

CRIMINAL

PRETRIAL ISSUES

Accusatory instrument

People v Ciccone

71 Misc 3d 5

(App Term, 2nd Dept) (3/25/21 DOI)

Attempted 7th degree criminal possession of a controlled substance and 3rd degree criminal trespass charges facially insufficient. The information did not state that NO TRESPASSING signs were conspicuously posted. The officer said that he saw that the defendant had crack cocaine in a pocket, but the proof did not support the inference that the officer recognized a controlled substance.

http://nycourts.gov/reporter/3dseries/2020/2020_20363.htm

People v Epakchi

37 NY3d 39

(COA) (4/1/21 DOI)

The Appellate Term (9th and 10th Dist.) adopted a rule under which, absent special circumstances, re-prosecution of traffic tickets was not permitted when the original prosecution was dismissed due to lack of a supporting deposition requested by the defendant. There was no basis in the CPL for such rule. Judge Wilson dissented. The Appellate Term had not created a rule of law reviewable by the COA. The broader issue was that the COA lacked interest-of-justice jurisdiction.

http://www.nycourts.gov/reporter/3dseries/2021/2021_02018.htm

People v Angel

194 AD3d 497

(1st Dept) (5/14/21 DOI)

The felony complaint charged 1st degree criminal contempt, 3rd degree assault, and 2nd degree harassment. The defendant agreed to waive prosecution by indictment and plead guilty to aggravated criminal contempt. The SCI was jurisdictionally defective since it did not set forth an offense for which the defendant was held for grand jury action or a lesser included offense.

http://nycourts.gov/reporter/3dseries/2021/2021_03001.htm

People v McCall

194 AD3d 1197

(3rd Dept) (5/14/21 DOI)

The defendant was charged in a felony complaint with 1st degree robbery and held for grand jury action. He waived indictment and was prosecuted by a SCI charging him with attempted 2nd degree robbery. The waiver of indictment and SCI were jurisdictionally defective because they did not charge an offense for which the defendant was held for action of a grand jury or a lesser included offense of the original charge.

http://nycourts.gov/reporter/3dseries/2021/2021_03083.htm

People v Latta

71 Misc 3d 139 (A)

(App Term) (5/28/21 DOI)

The accusatory instrument, alleging that the defendant possessed marihuana recovered from rear passenger floor in a black bag, was jurisdictionally defective. Possession not sufficiently alleged. No allegation that marihuana was within vehicle, let alone that the defendant owned, or was found inside of, a vehicle.

http://nycourts.gov/reporter/3dseries/2021/2021_50484.htm

People v Zaragoza

2021 NY Slip Op 03915

(1st Dept) (6/18/21 DOI)

Conviction of attempted forcible touching reversed. The complaint was jurisdictionally defective since it failed to allege that pressure was applied to the victim's sexual or intimate parts.

http://nycourts.gov/reporter/3dseries/2021/2021_03915.htm

Discovery

People v Stroud

190 AD3d 1085

(3rd Dept) (1/14/21 DOI)

Expedited review of a protective order granted to the People. Appellate justice upheld order to withhold grand jury testimony, identification procedures, and interviews of a certain witness until 30 days before trial. Proceedings could be entirely ex parte based on clear necessity, but generally People should provide notice that certain information was not disclosed and that a protective order was being sought.

http://nycourts.gov/reporter/3dseries/2021/2021_00101.htm

Order of protection

M/O Crawford v Ally

2021 NY Slip Op 04082

(1st Dept) (6/25/21 DOI)

Mootness exception applied. Mandamus granted. Criminal Court should have held an evidentiary hearing where the TOP issued at arraignment deprived the petitioner of an important liberty/property interest.

http://nycourts.gov/reporter/3dseries/2021/2021_04082.htm

Prohibition

M/O Gentner v Hall

193 AD3d 1129

(3rd Dept) (4/1/21 DOI)

Prohibition to enjoin prosecution granted. Offenses occurred in Saratoga County. "Particular effect" jurisdiction was rare and not available here. The respondent failed to show that the theft of \$3,900 from a nongovernmental entity, serving one town in the county, caused material harm to the well-being of the local community as a whole.

http://nycourts.gov/reporter/3dseries/2021/2021_02028.htm

Speedy trial

People v Reyes

70 Misc 3d 133 (A)

(App Term, 2nd Dept) (1/8/21)

Dissenter opined that Criminal Court had properly dismissed charges on speedy trial grounds. The People's statement of readiness at arraignment was illusory and disingenuous. The misdemeanor complaint was not properly converted to an information. There was no certificate of translation, even though the People had notice of the complainant's inability to speak English.

http://nycourts.gov/reporter/3dseries/2020/2020_51569.htm

People v Alvarez

194 AD3d 618

(1st Dept) (5/28/21 DOI)

Supreme Court erred in excluding pre-readiness delay. The People did not show the complainant's unavailability or her necessity as a witness, given that she did not remember the accident. The lower court also erred in excluding post-readiness delay, based on the prosecutor's declaration that readiness was "moot" because lead defense counsel was on trial. Counsel had a colleague present.

http://nycourts.gov/reporter/3dseries/2021/2021_03286.htm

Waiver of indictment

People v Meeks

192 AD3d 1698

(4th Dept) (3/29/21 DOI)

The waiver of indictment was jurisdictionally defective. The defendant was not on notice of the precise crime for which he was waiving prosecution by indictment, and the uncertainty implicated double jeopardy concerns.

http://nycourts.gov/reporter/3dseries/2021/2021_01925.htm

SUPPRESSION ISSUES

Closed container

People v Lewis

2021 NY Slip Op 03422

(1st Dept) (6/4/21 DOI)

During a search incident to arrest, the officer removed a small envelope from the defendant's pocket and peeked inside. That constituted a search of a closed container. To the extent that the envelope was partly open, its contents were not in plain view or visible until the officer opened the envelope. Absent exigent circumstances, the officer's actions were improper.

http://nycourts.gov/reporter/3dseries/2021/2021_03422.htm

Founded suspicion

People v Blandford

190 AD3d 1033

(3rd Dept) (1/8/21 DOI)

Dissent. While the traffic stop was valid, the proof did not establish a founded suspicion that criminality was afoot, so as to justify the canine search. The trooper's testimony about his interaction with the defendant after the stop was vague and confusing.

http://nycourts.gov/reporter/3dseries/2021/2021_00058.htm

People v Jonathas

192 AD3d 646

(1st Dept) (4/1/21 DOI)

Plea case. Suppression denied. Reversed, dismissed. No founded suspicion of criminality. The defendant was a passenger in a car, bearing a Massachusetts license plate, which was stopped for running a red light in a high-crime neighborhood. The driver obeyed an officer's demands, but was visibly nervous.

http://nycourts.gov/reporter/3dseries/2021/2021_01954.htm

People v Wright

2021 NY Slip Op 03675

(4th Dept) (6/14/21 DOI)

As the defendant and another man walked down the street, three officers descended upon them because the companion appeared to have an open container of an alcoholic beverage inside a paper bag. The defendant bladed his body while grabbing at his waistband. The level-two intrusion was improper, where the officers lacked the requisite founded suspicion.

http://nycourts.gov/reporter/3dseries/2021/2021_03675.htm

Huntley hearing

People v Coffie

192 AD3d 1641

(4th Dept) (3/29/21 DOI)

New trial. *Huntley* hearing was not held until midst of trial. The error was not harmless, given identification issues.

http://nycourts.gov/reporter/3dseries/2021/2021_01884.htm

Identification

People v Francis

190 AD3d 566

(1st Dept) (1/22/21 DOI)

An identification of the defendant—based on a single photo shown to a detective a few days after his very brief viewing of the defendant, who was not otherwise known to him—should have been suppressed as unduly suggestive. The detective’s observation was not so clear that the ID could not have been mistaken so as to render the delayed ID confirmatory.

http://nycourts.gov/reporter/3dseries/2021/2021_00267.htm

People v McGhee

194 AD3d 498

(1st Dept) (5/14/21 DOI)

Two harmless errors. The trial court should have suppressed an identification of the defendant from a surveillance tape. The ID was unduly suggestive, because a detective directed the eyewitness to watch for someone wearing “all brown,” thus singling out the defendant.

http://nycourts.gov/reporter/3dseries/2021/2021_03002.htm

Impoundment

People v Rivera

192 AD3d 920

(2nd Dept) (3/18/21 DOI)

Suppression, reversal, dismissal. People did not establish that the impoundment of vehicle was lawful. No proof that it was parked illegally or that there was a history of burglary or vandalism in the area. No proof as to the requirements of the impoundment policy or compliance with the guidelines.

http://nycourts.gov/reporter/3dseries/2021/2021_08256.htm

Lineup

People v Marion

193 AD3d 762

(2nd Dept) (4/15/21 DOI)

Denial of suppression reversed. New trial. Prior to the lineup, the defendant's attorney in another matter identified herself to the arresting officer. Though aware of the representation, the detective doing the lineup failed to notify counsel.

http://nycourts.gov/reporter/3dseries/2021/2021_02177.htm

Payton

People v Cuencas

190 AD3d 109

(2nd Dept) (1/14/21 DOI)

Addressing a question left open by *People v Xochimitl*, 32 NY3d 1026—whether a home visit by police for the sole purpose of making a warrantless arrest, not otherwise justified by exigent circumstances, violated a defendant's indelible right to counsel. NY law did not recognize a category of *Payton* violations based on subjective police intent.

