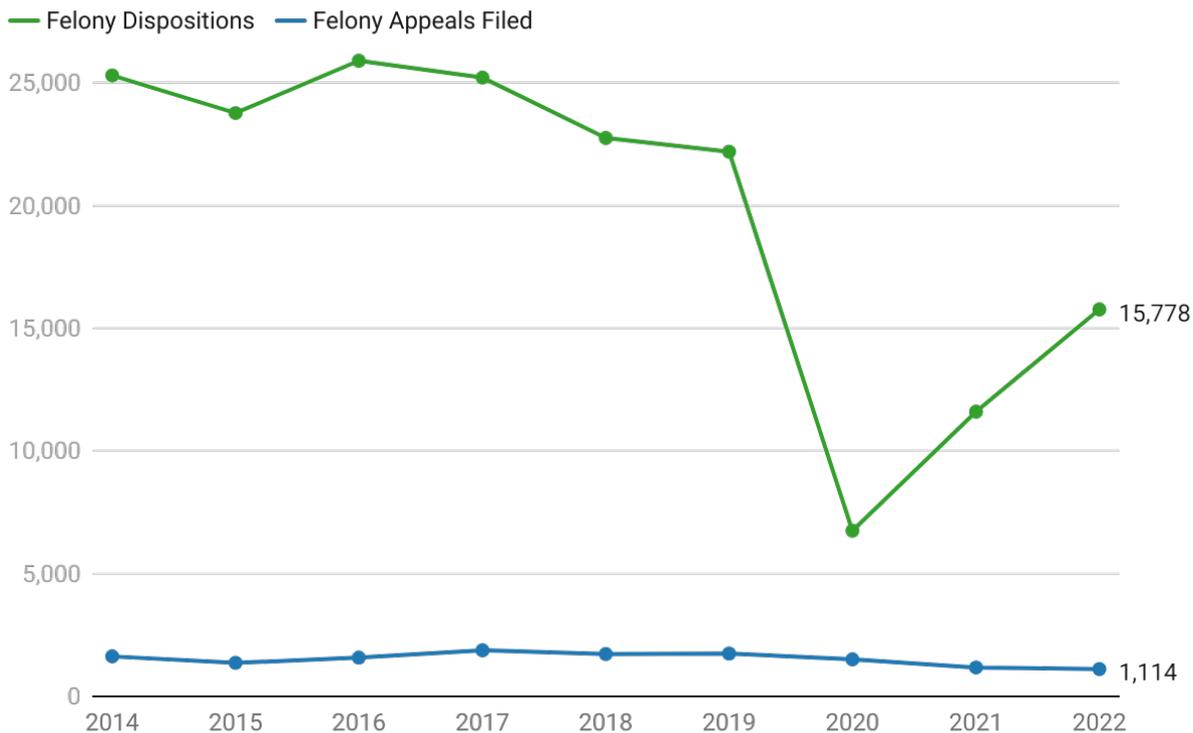
³³ *People v. Brown*, 155 A.D.3d 449 (1st Dep't 2017). Some of the details related above are found in the defense's appellate brief, available on Westlaw at [2017 WL 10719591](#).

³⁴ Excessive sentence findings can also be found in Third and Fourth Department decisions, but we have not analyzed those decisions for this report.

³⁵ The [First Department](#) oversees appellate matters originating from Bronx and New York counties, while the [Second Department](#) handles those from Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester counties.

Between 2014 and 2022, an average of 19,930 felony cases each year ended with a conviction after a guilty plea or a jury trial verdict.³⁶ But only a small percentage of these felony convictions were appealed: The average number of appeals filed annually was only 1,526, constituting 7.5% of all felony convictions.³⁷

Figure 1: The majority of felony convictions are not appealed



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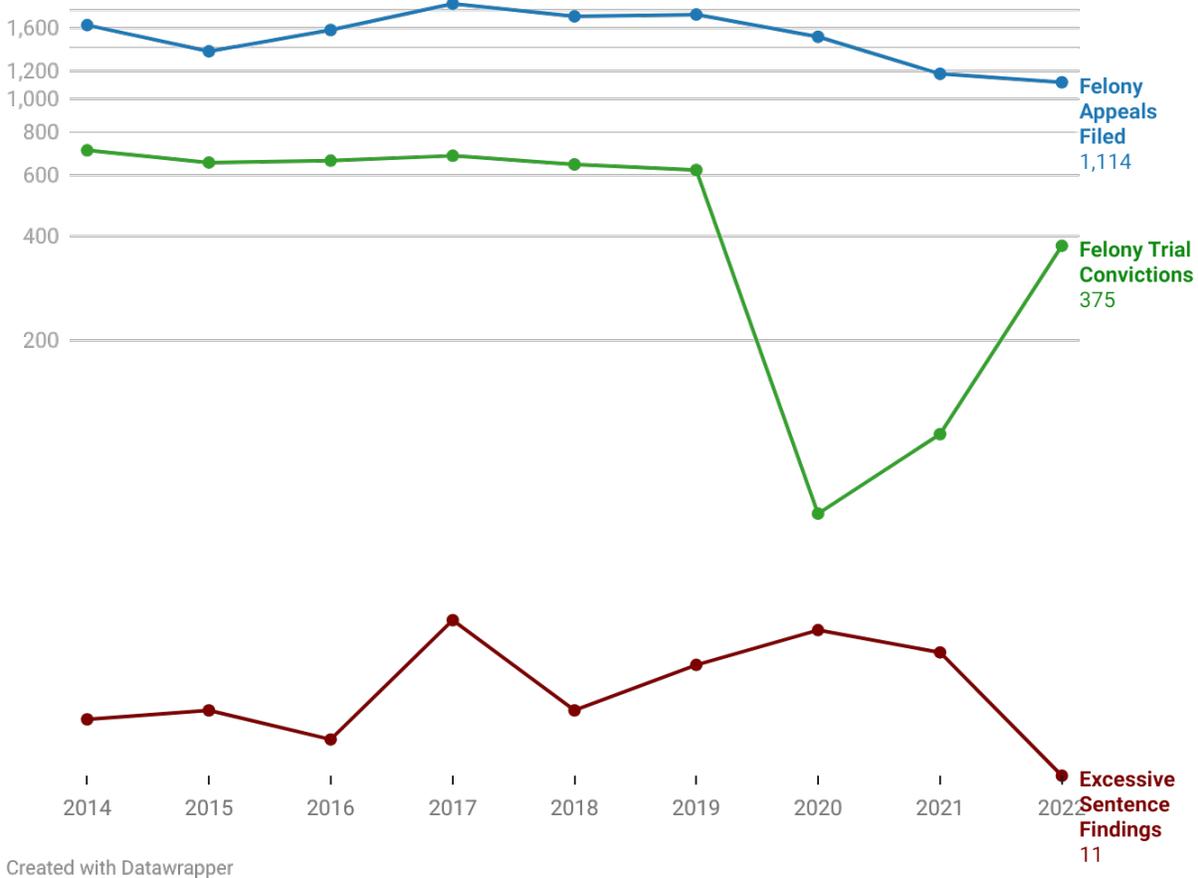
Since guilty pleas generally do not directly implicate the lower court judge's discretion, we only examine excessive sentence findings that occur after a felony trial, not those following pleas, thus giving more accurate context to understand

