GIBSON DUNN

# Gibson Dunn Secures Release of Incarcerated Domestic Violence Survivor in Precedent-Setting Victory Under New York's Domestic Violence Survivors Justice Act

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The New York State Supreme Court–Appellate Division, Third Judicial Department has unanimously reversed the denial of a resentencing application filed by Gibson Dunn's pro bono client in a precedent-setting victory under the state's recently enacted Domestic Violence Survivors Justice Act (DVSJA). Under the DVSJA, domestic violence survivors convicted of offenses for which their abuse was a significant contributing factor are eligible for reduced sentencing based on specific statutory considerations. This is only the second such appeal to reach the Third Department since the DVSJA's enactment, and the first successful appeal under the law by a domestic violence survivor. Before Gibson Dunn joined the case, the lower court had denied the survivor's resentencing application in part on the ground that her history of domestic violence had already been "factored in" to her plea agreement—and thus that she was attempting to "double dip" by applying for statutorily authorized relief. As a matter of first impression in the Third Department, our lawyers argued that the lower court's denial of the application on this and other grounds constituted reversible legal error. On November 22, 2023, a unanimous Third Department panel sided with our client, concluding that the lower court committed multiple legal errors in denying the application. Importantly, the court held that whether the domestic violence history was "factored in" to her plea agreement was "not relevant to the application of the DVSJA," confirming the remedial purpose of the statute and its availability to all eligible survivors, regardless of the disposition of their underlying cases. In a significant step, the Third Department modified the sentence itself rather than remanding to the lower court, broadening the appellate court's authority under the law to provide relief for future survivors. Because our client has already served more than the amended sentence, she will be immediately released from prison as a result of this ruling. New York partner Karin Portlock led the team and argued the case before the Third Department, with valuable assistance from associate Brian Yeh. The team received outstanding support from our pro bono partners Professor Kate Mogulescu of Brooklyn Law School and Michael Baker of the Broome County Public Defender's Office.

### Related People

Karin Portlock

Brian Yeh

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