http://nycourts.gov/reporter/3dseries/2020/2020_08118.htm

Probable cause

People v Kabia

190 AD3d 1105

(3rd Dept) (1/14/21 DOI)

The trial court held that the shotgun shell found on the defendant's person supplied probable cause to search the vehicle. However, the vehicle was searched before the defendant was. The People's alternate argument could not be considered since the trial court did not consider it. Reversal and remittal.

http://nycourts.gov/reporter/3dseries/2021/2021_00209.htm

People v White

192 AD3d 1539

(4th Dept) (3/22/21)

Decision reserved. The trial court erred in denying the defendant's request for a probable cause hearing. Specific allegations in the defendant's motion papers sufficiently raised a factual issue on a material point.

http://nycourts.gov/reporter/3dseries/2021/2021_01639.htm

People v Lawrence

192 AD3d 1686

(4th Dept) (3/29/21 DOI)

Dismissal of counts related to a handgun. The officer who searched the vehicle had no safety reasons to insist on retrieving the registration certificate from the glove compartment.

http://nycourts.gov/reporter/3dseries/2021/2021_01921.htm

People v Scottborgh

71 Misc 3d 131 (A)

(App Term, 2nd Dept) (4/22/21 DOI)

Appellate Term reversed conviction. The minimal information relayed did not provide probable cause that the defendant committed a traffic infraction or reasonable suspicion that he committed a criminal act. Moreover, there was no reasonable basis to believe he was the person in distress described in the tip.

http://nycourts.gov/reporter/3dseries/2021/2021_50316.htm

People v Ponder

194 AD3d 423

(1st Dept) (5/7/21 DOI)

CPW 2 dismissed. The odor of marijuana, together with a de minimis amount of pot in the vehicle's center console, did not furnish probable cause to search the trunk. There was no factual nexus between the possession of an amount consistent with personal consumption and the trunk search.

http://nycourts.gov/reporter/3dseries/2021/2021_02880.htm

People v Butler

2021 NY Slip Op 03222

(3rd Dept) (5/21/20)

Affirmance. One judge dissented. Probable cause—not reasonable suspicion—was needed to justify a canine's contact sniff search of a defendant's person. The Court of Appeals had held that a canine sniff, in the common hallway of an apartment building to detect drugs, required only reasonable suspicion; and there was a greater expectation of privacy in one's body than in a common hallway.

http://nycourts.gov/reporter/3dseries/2021/2021_03222.htm

Reasonable suspicion

People v Williams

191 AD3d 1495

(4th Dept) (2/12/21 DOI)

The officers stopped the vehicle for a traffic infraction. No reasonable suspicion justifying pursuit. The defendant appeared to reach toward his waistband, was nervous, and "bladed" his body. Suppression.

http://nycourts.gov/reporter/3dseries/2021/2021_00983.htm

People v Benbow

193 AD3d 869

(2nd Dept) (4/15/21 DOI)

Denial of suppression reversed. Dismissal. Police lacked reasonable suspicion to stop the defendant and a companion, based solely on tip that two individuals, one with a gun, were leaving a club. There was no proof about the identity of the tipster or how he/she knew about the gun.

http://nycourts.gov/reporter/3dseries/2021/2021_02304.htm

People v Ahmad

193 AD3d 961

(2nd Dept) (4/22/21 DOI)

Reversal and dismissal of weapon conviction. The officer lacked the requisite reasonable suspicion for the traffic stop. The defendant was not following anyone and was not trespassing. There was no indication that criminal activity was at hand.

http://nycourts.gov/reporter/3dseries/2021/2021_02404.htm

People v Rhames

2021 NY Slip Op 04242

(2nd Dept) (7/12/21 DOI)

Reversal. Dismissal. Officer witnesses' testimony conflicted on key points, undermining their credibility. The evidence showed at most that one officer grabbed at the defendant and/or pursued him, without the requisite level of suspicion, and that this illegality precipitated the recovery of evidence.

https://nycourts.gov/reporter/3dseries/2021/2021_04242.htm

Reopened hearing

People v Nunez

190 AD3d 565

(1st Dept) (1/22/21 DOI)

Reversal. The People gave notice of their intent to offer evidence of two statements made by the defendant while in custody following arrest. At the initial *Huntley* hearing, the People called a special agent who allegedly overheard the first statement, but not the detective who heard the second one. Later when the special agent was unavailable, the People sought to reopen the suppression hearing to call the detective. Allowing the testimony was error.

http://nycourts.gov/reporter/3dseries/2021/2021_00266.htm

Search incident to arrest

People v Mabry

2021 NY Slip Op 03348

(COA) (5/28/21 DOI)

The People failed to establish that the warrantless search of the defendant's backpack was a valid search incident to arrest. No evidence indicated that the backpack was in the defendant's immediate control or grabbable area. The record lacked testimony indicating where the bag was in relation to the defendant right before the search.

http://www.nycourts.gov/reporter/3dseries/2021/2021_03348.htm

Search warrant

People v Duval

36 NY3d 384

(COA) (2/12/21 DOI)

Search warrant description sufficiently characterized the defendant's home as a private residence, located at a unique, specified street address. The lower court had properly considered accompanying documents to determine if the description was supported by information available to the detective. No hearing was needed, given the defendant's failure to provide sworn affidavits regarding three separate residential units.

http://www.nycourts.gov/reporter/3dseries/2021/2021_00896.htm

People v Gordon

36 NY3d 420

(COA) (2/18/21 DOI)

A search warrant regarding a particular house at a certain address did not cover two vehicles not described, but located on the property. The warrant authorized a search of the defendant's "person" and the "entire premises." The factual materials did not allege that specified vehicles were involved in criminal activity. But police searched two vehicles on the premises. The COA had independent authority to follow existing State constitutional jurisprudence—even if federal constitutional doctrine had changed—in order to safeguard fundamental rights. CPL 690.15 (1) and case law differentiated between premises, vehicles, and persons. Specific descriptions and particularized probable cause were required for each category.

http://www.nycourts.gov/reporter/3dseries/2021/2021_01093.htm

People v Scheider

2021 NY Slip Op 03486

(COA) (6/4/21 DOI)

CPL 700.05 authorized a NY court to issue a warrant commanding the diversion into NY of a cell phone call between a California resident who had never been to NY and persons not in NY, so that NY officers could listen to the call in NY. The dissenters disagreed, invoking the NY Const., providing explicit protections against unreasonable interception of telephone communication; historical context; and the high number of wiretap applications granted in NY compared to other states.

http://www.nycourts.gov/reporter/3dseries/2021/2021_03486.htm

People v Moore

2021 NY Slip Op 03975

(4th Dept) (6/18/21 DOI)

Dismissal where drugs were found behind a doorway on stairs leading to the attic—not in a common area—and not in area covered by search warrant.

http://nycourts.gov/reporter/3dseries/2021/2021_03975.htm

GUILTY PLEAS

Default judgments

People v Iverson

2021 NY Slip Op 03347

(COA) (5/28/21 DOI)

Under VTL § 1806-a, the trial court may render a default judgment only when the defendant failed to enter a plea by the date specified in the ticket. If the defendant entered a plea of not guilty and demanded a hearing, a default judgment was prohibited.

http://www.nycourts.gov/reporter/3dseries/2021/2021_03347.htm

Direct consequences

People v Nguyen

191 AD3d 1321

(4th Dept) (2/8/21 DOI)

Plea vacated. Not until immediately before sentencing did the plea court tell the defendant about the fine, mandatory conditional discharge period, and ignition interlock device.

http://nycourts.gov/reporter/3dseries/2021/2021_00724.htm

Double jeopardy

People v Kattis

2021 NY Slip Op 04240

(2nd Dept) (7/12/21 DOI)

2nd degree course of sexual conduct against a child conviction upon a plea of guilty. Instant indictment and indictment in another county alleged a single continuing, uninterrupted offense against the same victim.

Constitutional double jeopardy principles precluded this latter conviction.

https://nycourts.gov/reporter/3dseries/2021/2021_04240.htm

Enhanced sentence

People v Stanley

191 AD3d 1411

(4th Dept) (2/12/21 DOI)

Prior to sentencing, the defendant violated the terms of the plea agreement. Supreme Court imposed an enhanced sentence, but had not previously advised the defendant that a higher sentence would include PRS.