³⁶ We obtain the data for these figures from the Annual Reports of the Chief Administrator for 2014-2022, which are publicly available on the New York Courts [website](#). We excluded figures for non-jury verdicts, since according to the Office of Court Administration (OCA), these figures encompass both acquittals and convictions. We also excluded the "Other" figures reported by OCA, as they include transfers to other jurisdictions or to family court, abatements by death, commitments to mental hygiene, and pleas of not responsible due to mental disease or defect, as well as dismissals. At the time that this report was finalized, the Annual Report for 2023 was not publicly available.

³⁷ Dispositions in the lower courts within a given year are typically not appealed or disposed of in that same year. Simply compiling the documents needed to complete the record on appeal can take two months to two years. See Letter to Judges Marks, Acosta, and Scheinkman by The Association of the Bar of the City of New York, [Delays Associated with Compiling the Record on Appeal in Criminal Cases](#) (2020). Thus, for example, appeals filed or disposed of in 2020 likely encompass felony cases where a conviction was obtained in 2019 or even earlier.

the frequency of these findings.

Figure 2: Only a fraction of felony sentences after trial are reduced for excessiveness on appeal



From 2014 to 2022, an average of 502 felony cases per year were resolved with a conviction after a jury trial.³⁸ Since all these cases ended in convictions, they all could be appealed as of right to New York’s intermediate appellate court,³⁹ be reviewed for excessive sentencing, and fall into our dataset (if reduced).

Yet only a fraction of felony sentences after trial are reduced for excessiveness on appeal. Assuming that every felony jury conviction is appealed—New York’s court system does not make this data available—then 4% of felony trial convictions result in an excessive sentence finding. If we exclude 2020 and 2021, when the COVID-19 pandemic led to a significant decrease in jury trials, this

³⁸ This figure does not include convictions after a non-jury trial, *i.e.*, a trial where the judge serves as a fact finder. Such data is not available from OCA. Including this figure would result in a higher annual average of felony convictions after trial. Hence, the average cited above serves as the lower bound (minimum) of felony cases that could qualify for an excessive sentence finding after a trial conviction.

³⁹ C.P.L. § 450.10.

number is even lower, at 3%.⁴⁰

Given the infrequency of excessive sentence findings, such findings offer a compelling signal that something extraordinary occurred in the sentencing process.

6.2. Excessive Sentencing Findings By Judge

Next, we group our data by lower court judge and calculate the number of excessive sentence findings and the total number of years reduced from the sentences that each judge imposed.

We calculate two metrics to measure total number of years reduced:

- Years Reduced (1): The difference between the original sentence (the sentence imposed by the lower court judge) and the reduced sentence (the sentence imposed by the appellate judges).
- Years Reduced (2): The difference between the 70.30 Sentence (the original sentence after it is lowered per P.L. § 70.30(1)(e), if applicable) and the reduced sentence imposed by the appellate court.⁴¹ We include this measure since it may be more indicative of excessive punitiveness, as discussed in detail below.

⁴⁰ This number is likely slightly inflated because the figures for felony trial convictions do not account for non-jury trial convictions, whereas the data on excessive sentence findings includes a small number of reductions from nonjury trial sentences.

⁴¹ According to these calculations, the total number of years measured by the Years Reduced (2) metric will invariably be either less than or equivalent to the total number of years measured by the Year Reduced (1) metric.

Table 1: Excessive Sentence Findings and Years Reduced by Judge

	Judge	Findings ▼	Years Reduced (1)	Years Reduced (2)	County(s)	Status
1	Edward J. McLaughlin	 20	 181.5	 164...	New York	Retired
2	Vincent Del Giudice	 19	 503.0	 293.0	Kings	Active
3	Daniel P. FitzGerald	 9	 59.5	 59.5	New York	Retired
4	Robert M. Mandelbaum	 8	 52.0	 52.0	New York	Active
5	Maxwell Wiley	 6	 66.0	 66.0	New York	Active
6	Ronald Zweibel	 6	 65.5	 65.5	New York	Retired
7	James P. Sullivan	 5	 12.5	 12.5	Kings	Retired
8	John G. Ingram	 5	 89.0	 89.0	Kings	Retired
9	Kenneth C. Holder	 5	 31.0	 31.0	Queens	Active
10	Lewis Bart Stone	 5	 76.5	 55.5	New York	Retired
11	Neil Jon Firetog	 5	 86.3	 86.3	Kings	Retired
12	Richard L. Buchter	 5	 23.3	 23.3	Queens	Retired
13	Alan D. Marrus	 4	 19.0	 17.0	Kings	Retired
14	Cassandra M. Mullen	 4	 12.3	 12.3	Bronx, New York	Active
15	Edward T. McLoughlin	 4	 40.0	 40.0	Dutchess	Active

Additional 125 rows not shown.

