

CRIMINAL

1/1/20 – 7/31/20

COVID-19

Habeas corpus

People ex rel. Carroll v Keyser

2020 NY Slip Op 03169

(3rd Dept) (6/5/20 DOI)

Reversal of grant of habeas corpus application on behalf of inmate Jalil Muntaqim. The Third Department reversed. The petitioner failed to meet the ultimate burden of showing that the inmate's detention was illegal. There was no showing of deliberate indifference by prison officials, who detailed many steps taken to prevent the spread of the virus. The petitioner further alleged that, although the sentence was lawful when imposed, it became grossly excessive due to the risks created by the pandemic. The reviewing court found it doubtful that a sentence proper that was at the time of imposition could become grossly disproportionate as a result of changed conditions, and opined that such a challenge should be raised in a post-conviction motion to the sentencing court.

http://nycourts.gov/reporter/3dseries/2020/2020_03169.htm

Matter of People ex rel. Stoughton v Brann

2020 NY Slip Op 04236

(1st Dept) (7/24/20 DOI)

The First Department affirmed the denial of mass applications for writs of habeas corpus on behalf of defendants incarcerated on Rikers Island and offered guidance in conclusion concluded that habeas courts reviewing cases during the pandemic should perform individualized assessments and consider: (1) each petitioner's risk of flight; (2) the particular health factors as documented by medical records and physician affirmations where practical; (3) the specific conditions of the petitioner's confinement; and (4) the environment into which the petitioner would be released and whether there was a plan in place to protect that person from contracting the virus and to monitor their health. Such information would permit courts to balance the competing interests, make decisions recognizing the potentially serious implications of confinement on detainees with underlying health conditions, and ensure the state's ability to enforce the law against those who might not return to face justice once released.

http://nycourts.gov/reporter/3dseries/2020/2020_04236.htm

PRETRIAL

Delay in prosecution

People v Clark

180 AD3d 925

(2nd Dept) (2/24/20 DOI)

Error to deny, without a hearing, the defendant's motion to dismiss the indictment based on the People's unjustified delay in prosecution. Relevant circumstances included a delay of 22 months from the incident to the indictment; the People's failure to offer a reason for the delay; and the defendant's claim of prejudice.

http://nycourts.gov/reporter/3dseries/2020/2020_01180.htm

Grand jury

People v Clark

182 AD3d 703

(3rd Dept) (4/10/20 DOI)

The People faxed to the Conflict Defender a notice stating that the matter would be presented to the grand jury, but not specifying a presentment date. The next day, the People presented the matter to the grand jury. County Court properly granted the defendant's motion to dismiss the indictment pursuant to CPL 190.50 (5), since the People failed to give him a reasonable opportunity to testify before the grand jury.

http://nycourts.gov/reporter/3dseries/2020/2020_02204.htm

People v Edwards

182 AD3d 929

(3rd Dept) (4/30/20 DOI)

People's appeal. Third Department reinstated two counts of 1st degree assault. One justice dissented, opining that grand jury proof was legally insufficient. A collision reconstruction investigator testified that the defendant's vehicle was slowing for the five seconds before the crash, while the steering wheel was being turned to the right as the road curved. One of the two injured passengers testified that the defendant slammed on the brakes before the collision. Such proof showed that the defendant took steps to reduce his speed and mitigate the risk of his reckless driving.

http://nycourts.gov/reporter/3dseries/2020/2020_02503.htm

Jurisdictional defect

People v Lawrence

179 AD3d 1155

(3rd Dept) (1/3/20 DOI)

Indictment was jurisdictionally defective, appellate counsel ineffective. Less than 25 grams of pot possessed by the defendant did not constitute dangerous contraband for promoting prison contraband charge.

http://nycourts.gov/reporter/3dseries/2020/2020_00004.htm

People v Elric YY.

179 AD3d 1304

(3d Dept) (1/20/20 DOI)

Waiver of indictment and SCI did not set forth approximate time of offense. However, under *People v Thomas* (COA, 11/26/19, affirming *People v Lang*, 165 AD3d 1584), this was non-elemental factual information, and the guilty plea forfeited such arguments regarding defects in the accusatory instrument.

http://nycourts.gov/reporter/3dseries/2020/2020_00326.htm

People v Wheeler

34 NY3d 1134

(COA) (2/24/20 DOI)

The defendant was convicted of 2nd degree obstructing governmental administration for backing his vehicle away from police officers. The Information lacked factual allegations providing notice of the official function the defendant allegedly interfered with—a police stop of him in his vehicle to execute a warrant to search the vehicle—so it was jurisdictionally defective.

http://www.nycourts.gov/reporter/3dseries/2020/2020_00998.htm

Suppression

Appellate review

People v Grimes

181 AD3d 1251
(4th Dept) (3/16/20 DOI)

The lower court erred in ruling without resolving whether the pat frisk was lawful, and the appellate court lacked the power to review issues not ruled upon, so the matter was remitted.

http://nycourts.gov/reporter/3dseries/2020/2020_01818.htm

People v Holz

35 NY3d 55
(COA) (5/8/20 DOI)

CPL 710.70 (2) gives a defendant the right to review of a suppression order “upon an appeal from an ensuing judgment of conviction, notwithstanding the fact that such judgment is entered upon a plea of guilty.” That provision encompasses a suppression order related to a count, satisfied by a guilty plea, to which the defendant did not plead guilty, a unanimous Court of Appeals held.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02682.htm

People v Harris

2020 NY Slip Op 03208
(COA) (6/12/20 DOI)

In denying suppression, Supreme Court found that *People v Gokey*, 60 NY2d 309, did not apply, and thus made no findings regarding exigent circumstances. Yet in affirming, the Appellate Division invoked a different ground. That was improper. Upon an appeal from a criminal court judgment, an intermediate appellate court may determine any question of law or issue of fact involving error or defect which may have adversely affected the appellant. CPL 470.15 (1). Because the suppression court did not deny the defendant’s motion based on exigent circumstances, that issue was not decided adversely to him and could not properly be invoked by the Appellate Division.

http://www.nycourts.gov/reporter/3dseries/2020/2020_03208.htm

Impoundment

People v Weeks

182 AD3d 539
(2nd Dept) (4/3/20 DOI)

Reversal, suppression, dismissal. The impoundment of the defendant’s vehicle was unlawful. The vehicle was legally parked. While an officer testified that the vehicle was impounded to safeguard against burglary, there was no evidence as to a history of burglary in the area, nor any evidence as to an NYPD impoundment policy, what the policy required, or whether the arresting officer complied with the policy.

http://nycourts.gov/reporter/3dseries/2020/2020_02198.htm

IAC

People v Allen

2020 NY Slip Op 03295
(4th Dept) (6/15/20 DOI)

Supreme Court erred in allowing evidence obtained after police stopped a vehicle in which the defendant was a passenger, based on the driver’s unsafe backing-out maneuver. VTL§ 1211 (a), addressing operating

a vehicle in reverse, did not apply. Counsel's failure to raise the dispositive argument at the suppression hearing constituted ineffective assistance.

http://nycourts.gov/reporter/3dseries/2020/2020_03295.htm

People v Persen

2020 NY Slip Op 04204

(3rd Dept) (7/24/20 DOI)

Defense counsel was ineffective. At the suppression hearing, he/she asked only four questions, waived closing argument, and declined to submit a post-hearing memo; and the sole suppression argument in defense papers was premised on factually inaccurate information. Notwithstanding counsel's defective performance, a new trial was not warranted in light of the overwhelming proof of guilt. There was no reasonable possibility that the constitutional error might have contributed to the convictions.

http://nycourts.gov/reporter/3dseries/2020/2020_04204.htm

Lineup

People v Colsen

181 AD3d 618

(2nd Dept) (3/9/20 DOI)

The hearing court erred in finding the lineup not unduly suggestive. The defendant was the only person with dreadlocks, which featured prominently in the complainant's description of one assailant. In the lineup, the dreadlocks were distinctive and visible, even though the defendant and fillers wore hats.

http://nycourts.gov/reporter/3dseries/2020/2020_01514.htm

No founded suspicion

People v Wallace

181 AD3d 1214

(4th Dept) (3/16/20 DOI)

Officer asked what was in the defendant's bag, a level-two intrusion, without a founded suspicion. Suppression ordered.

http://nycourts.gov/reporter/3dseries/2020/2020_01796.htm

No probable cause

People v Kamenev

179 AD3d 837

(2nd Dept) (1/20/20 DOI)

Police lacked probable cause to arrest the defendant, and motion to suppress lineup ID testimony and his statements to police should have been granted. Facts relied on were innocuous—that the defendant was seen riding a bike near the scene of the crime shortly before the shooting.

http://nycourts.gov/reporter/3dseries/2020/2020_00301.htm

People v Johnson

183 AD3d 1256

(4th Dept) (5/4/20 DOI)

Drugs and weapons convictions upon guilty plea dismissed due to suppression error. Traffic stop for not using a blinker. The defendant made furtive movements toward the center console and fled. After his arrest, deputy opened car door, smelled marijuana, found crack cocaine under armrest. Upon getting search warrant, deputy seized handgun from glove compartment. No probable cause to open door and search. Requisite nexus lacking. Since deputy did not smell pot after opening door.

http://nycourts.gov/reporter/3dseries/2020/2020_02576.htm

People v Thorpe

183 AD3d 844

(2nd Dept) (5/22/20 DOI)