Plea was not knowing, voluntary, and intelligent.

http://nycourts.gov/reporter/3dseries/2021/2021_00924.htm

People v Ackley

192 AD3d 1203

(3rd Dept) (3/4/21)

Enhanced sentence improper. The defendant was told a failure to cooperate with the Probation Department could result in an enhanced sentence, but court did not specify that the defendant must not make statements to Probation that were inconsistent with the plea colloquy—which was used as a basis to increase the sentence. The issue survived the unchallenged appeal waiver. The sentencing court did not make a sufficient inquiry. On remittal, County Court had to impose the agreed-upon sentence or let the defendant withdraw his plea.

http://nycourts.gov/reporter/3dseries/2021/2021_01293.htm

Grand jury

People v Owens

191 AD3d 1456

(4th Dept) (2/12/21 DOI)

County Court dismissed the original indictment based on the legal insufficiency of evidence before the grand jury. But the People failed to seek leave to resubmit the matter to the second grand jury. The judgment of conviction, based upon a plea of guilty, was reversed.

http://nycourts.gov/reporter/3dseries/2021/2021_00958.htm

Gravity knives

People v Johnson

192 AD3d 603

(1st Dept) (3/25/21 DOI)

CPW3 conviction dismissed in light of recent legislation amending Penal Law §265.01 to decriminalize simple possession of gravity knives, even though law did not apply retroactively.

http://nycourts.gov/reporter/3dseries/2021/2021_01864.htm

People v Minter

2021 NY Slip Op 04318

(4th Dept) (7/12/21 DOI)

Conviction based on the defendant's possession of a gravity knife. After conviction, Penal Law § 265.01 (1) was amended to decriminalize the simple possession of a gravity knife. People agreed that the indictment should be dismissed.

https://nycourts.gov/reporter/3dseries/2021/2021_04318.htm

Judicial diversion

People v Commissiong

194 AD3d 952

(2nd Dept) (5/21/20)

Appeal from judgment of conviction on drug charge brought up for review denial of motion seeking judicial diversion. Reversal. Review not foreclosed by the guilty plea. Supreme Court abused its discretion in summarily denying application for hearing. Defendant eligible. Evaluation favorable.

http://nycourts.gov/reporter/3dseries/2021/2021_03193.htm

Misadvice

People v Osbourne

191 AD3d 561

(1st Dept) (2/18/21 DOI)

Bail jumping reversed and plea vacated. Court misadvised the defendant as to his sentencing exposure if he was convicted after trial.

http://nycourts.gov/reporter/3dseries/2021/2021_01128.htm

People v Buchanan

194 AD3d 655

(1st Dept) (5/28/21 DOI)

The defendant was told that the maximum term was 45 years, but it was 20 years. The disparity rendered the plea involuntary.

http://nycourts.gov/reporter/3dseries/2021/2021_03386.htm

Motions to withdraw plea

People v Murphy

191 AD3d 1019

(2nd Dept) (2/25/21 DOI)

Prior to sentencing, the defendant moved to withdraw his guilty plea. He claimed innocence and said he pleaded guilty out of fear that prior counsel would not ably represent him. County Court deemed the application to be a CPL 330.30 motion. That was error. It was a CPL 220.60 (3) motion. Remittal with new counsel.

http://nycourts.gov/reporter/3dseries/2021/2021_08203.htm

People v Fellows

192 AD3d 701

(2nd Dept) (3/4/21 DOI)

Appeal in abeyance. Counsel said the defendant's proposed motion to withdraw the guilty plea would be frivolous. Thus, the defendant received ineffective assistance when counsel took a position adverse to his. The lower court should have appointed new counsel to represent him.

http://nycourts.gov/reporter/3dseries/2021/2021_01269.htm

People v Swain

192 AD3d 827

(2nd Dept) (3/11/21 DOI)

Remittal for hearing on motion to withdraw plea of guilty. There was a question as to whether the defendant understood that the court's purportedly forthcoming bail decision was contingent on the acceptance of the plea offer. When a defendant asks about bail, the court should advise him that such matter will be addressed only after plea negotiations are completed.

http://nycourts.gov/reporter/3dseries/2021/2021_01430.htm

Negated element

People v Gause

193 AD3d 1074

(2nd Dept) (4/29/21 DOI)

Third-degree CPW required "knowingly and unlawfully" possessing "a narcotic drug with intent to sell it." During the plea allocution, the defendant denied that he intended to sell the drugs he possessed, yet the court made no further inquiry. This was that rare case where the defendant's recitation of the facts clearly cast significant doubt on his guilt or otherwise called into question the voluntariness of the plea.

http://nycourts.gov/reporter/3dseries/2021/2021_02543.htm

Peque violations

People v Bruno

191 AD3d 585

(1st Dept) (2/25/21 DOI)

Conviction of 3rd degree criminal sale of a controlled substance. The appeal was held in abeyance, because it was not clear that the defendant was made aware of any potential *Peque* (22 NY3d 168) issues and had reached an informed decision not to raise them.

http://nycourts.gov/reporter/3dseries/2021/2021_01150.htm

People v Tapia

192 AD3d 706

(2nd Dept) (3/4/21)

Appeal held in abeyance. *People v Peque* argument reached in the interest of justice. At a joint plea proceeding, Supreme Court advised the codefendant of the possibility that he could be deported as a consequence of his plea and asked the defendant, “Do you understand *that?*” In light of the defendant’s limited education and need for a Spanish interpreter, the cryptic inquiry did not ensure his comprehension that he could be deported due to his plea.

http://nycourts.gov/reporter/3dseries/2021/2021_01274.htm

People v Remigio

192 AD3d 519

(1st Dept) (3/18/21 DOI)

Appeal held in abeyance. The defendant was deprived of effective assistance when counsel failed to advise him that a guilty plea to an aggravated felony would result in mandatory deportation. Counsel said only that the plea “may very well result” in deportation.

http://nycourts.gov/reporter/3dseries/2021/2021_01519.htm

People v Torres

193 AD3d 988

(2nd Dept) (4/22/21 DOI)

Appeal held in abeyance. The plea court failed to address the possibility of deportation due to the guilty plea. Upon remittal, defendant would have the opportunity to establish a reasonable probability that he would not have pleaded guilty had the court properly advised him.

http://nycourts.gov/reporter/3dseries/2021/2021_02424.htm

Rights forfeited

People v Velazquez-Hernandez

193 AD3d 1084

(2nd Dept) (4/29/21 DOI)

The plea court did not ensure that the defendant understood the rights he would be giving up by pleading guilty. Relief was granted in the interest of justice.

http://nycourts.gov/reporter/3dseries/2021/2021_02550.htm

People v Benitez

2021 NY Slip Op 03600

(2nd Dept) (6/11/21 DOI)

Drug sale conviction reversed, Trial court did not fulfill duty to ensure defendant had full understanding of the plea consequences, including the specific or maximum period of post-release supervision.

http://nycourts.gov/reporter/3dseries/2021/2021_03600.htm

Statutory speedy trial

People v Duggins

192 AD3d 191

(3rd Dept) (1/22/21 DOI)

The defendant argued that the People violated his statutory right to a speedy trial. The appellate court held that CPL 30.30 (6) (guilty plea does not forfeit statutory speedy trial claim) did not apply where, as here, the sentence was imposed prior to the amendment's effective date.

http://nycourts.gov/reporter/3dseries/2021/2021_00336.htm

People v Lara-Medina

2021 NY Slip Op 03997

(1st Dept) (6/25/21 DOI)

CPL 30.30 (6) (eff. 1/1/20), permitting defendants who pleaded guilty to raise statutory speedy trial claims on appeal, was not applied retroactively.

http://nycourts.gov/reporter/3dseries/2021/2021_03997.htm

VTL

People v Brown

71 Misc 3d 139 (A)

(App Term, 2nd Dept) (5/28/21 DOI)

The plea deal included a violation of VTL § 1192 (3). The plea court failed to state the basis of such disposition, as required by subdivision (10).

http://nycourts.gov/reporter/3dseries/2021/2021_50482.htm

Waivers of appeal

People v Momoh

192 AD3d 915

(2nd Dept) (3/18/21 DOI)

Detailed discussion of the defects in the waiver of the right to appeal.

http://nycourts.gov/reporter/3dseries/2021/2021_08251.htm

TRIALS

Evidentiary errors

Expert opinion

People v Murray

191 AD3d 1324

(4th Dept) (2/8/21 DOI)

Conviction of 3rd degree insurance fraud and another crime, in connection with property lost in a house fire. New trial. Trial court erred in allowing an arson investigator to testify that the fire was intentionally set. Opinion was irrelevant to prove any element of the crimes and was prejudicial.

http://nycourts.gov/reporter/3dseries/2021/2021_00722.htm

People v Anderson

36 NY3d 1109

(COA) (5/7/21 DOI)

The defendant was convicted of 2nd degree murder for a crime committed at age 14. Expert proof was not necessary to aid the jury in deciding whether the People disproved justification, because adolescent impulsiveness was not an issue beyond the ken of the typical juror.

http://www.nycourts.gov/reporter/3dseries/2021/2021_02735.htm

Excited utterance

People v Germosen

2021 NY Slip Op 04237

(2nd Dept) (7/12/21 DOI)

Error to let People elicit testimony from officers as to hearsay statements by the complainant a few hours after the incident. Given that delay, the People did not show that the complainant's capacity for reflection remained stilled, and the trial court erred in invoking the excited utterance exception.

https://nycourts.gov/reporter/3dseries/2021/2021_04237.htm

Frye

People v Applewhite

2021 NY Slip Op 03847

(2nd Dept) (6/18/21 DOI)

New trial. Error to deny defense motion to preclude the introduction of DNA testing results and testimony about the Forensic Statistical Tool or to hold a *Frye* hearing.

http://nycourts.gov/reporter/3dseries/2021/2021_03847.htm

Molineux errors

People v Rodriguez

193 AD2d 554

(1st Dept) (4/22/21 DOI)

New trial ordered in attempted burglary case. The People introduced extensive *Molineux* evidence relating to two prior burglaries. The prejudicial impact of the evidence far exceeded the probative value. Limiting instructions were insufficient; and the error was not harmless.

http://nycourts.gov/reporter/3dseries/2021/2021_02367.htm

People v Gaylord

194 AD3d 1189

(3rd Dept) (5/14/21 DOI)