Created with Datawrapper

A searchable table is available at www.scrutinize.org/excessive-sentencers

In total, between 2007 and 2023, the First and Second Department reduced 2,946 prison years (2,566 years under the Year Reduced (2) metric), for an average of 173 prison years reduced every year. During this 17-year period, 65 lower court judges engaged in excessive sentencing more than once. The 12 judges with five or more excessive sentence findings had their sentences reduced by a total of 1,246 years under the Years Reduced (1) metric and 998 years under the Years Reduced (2) metric.

While the number of findings might be the same for certain judges, the severity of their excessive sentences can vary. For example, Edward J. McLaughlin and Vincent Del Giudice have a similarly high number of findings: 20 and 19, respectively. But Del Giudice's sentences were much more excessive, resulting in a reduction of 503 years compared to McLaughlin's 181.5 years (under the Years Reduced (1) metric). The same holds true for judges with fewer excessive sentence findings: Judge Robert Collini had 4 excessive sentence findings, the same as several of his peers. However, under the Years Reduced (1) metric, his sentences were reduced by 61 years, while his peers had reductions of no more than 40 years.

6.3. The Implications of Automatic Lowering in Sentencing: More Punitiveness?

Sentences that are automatically lowered pursuant to P.L. § 70.30(1)(e) because of their length (calculated by the Years Reduced (2) metric) may serve as indicators of even more punitive exercises of discretion, despite yielding a lower figure than the sentence reductions measured by the Years Reduced (1) metric.

Our data does not make clear whether lower court judges have factored in whether the sentences they impose will be automatically reduced by law. Given the complexity of interpreting P.L. § 70.30(1)(e), it is conceivable that experienced judges might be unsure of its exact impact on the sentences they impose.⁴² Moreover, P.L. § 70.30(1)(e) is directed at the Department of Corrections and Community Supervision, meaning that judges may be less likely to fully attend to its operation.

⁴² New York's sentencing laws are notoriously difficult to navigate, even for seasoned practitioners. See, e.g., William C. Donnino, *Practice Commentaries, McKinney's Cons Laws of N.Y., Book 39, Penal Law § 60.00* ("sentencing statutes have become a labyrinth not easily traversed by even the most experienced practitioner of the criminal law"). Similarly, the Chair of New York's sentencing commission noted that the state's sentencing structure "is an overly complex, Byzantine sentencing structure that is riddled with opportunities for injustice and, in some cases, is virtually unintelligible to prosecutors, defense attorneys, defendants and crime victims alike." *The Future of Sentencing in New York State: A Preliminary Proposal for Reform*, New York State Commission on Sentencing Reform (2007).

Why would a judge knowingly impose a sentence that will be automatically lowered later? (In other words, why not just impose the lowered sentence from the start?) When a judge understands the implications of P.L. § 70.30(1)(e) and still opts for a sentence that will be automatically lowered, they may be trying to publicly communicate their punitiveness. After all, parties unfamiliar with P.L. § 70.30(1)(e)—for example, the media, political patrons, or complainants and their families—will be left to believe that the judge imposed a sentence that is more punitive than it really is. Alternatively, the judge may be trying to signal to the parole board that it should treat the defendant’s parole application more strictly than the length of the sentence may suggest.

Conversely, where a judge is not aware of the effects of P.L. § 70.30(1)(e) but still imposes a sentence that will be automatically lowered, their sentencing decision may indicate eagerness to use their discretion to impose punishment so severe that it activates built-in legislative mechanisms designed to prevent overly long sentences.

Thus, a lower value for the Years Reduced (2) metric—indicating that a sentence was automatically lowered by operation of law—may imply an even *greater* punitive use of discretion, whether or not the lower court judge is aware of the effects of P.L. § 70.30(1)(e).

7. Excessive Sentences Are an Insufficient Gauge of the Leniency or Severity of New York’s Criminal Legal System

Excessive sentence findings cannot speak to the overall leniency or punitiveness of the New York criminal legal system. Instead, they only speak to the relative punitiveness of certain sentences within the context of all sentencing in the state. Metrics suggest that New York imposes lengthier sentences, on average, than several states known for their punitive criminal legal systems, such as Louisiana and South Carolina, as well as several states commonly thought to be similarly liberal, such as New Jersey, Massachusetts, and Washington.⁴³

⁴³ Gerald Gaes and Julia Laskorunsky, *The Relationship Between Sentence Length, Time Served, and State Prison Population Levels*, Council on Criminal Justice (2023)

The persistence of long sentences in New York is partially explained by its sentencing scheme, which still requires mandatory minimum sentences for most felony convictions.⁴⁴ This enables coercive guilty pleas and other drivers of lengthy sentences.⁴⁵

Mandatory minimum sentences can also restrict appellate review of excessive sentencing since appellate courts cannot reduce a sentence below its mandatory minimum. Consider the following example of a mandatory minimum sentence in action:

From 4 to 8 Years Down to 3 to 6: The High Cost of a Counterfeit \$20 Bill

In *People v. Mitchell*,⁴⁶ Mr. Mitchell, a 53-year-old unhoused man, attempted to purchase a tube of toothpaste from a pharmacy using a counterfeit \$20 bill. This effort was unsuccessful, and he was later observed by police trying to use a counterfeit \$20 bill to buy food. Following a jury trial, Mr. Mitchell was convicted of a class C non-violent felony, Criminal Possession of a Forged Instrument in the First Degree. Judge Anthony J. Ferrara sentenced Mr. Mitchell to 4 to 8 years in prison.