The suppression hearing evidence established that, after receiving a report of a burglary, an officer stopped the defendant as he walked near the crime, because he matched a description of “a suspect in dark clothing.” When the officer asked him for identification, the defendant began to put his hand in his pants pockets, and the officer stopped him and told him to place his hands on his head. The officer then saw bulges in the defendant’s pants pockets, patted his clothing, felt a bulge, put his hands into the defendant’s pockets, and pulled out a big wad cash of cash. Suppression was proper. After the pat-down, further intrusion unlawful.

http://nycourts.gov/reporter/3dseries/2020/2020_02941.htm

No reasonable suspicion

People v Nazario

180 AD3d 1355

(4th Dept) (2/10/20 DOI)

Suppression was proper where officer did not recognize the defendant from BOLO information, which thus could not be used to validate the officer’s conduct. Search of bag was improper; no proof officer could have reasonably suspected that the defendant was armed and posed a threat to his safety.

http://nycourts.gov/reporter/3dseries/2020/2020_00955.htm

Peace officers/citizens’ arrest

People v Page

2020 NY Slip Op 03265

(COA) (6/12/20 DOI)

Marine interdiction agents were not encompassed in CPL 2.15, which accorded limited peace officer powers to certain federal law enforcement officers. The instant arrest was a valid citizen’s arrest. Judge Fahey dissented. The majority expanded the ability of law enforcement to effect arrests they had no authority to make, under the guise of a citizen’s arrest, and undermined the rationale of *People v Williams*, 4 NY3d 535—to deter vigilantism and ensure that persons chosen to protect citizens from crime may be readily identified, and persons effectuating citizens’ arrests must do so without pretense of other authority.

http://www.nycourts.gov/reporter/3dseries/2020/2020_03265.htm

Preservation

People v Crum

2020 NY Slip Op 03282

(1st Dept) (6/12/20 DOI)

At trial, the defendant did not preserve any claim relating to cell-site location information obtained without a warrant. The motion court properly rejected the attempt to raise the issue via a post-conviction motion. The defendant asserted that it would have been futile for trial counsel to raise the issue, because SCOTUS had not yet decided *Carpenter v U.S.* The appellate court concluded that the defendant was required to preserve the issue by advocating for a change in the law.

http://nycourts.gov/reporter/3dseries/2020/2020_03282.htm

Right to counsel

People v McCabe

182 AD3d 772

(3rd Dept) (4/17/20 DOI)

County Court committed reversible error in denying the defendant's motion to suppress his un-*Mirandized* statements. After arriving at the crime scene and finding the defendant in the driveway, a police officer entered the residence where the victim was being treated by the defendant's mother. The officer informed the defendant that he was being detained for questioning. After handcuffing the defendant and placing him in the patrol car, the officer asked him, "What happened?" The defendant responded that he "snapped" and "wanted her to feel the pain he had." The incident had been completed, the parties identified, and medical assistance requested. The custodial questioning constituted interrogation.

http://nycourts.gov/reporter/3dseries/2020/2020_02288.htm

Search incident to arrest

People v Chy

2020 NY Slip Op 03244

(2nd Dept) (6/12/20 DOI)

The search was not justified as incident to a lawful arrest. The officer did not act out of concerns for safety or evidence preservation. The People contended that, even if the search were unlawful, the defendant's statements were admissible, because they were sufficiently attenuated so as to purge the taint of the illegal search. Since Supreme Court did not rule on that issue, remittal was required.

http://nycourts.gov/reporter/3dseries/2020/2020_03244.htm

Search warrant

People v Morehouse

183 AD3d 1180

(3rd Dept) (5/29/20 DOI)

The defendant argued that a search warrant was issued without probable cause, because the application was based on possession of synthetic cannabinoids, which is not illegal under the Penal Law. While the P.L. did not prohibit the possession of synthetic cannabinoids, the State Sanitary Code did (10 NYCRR 9-1.2), and a violation was punishable by a fine and/or 15 days' incarceration.

http://nycourts.gov/reporter/3dseries/2020/2020_03048.htm

Valid accusatory instrument

People v Middleton

35 NY3d 952

(COA) (4/30/20 DOI)

Information regarding official misconduct was jurisdictionally valid. It alleged that, while working as a treatment program aide at a correctional facility, the defendant disclosed information to an inmate regarding an unusual incident, in violation of the employee manual she signed. The defendant admitted that she printed the paperwork on a facility computer and allowed the inmate to take the document to his cell. One could infer that she meant to benefit herself or inmates.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02530.htm

GUILTY PLEAS

Amended indictment

People v Mathis

2020 NY Slip Op 03696

(3rd Dept) (7/3/20 DOI)

As a result of an amendment of the indictment, the defendant was charged with a different crime than the one voted on by the grand jury. The record established only that the grand jury indicted the defendant for violating Penal Law § 120.05 (7), not subdivision (3), as was charged in the amended instrument. The claim was not waived by the guilty plea and could be raised for the first time on appeal. Reversal.

http://nycourts.gov/reporter/3dseries/2020/2020_03696.htm

Cognitive ability

People v Patillo

2020 NY Slip Op 03743

(1st Dept) (7/3/20 DOI)

Plea of guilty to murder vacated in the interest of justice. The defendant had been diagnosed as mentally retarded and had an IQ of 56. Clearly, a standard plea allocution would be nearly incomprehensible to him. Yet the plea court made no effort to translate the usual litany into simple language that the defendant could understand.

http://nycourts.gov/reporter/3dseries/2020/2020_03754.htm

Coercion

People v Shields

181 AD3d 1193

(4th Dept) (3/16/20 DOI)

At an appearance prior to the plea proceeding, the court stated that, if the defendant decided to reject the plea offer and was convicted after trial, court would impose the maximum sentence on the top count and consecutive time on an unnamed additional count. Such statements constituted impermissible coercion.

http://nycourts.gov/reporter/3dseries/2020/2020_01767.htm

IAC

People v Maldonado

183 AD3d 1129

(3rd Dept) (5/22/20 DOI)

On the scheduled sentencing date, the defendant expressed dissatisfaction with counsel and moved pro se to withdraw her guilty plea. On an adjourn date, defense counsel made several statements detrimental to the defendant. A conflict of interest arose; the sentencing court was required to relieve counsel. On a subsequent date, still represented by original counsel, the defendant was sentenced. Supreme Court deprived the defendant of her right to effective assistance of counsel.

http://nycourts.gov/reporter/3dseries/2020/2020_02953.htm

Padilla violations

People v Lantigua

2020 NY Slip Op 02257

(1st Dept) (4/30/20 DOI)

Error to summarily deny CPL 440.10 motion regarding IAC as to advice on immigration consequences. In unsworn letter, counsel admitted his flawed performance. At the plea proceedings, the defendant received no relevant advice. The motion court should not have focused on likelihood that the defendant would have been convicted after trial. IAC claim may succeed even where a favorable outcome is unlikely. The defendant faced only a short sentence if convicted after trial and had family here.

http://nycourts.gov/reporter/3dseries/2020/2020_02557.htm

People v George

183 AD3d 436

(1st Dept) (5/15/20 DOI)

The defendant's guilty plea subjected him to mandatory deportation. His 440 motion charged that defense counsel was ineffective in failing to make any effort to negotiate a plea with less severe immigration consequences. Plea counsel did not consider immigration impact, according to a supporting affidavit. Where the alleged IAC was the failure to negotiate an immigration-friendly plea, the defendant must show a reasonable probability that the People would have made such an offer. The defendant made such showing. motion court abused its discretion in denying the 440 motion without a hearing.

http://nycourts.gov/reporter/3dseries/2020/2020_02852.htm

People v Ni

2020 NY Slip Op 03621

(COA) (6/25/20 DOI)

The defendant was convicted, after a jury trial, of 3rd degree grand larceny and other crimes. He asserted that his attorney advised him that a guilty plea to petit larceny would result in mandatory deportation. In fact, such a plea would only have rendered the defendant deportable with the possibility of discretionary relief. The defendant claimed that he rejected a favorable plea offer based on the misadvice. A hearing was necessary to determine whether counsel gave erroneous guidance and the defendant was thereby prejudiced.

http://nycourts.gov/reporter/3dseries/2020/2020_03621.htm

Peque violations

People v Arana

179 AD3d 826

(2nd Dept) (1/20/20 DOI)

Plea court failed to address deportation. Defendant was given chance to move to vacate his plea.

http://nycourts.gov/reporter/3dseries/2020/2020_00290.htm

People v Delorbe

35 NY3d 112

(COA) (4/3/20 DOI)

The instant defendant failed to preserve his *Peque* claim. A year before the plea proceeding, the People provided him with a generic notice of immigration consequences. The notice adequately alerted the defendant about immigration consequences. At sentencing, the defendant did not seek to withdraw his plea or inquire about a possible immigration impact.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02126.htm

People v Pinnock

183 AD3d 424

(1st Dept) (5/8/20 DOI)

When the defendant, a noncitizen, pleaded guilty to a firearm possession charge, the plea court did not advise him that, if he was not a citizen, he could be deported as a consequence of his plea. Although the defendant did not move to withdraw his plea, there was no evidence that he knew about the possibility of

deportation during the plea and sentencing proceedings. Thus, his claim fell within the narrow exception to the preservation doctrine. *See People v Peque*, 22 NY3d 168.

http://nycourts.gov/reporter/3dseries/2020/2020_02731.htm

People v Singh

183 AD3d 546

(1st Dept) (5/29/20 DOI)

In 2009, the plea court did not advise the defendant that, if he was not a U.S. citizen, he could be deported as a result of his plea, as subsequently required in *People v Peque* 22 NY3d 168. There was no reasonable possibility that he could show prejudice. When he pleaded guilty, he had previously been convicted for grand larceny, which rendered him deportable.