It was error to allow the victim's testimony that the defendant punched her in the stomach when fearing she was pregnant, since he had no notice of the *Molineux* proof. But the error was harmless.

http://nycourts.gov/reporter/3dseries/2021/2021_03080.htm

Present sense impression

People v Merritt

193 AD3d 661

(1st Dept) (4/29/21 DOI)

Harmless error to admit the complainant's 911 call as a present sense impression. The complainant said that after incident, he walked block before he thought about the incident and called 911. Call occurred six minutes after incident. Such time for reflection negated the "essential assurance of reliability."

http://nycourts.gov/reporter/3dseries/2021/2021_02615.htm

Pretrial silence

People v DeLaCruz

192 AD3d 1042

(2nd Dept) (3/25/21 DOI)

New trial. The People improperly used the defendant's pretrial silence against him on their direct case, and the error was not harmless. Issue reached in the interest of justice.

http://nycourts.gov/reporter/3dseries/2021/2021_01785.htm

Sirois hearing

People v Burgess

192 AD3d 1136

(2nd Dept) (4/1/21 DOI)

New trial. After a *Sirois* hearing, trial court improperly admitted an out-of-court statement of an unavailable witness. The People did not prove that the defendant controlled persons who threatened the witness.

http://nycourts.gov/reporter/3dseries/2021/2021_01993.htm

Translators / hearsay

People v Slade

2021 NY Slip Op 02866

(COA) (5/7/21 DOI)

The use of a translator did not create a hearsay defect in accusatory instruments. Judges Garcia and Rivera dissented. There was a systemic problem where the sufficiency of the accusatory instrument depended on supporting depositions by persons who lacked English-language proficiency. A certificate of translation under penalty of perjury—in which the translator attested to fluency in the relevant languages and affirmed the accuracy of the translation—would have provided confidence in each translation.

http://www.nycourts.gov/reporter/3dseries/2021/2021_02866.htm

Ineffective assistance

People v Jennings

191 AD3d 1429

(4th Dept) (2/12/21 DOI)

Reversal. No valid strategic reason for counsel's failure to object to repugnant verdicts. The jury was instructed that the People had to prove that the defendant directed the codefendant to emerge from a hiding place and shoot the victim in the head. The codefendant's acquittal negated an essential element.

http://nycourts.gov/reporter/3dseries/2021/2021_00944.htm

People v Kashif

71 Misc 3d 28

(App Term, 2nd Dept) (3/25/21 DOI)

New trial. IAC. Defense counsel did not conduct pretrial research to determine whether the defendant had a criminal history; did not seek a *Sandoval* hearing. At trial, counsel asked the defendant about a prior criminal conviction when he was 17 that arose from joyriding in a stolen car—for which he had received a YO adjudication.

http://www.nycourts.gov/reporter/3dseries/2021/2021_21062.htm

People v Stackhouse

194 AD3d 113

(4th Dept) (3/29/21 DOI)

Upon the denial of suppression, counsel failed to seek redaction of the defendant's video-recorded statement. The jury thus heard a reference to the defendant's history of incarceration. There could be no tactical or strategic reason for such error.

http://nycourts.gov/reporter/3dseries/2021/2021_01883.htm

Jury instructions

People v Ballo

191 AD3d 482

(1st Dept) (2/12/21 DOI)

Assault case. Proof did not support the defendant's liability as a principal, but prosecutor did not request an accessorial liability instruction. Conviction may not be sustained on an acting-in-concert theory that was not submitted to the jury. Verdict finding the defendant guilty as a principal was against the weight.

http://nycourts.gov/reporter/3dseries/2021/2021_00810.htm

People v Herrera

193 AD3d 189

(1st Dept) (2/25/21 DOI)

Reversal in interest of justice. Justification was central. But the jury instructions failed to convey that acquittal of attempted 1st degree assault based on justification would preclude consideration of the lesser included offense of 2nd degree assault (*People v Velez*, 131 AD3d 129). The verdict sheet was also incorrect.

http://nycourts.gov/reporter/3dseries/2021/2021_01148.htm

People v Garcia

192 AD3d 1463

(4th Dept) (3/22/21)

New trial. The trial court erred in denying a missing witness charge on cumulativeness grounds. The complainant testified that she immediately reported the rape to her boyfriend and, hours later, to her mother. The mother testified, the boyfriend did not. The testimony would have been highly relevant to whether the complainant reported the alleged rape at the first suitable opportunity.

http://nycourts.gov/reporter/3dseries/2021/2021_01571.htm

People v Crumb

194 AD3d 739

(2nd Dept) (5/7/21 DOI)

Vacatur of convictions of 1st degree reckless endangerment, 2nd degree assault, and resisting arrest and ordered a new trial on those counts. As to the crimes that occurred after he fled, Supreme Court erred in instructing the jury that geographic jurisdiction over one count conferred jurisdiction overall.

http://nycourts.gov/reporter/3dseries/2021/2021_02816.htm

People v Ahmeti

71 Misc 3c 139 (A)

(App Term, 2nd Dept) (5/28/21 DOI)

The defendant sought a missing witness charge when the People failed to call the complainant. The motion was denied. That was error. The complainant's testimony would have been material to the People's case. The trial prosecutor said she had been informed by the former prosecutor that the witness had moved back to France but did not confirm that.

http://nycourts.gov/reporter/3dseries/2021/2021_50481.htm

People v Swift

2021 NY Slip Op 03785

(4th Dept) (6/14/21 DOI)

New trial on strangulation. County Court erred in denying request to instruct jury on attempted strangulation 2nd, where a reasonable view of the evidence would have supported a finding of no physical injury.

http://nycourts.gov/reporter/3dseries/2021/2021_03785.htm

People v Taylor

2021 NY Slip Op 04258

(3rd Dept) (7/12/21 DOI)

Error to deny circumstantial evidence charge. No direct evidence identified the defendant as the shooter or as having possessed a loaded firearm. Indeed, there was no DNA or fingerprint evidence linking him to the gun found near the scene or the projectiles fired from it. Footage capturing the incident did not depict the defendant with a firearm. Equivocal eyewitness testimony was not direct evidence.

https://nycourts.gov/reporter/3dseries/2021/2021_04258.htm

Multiplicitous counts

People v Edmondson

191 AD3d 1015

(2nd Dept) (2/25/21 DOI)

Convictions of 1st degree assault, 1st degree robbery were multiplicitous. The jury instructions for the two offenses were essentially identical. Dismissal of assault count in interest of justice.

http://nycourts.gov/reporter/3dseries/2021/2021_08201.htm

Notice of defendant's statement

People v Porter

192 AD3d 222

(2nd Dept) (1/14/20 DOI)

The defendant appealed from a judgment of conviction. At trial, a detective said a safe “needed to be opened.” The defendant typed in the combination and opened the safe, which contained drugs and firearms—a communicative act. As to involuntariness, the defendant acted when she was handcuffed and un-Mirandized. CPL 710.30 (1) (a) notice was required but not given. New trial.

http://nycourts.gov/reporter/3dseries/2020/2020_08122.htm

Oaths

People v Van Alphen

2021 NY Slip Op 04056

(3rd Dept) (6/25/21 DOI)

The victims, all over age 9, did not give unsworn testimony. The form of the oath was flexible and could be modified, as here, to a child's level of understanding.

http://nycourts.gov/reporter/3dseries/2021/2021_04056.htm

O'Rama violations

People v Everett

191 AD3d 696

(2nd Dept) (2/4/21 DOI)

New trial was required based on the trial court's failure to comply with CPL 310.30 and *People v O'Rama*. The jury asked to view a surveillance video. The lower court failed to notify the parties about the jury note, to read its contents into the record, or to respond.

http://nycourts.gov/reporter/3dseries/2021/2021_00575.htm

People v Jackson

192 AD3d 486

(1st Dept) (3/11/21 DOI)

The trial court's paraphrasing of part of a jury note from the deliberating jury did not constitute an *O'Rama* mode of proceedings error. The relevant portion unambiguously asked for a rereading of a specific part of the original charge. Although the court should have read the entire note verbatim, the paraphrasing did not undermine defense counsel's ability to provide input regarding the response.

http://nycourts.gov/reporter/3dseries/2021/2021_01488.htm

People v Dennis

192 AD3d 1137

(2nd Dept) (4/1/21 DOI)

New trial. Court did not tell counsel the precise contents of a substantive jury note, reporting that it asked for the defendant's phone call from jail, but not revealing that the note ended with "(transcript)." The judge did not provide the transcript. There was a discrepancy between the recording and the transcript.

http://nycourts.gov/reporter/3dseries/2021/2021_01994.htm

Prospective jurors

People v Padilla

191 AD3d 1347

(4th Dept) (2/8/21 DOI)

New trial. Error to deny challenges for cause to two prospective jurors whose statements raised serious doubts about their ability to render an impartial verdict. Their silence, in response to the court's question to the entire panel, did not constitute an unequivocal assurance.

http://nycourts.gov/reporter/3dseries/2021/2021_00732.htm

People v Singleton

192 AD3d 1536

(4th Dept) (3/22/21)

Decision reserved, remittal. Trial court erred in failing to conduct the *Batson* three-step inquiry, following defense counsel's objection to the People's peremptory challenge of a Black prospective juror. After the defendant made a prima facie showing, the prosecutor offered a race-neutral explanation. Counsel attempted to respond, but the court did not give him the opportunity to argue pretext.