On appeal, the First Department reduced Mr. Mitchell's sentence to 3 to 6 years, the minimum legally permissible sentence in New York for his conviction.

We cannot know whether the First Department would have chosen to reduce Mr. Mitchell's sentence further, but the mandatory minimum sentence dictated that they had no choice.

Further, the low rate of appeals in New York minimizes the number of sentences found to be excessive. The primary mechanism for assessing the excessiveness of an imposed sentence—appellate review—is not applied to the majority of felony sentences. About 7.5% of felony dispositions in New York undergo appellate review, leaving 92.5% of felony dispositions, including those overseen by judges

⁴⁴ A mandatory minimum sentence is a legally prescribed minimum amount of time that an individual must serve in prison when convicted of a specific crime. As of 2014, there were 29 states that had reformed mandatory minimum sentencing laws. See Ram Subramanian and Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences*. New York, Vera Institute of Justice (2014).

⁴⁵ Michael Rempel and Amanda Cissner, *N.Y. needs criminal justice reform: Mandatory minimum sentences are unjust*, New York Daily News (2023); Mariam Gaye, *New York Should Abolish Mandatory Minimums*, Vera Institute of Justice (2022). See also *A More Just New York City*, Independent Commission on New York City Criminal Justice and Incarceration Reform, page 66 (2017) (calling for the abolishment of mandatory minimums).

⁴⁶ *People v. Mitchell*, 168 A.D.3d 531 (1st Dep't 2019).

known for excessive sentencing, unexamined for their excessiveness. While many of these sentences are the result of guilty pleas, they nevertheless would be subject to the interest of justice jurisdiction and to reduction of excessiveness if appealed.⁴⁷ Since 92.5% of cases are not appealed, their excessiveness is never evaluated. If more sentences were appealed—or if all sentences were to be reviewed for excessiveness—it is likely that more sentences would be found excessive and reduced.

8. Recommendations

This section outlines two key recommendations that, if implemented, would shed light on sentencing practices across the state. Implementation of each recommendation would empower the public and the court system with helpful information and improve the transparency of the judiciary.

1. New York’s court system should increase its transparency by releasing detailed, judge-level sentencing data.

The Unified Court System possesses judge-level sentencing data spanning at least a decade.⁴⁸ This data includes, for each sentence imposed by a judge, details about the case, the charges, and the sentence imposed. Publishing this data will keep New Yorkers and decision-makers informed about individual judges’ sentencing habits and help determine the effects of legislative and policy changes on judicial sentencing discretion.

2. New York’s court system should publish annual reports summarizing excessive sentence findings and detailing the judges involved, the legal arguments made, and the appeal outcomes.

As part of its commitment to transparency,⁴⁹ the Unified Court System should publish an annual report summarizing excessive sentence findings. This report would tally the number of appeals seeking sentence reduction

⁴⁷ In many cases resulting in a guilty plea, defendants are required to sign a waiver forfeiting their right to appeal. This waiver prevents them from requesting that the Appellate Division review their sentence’s excessiveness under interest-of-justice jurisdiction. *People v. Lopez*, 6 N.Y.3d 248, 255 (2006).

⁴⁸ See *NYCLU, Scrutinize, and Harvard Law School Cyberlaw Clinic File Freedom of Information Law Requests to Further Expose Racial Disparities in NY Criminal Legal System*, Scrutinize (2024).

⁴⁹ *Mission Statement*, New York Unified Court System (2021) (“...the UCS is committed to operating with integrity and transparency”); Brian Lee, *Court Watchdogs Target Dearth of Published Criminal Decisions*, NYLJ (2023) (“The state Court System is firmly committed to maintaining a transparent judiciary for all New Yorkers,” according to an Office of Court Administration spokesperson).

under the court's interest of justice jurisdiction; detail the name of the judge who imposed the original sentence and the outcome of each appeal. The report should also summarize the arguments made by both the defense and prosecution regarding sentence reduction—which are currently not accessible online in most cases, but which are included in the appellate brief submitted in each case—as well as any reasoning provided by the court for its ruling on this issue.

9. Conclusion

As more attention is paid to state judiciaries and their impacts on daily life, transparency into judges' decisions affecting incarceration, racial disparities, and constitutional rights gains relevance and value to the public and decision-makers. Equipping New York's court system with more, systematized data about excessive sentences could help it move closer to embodying the values it stands for. Sharing this metric with decision-makers and the public can promote democratic engagement and oversight of the judiciary by the communities that it serves.

This report introduces a new metric for assessing individual judges' decisions and impacts: exceptionally punitive sentences, so severe that even appellate judges could not uphold them.

This metric is especially important in light of the significant human and societal costs associated with long-term imprisonment. Long prison sentences carry significant costs on the person imprisoned, their family and community, and society as a whole. Studies, one utilizing New York data, have associated prolonged incarceration with mental health harms, acceleration of the biological processes of aging, and two years off a person's life expectancy for each year of incarceration.⁵⁰ Care for incarcerated, elderly people in New York costs taxpayers between \$100,000 and \$240,000 per person per year.⁵¹ Finally, long sentences do not effectively deter crime and even heighten the risk of reoffending, making communities less safe.⁵²

⁵⁰ Evelyn J. Patterson, *The Dose–Response of Time Served in Prison on Mortality: New York State, 1989–2003*, *American Journal of Public Health* (2013); Farah Acher Kaiksow, Lars Brown, and Kristin Brunsell Merss, *Caring for the Rapidly Aging Incarcerated Population: The Role of Policy*, *J Gerontol Nurs.* 49(3):7–11 (2023); Katie Rose Quandt and Alexi Jones, *Research Roundup: Incarceration can cause lasting damage to mental health*, Prison Policy Initiative (2021).