http://nycourts.gov/reporter/3dseries/2020/2020_03087.htm

People v Singh

2020 NY Slip Op 03978

(1st Dept) (7/20/20 DOI)

The plea court did not advise the defendant that, if he was not a U.S. citizen, he could be deported as a result of his plea, as later required in *People v Peque*, 22 NY3d 168, but there was no reasonable possibility that the defendant could show prejudice, where he was deportable based on prior and subsequent convictions.

http://nycourts.gov/reporter/3dseries/2020/2020_03978.htm

Preservation

People v Tavaréz

2020 NY Slip Op 03185

(1st Dept) (6/5/20 DOI)

A claim that a defective count impacted a decision to plead guilty was not exempt from the requirement for preservation, such as via a plea withdrawal motion. Further, there was no basis to reverse in this case.

http://nycourts.gov/reporter/3dseries/2020/2020_03185.htm

People v Hernandez

2020 NY Slip Op 04049

(4th Dept) (7/20/20 DOI)

The defendant negated the element of “intent to commit a crime therein” of the burglary charge. Trespass could not itself be used as the sole predicate crime. Supreme Court failed to further inquire to ensure that the plea was intelligently entered.

http://nycourts.gov/reporter/3dseries/2020/2020_04049.htm

Rights waived

People v Oliver

2020 NY Slip Op 03697

(3rd Dept) (7/3/20 DOI)

The plea of guilty was not knowing, voluntary, and intelligent. The issue was not precluded by the appeal waiver and was preserved by a motion to withdraw the plea. County Court did not ascertain whether the defendant had conferred with counsel regarding the constitutional rights waived.

http://nycourts.gov/reporter/3dseries/2020/2020_03697.htm

Right to counsel

People v Sears

181 AD3d 1290

(4th Dept) (3/23/20 DOI)

Reversal, because the defendant's right to counsel was violated when a defense attorney who actively participated in the preliminary stages of the defense became employed as an ADA by the office prosecuting the defendant's ongoing case.

http://nycourts.gov/reporter/3dseries/2020/2020_01974.htm

Reviewability

People v Holz

35 NY3d 55

(COA) (5/8/20 DOI)

CPL 710.70 (2) gives a defendant the right to review of a suppression order "upon an appeal from an ensuing judgment of conviction, notwithstanding the fact that such judgment is entered upon a plea of guilty." That provision encompasses a suppression order related to a count, satisfied by a guilty plea, to which the defendant did not plead guilty, a unanimous Court of Appeals held.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02682.htm

People v Person

2020 NY Slip Op 03278

(1st Dept) (6/12/20 DOI)

Formerly, a defendant who pleaded guilty automatically forfeited appellate review of denial of a statutory speedy trial motion. Effective January 1, 2020, CPL 30.30 (6) was amended to provide that "an order finally denying a [30.30] motion to dismiss...shall be reviewable upon appeal from an ensuing judgment of conviction, notwithstanding the fact that such judgment is entered upon a plea of guilty." The amendment created reviewability that did not previously exist. However, by validly waiving the right to appeal, a defendant could voluntarily relinquish otherwise mandatory review.

http://nycourts.gov/reporter/3dseries/2020/2020_03278.htm

Waivers of appeal

People v Barrales

179 AD3d 1313

(3rd Dept) (1/20/20 DOI)

Invalid appeal waiver. Written doc did not explain issues waived and inaccurately stated that the defendant gave up the right to have counsel assigned, file an appeal, or seek post-conviction relief in any court. Under *People v Thomas*, 34 NY3d 545, waiver was unenforceable.

http://nycourts.gov/reporter/3dseries/2020/2020_00329.htm

People v Burdo

179 AD3d 1355

(3rd Dept) (1/24/20)

Appeal waiver invalid. County Court did not explain "separate and distinct" element. Not clear the defendant signed written document in open court after conferring with counsel.

http://nycourts.gov/reporter/3dseries/2020/2020_00456.htm

People v Ecchevaria

180 AD3d 703

(2nd Dept) (2/10/20 DOI).

Purported waiver of the right to appeal was invalid. Particularly in light of the defendant's young age and inexperience with the criminal justice system, the terse oral colloquy was insufficient.

http://nycourts.gov/reporter/3dseries/2020/2020_00875.htm

People v Frias

180 AD3d 704

(2nd Dept) (2/10/20 DOI)

Purported waiver of his right to appeal was invalid. Erroneous statement that, by signing the written waiver, the defendant was giving up his right to appeal "any issue that may arise from this case, including sentencing." Written waiver did not overcome flaws.

http://nycourts.gov/reporter/3dseries/2020/2020_00876.htm

People v Brown

180 AD3d 1341

(4th Dept) (2/10/20 DOI)

Waiver of right to appeal invalid, because lower court told the defendant he could obtain no further review of the conviction or sentence by a higher court.

http://nycourts.gov/reporter/3dseries/2020/2020_00944.htm

People v Marcel G.

183 AD3d 667

(2nd Dept) (5/8/20 DOI)

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of attempted 2nd degree robbery. The Second Department adjudicated the defendant to be a youthful offender. The purported waiver of the right to appeal was invalid. The defendant's youth, limited education, and lack of experience with the criminal justice system warranted a more thorough explanation; and there was no indication on the record that he read the written waiver.

<http://www.courts.state.ny.us/courts/ad2/Handdowns/2020/Decisions/D62758.pdf>

People v Sutton

2020 NY Slip Op 03400

(2nd Dept) (6/19/20 DOI)

The Second Department affirmed a challenged conviction, but found the waiver of the right to appeal invalid. Supreme Court insisted on the waiver as a condition of the plea. But judicial extraction of such a waiver, could create the appearance that the court sought to insulate its decision from review. The waiver gratuitously demanded after the plea deal had been struck.

http://nycourts.gov/reporter/3dseries/2020/2020_03400.htm

People v Anderson

2020 NY Slip Op 03571

(COA) (6/25/20 DOI)

The waiver of the right to appeal was invalid. The plea court advised the defendant that the appellate rights being relinquished were listed on the written waiver he signed. That document contained overbroad language. There was no indication that the defendant—a first-time felony offender—understood that he retained the right to some appellate review.

http://nycourts.gov/reporter/3dseries/2020/2020_03571.htm

People v Tomko

2020 NY Slip Op 04346

(3rd Dept) (7/31/20 DOI)

The waiver of the right to appeal was not knowing, intelligent, and voluntary. The plea court's brief colloquy with the defendant—a first-time offender—failed to ensure that she understood the terms and/or consequences of the appeal waiver.

http://nycourts.gov/reporter/3dseries/2020/2020_04346.htm

TRIALS

Courtroom closure

People v Rivera

180 AD3d 514

(1st Dept) (2/24/20 DOI)

Error to exclude family members from courtroom during testimony of undercover officers, where prosecutor did not oppose the defense request, the court made no supporting findings, and there was no request that the family members be identified.

http://nycourts.gov/reporter/3dseries/2020/2020_01035.htm

Deliberating jurors

People v Kluge

180 AD3d 705

(2nd Dept) (2/10/20 DOI)

Mode of proceedings errors required reversal. The defendant was not present when deliberating juror expressed concerns about pressure on jury. As to ensuing jury note, court failed to comply with CPL 310.30.

http://nycourts.gov/reporter/3dseries/2020/2020_00878.htm

People v Petrizzo

2020 NY Slip Op 03251

(2nd Dept) (6/12/20 DOI)

Supreme Court failed to comply with CPL 310.30 and *People v O'Rama*, 78 NY2d 270. In a note, the jury asked about the elements of resisting arrest. Twice when reading the note, Supreme Court substituted the word "initially" in place of "intentionally."

http://nycourts.gov/reporter/3dseries/2020/2020_03251.htm

Discharge of jurors

People v Alleyne

179 AD3d 712

(2nd Dept) (1/13/20 DOI)

Juror's work trip was lame reason to excuse her after both sides rested. She was not "unavailable" within meaning of CPL 270.35 (1). Reversal and new trial.

http://nycourts.gov/reporter/3dseries/2020/2020_00154.htm

People v Manning

180 AD3d 605

(1st Dept) (2/28/20 DOI)

Reversal due to the unjustified discharge for cause of a selected but unsworn juror, based on concerns about juror's out-of-town meeting during trial. Record did not show that his state of mind would have prevented him from rendering an impartial verdict.

http://nycourts.gov/reporter/3dseries/2020/2020_01308.htm

People v Lang

2020 NY Slip Op 03487

(COA) (6/25/20 DOI)

Reversal. The trial judge discharged a sworn juror as unavailable without the requisite inquiry and notice. Court judge informed the parties that juror 9 was absent, due to an important appointment for a family member. Without stating that a substitution would occur, the court seated alternate 1 in place of juror 9. There was no inquiry into juror 9's likelihood of appearing. At a recess, defense counsel objected and later moved for a mistrial.

http://www.nycourts.gov/reporter/3dseries/2020/2020_03487.htm

Evidentiary errors

Collateral v material proof

People v Hemphill

2020 NY Slip Op 03567

(COA) (6/25/20 DOI)

The Court of Appeals upheld a murder conviction. Judge Fahey dissented. An eyewitness gave false testimony in stating that she had not identified a third party in the crime. The defense was not allowed to call a Grand Jury reporter to reveal the truth. In the dissenter's view, the ruling was reversible error. Evidence tending to show that a witness was fabricating testimony was never collateral.