http://nycourts.gov/reporter/3dseries/2021/2021_01638.htm

People v Taylor

192 AD3d 1134

(2nd Dept) (4/1/21 DOI)

New trial. The trial court erred in allowing the People to exercise peremptory challenges to prospective jurors after the defendant and codefendant used challenges as to that same panel.

http://nycourts.gov/reporter/3dseries/2021/2021_01998.htm

People v Coleman

2021 NY Slip Op 03695

(4th Dept) (6/14/21 DOI)

New trial. *Batson* violation. Error to allow the prosecutor to exercise a peremptory challenge to exclude a black prospective juror. The court accepted the purported race-neutral reason for the challenge, though it was based on the prosecutor's erroneous recollection of juror's statements.

http://nycourts.gov/reporter/3dseries/2021/2021_03695.htm

People v Murray

2021 NY Slip Op 04108

(1st Dept) (7/2/21)

New trial. *Batson* violation. At trial, the defendant pro se, an African-American, complained that the prosecutor was "excluding all the blacks." The People relied on two pretextual reasons for a peremptory challenge to one prospective juror. First, the prosecutor stated that the juror could not understand a domestic violence situation since he was an older person, had no children, and lived with roommates. Then, after the jury was empaneled and instructed, the prosecutor said that people with higher-level jobs could better follow instructions and understand the law.

https://nycourts.gov/reporter/3dseries/2021/2021_04108.htm

Quantum of evidence

Assault

People v Ballo

191 AD3d 482

(1st Dept) (2/12/21 DOI)

Assault case. Proof did not support the defendant's liability as a principal, but prosecutor did not request an accessory liability instruction. Conviction may not be sustained on an acting-in-concert theory that was not submitted to the jury. Verdict finding the defendant guilty as a principal was against the weight.

http://nycourts.gov/reporter/3dseries/2021/2021_00810.htm

Attempted rape

People v Rath

192 AD3d 1600

(4th Dept) (3/22/21)

Dismissal of attempted rape count as to which the bill of particulars alleged that the defendant attempted to have sexual intercourse with victim after striking her in face. No testimony supported those allegations.

http://nycourts.gov/reporter/3dseries/2021/2021_01667.htm

Criminal mischief

People v Jackson

194 AD3d 622

(1st Dept) (5/28/21 DOI)

The First Department dismissed one mischief count because of the lack of proof re reasonable repair costs.

http://nycourts.gov/reporter/3dseries/2021/2021_03288.htm

CPCS

People v Hawkins

2021 NY Slip Op 04238

(2nd Dept) (7/12/21 DOI)

No officer saw the defendant carrying a bag; neither bystander was able to identify him as the man with the bag; and no forensic evidence linked him to it. True, the bystanders' vague description was consistent with the defendant's general appearance. But such proof—coupled with the defendant's proximity to the crime scene—did not establish his identity as the perpetrator.

https://nycourts.gov/reporter/3dseries/2021/2021_04238.htm

CPW

People v Rose

191 AD3d 697

(2nd Dept) (2/4/21 DOI)

Weapon possession conviction was against weight of evidence. The defendant's temporary possession of the gun did not constitute a crime. The defendant, who was acquitted of murder charge based on justification defense, initially took possession with valid legal excuse. No proof he retained it after opportunities to hand it over to authorities.

http://nycourts.gov/reporter/3dseries/2021/2021_00577.htm

People v Johnston

192 AD3d 1516

(4th Dept) (3/22/21)

Modified. Four CPW counts (P.L. § 265.03[3]), were based on the defendant's uninterrupted possession of a single weapon at different times. But the possession of the weapon constituted a single continuing offense for which the defendant could be prosecuted only once. Three CPW counts dismissed.

http://nycourts.gov/reporter/3dseries/2021/2021_01632.htm

People v Lora

192 AD3d 1488

(4th Dept) (3/22/21)

Dismissal of counts of 1st degree criminal use of a firearm and 3rd and 4th degree CPW. The evidence, showing only the defendant's presence in the house where a rifle was found, was legally insufficient to establish constructive possession.

http://nycourts.gov/reporter/3dseries/2021/2021_01597.htm

People v Hawkins

192 AD3d 1637

(4th Dept) (3/29/21 DOI)

CPW 2 counts were dismissed. The proof was legally insufficient to show accessorial liability as to one weapon count. As to the other count, the verdict was against the weight of evidence. The People did not prove that the defendant—finding himself in the presence of a man with a loaded weapon—willingly aided possession of the weapon.

http://nycourts.gov/reporter/3dseries/2021/2021_01882.htm

People v Santiago

2021 NY Slip Op 03756

(4th Dept) (6/14/21 DOI)

Conviction 2nd degree CPW modified. There was no proof that the weapon was loaded. The victim testified that, on the date in question, the defendant put the firearm to her head and pulled the trigger twice, but the weapon did not fire. Reduced to criminal possession of a firearm.

http://nycourts.gov/reporter/3dseries/2021/2021_03756.htm

Drug possession

People v Ponder

191 AD3d 1409

(4th Dept) (2/12/21 DOI)

Reversal of drug conviction based on constructive possession. Although the defendant was present when the police executed a search warrant, no other proof showed that he was an apartment occupant or regularly frequented it.

http://nycourts.gov/reporter/3dseries/2021/2021_00923.htm

Drug sale

People v Moreno

193 AD3d 881

(2nd Dept) (4/15/21 DOI)

Dismissal of drug sale and conspiracy convictions. The evidence was legally insufficient as to both charges. The defendant was merely present during the sale. There was no proof of an overt act.

http://nycourts.gov/reporter/3dseries/2021/2021_02316.htm

DWAI

People v Koukhta

2021 NY Slip Op 50572

(App Term, 2nd Dept) (6/25/21 DOI)

Conviction of DWAI reversed, charge dismissed. The defendant offered a plausible account that he drove his truck into a tree stump after swerving to avoid a deer and that upon arriving home, he drank more. The People could not refute his story about how he became drunk in the two-hour interval between the accident and the trooper's arrival.

http://nycourts.gov/reporter/3dseries/2021/2021_50572.htm

Escape

People v Bagley

194 AD3d 1475

(4th Dept) (5/10/21 DOI)

First degree escape count dismissed. The proof did not show that the defendant was in custody at the time of the alleged escape. An officer informed the defendant that he was under arrest and tried to pull him from the driver's seat of a vehicle. The defendant drove off, dragging officers across the parking lot.

http://nycourts.gov/reporter/3dseries/2021/2021_02964.htm

False instrument

People v Saladeen

194 AD3d 426

(1st Dept) (5/7/21 DOI)

Filing false instrument count dismissed. The defendant intentionally caused false statements to be written on officially filed forms—with one exception. The Investigating Supervisor's Report was not prepared, reviewed, or filed by the defendant; and the evidence did not show that he knew that his oral statements to his commanding officer would be memorialized therein.

http://nycourts.gov/reporter/3dseries/2021/2021_02760.htm

Identification

People v Green

194 AD3d 1106

(3rd Dept) (5/7/21 DOI)

Robbery, assault convictions not supported by legally sufficient evidence. The People failed to prove that the defendant was one of three perpetrators who robbed and assaulted the victim. The victim vaguely described the assailants as three Black men; and the three codefendants pleaded guilty.

http://nycourts.gov/reporter/3dseries/2021/2021_02841.htm

People v Garcia

194 AD3d 956

(2nd Dept) (5/21/20)

Guilty verdict as to robbery against the weight of evidence. While the defendant was found in possession of a distinctive bandana shortly after the crime near the scene, no witnesses testified that the complainant mentioned a bandana before the arrest. Also, the complainant testified that he had seen the man with the bandana twice before—but that he had never seen the defendant before the crime.

http://nycourts.gov/reporter/3dseries/2021/2021_03196.htm

Kidnapping

People v Legrand

194 AD3d 1073

(2nd Dept) (5/28/21 DOI)

Kidnapping proof legally insufficient. The proof did not establish that the defendant: (1) knew that the complainant was a 14-year-old runaway whose parents were looking for her during the one-week period she stayed at his house; (2) intentionally restricted her movements by confining her; or (3) or intended to prevent the complainant's liberation by hiding her where she was unlikely to be found.

http://nycourts.gov/reporter/3dseries/2021/2021_03333.htm

Larceny

People v Badji

36 NY3d 393

(COA) (2/12/21 DOI)

Conviction of 4th degree grand larceny was properly based on the defendant's theft of the victim's intangible credit card information to make purchases. General Business Law § 511-a was applicable, and it said that "credit card" included "any number assigned to a credit card."

http://www.nycourts.gov/reporter/3dseries/2021/2021_00897.htm

Obstructing gov't. admin.