⁵¹ Elizabeth Gaynes, Tanya Krupat, David George, and Colin Bernatzky, *The High Costs of Low Risk: The Crisis of America's Aging Prison Population*, The Osborne Association (2018).

⁵² Jared Trujillo, *Reducing Multigenerational Poverty in New York Through Sentencing Reform*, *CUNY Law Review* 26(1): 226–265, 228, 244 (2023); Marta Nelson, Samuel Feineh, and Maris Mapolski, *A New Paradigm for Sentencing in the United States*, Vera Institute of Justice (2023).

This report presents a key innovation in the study of judicial decisions outside of the federal system: the use of written decisions as a dataset to illuminate the decisions and impacts of individual judges. Judicial decisions are widely available in many, if not all, U.S. jurisdictions, rendering our approach replicable in other jurisdictions.

The metric of excessive sentence findings has a unique and salient feature: its legitimacy stems from the judgment of appellate judges. These judges, seasoned insiders within the judicial system, are the ones who deem a sentence “excessive” or “harsh.” Their identification of a sentence as excessive serves as a rare and clear signal—from highly-respected institutional actors—that a lower court judge made an exceptionally troubling choice.

Our findings raise urgent questions about judicial accountability in New York. Specifically, seven active judges have imposed four or more excessive sentences—with one having been found to impose excessive sentences 19 separate times. The continued reappointment and reelection of these judges by the public and key decision-makers, including mayors of New York City and governors of the state, demonstrates how, without sufficient transparency into sentencing practices, these red flags go unnoticed.

Appendix: Data & Methodology

Our dataset includes appellate decisions issued by the Appellate Division, First and Second Departments, from 2007 to 2023. As such, the data covers all intermediary criminal appeals in felony cases originating from the five counties of New York City and Nassau, Suffolk, Westchester, Orange, Rockland, Dutchess, and Putnam counties.⁵³ These appellate decisions, our dataset, are publicly accessible via a variety of legal databases.

Each appellate decision provides relevant information, including:⁵⁴

1. The **date** of the appellate decision;
2. Whether the conviction resulted from a **trial** or a plea;
3. The **name** of the lower court judge who imposed the sentence;
4. The **sentence** imposed by the lower court judge;
5. Whether the appellate court deemed the sentence to be **excessive**, unduly harsh, or otherwise in need of modification in the “interest of justice”;
6. The **modified sentence**, if any.

The language of the appellate decisions provides additional information needed to calculate automatic limits on sentence length under P.L. § 70.30(1)(e):⁵⁵

7. The charge(s) of conviction;⁵⁶
8. Whether the lower court judge imposed a concurrent or consecutive sentence;
9. Whether the sentence(s) were determinate, indeterminate, or a combination of both (in cases of multiple charge convictions);

⁵³ The [First Department](#) oversees appellate matters originating from Bronx and New York counties, while the [Second Department](#) handles those from Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester counties.

⁵⁴ In a few decisions, some of this information was not available as part of the decision itself. In those instances, we collect the missing information from appellate briefings and other sources.

⁵⁵ P.L. § 70.30(1)(e) requires knowledge about whether the consecutive charges were “committed prior to the time the person was imprisoned under any of such sentences.” Since the appellate decisions do not include this information, we assume that this condition is fulfilled. Consequently, we might be applying automatic limits when, in fact, such limits may not apply. In practice, our assumption could impact the calculation of Years Reduced (2) by decreasing it, but it does not affect the calculation of Year Reduced (1).

⁵⁶ In determining whether the conviction charges were violent or non-violent, we rely on the most recent versions of the relevant statutes. We do not consult the statutes in effect at the time of conviction or the automatic reduction of the sentence. Any changes to these statutes that might have occurred could influence the calculation of the sentence after the after P.L. § 70.30(1)(e) adjustment.

10. Whether the defendant was adjudicated a “persistent felon” or a “juvenile offender.”⁵⁷

We gather information regarding the severity of charges, necessary for calculating automatic sentence length limitations, from the relevant statutory provisions found in the New York State [Open Legislation](#) website.

Of 27,395 First and Second Department criminal decisions between 2007 and 2023, we identify 903 (3%) decisions that include modifications grounded in the appellate court's “interest of justice” jurisdiction.⁵⁸ Of these 903 decisions, we remove the following:

1. Decisions where modifications were made pursuant to the “interest of justice” jurisdiction as well as on another ground (*e.g.*, “on the law”, “on the facts”) (138 decisions removed), therefore retaining only modifications made exclusively pursuant to the “interest of justice.”⁵⁹
2. Decisions involving sentences *not* imposed after a jury or non-jury trial. These sentences are not direct results of the lower court judge’s discretion since they are usually negotiated between the defense and the prosecution (345 decisions removed).
3. Decisions where sentence modifications did not apply to the length of incarceration, such as adjustments to restitution amounts, orders of protection, probation or PRS (Post Release Supervision, a variant of parole) periods, and Sex Offender Registration Act (SORA) levels (110 decisions removed).