http://www.nycourts.gov/reporter/3dseries/2020/2020_03567.htm

People v Snow

2020 NY Slip Op

(4th Dept) (7/20/20 DOI)

Error to refuse to allow the defendant sought to call a witness whose testimony related to the content of the note he presented to the bank employee in the first robbery incident. The note contained language that purportedly did not threaten the immediate use of force—contrary to a witness's testimony.

http://nycourts.gov/reporter/3dseries/2020/2020_04024.htm

“Complainant” vs. “victim”

People v Horton

181 AD3d 986

(3rd Dept) (3/9/20 DOI)

The complainant should not be referred to as the “victim,” since such label dilutes the presumption of innocence. Other jurisdictions have expanded restrictions on the use of the term in additional contexts where the complainant's credibility is in issue.

http://nycourts.gov/reporter/3dseries/2020/2020_01530.htm

Cross-examination

People v Vasquez

182 AD3d 438

(1st Dept) (4/10/20 DOI)

The defendant was convicted based on his role in the crimes along with three other participants, including Francisco Calderon. While the prosecutor improperly cross-examined Calderon, the error was harmless. Two justices dissented. The cross-examination left the impression that the defendant had participated with

Calderon as a getaway driver in a spree of uncharged violent robberies. Such propensity evidence must not be admitted at trial.

http://nycourts.gov/reporter/3dseries/2020/2020_02237.htm

People v Conner

2020 NY Slip Op 03200

(1st Dept) (6/5/20 DOI)

The trial court erred in denying the defendant's request to cross-examine a police sergeant regarding allegations of misconduct in a civil lawsuit, in which it was claimed that the sergeant arrested the plaintiff without suspicion of criminality and lodged false charges against him. The civil complaint contained allegations bearing on the sergeant's credibility at the instant trial.

http://nycourts.gov/reporter/3dseries/2020/2020_03200.htm

Demonstration

People v Jenkins

2020 NY Slip Op 04014

(1st Dept) (7/20/20 DOI)

The defendant contended that the court should have granted a motion for a mistrial, based on the prosecutor becoming an unsworn witness. She made an irrelevant demonstration, showing that the defendant's knife could be opened in ways other than what he described. The argument was preserved for review, despite a three-day delay in raising it. The trial court curative charge was sufficient to prevent prejudice.

http://nycourts.gov/reporter/3dseries/2020/2020_04014.htm

Frye hearing

People v Williams

2020 NY Slip Op 02123

(COA) (4/3/20 DOI)

The trial court abused its discretion as a matter of law in refusing to hold a *Frye* hearing to assess the general acceptance within the scientific community of Low Copy Number (LCN) DNA evidence and the Forensic Statistical Tool (FST) used by the Office of the Chief Medical Examiner of NYC. Judicial caution should govern the admission of developing scientific evidence in criminal proceedings. Scientific community approval—not judicial fiat—was the litmus test. However, *sound* prior judicial opinions regarding general acceptance of scientific evidence could validate a trial court's decision to admit evidence without a *Frye* inquiry.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02123.htm

People v Foster-Bey

2020 NY Slip Op 02124

(COA) (4/10/20 DOI)

Standard DNA analysis could not connect this defendant to the subject gun, so the People sought to introduce evidence based on LCN typing and FST analysis. The trial court denied a motion to preclude evidence, without a *Frye* hearing. The defense cited persuasive scholarly writing. The motion court relied on flawed trial-court decisions. But the error was harmless.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02124.htm

People v Pelt

2020 NY Slip Op 03250

(2nd Dept) (6/12/20 DOI)

Prior to trial, the defendant moved to preclude evidence regarding DNA testing derived from the use of the FST or for a *Frye* hearing. Supreme Court denied the motion. The trial court erred in not holding a hearing. There was uncertainty regarding whether the FST had been generally accepted in the relevant scientific community at the time of the motion.

http://nycourts.gov/reporter/3dseries/2020/2020_03250.htm

Hearsay

People v Thelismond

180 AD3d 1076

(2nd Dept) (2/28/20 DOI)

Reversible error in admitting recording of anonymous 911 call. The caller said somebody got shot, but not that the caller saw the shooting. So neither the excited utterance nor the present sense impression exception applied.

http://nycourts.gov/reporter/3dseries/2020/2020_01368.htm

Mental health records

People v Butler

2020 NY Slip Op 03374

(2nd Dept) (6/19/20 DOI)

Reversal and a new trial. Before trial, the defendant requested copies of the complainant's mental health records, relating to her counseling after disclosure of the purported abuse. Following in camera review, Supreme Court redacted most of the records, including arguably exculpatory and material.

http://nycourts.gov/reporter/3dseries/2020/2020_03374.htm

Molineux

People v Ramirez

180 AD3d 811

(2nd Dept) (2/24/20 DOI)

An erroneous *Molineux* ruling occurred. It was not relevant that the defendant allegedly resisted arrest six months following the incident in question after violating an order of protection.

http://nycourts.gov/reporter/3dseries/2020/2020_01087.htm

Opinion

People v Urena

183 AD3d 534

(1st Dept) (5/29/20 DOI)

The trial court erroneously received a detective's opinion testimony that the object the defendant appeared to be holding in surveillance videos was a knife. However, there was no reasonable probability that the error contributed to the verdict.

http://nycourts.gov/reporter/3dseries/2020/2020_03073.htm

Right to confrontation

People v Stone

179 AD3d 1287

(3rd Dept) (1/20/20 DOI)

Defendant and co-defendant jointly tried. Error for trial court to admit a statement of the co-defendant that incriminated the defendant. Violation of right to confrontation.

http://nycourts.gov/reporter/3dseries/2020/2020_00323.htm

People v Tsintzelis

35 NY3d 925

(COA) (3/27/20 DOI)

The admission of DNA lab reports through the testimony of an analyst who did not perform or supervise the DNA testing violated the defendants' confrontation clause rights. The errors were not harmless.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02026.htm

People v Butler

183 AD3d 665

(2nd Dept) (5/8/20 DOI)

When confronted with testimonial DNA evidence at trial, a defendant is entitled to cross-examine an analyst who witnessed, performed or supervised the generation of the defendant's DNA profile or used his or her independent analysis on the raw data. The People failed to establish that the analyst who testified played such a role.

http://nycourts.gov/reporter/3dseries/2020/2020_02676.htm

Right to silence

People v Chapman

182 AD3d 862

(3rd Dept) (4/24/20 DOI)

County Court erred in admitting a redacted video of the defendant's police interrogation. The video consisted of police recounting their case against the defendant and being met largely with silence from a dismissive defendant. The evidence of selective silence lacked probative value and was highly prejudicial.

http://nycourts.gov/reporter/3dseries/2020/2020_02330.htm

Same weapon

People v Deverow

180 AD3d 1064

(2nd Dept) (2/28/20 DOI)

Error to admit revolver recovered from underneath a vehicle located several blocks from crime scene. Proof was insufficient to provide reasonable assurances that the revolver was the weapon used in the shooting.

http://nycourts.gov/reporter/3dseries/2020/2020_01359.htm

Jury charge

People v Swem

182 AD3d 1050

(4th Dept) (4/27/20 DOI)

County Court erred in denying the defendant's request for a circumstantial evidence instruction. At a crowded house party, there were multiple physical fights. The victim was involved in fights with at least two others; was stabbed five times; and had one wound that was 5" deep. The defendant was seen fighting with the victim, but not holding a knife, and no blood was found in the room where they fought.

http://nycourts.gov/reporter/3dseries/2020/2020_02435.htm

People v Lee

183 AD3d 1183

(3rd Dept) (5/29/20 DOI)

The indictment charged that the defendant acted with the intent to cause the death of the decedent. On appeal, he urged that the court gave an improper supplemental instruction. When the jury asked if the murder charge was specific to the killing of the decedent, the court said yes. The jury then asked if intent could go to the fact that the defendant intentionally fired the gun at whomever walked out the door, and the court said yes. The People were not bound by the indictment, because the victim's identity was not an element of the crime. The supplemental instruction did not impermissibly alter the theory of the prosecution. http://nycourts.gov/reporter/3dseries/2020/2020_03049.htm

People v Sabirov

2020 NY Slip Op

(2nd Dept) (6/19/20 DOI)

An intoxication instruction should have been given. The complainants testified that the defendant did not appear drunk at the time of the incident, and the arresting officer did not recall how the defendant appeared upon arrest. However, the officer's notes and the defendant's testimony supported the requested charge.

http://nycourts.gov/reporter/3dseries/2020/2020_03378.htm

People v Savillo

2020 NY Slip Op

(2nd Dept) (7/20/20 DOI)

After Supreme Court instructed the jury on justification, the defendant was found not guilty of the 1st degree assault and guilty of 2nd degree assault and another crime. The jury failed to convey that, if the jury found the defendant not guilty of assault 1st based on justification, it should cease deliberations. The new trial was to be held before a different justice, because the instant justice extensively questioned witnesses and created the impression that the court was an advocate for the prosecution.

http://nycourts.gov/reporter/3dseries/2020/2020_03928.htm

Prospective juror

People v Laverpool

2020 NY Slip Op 03745

(1st Dept) (7/3/20 DOI)

Reversal and new trial. The trial court erred in denying a challenge for cause as to a panelist who stated that he could not be "fully fair" if the defendant did not testify and "defend himself." There were no unequivocal assurances. The panelist if the defendant did not take the stand, he would "not hold it against him, but—I don't know;" and "I think I'll be able to give him a fair trial."