People v Johnson

2021 NY Slip Op 03851

(2nd Dept) (6/18/21 DOI)

Dismissal of obstructing governmental administration based on legal insufficiency. The arresting officers said the defendant was argumentative during a traffic stop and uncooperative during the arrest-booking process. That was not a knowing physical interference with the official function.

http://nycourts.gov/reporter/3dseries/2021/2021_03851.htm

Physical injury

People v Bowen

2021 NY Slip Op 04236

(2nd Dept) (7/12/21 DOI)

The complainant testified that he had pain in his back and neck for three weeks, and it hurt when he lifted “something” while working in construction. However, the victim never sought medical treatment and used only a topical cream. Such proof did not show substantial pain or impairment of a physical condition.

https://nycourts.gov/reporter/3dseries/2021/2021_04236.htm

Promoting prison contraband

People v McLamore

191 AD3d 1413

(4th Dept) (2/12/21 DOI)

Conviction of promoting prison contraband reduced from 1st to 2nd degree offense. Evidence insufficient to establish that the substance in the packages seized—synthetic marihuana—was dangerous contraband.

http://nycourts.gov/reporter/3dseries/2021/2021_00926.htm

Rape

People v O’Donnell

2021 NY Slip Op 03709

(4th Dept) (6/14/21 DOI)

Rape 1st charges dismissed. Physical abuse in the sexual relationship did not make the sex acts a product of forcible compulsion.

http://nycourts.gov/reporter/3dseries/2021/2021_03709.htm

People v Wagoner

2021 NY Slip Op 03981

(4th Dept) (6/18/21 DOI)

Rape and prostitution counts reduced. The man at issue denied having sexual contact with the victim, who said she did not believe that the defendant knew what the man was doing to her the night he raped her.

http://nycourts.gov/reporter/3dseries/2021/2021_03981.htm

Robbery

People v Kourouma

191 AD3d 542

(1st Dept) (2/18/21 DOI)

Robbery conviction to petit larceny. Conduct in snatching a purse dangling from the victim’s arm did not involve the required physical force.

http://nycourts.gov/reporter/3dseries/2021/2021_01011.htm

People v Stackhouse

194 AD3d 113

(4th Dept) (3/29/21 DOI)

Robbery counts were dismissed because the defendant’s version of events was supported by the physical evidence and his admission was uncorroborated.

http://nycourts.gov/reporter/3dseries/2021/2021_01883.htm

Serious physical injury

People v Smith

193 AD3d 1260

(3rd Dept) (4/29/21 DOI)

The verdict as to 2nd degree assault was against the weight of the evidence because serious physical injury was not proven. There was no evidence that: the victim lost consciousness after being shot or that a vital organ was damaged; that the injuries caused a substantial risk of death or were life threatening; or that the victim suffered a protracted impairment of health or protracted loss or impairment of an organ's function.

http://nycourts.gov/reporter/3dseries/2021/2021_02564.htm

Terroristic threat

People v DeBlasio

190 AD3d 595

(1st Dept) (1/22/21 DOI)

Conviction of making a terroristic threat reversed, charge dismissed. Proof of "intent to intimidate or coerce a civilian population" was legally insufficient. After an altercation, the defendant, a Muslim, threatened to shoot several Bangladeshi worshippers at his mosque. His threat mentioned no group or population and was apparently based on a personal dispute.

http://nycourts.gov/reporter/3dseries/2021/2021_00376.htm

Right to be present

People v Brown

192 AD3d 1603

(4th Dept) (3/22/21)

New trial. Before prospective jurors were brought in, the defendant shouted that the court called him by the wrong name and he could not wear clothes provided to him. The court had the defendant removed, and he was absent for the selection of the first 11 jurors. A defendant has a fundamental right to be present for material stages of trial. A disorderly and disruptive defendant must first be warned that he will be removed if his misconduct continues. There was no warning here.

http://nycourts.gov/reporter/3dseries/2021/2021_01668.htm

People v King

192 AD3d 1140

(2nd Dept) (4/1/21 DOI)

New trial. After the complainant testified that she had been treated for mental health issues, the judge interviewed her in camera, found her psychiatric history irrelevant, and struck that testimony. The interview was a material stage of trial, so the defendant should have been present.

http://nycourts.gov/reporter/3dseries/2021/2021_01996.htm

Right to counsel

People v Lemmo

192 AD3d 1143

(2nd Dept) (4/1/21 DOI)

New trial. Before letting the defendant go pro se, the court did not make sure he knew the risks of doing so, the benefits of counsel, and the potential sentence.

http://nycourts.gov/reporter/3dseries/2021/2021_01997.htm

People v Stackhouse

194 AD3d 113

(4th Dept) (3/29/21 DOI)

A new trial was ordered as to the remaining counts because the defendant's right to counsel was violated. When he made complaints about counsel, the trial court did not do a minimal inquiry and timely act to safeguard his rights.

http://nycourts.gov/reporter/3dseries/2021/2021_01883.htm

People v Robinson

2021 NY Slip Op 03939

(4th Dept) (6/18/21 DOI)

Reversal. The defendant made serious complaints about counsel, indicating a complete collapse in communication. Error to deny request for new counsel without minimal inquiry by court.

http://nycourts.gov/reporter/3dseries/2021/2021_03939.htm

People v Darwish

2021 NY Slip Op 03936

(4th Dept) (6/18/21 DOI)

Reversible error to not conduct an inquiry following the defendant's requests for new counsel. Prompted by the defendant's complaints about his defective performance, counsel sought to be relieved. In response, the defendant described a breakdown in communication. Irreconcilable conflict.

http://nycourts.gov/reporter/3dseries/2021/2021_03936.htm

Severance / Joinder

People v Santiago

190 AD3d 502

(1st Dept) (1/14/21 DOI)

Motion to sever should have been granted, where DWI and leaving the scene crimes occurred on different dates and were based on different facts, and none of the proof necessary for each offense was material to the other.

http://nycourts.gov/reporter/3dseries/2021/2021_00130.htm

People v Moore

190 AD3d 500

(1st Dept) (1/14/21 DOI)

Counts of burglary in 2nd and 3rd degree were properly joined on the ground of overlapping evidence. The crimes involved a sufficiently unique M.O. and were legally similar, and the defendant did not make a sufficient showing for discretionary severance.

http://nycourts.gov/reporter/3dseries/2021/2021_00127.htm

Statute unconstitutional

People v Hodgdon

36 NY3d 564

(COA) (4/1/21)

The Court of Appeals found unconstitutional Executive Law § 552 provisions creating a special prosecutor, possessing authority concurrent with that of District Attorneys, to prosecute individuals accused of abuse or neglect against adults with special needs in residential facilities operated under the State aegis. The law impermissibly gave essential function of constitutional officer to different officer chosen in different way..

http://www.nycourts.gov/reporter/3dseries/2021/2021_01934.htm

People v Agudio

194 AD3d 1270

(3rd Dept) (5/21/20)

One count of falsely reporting incident dismissed. The defendant made false claim of racially charged incident on social media. P.L. § 240.50 (1) was unconstitutional as applied to posting false tweets.

http://nycourts.gov/reporter/3dseries/2021/2021_03224.htm

Territorial jurisdiction

People v Cousar

191 AD3d 694

(2nd Dept) (2/4/21 DOI)

The defendant admitted that, while in NJ, he used personal identifying information of a Putnam County, NY resident to access his bank account and steal \$9,000. No elements of the offense occurred in NY, so the People argued it was a “result offense.” Not. No specific consequence was an element of the crime. The matter was dismissed based on a lack of territorial jurisdiction.

http://nycourts.gov/reporter/3dseries/2021/2021_00573.htm

Theory changed

People v Hursh

191 AD3d 1453

(4th Dept) (2/12/21 DOI)

Right to be tried and convicted only of crimes and theories charged is fundamental and non-waivable. Issues of facial and non-facial duplicity must be preserved. No preservation here, nor interest of justice review.

http://nycourts.gov/reporter/3dseries/2021/2021_00956.htm

Uncharged theory

People v Petersen

190 AD3d 769

(2nd Dept) (1/14/21 DOI)

A defendant has a right to be tried only for the crimes charged in the indictment. That applies to burglary cases regarding the crime the defendant intended to commit. The People’s theory was intent to commit property damage and/or theft. The trial court erred in allowing them to instead argue intent to assault in their summation.

http://nycourts.gov/reporter/3dseries/2021/2021_00193.htm

Unsworn witness

People v Alvarez

190 AD3d 462

(1st Dept) (1/8/21)

Reversal. Retired detective/juror acted as an unsworn expert during deliberations, offering views within his specialized expertise concerning material issues.

http://nycourts.gov/reporter/3dseries/2021/2021_00092.htm

People v Sammeth

190 AD3d 1112

(3rd Dept) (1/14/21 DOI)

In summation, the prosecutor said that, if there was a conspiracy among police witnesses to make false incriminating statements, “It’s me too.” The prosecutor’s remark was improper, since he acted as an unsworn witness, but it did not cause substantial prejudice. A proper curative instruction was given.
http://nycourts.gov/reporter/3dseries/2021/2021_00212.htm

SENTENCING

Catu error

People v Dillon

2021 NY Slip Op 03607

(2nd Dept) (6/11/21 DOI)

Judgment reversed, remittal. Supreme Court failed to advise the defendant that, for assault, he would be sentenced to post-release supervision. Plea of guilty to each count had to be vacated, since the counts were all part of one indictment and one judgment, and sentences were to run concurrently.

http://nycourts.gov/reporter/3dseries/2021/2021_03607.htm

Concurrent

People v Alligood

192 AD3d 1508

(4th Dept) (3/22/21)

For convictions of 2nd degree murder and 2nd degree CPW, imposing consecutive sentences was error. The People did not present proof that the defendant’s acts of possessing the loaded firearm and shooting the victim were separate and distinct.