⁵⁷ People adjudicated as persistent felony offenders under P.L. § 70.10 do not qualify for automatic sentencing limitations under P.L. § 70.30(1)(e). See *Roballo v. Smith*, 63 N.Y.2d 485 (1984). Sentence limitations for juvenile offenders are addressed under a separate provision of P.L. § 70.30(1)(f). In our study, we did not identify any decisions involving juvenile offenders who qualified for automatic lowering of their sentence.

⁵⁸ We identify these decisions based on the use of indicative terms within the text of the decisions themselves, such as “Judgment modified”, “unanimously modified”, and “, modified,”, as well as similar string patterns that indicate modification based solely on interest of justice jurisdiction, such as “as a matter of discretion in the interest of justice.”

⁵⁹ Cases that involve determinations based on the law and the facts, and not just the interest of justice, blur the picture of how lower court judges use their discretion, and therefore we exclude them from our data. To illustrate this, consider *People v. Ramos*, 218 A.D.3d 495 (2d Dep’t 2023) where the appellate court vacated several charges, including the most serious ones, due to a legal error, and subsequently reduced the sentence on the remaining conviction under its “interest of justice” jurisdiction. Cases like *Ramos* make it difficult to discern whether the original sentence would have been lighter without the vacated convictions. Because it is speculative to determine the lower court judge's potential decision in the absence of these charges, we opt to exclude such cases to avoid basing our findings on assumptions.

We are left with 310 appellate decisions. Three of these involve excessive sentence findings regarding multiple defendants or in multiple cases of the same defendant, resulting in a total of 313 distinct findings of excessive sentence.⁶⁰

We classify all these cases as “excessive sentencing” cases, despite the words “excessive” or “harsh” not appearing in 22 out of the 313 cases. All these cases feature a reduction in prison sentence under the appellate court's “interest of justice” jurisdiction, whereby the appellate judges substitute their sentencing discretion for that of the lower court judge.⁶¹ In addition, several of the decisions involve a resentencing, mostly from a remittitur by the appellate court in a previous appeal or under the Drug Law Reform Act, where the underlying conviction was obtained through a trial. In several decisions, the appellate court vacates the lower court judge’s discretionary adjudication of the defendant as a persistent felony offender and reduces the sentence according to lower sentencing limits absent such adjudication.

For each decision in our dataset, we calculate the following:

1. **Original Sentence:** The sentence imposed by the lower court judge.
2. **70.30 Sentence** (where applicable): The sentence length after automatic adjustment per the limitations in Penal Law § 70.30(1)(e).
3. **Reduced Sentence:** The sentence after reduction by the appellate court.

For simplicity in the calculation of each sentence, we adhere to these guidelines:

1. **Determinate sentences:** We use the entire term imposed, without reducing it by 1/7th.⁶²
2. **Indeterminate sentences:** We use the minimum term imposed, regardless of whether the maximum sentence is a fixed term or life.
3. **Definite sentences:** We use two-thirds of the term imposed.⁶³
4. **Effective sentences:** We treat a concurrent sentence of 9, 9, and 4 years, on three different charges, which is reduced to a concurrent sentence of 6, 6,

⁶⁰ We do not review whether any decision in our dataset was appealed to the Court of Appeals or what the outcome of such an appeal was.

⁶¹ See, e.g., *People v. Harvey*, 80 A.D.3d 464 (1st Dep’t 2011) (appellate court reduces sentence by vacating persistent felony offender adjudication under its interest of justice jurisdiction, noting that the lower court judge “improvidently exercised [his] discretion” in adjudicating Mr. Harvey persistent felony offender); *People v. Solomon*, 78 A.D.3d 521 (1st Dep’t 2010) (appellate court reduces sentence under its interest of justice jurisdiction, noting that the sentence “warrants” modification); *People v. Hodge*, 154 A.D.3d 963 (2d Dep’t 2017) (appellate court reduces sentence, suggesting lower court judge penalized Mr. Hodge for exercising the right to trial).

⁶² Corr. Law § 803(1)(c).

⁶³ P.L. § 70.30(4)(b).

and 4 years, as a 3-year reduction, not a 6-year reduction.

We obtain judges' status (active or retired) by looking at the New York State Reporter's list of judges of the Record,⁶⁴ which, to our knowledge, is the most accurate list of currently active judges. We rely on the State Reporter's March 2023 Report, which is the most updated listing available online.

Challenges in Contextualizing Judicial Behavior

Due to the limited data available from the New York Unified Court System, our ability to contextualize our findings across judges is somewhat restricted. The Unified Court System's decision not to publicize comprehensive sentencing data leaves us without crucial figures, such as the total number of cases overseen by each judge or the number of sentences they have imposed. The Unified Court System possesses this information, but it has not made it public—a subject of an ongoing Freedom of Information request.⁶⁵ This data gap hinders our ability to determine the proportion of each judge's sentences that were deemed excessive.

Furthermore, the unavailability of data from the Unified Court System prevents us from accounting for the number of each judge's sentences that were appealed but not deemed excessive. We do not have electronic access to defense appellate filings in the vast majority of cases, so we cannot determine if an excessive sentence claim was raised unless the decision mentions such a claim. Alas, many appellate decisions address a few legal issues raised on appeal but dismiss other claims without detailing them, often using phrases like, "The defendant's remaining contentions are without merit." As a result, we cannot identify all cases where an excessive sentence claim was raised by the defense and denied by the appellate court.

Despite these limitations, our numerical data holds significant value. As an analogy, consider a police officer who has been found to use excessive force on multiple occasions. It would be helpful to know the officer's total number of interactions with members of the public, enabling computation of their rate of use of excessive force. It would also be helpful to know the total number of interactions of the officer's peers, to compute the officer's performance

⁶⁴ Law Reporting Bureau, *Judges and Justices of Courts of Record of the State of New York* (2023). This link directs to a copy of the Law Reporting Bureau's website on the Wayback Machine, an internet archive, because the Law Reporting Bureau removed this webpage from its website in early 2024. It has not created a new webpage that includes these lists. (The lists were formerly available [here](#), which as of this writing leads to an error page). Its most recent version of the list dates to March 2023, which the Wayback Machine captured.