http://nycourts.gov/reporter/3dseries/2020/2020_03745.htm

People v Cobb

2020 NY Slip Op 04055

(4th Dept) (7/20/20 DOI)

Error to deny challenge for cause. Prospective juror said that her friendship with a prosecution witness might affect her ability to be fair and impartial. The panelist did not give an unequivocal assurance of impartiality.

http://nycourts.gov/reporter/3dseries/2020/2020_04055.htm

Quantum of evidence

Assault / firearm/ reckless endangerment

People v Spencer

181 AD3d 1257

(4th Dept) (3/16/20 DOI)

Assault and firearm counts were based on legally insufficient evidence. The People did not object when their theory of transferred intent was not reflected in the jury instruction on the assault charges. Appellate review of sufficiency was limited to the instruction as given without objection; and there was insufficient evidence that the defendant knew that either victim was present or intended any harm to either.

http://nycourts.gov/reporter/3dseries/2020/2020_01823.htm

People v Verneus

2020 NY Slip Op 03256

(2nd Dept) (6/12/20 DOI)

Assault and reckless endangerment convictions were reduced in connection with injuries sustained by the defendant's infant foster child, who suffered serious burns on 12% of his body. The defendant said that the child was accidentally scalded while unattended in the bathtub, and she then treated him with ointment and bandages. People failed to prove depraved indifference based on her failure to obtain proper medical care.

http://nycourts.gov/reporter/3dseries/2020/2020_03256.htm

Criminally negligent homicide

People v Derival

181 AD3d 918

(2nd Dept) (3/27/20 DOI)

Indictment for criminally negligent homicide dismissed since verdict was against the weight of the evidence. The case arose out of 2013 collisions among three vehicles. The People did not establish that the defendant failed to perceive a substantial and unjustifiable risk, thus causing the death of his passenger. No single consistent version of the accident emerged. Even the People's experts were at odds with each other.

http://nycourts.gov/reporter/3dseries/2020/2020_02072.htm

DWI

People v Bradbury

183 AD3d 1257

(4th Dept) (5/4/20 DOI)

People failed to establish that the defendant operated car. Conviction upon jury verdict of two counts of felony DWI reversed. Passing motorist saw the defendant off the road, and the defendant said don't call 911, but motorist did. The defendant said the car had been driven by a man she had met at a bar the night before. She was intoxicated. Story was plausible. Request that the motorist not call 911 was weak evidence.

http://nycourts.gov/reporter/3dseries/2020/2020_02577.htm

Escape

People v Gonzalez

183 AD3d 663

(2nd Dept) (5/8/20 DOI)

The defendant's contention that the evidence was legally insufficient to support the attempted escape conviction was unpreserved, but reached in the interest of justice. The Second Department dismissed the count of attempted 2nd degree escape. The evidence did not establish that the defendant was under arrest when he allegedly attempted to open the door of the police car in which he was being detained.

http://nycourts.gov/reporter/3dseries/2020/2020_02675.htm

Evidence tampering

People v Zachary

179 AD3d 722

(2nd Dept) (1/13/20 DOI)

Proof of tampering with physical evidence was legally insufficient, where police were in pursuit for a violation of the open-container law when the defendant discarded a plastic bag containing pot.

http://nycourts.gov/reporter/3dseries/2020/2020_00165.htm

Falsely reporting a crime

People v Burwell

183 AD3d 173

(3rd Dept) (4/10/20 DOI)

The defendant was charged with knowingly circulating via social media a false allegation that she was the victim of a racially motivated assault. The Third Department dismissed that count for falsely reporting a crime. As applied here, Penal Law § 240.50 (1) was unconstitutionally broad in criminalizing the false speech. The Twitter storm that ensued after the defendant posted false tweets did not cause “public alarm.”

http://nycourts.gov/reporter/3dseries/2020/2020_02205.htm

Forged instrument

People v Johnson

183 AD3d 401

(1st Dept) (5/8/20 DOI)

The evidence was legally insufficient to support the conviction of 2nd degree criminal possession of a forged instrument. The People failed to prove that the defendant knew that four NY Rangers tickets were counterfeit.

http://nycourts.gov/reporter/3dseries/2020/2020_02708.htm

Justification

People v Allen

183 AD3d 1284

(4th Dept) (5/4/20 DOI)

In manslaughter case, dissenter opined People failed to disprove the justification defense beyond a reasonable doubt. The defendant called 911 and said her boyfriend tried to kill her. There was blood on her and everywhere in house. The defendant had bruises and cuts. She told paramedic that the decedent tried to kill her and told police he choked her. A neighbor heard someone say, “Don’t kill me.”

http://nycourts.gov/reporter/3dseries/2020/2020_02595.htm

Larceny

People v Rivera

180 AD3d 989

(2nd Dept) (2/24/20 DOI)

Conviction reduced from grand larceny 3rd to 4th degree. As to some of items, the only evidence of the value was the complainant’s testimony regarding the purchase price.

http://nycourts.gov/reporter/3dseries/2020/2020_01192.htm

Menacing / reckless endangerment

People v Thomas

2020 NY Slip Op 03318

(4th Dept) (6/15/20 DOI)

The guilty verdict as to 1st degree reckless endangerment and menacing a police officer or peace officer was against the weight of evidence, where the People's evidence consisted of one officer's testimony that, while pursuing the defendant on foot, he heard a gunshot from about 10' feet away, and a second officer's testimony that he heard a shot from his northwest and believed that the defendant had fired at them.

http://nycourts.gov/reporter/3dseries/2020/2020_03318.htm

Promoting prison contraband

People v Simmons

2020 NY Slip Op 03359

(4th Dept) (6/15/20 DOI)

A conviction of 1st degree promoting prison contraband was reduced to a 2nd degree offense and remitted for sentencing. There legally insufficient evidence that three baggies of cocaine found on the defendant were dangerous contraband. Though perhaps unhealthy, cocaine was not inherently dangerous.

http://nycourts.gov/reporter/3dseries/2020/2020_03350.htm

Robbery

People v James

179 AD3d 1095

(2nd Dept) (2/3/20 DOI)

Robbery verdict was against weight of evidence where complainant struggled to recall details of crime, and her description of perpetrator did not match the defendant's appearance.

http://nycourts.gov/reporter/3dseries/2020/2020_00615.htm

People v Mann

2020 NY Slip Op 03249

(2nd Dept) (6/12/20 DOI)

The verdict of guilty of 1st degree robbery was against the weight of evidence. The complainant described the perpetrator to the police as balding with no facial hair. The participants in the lineup wore hats to conceal their hairlines, but the defendant's significant facial hair was visible. Although the shirts of the participants were covered, the defendant's shoulders remained visible. He was the only participant wearing a yellow shirt. The complainant said that she recognized the defendant's yellow shirt as the one worn by the perpetrator.

http://nycourts.gov/reporter/3dseries/2020/2020_03249.htm

Sex trafficking

People v Hayes

180 AD3d 423

(1st Dept) (2/10/20 DOI)

Proof did not establish that the defendant used force, or engaged in a scheme or plan, to induce the alleged victim to engage in prostitution. Sex trafficking count dismissed.

http://nycourts.gov/reporter/3dseries/2020/2020_00832.htm

Right to present a defense

People v Butts

2020 NY Slip Op 03243

(2nd Dept) (6/12/20 DOI)

The defendant was deprived of a fair trial. A victim testified that he recognized the defendant, because at some point a scarf no longer covered the defendant's face. After the victim's testimony, his brother contacted defense counsel to report that the victim told him that he had not seen the intruders' faces. Supreme Court should not have precluded the material and exculpatory testimony, which went directly to the victim's credibility and to the defendant's guilt.

http://nycourts.gov/reporter/3dseries/2020/2020_03243.htm

Self-representation

People v Trammell

183 AD3d 155

(1st Dept) (4/3/20 DOI)

Reversal and a new trial, because the defendant was deprived of his right to represent himself. His insistent entreaties were erroneously and summarily rejected. The trial court ordered 730 examinations and assigned successive defense counsel, notwithstanding valid complaints about counsel's flaws.

http://nycourts.gov/reporter/3dseries/2020/2020_02190.htm

Severance

People v Moore

181 AD3d 719

(1st Dept) (3/16/20 DOI)

Court erred in denying severance of charges arising from two robberies. The defendant had important testimony to give in the first case as to a duress defense and had a genuine need to refrain from testifying in the second case due to an adverse *Sandoval* ruling.

http://nycourts.gov/reporter/3dseries/2020/2020_01645.htm

Summation

People v Ramirez

180 AD3d 811

(2nd Dept) (2/24/20 DOI)

The prosecutor made improper, prejudicial statements in summation by suggesting that jurors should disregard the grand jury testimony of a central prosecution witness, and by inviting the jurors to speculate that, if called to testify, a missing witness would have given supporting testimony.

http://nycourts.gov/reporter/3dseries/2020/2020_01087.htm

People v Carlson

2020 NY Slip Op 03336

(4th Dept) (6/15/20 DOI)

A closing comment by the People, characterizing defense counsel's summation as evincing "a Brock Turner mentality" was improper but did not deny a fair trial. The appellate court admonished the People: a

defendant is entitled to a full measure of fairness; and the prosecutor must search for the truth, ensure that justice is done, and safeguard the integrity and fairness of criminal proceedings.

http://nycourts.gov/reporter/3dseries/2020/2020_03336.htm

330.30 motion

People v Newman

182 AD3d 1067

(4th Dept) (4/27/20 DOI)

County Court erred in summarily denying a CPL 330.30 motion to set aside the conviction for menacing peace officers. Alleged jury misconduct involved a reenactment, thus requiring the court to inquire into whether the jury's conduct was a conscious experiment directly material to a critical issue that may have colored the jurors' views and prejudiced the defendant.