http://nycourts.gov/reporter/3dseries/2021/2021_01628.htm

People v Boyd

192 AD3d 1659

(4th Dept) (3/29/21 DOI)

Consecutive terms for 1st degree assault and 2nd degree CPW were illegal. The defendant did not knowingly and unlawfully possess loaded firearm before forming intent as to assault. The People had the burden of establishing the legality of consecutive sentences.

http://nycourts.gov/reporter/3dseries/2021/2021_01897.htm

People v Muniz

193 AD3d 1116

(3rd Dept) (4/1/21 DOI)

The defendant appealed from a Warren County Court judgment, convicting him of 3rd degree criminal sale of a controlled substance (two counts) and other crimes. The sentences imposed on the drug sale counts must run concurrently. The defendant engaged in a single sale of two drugs.

http://nycourts.gov/reporter/3dseries/2021/2021_02023.htm

People v Long

193 AD3d 978

(2nd Dept) (4/22/21 DOI)

Sentence modified. The term for the weapons charge must had to run consecutively to the other terms. People did not establish that the defendant’s possession of a weapon with an intent to use it unlawfully was separate and distinct from his intent to use it to commit the other crimes.

http://nycourts.gov/reporter/3dseries/2021/2021_02414.htm

People v Adams

194 AD3d 730

(2nd Dept) (5/7/21 DOI)

Conviction of two counts of 3rd degree CPW. Consecutive sentences should not have been imposed, since there was no showing that the acts underlying the crimes were separate and distinct.

http://nycourts.gov/reporter/3dseries/2021/2021_02808.htm

People v Argueta

194 AD3d 857

(2nd Dept) (5/14/21 DOI)

The consecutive sentence term for 1st degree criminal use of a firearm was improper, where the conviction did not involve display of a loaded operable weapon, and criminal liability was based on conduct of another. *See* Penal Law § 265.09 (2).

http://nycourts.gov/reporter/3dseries/2021/2021_03067.htm

Conflict of interest

People v Miller

190 AD3d 1029

(3rd Dept) (1/8/21 DOI)

Vacatur of sentence. Defendant was represented by the Albany County Public Defender's Office. That office was precluded from representing him at the sentencing hearing because the Public Defender, prior to being appointed to that position, was the County Judge who presided over the plea and deferred sentencing.

http://nycourts.gov/reporter/3dseries/2021/2021_00056.htm

Fees and surcharge

People v Chirinos

190 AD3d 434

(1st Dept) (1/8/21)

The defendant was convicted before enactment of CPL 420.35 (2-a), permitting waiver of fees for persons under age 21. In interest of justice, mandatory surcharge, DNA fee, crime victim assistance fee vacated.

http://nycourts.gov/reporter/3dseries/2021/2021_00038.htm

Ignition interlock device

People v Miller

191 AD3d 802

(2nd Dept) (2/12/21 DOI)

The defendant was convicted aggravated DWI (driving while ability impaired by drugs). Vacatur of directive that he install an ignition interlock device—a condition only for offenses involving alcohol.

http://nycourts.gov/reporter/3dseries/2021/2021_00868.htm

Predicate felony not equivalent

People v Ramirez

192 AD3d 825

(2nd Dept) (3/11/21 DOI)

Vacatur of second felony offender adjudication in the interest of justice. The armed robbery conviction in Florida could not be used as a predicate felony in NY.

http://nycourts.gov/reporter/3dseries/2021/2021_01429.htm

People v Johnson

192 AD3d 909

(2nd Dept) (3/18/21 DOI)

In interest of justice, vacatur of second violent felony offender adjudication. The defendant's prior NJ conviction of aggravated assault did not constitute a felony under NY law.

http://nycourts.gov/reporter/3dseries/2021/2021_08246.htm

People v Mohabir

192 AD3d 1047

(2nd Dept) (3/25/21 DOI)

Federal conviction of conspiracy to deal in firearms was not predicate felony conviction, because the federal statute contained different elements than NY equivalent. It was possible to violate the federal statute without engaging in conduct that was a felony in NY. Vacatur of adjudication as a second felony offender.

http://nycourts.gov/reporter/3dseries/2021/2021_01789.htm

People v Simmons

2021 NY Slip Op 03924

(1st Dept) (6/18/21 DOI)

Affirmance upon appeal from resentencing as second felony offender. App Div did not give preclusive effect to prior decision in this case finding that Pennsylvania drug possession conviction could serve as a predicate felony, and court acknowledged that broader knowledge requirement of the PA statute raised possibility that the defendant could have been convicted without being guilty of a NY felony. However, the accusatory instrument revealed that the PA conviction was equivalent to a NY felony.

http://nycourts.gov/reporter/3dseries/2021/2021_03924.htm

Predicate felony tolling periods

People v Hall

194 AD3d 1372

(4th Dept) (5/10/21 DOI)

The sentence for the predicate felony was imposed more than 10 years before the instant offense. The People's SFO statement did not set forth the dates or locations of incarceration. The matter was remitted for a new SFO statement and resentencing.

http://nycourts.gov/reporter/3dseries/2021/2021_02901.htm

Probation

People v Acuna

2021 NY Slip Op 03846

(2nd Dept) (6/18/21 DOI)

Probation condition vacated as not reasonably necessary to ensure that the defendant would lead a law-abiding life. When he committed the crimes, he was not armed or under the influence of any substance, and his criminal history did not include offenses involving weapons or drugs.

http://nycourts.gov/reporter/3dseries/2021/2021_03846.htm

Reduction explained

People v Cordon

191 AD3d 1376

(4th Dept) (2/8/21 DOI)

Sentences for 2nd degree burglary, attempted 2nd degree burglary, and two other crimes ordered to run concurrently for several reasons: (1) while serving in the Army, the defendant was injured; (2) as a result of the injury, he developed an opiate addiction; (3) in addition, he struggled with mental illness; (4) he had accepted responsibility for his actions; and (5) he had shown remorse.

http://nycourts.gov/reporter/3dseries/2021/2021_00751.htm

People v Brown

192 AD3d 1260

(3rd Dept) (3/11/21 DOI)

The defendant was convicted of 2nd degree burglary, 4th degree grand larceny, 4th degree conspiracy, and other offenses. The sentence was found harsh and excessive. The plea agreement failed to mention the possibility of consecutive sentences. Further, the resulting aggregate term of 13½ to 16 years exceeded the People's promise of a maximum of 12 years in prison. All terms to run concurrently.

http://nycourts.gov/reporter/3dseries/2021/2021_01442.htm

People v Zdatny

192 AD3d 1581

(4th Dept) (3/22/21)

Sentence for violent crimes reduced. The defendant was age 41 at the time of the crimes, had only one previous crime (a misdemeanor in 2001), and had no prior incidents of violence. Further, he had a history of mental illness and had demonstrated extreme remorse for his actions.

http://nycourts.gov/reporter/3dseries/2021/2021_01659.htm

People v Colon

192 AD3d 1567

(4th Dept) (3/22/21)

Sentence for violent crimes reduced. The defendant was age 22, gainfully employed, and had no criminal history. Although he was an accessory to crimes committed at the victim's residence, she was one block away during that incident and did not physically participate. Evidence suggested that the defendant was a victim of repeated domestic abuse by a codefendant.

http://nycourts.gov/reporter/3dseries/2021/2021_01652.htm

People v Ranot

194 AD3d 967

(2nd Dept) (5/21/20)

First degree assault. Sentence reduce from 15 to 8 years flat. Crime involved the defendant striking her stepdaughter with the sharp metal handle of a broom, resulting in a permanent wrist injury.

http://nycourts.gov/reporter/3dseries/2021/2021_03201.htm

People v Williams

2021 NY Slip Op 03634

(3rd Dept) (6/11/21 DOI)

Resentence order modified. An earlier conviction cited as reason for consecutive sentences was vacated. Thus, the sentence were modified to run concurrently.

http://nycourts.gov/reporter/3dseries/2021/2021_03634.htm

People v Nelson

2021 NY Slip Op 03728

(4th Dept) (6/14/21 DOI)

In a prior appeal, the defendant's conviction was reduced from 1st to 2nd degree gang assault. The defendant now contended that his resentencing was harsh and excessive, because it was the same as the original punishment. The appellate court ordered a reduction to a determinate term of 12 years.

http://nycourts.gov/reporter/3dseries/2021/2021_03728.htm

People v O'Donnell

2021 NY Slip Op 03709

(4th Dept) (6/14/21 DOI)

Given the defendant's advanced age and lack of a criminal record, the sentence was unduly severe for rape and attempted sexual act. Terms to run concurrently.

http://nycourts.gov/reporter/3dseries/2021/2021_03709.htm

People v Swift

2021 NY Slip Op 03785

(4th Dept) (6/14/21 DOI)

Burglary terms were too harsh, given the defendant's lack of a record, his psychiatric hospitalizations, and the pretrial offer of five years. Reduced to determinate terms of 10 years.

http://nycourts.gov/reporter/3dseries/2021/2021_03785.htm

People v Kerringer

2021 NY Slip Op 03852

(2nd Dept) (6/18/21 DOI)

Sentence reduced in drug possession case. Excellent discussion of relevant standards of sentence review. In this case, the defendant's employment as a correction officer militated in favor of a severe sentence. However, he had no prior criminal history, took responsibility for actions, expressed remorse, had strong community ties, and supported his parents.