⁶⁵ See *Press Release: NYCLU, Scrutinize, and Harvard Law School Cyberlaw Clinic File Freedom of Information Law Requests to Further Expose Racial Disparities in NY Criminal Legal System, Scrutinize* (2024).

relative to others. Nevertheless, even without these broader perspectives, the repeated occurrences of an officer resorting to excessive force provides a wealth of information about their individual conduct and approach to law enforcement.

The same holds true for our data on excessive sentences. Every recorded instance of excessive sentencing is a judge making an excessively punitive sentencing choice to a degree deemed unacceptable by several higher court judges. Multiple instances of excessive sentencing shine a spotlight on judges who demonstrate a tendency toward excessive punitiveness over time. Even if these instances of excessiveness constitute only a small fraction of a judge's total sentences imposed or reviewed, they still serve as significant markers of outlier punitiveness. Therefore, despite its limitations, our data provides illuminating insights, while also underscoring the necessity for further publication of data, research, and contextualization regarding sentencing practices.

Limitations: The Improbable Possibility of Influence of Off-Record Information in Appellate Decisions

The use of excessive sentence findings as an indicator of excessive carceral discretion has some limitations. To explain these limitations and their improbability, we provide a brief outline of the sentencing and appellate processes.

During the sentencing phase after a trial conviction, the judge exercises their discretion to decide the length of the sentence, within the bounds of the law. In an attempt to sway the judge's discretion towards leniency, the defense attorney may make an argument, present documentation, or both. Similarly, the prosecutor may make a case for a punishment they consider suitable. Based on this information, along with any other case-specific details, the judge will impose a sentence.

On a direct appeal, the appellate judges who contemplate a sentence reduction in the interest of justice are generally bound to consider only the information available to the lower court judge. Thus, they consider only the “record on appeal”—documents, verdicts, and transcripts available to the lower court judge—in making their rulings.⁶⁶ When the appellate judges reduce the sentence for excessiveness, they substitute their sentencing discretion for that of the lower court judge. They do so based on the same set of facts that was before the lower court judge—the record on appeal.

⁶⁶ See, e.g., *Block v. Magee*, 146 A.D.2d 730 (2d Dep't 1989) (“appellate review is limited to the record made at the nisi prius court and, absent matters which may be judicially noticed, new facts may not be injected at the appellate level”); *People v. Chiles*, 70 A.D.3d 1453 (4th Dep't 2010); *People v. Mann*, 42 A.D.2d 587 (2d Dep't 1973).

While generally constrained to the record on appeal, appellate judges may look beyond this record in limited situations. For instance, an appellate court could take judicial notice of post-conviction facts when deciding on a sentence reduction, thus considering information that was not before the lower court judge.⁶⁷ Similarly, a few appellate cases have found permissible the consideration, on direct appeal, of evidence of post-conviction rehabilitation or cooperation with law enforcement.⁶⁸ In these instances, information outside of the record on appeal—and therefore not in front of the lower court judge—could muddle the attribution of extreme punitive discretion to the lower court judge.

Our data on excessive sentence findings does not provide insight into whether appellate judges had considered any information beyond the record on appeal. Appellate decisions typically announce a sentence reduction in a single sentence without providing the reasons for the reduction. Moreover, appellate documents—which would include post-conviction records, if used—are generally not electronically accessible. Therefore, our data does not permit us to determine if an excessive sentence finding was influenced by information not available to the lower court judge.

Nevertheless, the use of these findings as indicators of the lower court judge’s carceral discretion remains valid. Appellate courts are overwhelmingly hesitant to consider matters outside the record on appeal,⁶⁹ including when weighing claims of excessive sentencing.⁷⁰ Moreover, while the appellate courts often mention that an argument was made based on information outside of the record on appeal,⁷¹ none of the 313 decisions in our dataset include such a clarification.

⁶⁷ See, e.g., *People v. Glenn*, 221 A.D.3d 544 (1st Dep’t 2023) (Court reduces sentence on consent of the prosecution and considering defendant’s behavior while incarcerated, among other factors).

⁶⁸ See, e.g., *People v. Hiemel*, 49 A.D.2d 769 (2d Dep’t 1975); *People v. Fioravantes*, 229 A.D.2d 784 (3d Dep’t 1996).

⁶⁹ See, e.g., *People v. Ores*, 108 A.D.2d 931, 931 (2d Dep’t 1985) (“Defendant’s brief contains matters which are de hors the record and, thus, may not be considered on appeal by this court”); *People v. Rivera*, 180 A.D.3d 939, 941 (2d Dep’t 2020) (“The contention raised in the defendant’s pro se supplemental brief is based on matter de hors the record and therefore may not be considered on direct appeal from the judgment.”).

⁷⁰ See, e.g., *People v. Lane*, 218 A.D.3d 1152 (4th Dep’t 2023); *People v. Banker*, 138 A.D.3d 1253, 1254 (3d Dep’t 2016) (matters related to excessive sentencing “that are outside the record on appeal,” should be addressed outside of the direct appeal); *People v. Muszynski*, 2003 WL 2004511 (App. Term 2003) (denying excessive sentence claim noting that defendant’s medical condition is “de hors of the record”).