http://nycourts.gov/reporter/3dseries/2020/2020_02449.htm

People v Sonds

183 AD3d 919

(2nd Dept) (5/29/20 DOI)

Prior to sentencing, the defendant pro se made a CPL 330.30 motion. Defense counsel said that he would not adopt the motion because it was not "viable," and it presented matters not "for the purview of the court." Supreme Court declined to review the motion. By taking a position adverse to the defendant, counsel deprived him of effective assistance. The matter was remitted.

http://nycourts.gov/reporter/3dseries/2020/2020_03036.htm

Misc. trial issues

People v Bryan

179 AD3d 489

(1st Dept) (1/20/20 DOI)

Court erred in denying one-day adjournment so defense could call absent witness with material testimony.

http://nycourts.gov/reporter/3dseries/2020/2020_00243.htm

People v Torres

179 AD3d 543

(1st Dept) (1/24/20 DOI)

Conviction of 2nd degree incest violated Ex Post Facto Clause, because it was based on conduct that occurred before statute became effective.

http://nycourts.gov/reporter/3dseries/2020/2020_00480.htm

People v Tucker

181 AD3d 103

(4th Dept) (2/3/20 DOI)

Criminal possession of a firearm was not unconstitutional as applied to the defendant, who possessed a revolver in his home for self-defense.

http://nycourts.gov/reporter/3dseries/2020/2020_00739.htm

People v Brown

183 AD3d 910

(2nd Dept) (5/29/20 DOI)

There was no *Brady* violation based on the People's failure to disclose a fingerprint comparison report. *Brady* does not require a prosecutor to supply exculpatory evidence about which the defendant should reasonably have known.

http://nycourts.gov/reporter/3dseries/2020/2020_03021.htm

SENTENCING/YO

Absence

People v Dais

180 AD3d 417

(1st Dept) (2/10/20 DOI)

Because the defendant was absent when court imposed post-release supervision, he had to be resentenced.

http://nycourts.gov/reporter/3dseries/2020/2020_00828.htm

Consecutive/concurrent

People v Banks

181 AD3d 973

(3rd Dept) (3/9/20 DOI)

The imposition of consecutive terms for the assault convictions was error. Eyewitnesses heard five shots. Four bullets were recovered from the victims and one from the bar where the incident occurred. No proof showed that any victim was struck by a bullet that did not first pass through another victim.

http://nycourts.gov/reporter/3dseries/2020/2020_01525.htm

People v Burns

183 AD3d 835

(2nd Dept) (5/22/20 DOI)

The defendant was sentenced concurrent indeterminate terms of 5 to 15 years on manslaughter convictions, to run consecutively to concurrent 7-year terms on assault convictions. The Second Department modified. All sentences would run concurrently, since the assault and manslaughter crimes arose out of the same operative facts—the defendant's act of recklessly driving her car into another vehicle.

http://nycourts.gov/reporter/3dseries/2020/2020_02933.htm

People v Hyde

2020 NY Slip Op 03319

(4th Dept) (6/15/20 DOI)

The periods of post-release supervision should have been ordered to run concurrently. The issue was unpreserved, but the appellate court could not allow an illegal sentence to stand.

http://nycourts.gov/reporter/3dseries/2020/2020_03319.htm

Enhanced

People v Blanford

179 AD3d 1388

(3rd Dept) (2/3/20 DOI)

Where court did not warn the defendant that positive drug test could result in enhanced sentence, its imposition was error. Remittal for original sentence or chance to withdraw guilty plea.

http://nycourts.gov/reporter/3dseries/2020/2020_00646.htm

IAC

People v Jones

181 AD3d 714

(2nd Dept) (3/16/20 DOI)

The defendant was deprived of effective assistance of counsel at sentencing, since counsel made no substantive arguments on his behalf and displayed no meaningful knowledge of the case or his background.

http://nycourts.gov/reporter/3dseries/2020/2020_01640.htm

People v Huntress

181 AD3d 1204

(4th Dept) (3/16/20 DOI)

The defendant was improperly sentenced as a second felony offender. The predicate conviction, the Pennsylvania crime of receiving stolen property, was not the equivalent of NY's 4th degree CPW.

http://nycourts.gov/reporter/3dseries/2020/2020_01778.htm

Persistent felony offender

People v Garno

2020 NY Slip Op 03311

(4th Dept) (6/15/20 DOI)

A persistent felony offender adjudication was vacated, and the sentence reduced. Twenty years to life was too harsh in light of the defendant's record of only two prior felonies and the plea offer of 6 to 9 years.

http://nycourts.gov/reporter/3dseries/2020/2020_03311.htm

Reduction explained

People v Rankin

181 AD3d 1293

(4th Dept) (3/23/20 DOI)

The defendant was convicted of 2nd degree murder in the death of a rival gang member and was sentenced to 23 years to life. The reviewing court reduced the sentence to a term of 18 years to life, noting that the defendant was only 18 years old at the time of the incident.

http://nycourts.gov/reporter/3dseries/2020/2020_01976.htm

People v Fenton

182 AD3d 1048

(4th Dept) (4/27/20 DOI)

The Fourth Department reduced sentence from 7½ to 2½ years, followed by post-release supervision. At the time of the sale of \$50 worth of cocaine, the defendant was 56 and had a minimal criminal record. His son, who arranged the sale, pleaded guilty and got probation.

http://nycourts.gov/reporter/3dseries/2020/2020_02428.htm

People v Guillermo P.

2020 NY Slip Op 03464

(1st Dept) (6/19/20 DOI)

The defendant was sentenced a youthful offender for robbery 3rd to a term of 60 days' incarceration and five years' probation. The Second Department affirmed the sentence. One justice dissented, opining that the probation term should be reduced to a period of three years, based on several factors. The defendant's actions were minor. Three years was the maximum probation period for the original misdemeanor charges. Aside from a minor drug offense, he did not have any other contact with the criminal justice system. His decision to plead guilty was likely influenced by 81 days served at Rikers Island, after the court set bail that his family struggled to pay.

http://nycourts.gov/reporter/3dseries/2020/2020_03464.htm

People v Spinac

2020 NY Slip Op 04002

(1st Dept) (7/20/20 DOI)

The First Department reduced the sentence for 2nd degree assault and other crimes. The defendant had terrorized the attorneys and staff at the law firm representing his wife in a divorce. The reviewing court nevertheless "extend[ed] to him the compassion and consideration he neglected to show the four women simply doing their jobs" due to his age, chronic health conditions, and nearly completed sentence.

http://nycourts.gov/reporter/3dseries/2020/2020_04002.htm

People v Jeffords

2020 NY Slip Op 04037

(4th Dept) (7/20/20 DOI)

Manslaughter term reduced by five years due to defendant's unspecified background, show of remorse, and lack of prior criminal history.

http://nycourts.gov/reporter/3dseries/2020/2020_04037.htm

People v Persen

2020 NY Slip Op 04204

(3rd Dept) (7/24/20 DOI)

A sentence for 3rd degree CPW was reduced from 1½-4½ years in state prison to time served based on the circumstances of the crime, the defendant's minimal criminal history, his status as a crime victim, certain mental health issues, his history of steady employment, and his close familial relationships.

Restitution

People v Grant

2020 NY Slip Op 03674

(2nd Dept) (7/3/20 DOI)

The defendant's sentence included a direction that he should make restitution of \$39,374 for the victim's family. The Second Department modified. The amount violated the \$15,000 statutory cap.

http://nycourts.gov/reporter/3dseries/2020/2020_03674.htm

People v Gravell

2020 NY Slip Op 04344

(3rd Dept) (7/31/20 DOI)

The sentencing court ordered restitution in an amount exceeding the plea deal figure. The defendant failed to preserve his claim by requesting a hearing or objecting at sentencing to the restitution amount; but the appellate court took corrective action in the interest of justice. The matter was remitted to give the defendant the opportunity to accept the sentence with the enhanced restitution award or to withdraw his guilty plea.

http://nycourts.gov/reporter/3dseries/2020/2020_04344.htm

Sealing

People v Anonymous

34 NY3d 641

(COA) (2/24/20 DOI)

A trial court is without authority to consider, for sentencing purposes, erroneously unsealed official records of a prior criminal proceeding terminated in favor of the defendant. The exception at CPL 160.50 (1) (d) (ii) (access permitted where law enforcement agency shows that justice so requires) did not apply here.

http://www.nycourts.gov/reporter/3dseries/2020/2020_01113.htm

People v Shrayef

181 AD3d 935

(2nd Dept) (3/27/20 DOI)

The defendant's CPL 160.59 motion to seal his conviction of 2nd degree money laundering was denied. The Second Department affirmed. Weighing in favor of sealing were the time since the defendant's conviction and his lack of contacts, before or since, with the criminal justice system. However, weighing against relief were the circumstances and seriousness of the offense, including his central role.

http://nycourts.gov/reporter/3dseries/2020/2020_02073.htm

Shock incarceration

Matter of Matzell v Annucci

183 AD3d 1

(3rd Dept) (2/28/20 DOI)

DOCCS could not consider an inmate's disciplinary record to deny shock incarceration. DLRA amendment gave sentencing court authority to order shock incarceration if the defendant was eligible. DOCCS no longer makes ultimate determination.

http://nycourts.gov/reporter/3dseries/2020/2020_01425.htm

YO not considered

People v Blanton

179 AD3d 715

(2nd Dept) (1/13/20 DOI)

Defendant pleaded guilty. Supreme Court failed to consider YO status, though the defendant was eligible. CPL 720.20 (1) mandated violated. *See People v Rudolph*, 21 NY3d 497. Sentence vacated, remittal.

http://nycourts.gov/reporter/3dseries/2020/2020_00156.htm

People v Allen

179 AD3d 941

(2nd Dept) (1/24/20 DOI)

Court failed to consider whether youth charged with armed felony was eligible for YO treatment and, if so, whether such status should be granted.

http://nycourts.gov/reporter/3dseries/2020/2020_00423.htm

People v Giron

181 AD3d 710

(2nd Dept) (3/16/20 DOI)

The sentencing court must determine whether an eligible youth is a YO. The defendant was an eligible youth, yet the mandated determination was not made. Sentence vacated.

http://nycourts.gov/reporter/3dseries/2020/2020_01637.htm

People v Ochoa

182 AD3d 410

(1st Dept) (4/3/20 DOI)

The defendant was convicted of 2nd degree CPW, upon his plea of guilty. The First Department vacated the sentence and remanded for a further youthful offender determination. The lower court erred in finding the defendant presumptively ineligible for YO, based on his commission of an armed felony. Under CPL 720.10, an armed felony required possession of a deadly weapon. Since a loaded firearm was not always a deadly weapon, the defendant's conviction for possessing a loaded firearm was not an armed felony.

http://nycourts.gov/reporter/3dseries/2020/2020_02156.htm

People v Jones

182 AD3d 698

(3rd Dept) (4/10/20 DOI)

It was unclear whether the lower court recognized that the defendant had pleaded guilty to an armed felony and that a judicial finding regarding YO-eligibility, based on the CPL 720.10 (3) factors, was required. There was no reference at the plea or sentencing to an armed felony. The sentence was vacated.

http://nycourts.gov/reporter/3dseries/2020/2020_02202.htm

People v Shabazz

183 AD3d 494

(1st Dept) (5/22/20 DOI)

The defendant appealed from a judgment of NY County Supreme Court, convicting him of attempted 1st degree assault and other crimes. The First Department modified to the extent of vacating the sentence and remanding for a youthful offender determination. As the People conceded, based on *People v Rudolph*, 21 NY3d 497, the defendant was entitled to resentencing for an express YO determination.

http://nycourts.gov/reporter/3dseries/2020/2020_02974.htm

People v Shehi

2020 NY Slip Op 03676

(2nd Dept) (7/3/20 DOI)

Appeals held in abeyance. The lower court imposed the promised sentences without considering whether the defendant should be afforded youthful offender treatment. Supreme Court was directed to determine whether the defendant, who had served his sentences, should be afforded YO.

http://nycourts.gov/reporter/3dseries/2020/2020_03676.htm

People v Williams

2020 NY Slip Op 04092

(4th Dept) (7/20/20 DOI)

County Court failed to determine whether the defendant should be afforded youthful offender status. Because he was convicted of an armed felony offense, he was ineligible unless the court determined that a requisite factor mitigating was present. Remittal.

http://nycourts.gov/reporter/3dseries/2020/2020_04092.htm

YO granted

People v Carlos M.-A.

180 AD3d 808

(2nd Dept) (2/24/20 DOI)

The defendant was convicted of an armed felony, but was eligible for a YO adjudication. Mitigating circumstances supporting YO treatment included that: (1) the defendant was only 16 at the time of the

crime; (2) he had no prior criminal record; (3) he had strong family support; (4) the presentence report recommended a YO adjudication; and (5) the defendant expressed remorse.

http://nycourts.gov/reporter/3dseries/2020/2020_01083.htm

People v Nicholas G.

181 AD3d 1273

4th Dept (3/16/20 DOI)

YO ordered where: (1) the defendant was 17 at the time of the crimes and had no criminal record or history of violence or sex offending; (2) he had cognitive limitations, learning disabilities, and mental health issues; (3) the defendant accepted responsibility and expressed genuine remorse; and (4) the Probation Department and reviewing psychologist recommended YO treatment.

http://nycourts.gov/reporter/3dseries/2020/2020_01828.htm

People v Marcel G.

183 AD3d 667

(2nd Dept) (5/8/20 DOI)

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of attempted 2nd degree robbery. The Second Department adjudicated the defendant to be a youthful offender. The defendant, who was 17 at the time of the offenses, admitted his guilt and took responsibility for his actions. As part of his plea conditions, he successfully completed a treatment program, passing every drug test administered. The PSI report recommended YO status.

<http://www.courts.state.ny.us/courts/ad2/Handdowns/2020/Decisions/D62758.pdf>

Miscellaneous issues

People v Tyrek M.

183 AD3d 915

(2nd Dept) (5/29/20 DOI)

As to a split sentence, the sentencing court neglected to recite the term of probation. Under CPL 380.20, courts must pronounce sentence in every case where a conviction is entered. A violation of the statute may be addressed on direct appeal, despite a valid waiver of the right to appeal and failure to preserve.

http://nycourts.gov/reporter/3dseries/2020/2020_03031.htm

People v Jemmott

2020 NY Slip Op 03130

(2nd Dept) (6/5/20 DOI)

The defendant appealed from a sentence imposed by Kings County Supreme Court upon his plea of guilty. The Second Department reversed. The lower court did not pronounce the length of the term of probation in open court. The matter was remitted for resentencing in accordance with CPL 380.20.

http://nycourts.gov/reporter/3dseries/2020/2020_03130.htm

SORA

Reversed

People v Pittman

179 AD3d 955

(2nd Dept) (1/24/20 DOI)

Reduction from level three to two. Upward departure was error. Criminal history was covered by Guidelines. Prior criminal conduct for which the defendant was not convicted did not meet clear and convincing evidence standard.

http://nycourts.gov/reporter/3dseries/2020/2020_00443.htm

People v Maund

181 AD3d 1331

(4th Dept) (3/23/20 DOI)

SORA risk level reduced from three to two, because the People failed to prove that the defendant committed a continuing course of sexual misconduct—risk factor 4. The sole evidence presented was the case summary prepared by the Board of Examiners. At the hearing, the defendant denied that he engaged in a continuing course of sexual misconduct. Where the defendant contested the factual allegations, the case summary alone was insufficient to satisfy the People's burden.

http://nycourts.gov/reporter/3dseries/2020/2020_02011.htm

People v Wilke

181 AD3d 1324

(4th Dept) (3/23/20 DOI)

The defendant was found to be a level-two risk. The Fourth Department reversed and remitted. County Court violated his right to due process by sua sponte assessing points on a theory not raised by the Board of Examiners or the People.

http://nycourts.gov/reporter/3dseries/2020/2020_02002.htm

People v Kaminski

2020 NY Slip Op 03431

(3rd Dept) (6/19/20 DOI)

A petition to reduce the sex offender risk level was denied. That was error. The SORA court did not consider an updated recommendation from the Board of Examiners. *See* Correction Law § 168-o (2).

http://nycourts.gov/reporter/3dseries/2020/2020_03431.htm

People v Banuchi

2020 NY Slip Op 03553

(COA) (6/25/20 DOI)

The defendant appealed from an order, which denied his petition to modify his SORA risk-level classification. The Second Department reversed and remitted. Supreme Court denied the petition without holding a hearing. That was error. *See* Correction Law § 168-o (4).

http://nycourts.gov/reporter/3dseries/2020/2020_03553.htm

People v Murray

2020 NY Slip Op 03554

(COA) (6/25/20 DOI)

The defendant appealed from a Supreme Court order designating him a level-two sex offender. The Second Department reversed and reduced his status to level one. The SORA court should not have granted an upward departure. The People failed to establish that the defendant's conduct was an aggravating factor not adequately taken into account by the Guidelines.

http://nycourts.gov/reporter/3dseries/2020/2020_03554.htm

Affirmed

People v Thomas

179 AD3d 444

(1st Dept) (1/13/20 DOI).

Error to assess 15 points under risk factor for accepting responsibility, but defendant was still level three.

http://nycourts.gov/reporter/3dseries/2020/2020_00084.htm

People v Diaz

34 NY3d 1179

(COA) (2/24/20 DOI)

A statement in the PSI report (“on one or more occasions, he used physical force to coerce the victim into cooperation”) was “reliable hearsay,” justifying an assessment of 10 points for use of force standard. Judges and Wilson dissented. The unattributed conclusory hearsay sentence was not reliable and did not constitute clear and convincing evidence of forcible compulsion.

http://www.nycourts.gov/reporter/3dseries/2020/2020_01114.htm

People v Perez

2020 NY Slip Op 02096

(COA) (3/27/20 DOI)

The SORA hearing court did not err in assessing 30 points for risk factor 9. It was proper to rely on the underlying conduct of the foreign conviction. Judge Wilson dissented, joined by Judge Rivera.

http://www.nycourts.gov/reporter/3dseries/2020/2020_02096.htm

CPL 330.20

People v Guillen

179 AD3d 539

(1st Dept) (1/24/20 DOI)

Hearing needed on motion where, based on note she sent, it appeared that jury foreperson wanted to date a prosecution assistant, and another juror failed to reveal a close relationship with a witness.

http://nycourts.gov/reporter/3dseries/2020/2020_00387.htm

People v David T.

180 AD3d 1370

(4th Dept) (2/10/20 DOI)

Reversal in CPL 330.20 proceeding, where court failed to conduct initial hearing required by statute.

http://nycourts.gov/reporter/3dseries/2020/2020_00964.htm

People v Juan R.