⁷¹ See, e.g., *People v. Lane*, 218 A.D.3d 1152 (stating, in the context of denying an excessive sentence claim, that “there is no indication that defendant sought to properly include the documents as part of the record on appeal”); *People v. Sinha*, 84 A.D.3d 35 (1d Dep’t 2011) (“Although the grand jury minutes were, of course, before the trial court, the People nonetheless have moved...to enlarge the record on appeal to include them”); *People v. Marshall*, 106 A.D.3d 1 (1st Dep’t 2013) (“Furthermore, the parties stipulated to expand

Therefore, even though it is possible that some decisions in our data depended on information beyond the record on appeal—and that the appellate court failed to mention this—it remains highly improbable.

Similarly, the use of excessive sentence findings as indicators of extremely punitive discretion is not substantially impacted by potential disparities in the effectiveness of the trial and appellate defense attorneys. In the vast majority of cases, the appellate defense attorney will be bound by the lower court record: the facts developed during trial, and at sentencing, by the trial defense attorney. Thus, while the presentation of these facts may be more compelling on appeal, the same facts would have been available to the lower court judge in making their sentencing decision. Moreover, the role of a lower court judge arguably entails the obligation to exercise judicial discretion responsibly, based on the facts presented, irrespective of the quality of the defense attorney's advocacy at sentencing.⁷²

the record on appeal to include the record of defendants' post-conviction CPL 440.10..."); *People v. Morales*, 126 A.D.3d 43 (1st Dep't 2015) ("The dissent raises a host of matters neither developed in the record below nor advanced by the People"); *People v. Antoine*, 189 A.D.3d 1445 (2d Dep't 2021) ("The People's contentions that the defendant's claim of an improper removal from the courtroom is de hors the record"); *People v. LaBagh*, 51 Misc.3d 144(A) (App. Term 2016 ("To the extent that defendant's contention rests on matters de hors the record, it may not be reviewed on this appeal").

⁷² See, generally, Arthur W. Campbell, *Law of Sentencing*, § 10: Judge's Duties (2d Ed.); see also *People v. Farrar*, 52 N.Y.2d 302, 305–06 (1981) ("The determination of an appropriate sentence requires the exercise of discretion after due consideration given to, among other things, the crime charged, the particular circumstances of the individual before the court and the purpose of a penal sanction, i. e., societal protection, rehabilitation and deterrence. . . The law and strong public policy of this State mandate that the court, detached from outside pressures often brought to bear on the prosecution and defense, make that determination. Quite simply, the court must perform the delicate balancing necessary to accommodate the public and private interests represented in the criminal process"); *Standards for Criminal Justice: Special Functions of the Trial Judge*, American Bar Association, Standard 6-1.1(a) (2000) ("The trial judge has the responsibility for safeguarding both the rights of the accused and the interests of the public in the administration of criminal justice. The adversary nature of the proceedings does not relieve the trial judge of the obligation of raising on his or her initiative, at all appropriate times and in an appropriate manner, matters which may significantly promote a just determination of the trial").

About

Scrutinize uses innovative, scalable, and data-informed tools to shed light on the decisions and impacts of individual judges. It is housed at the Urban Justice Center's [Social Justice Accelerator](#) program.

The Center on Race, Inequality, and the Law at NYU School of Law confronts the laws, policies, and practices that lead to the oppression and marginalization of people of color. We believe that the racism that permeates our present day legal system has deep roots. By documenting the history of racism in America, elevating the stories of those affected by race-based inequality, and rigorously applying a racial lens to analyze unremitting disparities, we identify actionable, forward-looking solutions to address the injustices caused by racism and then take action.

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Cover Art

[Ascension](#) (2022) by Mark A. Cádiz AKA Rev. M. Seishin Cádiz

Artist Statement: I began drawing around the age of 4 or 5, after having nearly died from pneumonia. When I came around, my mother brought me colored pencils, paper, and comic books to entertain myself. That was the beginning of my journey as an artist. As I grew up, I used art to express feelings and perceptions that seem beyond language. Art has provided me with a world without limitation.

Art is a creative meditation for me. To give form to a concept through my art is an expression of life. As long as I have the tools to liberate my creativity, I am free. Who we are is not limited to the perceptions of others or our physical form, nor can it be contained by them or by a piece of parchment framed by words. Art is my gateway to look beyond these seeming limitations to see true essence.

My artwork has evolved and expanded to different mediums, subjects, content, and techniques over the years. Initially working with pencils, I began to develop my illustrative style. I incorporated new techniques acquired by mistake, by observation of other artists' work, and through my exploration of a variety of genres. It wasn't until I was in my early 50s that I began working with acrylics and watercolor. My style and technique are as diverse as my artwork: from the symbolic and metaphorical, to fantasy and the natural world. My art is influenced by my personal life experiences, the spiritual nature of reality, interconnection, and my musings.

Maybe something in my artwork will speak to and inspire someone else.

Artist Bio: Mark A. Cádiz, also known as Rev. M. Seishin Cádiz, is a 56-year-old Puerto Rican born on a U.S. Air Force base in Texas. He is the first in his family to be born on the U.S. mainland. He is a son, a brother, an uncle, a father, a grandfather, and a Soto Zen Buddhist priest ordained in 2012 and given the name "Seishin" (pronounced Say-shin), which means "Pure Heart-Mind." As an "inside" priest, Seishin serves the San Quentin Buddhadharma Sangha along with an "outside" priest. Seishin's work has been exhibited at a variety of venues including: SF 9th Circuit Court (2019), Liberation Prison Project Show (2021 & 2022), SF Opera, Berkeley Art Museum and DreamCorp's Day of Empathy and Black Future Weekend events (2022). He produced cover art for Apogee Journal (2020) and Through the Eyes of a Ski Mask 2 by Tyler Woods (2020).

Read more: [San Quentin News, Mark Cadiz's art honors San Quentin Covid deaths](#)