180 AD3d 935

(2nd Dept) (2/24/20 DOI)

The defendant was committed to a secure facility for six months, pursuant to CPL 330.20 (6), upon a finding that he had a dangerous mental disorder. Reversed. No valid strategy could have warranted defense counsel’s concession that the defendant suffered from a dangerous mental disorder; and the hearing was mandatory.

http://nycourts.gov/reporter/3dseries/2020/2020_01190.htm

POST-DISPOSITION

CPL 440.10 motions

Reversal / hearing or new trial ordered

People v Martin

179 AD3d 428

(1st Dept) (1/13/20 DOI)

A material factual dispute warranted a hearing, where motion counsel reported that defense counsel said he did not realize he could have called an expert about the defendant not possessing the requisite mental state for murder, but the prosecution stated the opposite.

http://nycourts.gov/reporter/3dseries/2020/2020_00067.htm

People v Martinez

180 AD3d 190

(1st Dept) (1/20/10 DOI)

Reversal of summary denial of 440 motion. Counsel said deportation was possible, but it was mandatory. In finding no prejudice, Supreme Court erred in focusing on events in 2017, not at the time of the 2007 plea. Extensive proof of the defendant's primary purpose of remaining in the U.S. Remand to different justice.

http://nycourts.gov/reporter/3dseries/2020/2020_00252.htm

People v Scott

181 AD3d 1220

(4th Dept) (3/16/20 DOI)

Hearing on 440.10 motion needed. Counsel was purportedly ineffective in failing to call an alibi witness who would have testified that he was with the defendant in North Carolina at the time of the murder.

http://nycourts.gov/reporter/3dseries/2020/2020_01807.htm

People v Fox

181 AD3d 1228

(4th Dept) (3/16/20 DOI)

Hearing on 440.10 motion needed. An affiant said the defendant borrowed his jacket and did not know drugs were in the pockets, yet counsel did not call such witness.

http://nycourts.gov/reporter/3dseries/2020/2020_01809.htm

People v Borcyk

2020 NY Slip Op 03359

(4th Dept) (6/15/20 DOI)

A CPL 440.10 motion should not have been denied. A new trial based on ineffective assistance of counsel. At the time of trial, counsel spoke with a witness who said that her former boyfriend admitted killing the victim. Such proof supported the defense theory. Yet when the critical, exculpatory witness failed to appear at trial, defense counsel took no action to secure her presence.

http://nycourts.gov/reporter/3dseries/2020/2020_03359.htm

People v Illis

2020 NY Slip Op 03535

(COA) (6/25/20 DOI)

Reversal of order denying 440 motion to vacate murder conviction. Before the conviction became final, *People v Payne*, 3 NY3d 266, set forth a new standard for depraved indifference murder. The motion court erred in equating the leave denial to a rejection of arguments based on the changed law. Because the trial evidence was not legally sufficient to support the verdict, the murder count was dismissed.

http://nycourts.gov/reporter/3dseries/2020/2020_03535.htm

People v Mineccia

Waiver of a jury trial was invalid because the defendant was not told that the prosecutor for preliminary proceedings was appointed as confidential law clerk to the trial court. 440 motion granted. New trial.
http://nycourts.gov/reporter/3dseries/2020/2020_04028.htm

People v Blue
2020 NY Slip Op 04231
(1st Dept) (7/24/20 DOI)

In a 440 motion motion, the urged that his CPL 30.30 and constitutional rights to a speedy trial were violated. Supreme Court failed to analyze the constitutional argument so the matter was remanded.
http://nycourts.gov/reporter/3dseries/2020/2020_04231.htm

People v Fernandez
2020 NY Slip Op 04368
(1st Dept) (7/31/20 DOI)

In a prior appeal, the defendant set forth an IAC claim as to suppression proceedings. The First Department found the claim unreviewable; an expanded record was required. The instant CPL 440.10 motion was supported by an affirmation detailing many unsuccessful attempts to obtain a statement from trial counsel as to his actions/inactions. The motion court summarily denied the 440 motion. That was error. Upon remand, counsel could be subpoenaed to present evidence as to strategic reasons, or not, for his decisions.
http://nycourts.gov/reporter/3dseries/2020/2020_04368.htm

Denial affirmed

People v Maffei
2020 NY Slip Op 02680
(COA) (5/8/20 DOI)

The defendant contended that he was denied effective assistance based on counsel's failure to challenge a prospective juror. Finding that a CPL 440.10 motion was needed to present such argument, the Court of Appeals upheld a conviction for 2nd degree murder. Judge Rivera dissented. A single error may qualify as IAC. Jury selection was a strategic decision solely within the province of defense counsel. The majority had, in effect, adopted a per se rule that IAC claims must be considered via a 440 motion.
http://www.nycourts.gov/reporter/3dseries/2020/2020_02680.htm

People v Alston
2020 NY Slip Op 03183
(1st Dept) (6/5/20 DOI)

Denial of a 440 motion reversed. The People agreed that the conviction should be vacated in light of legislation amending Penal Law § 265.01 to decriminalize the simple possession of gravity knives.
http://nycourts.gov/reporter/3dseries/2020/2020_03183.htm

People v Gardine
2020 NY Slip Op 04005
(1st Dept) (7/20/20 DOI)

A CPL 440.10 motion was properly denied, where an investigator recounted conversations with eyewitnesses to the homicide, but their affidavits were not submitted; and the defendant failed to explain the two-decade delay in investigating and resulting witness reliability concerns.
http://nycourts.gov/reporter/3dseries/2020/2020_04005.htm

CPL 440.20 motions

People v Francis

34 NY3d 464
(COA) (2/24/20 DOI)

The jurisdictional restrictions of CPL 470.15 (1) did not apply to appeals of CPL 440.20 orders. By its plain terms, the statute limited review to errors that hurt the appellant in the instant proceedings.

http://www.nycourts.gov/reporter/3dseries/2020/2020_00996.htm

People v Khan
2020 NY Slip Op 03537
(COA) (6/25/20 DOI)

Reversal of order denying CPL 440.20. Consecutive sentences for the kidnapping and felony murder convictions were unlawful, since the kidnapping was the underlying felony in the felony murder. Thus, those sentences had to run concurrently. Remittal on a further argument: that running the kidnapping sentence consecutively to the sentences for the other murder convictions violated the defendant's equal protection rights, in that a codefendant received concurrent sentences for such counts.

http://nycourts.gov/reporter/3dseries/2020/2020_03537.htm

MHL Art. 10

M/O State of NY v Richard F.
180 AD3d 1339
(4th Dept) (2/10/20 DOI).

MHL Article 10 order finding that the defendant was a dangerous sex offender requiring confinement was error, where it defied unanimous expert proof.

http://nycourts.gov/reporter/3dseries/2020/2020_00943.htm

Parole

M/O Benson v NYS Bd. of Parole
2020 NY Slip Op 03207
(COA) (6/12/20 DOI)

The petitioner appealed from a Third Department order upholding the Parole Board's determination rescinding parole release. The Court of Appeals affirmed. Judicial intervention in Parole Board determinations was warranted only when there was a showing of irrationality bordering on impropriety. The petitioner failed to make such a showing.

http://www.nycourts.gov/reporter/3dseries/2020/2020_03207.htm

Retrial barred

Matter of Bannister v Wiley
179 AD3d 579
(1st Dept) (2/3/20 DOI)

Article 78 petition in nature of prohibition granted. Trial court erred in declaring a mistrial to accommodate juror's travel plans. Retrial barred by double jeopardy clauses of U.S. and NYS Constitutions. Indictment dismissed.

http://nycourts.gov/reporter/3dseries/2020/2020_00522.htm

SARA

People ex rel. Rosario v Superintendent

180 AD3d 920

(2nd Dept) (2/24/20 DOI)

As a result of inartful language, Executive Law § 259-c (14) had been interpreted in opposing fashion by the Third and Fourth Departments. The legislative history supported an interpretation that imposed the SARA-residency requirement based on either an offender's conviction of a specifically enumerated offense against an underage victim *or* the offender's status as a level-three sex offender.

http://nycourts.gov/reporter/3dseries/2020/2020_01178.htm

M/O Green v LaClair

182 AD3d 877

(3rd Dept) (4/24/20 DOI)

Based on burglary and robbery convictions and his previous designation as risk-level three designation, the petitioner was found subject to SARA. That was error. The crimes for which the petitioner was serving a sentence were not enumerated offenses. The Exec. Law § 259-c (14) school-grounds restriction applied to offender serving sentence for enumerated Penal Law offense, where in addition, either the victim was under age 18 at time of offense or defendant was designated risk-level three sex offender.

http://nycourts.gov/reporter/3dseries/2020/2020_02338.htm

VOP

People v McCray

2020 NY Slip Op 03154

(3rd Dept) (6/5/20 DOI)

A 14-month delay in receiving transcripts, which mooted the issue of the resentencing upon the VOP, was not a due process violation. The delay did not prejudice the defendant.

http://nycourts.gov/reporter/3dseries/2020/2020_03154.htm

Other issues

Matter of Staropoli v Botsford

183 AD3d 1064

(3rd Dept) (5/15/20 DOI)

The petitioner appealed from an order dismissing his Article 78 petition. The CSI form inaccurately indicated that the petitioner was convicted of a crime involving deviate behavior. Further, the COMPAS instrument incorrectly indicated that he committed a sex offense with force. Inclusion of such references could be misleading and prejudicial to the petitioner's status in the future. Thus, he had stated a potentially valid cause of action, and remittal was required.

http://nycourts.gov/reporter/3dseries/2020/2020_02840.htm