http://nycourts.gov/reporter/3dseries/2021/2021_03852.htm

People v Johnson

2021 NY Slip Op 04162

(3rd Dept) (7/2/21)

Persistent felony offender adjudication and sentence vacated. Prison term reduced from 15 years to life to five years plus post-release supervision. The sentencing court said expressed racist, dehumanizing comments regarding the defendant's brain growth. Proceedings were unfair, sentence was too harsh.

https://nycourts.gov/reporter/3dseries/2021/2021_04162.htm

People v Daskiewich

2021 NY Slip Op 04305

(4th Dept) (7/12/21 DOI)

Multiple sex offenses. Aggregate period reduced from 40 to 15 years, while the period of 20 years' post-release supervision was sustained. The new sentence was the same as set forth in the plea offer.

https://nycourts.gov/reporter/3dseries/2021/2021_04305.htm

Right to make statement

People v Brown

2021 NY Slip Op 02867

(COA) (5/7/21 DOI)

An enforceable unrestricted waiver of appeal precluded appellate review of the claim that the defendant was denied the statutory right to an opportunity to speak at sentencing. Two judges dissented.

http://www.nycourts.gov/reporter/3dseries/2021/2021_02867.htm

YOUTHFUL OFFENDER

People v Reed

192 AD3d 1481

(4th Dept) (3/22/21)

Decision reserved. County Court erred in failing to determine whether the defendant should receive youthful offender status. Because the defendant was convicted of an armed felony offense, the court first had to determine whether one of two mitigating factors was present.

http://nycourts.gov/reporter/3dseries/2021/2021_01590.htm

People v Johnson

193 AD3d 1076

(2nd Dept) (4/29/21 DOI)

The defendant's conviction of attempted 1st degree assault was vacated. CPL 720.20 (1) required a youthful offender determination in every case where the defendant was eligible, even where he/she failed to request it or agreed to forego it as part of a plea bargain. With respect to this armed felony, the court was required to first consider whether the defendant was an eligible youth by considering statutory factors.

http://nycourts.gov/reporter/3dseries/2021/2021_02544.htm

People v Terrence L.

2021 NY Slip Op 04149

(2nd Dept) (7/2/21)

YO status granted. Many factors supported YO treatment: (1) Probation endorsed such status; (2) the defendant had no other criminal history; (3) he was cooperative with authorities; (4) he was employed; (5) while incarcerated, the defendant obtained his GED; (6) he now had a child; and (7) the People withheld exculpatory evidence.

https://nycourts.gov/reporter/3dseries/2021/2021_04149.htm

SORA

Affirmed

People v Bean

190 AD3d 622

(1st Dept) (1/28/21 DOI)

The SORA court correctly assessed 30 points for a prior sex offense based on a California conviction. Such CA felony could be committed by consensual sex with a person under age 18, whereas in NY, a person age 17 was capable of consent. But the conduct at issue involved oral sexual contact by forcible compulsion, which constituted a felony sex offense in NY.

http://nycourts.gov/reporter/3dseries/2021/2021_00396.htm

People v Chrisley

193 AD3d 1422

(4th Dept) (5/3/21 DOI)

SORA adjudication affirmed, despite error. The court assessed points for continuing course of sexual misconduct. The salient evidence showed only the possibility that something nefarious happened but did not constitute clear and convincing proof. Unlike in other cases involving a victim who sat on a defendant's lap, there was no proof here that the defendant touched the victim illicitly.

http://nycourts.gov/reporter/3dseries/2021/2021_02699.htm

People v Rodriguez
2021 NY Slip Op 03475
(2nd Dept) (6/4/21 DOI)

Without more, a familial relationship between the defendant and victim was not a basis for an upward departure. Abuse of trust in a relationship was not key to assessing points under risk factor 7. *People v Cook*, 29 NY3d 121. The Guidelines required enhanced community notifications where abuse occurred in distant relationships, which indicated an increased risk. Challenged order affirmed.

http://nycourts.gov/reporter/3dseries/2021/2021_03475.htm

Appeal dismissed

People v West
193 AD3d 1127
(3rd Dept) (4/1/21 DOI)

The defendant appealed from a Schenectady County Court order, which denied SORA reclassification. The Third Department dismissed the appeal. The challenged bench decision was not an entered and filed order and thus was not an appealable paper.

http://nycourts.gov/reporter/3dseries/2021/2021_02027.htm

People v Wassilie
193 AD3d 1193
(3rd Dept) (4/15/21 DOI)

SORA appeal dismissed. Order not entered and filed; and risk assessment instrument did not contain “so ordered” language, so it was not an appealable paper.

http://nycourts.gov/reporter/3dseries/2021/2021_02196.htm

People v Ashdown
2021 NY Slip Op 04062
(3rd Dept) (6/25/21 DOI)

Appeal as to SORA risk-level classification dismissed al. No appeal lies from a decision. The appealable paper is a written order setting forth its determination, findings of fact, and conclusions of law, which has been entered and filed in the court clerk’s office.

http://nycourts.gov/reporter/3dseries/2021/2021_04062.htm

Ineffective Assistance

People v Cortez-Moreno
194 AD3d 953
(2nd Dept) (5/21/20)

New appellate counsel assigned. The defendant sought only the review of the SORA adjudication that he was a level-three risk, but such a matter may not be reviewed on appeal from a judgment of conviction.

http://nycourts.gov/reporter/3dseries/2021/2021_03194.htm

People v Bertrand
194 AD3d 1081
(2nd Dept) (5/28/21 DOI)

IAC of SORA counsel. COA soundly rejected only argument counsel made. Counsel’s failure to apply for a downward departure, based on an overassessment of risk, revealed a misunderstanding of relevant law.

http://nycourts.gov/reporter/3dseries/2021/2021_03338.htm

Remitted

People v Conrad
193 AD3d 1187
(3rd Dept) (4/15/21)

SORA court used a short form order alluding to the findings of fact and conclusions of law made in open court. They were not sufficient for intelligent review, but the record allowed the appellate court to make own determination. Remittal required because court did not address request for a downward departure.

http://nycourts.gov/reporter/3dseries/2021/2021_02194.htm

Reserved

People v Delles
2021 NY Slip Op 03711
(4th Dept) (6/14/21 DOI)

App Div reserved decision and remitted. SORA court did not comply with the statutory requirement to set forth findings of fact and conclusions of law. The standardized-form order merely listed the risk-factor point assessments and, in conclusory fashion, identified factors supporting upward departure and denied request for downward departure.

http://nycourts.gov/reporter/3dseries/2021/2021_03711.htm

Reversed

People v Huntley
191 AD3d 1261
(4th Dept) (2/8/21 DOI)

SORA adjudication reversed because court did not conduct the requisite searching inquiry regarding the purported waiver of the right to counsel.

http://nycourts.gov/reporter/3dseries/2021/2021_00688.htm

People v Carmichael
192 AD3d 924
(2nd Dept) (3/18/21 DOI)

SORA level-two adjudication reduced to level one. There was never any sexual contact between the defendant and the victim, so the SORA court improperly assessed points under risk factors 2 and 4.

http://nycourts.gov/reporter/3dseries/2021/2021_08263.htm

People v Hagen
193 AD3d 991
(2nd Dept) (4/22/21 DOI)

The defendant's SORA designation changed from level three to two. He should have been assessed only 10 points under risk factor 12, since the People did not prove that he refused to participate in sex offender treatment; and they did not show that he an inappropriate living or employment situation so as to warrant 10 points under risk factor 15.

http://nycourts.gov/reporter/3dseries/2021/2021_02426.htm

People v Mott
2021 NY Slip Op 03621
(2nd Dept) (6/11/21 DOI)

The defendant was a level-two, not-three, sex offender. County Court lacked the discretion to upwardly depart, because the People failed to identify aggravating factors. They relied on a prior conviction for public

lewdness and indications that the defendant had not accepted responsibility for his sexual misconduct. The prior conviction was accounted for under risk factor 9. Lack of acceptance of responsibility was covered by risk factor 12.

http://nycourts.gov/reporter/3dseries/2021/2021_03621.htm

People v Velasquez

2021 NY Slip Op 03625

(2nd Dept) (6/11/21 DOI)

The defendant a level-two, not -three, sexually violent offender. The existence of a familial relationship between the offender and the victim, standing alone, did not constitute an aggravating factor justifying an upward departure.

http://nycourts.gov/reporter/3dseries/2021/2021_03625.htm

People v Sosa

2021 NY Slip Op 50519

(App Term 2nd Dept) (6/11/21 DOI)

Accusatory instrument properly dismissed on statutory speedy trial grounds. The defendant was charged with DWI per se and common law DWI. The original accusatory instrument was facially insufficient, since factual allegations did not show that the defendant had operated the vehicle—an element of each of the charged offenses.

http://nycourts.gov/reporter/3dseries/2021/2021_50519.htm

People v Canady

2021 NY Slip Op 03618

(2nd Dept) (6/11/21 DOI)

The defendant was a level-two, not -three, sex offender. SORA court improperly assessed 25 points under risk factor 2 and 20 points under risk factor 4, where the People failed to establish that the defendant engaged in sexual contact with the victims or that, under a theory of accessorial liability, he shared the intent of the victims' clients in engaging in sexual contact.

http://nycourts.gov/reporter/3dseries/2021/2021_03618.htm

People v Sestito

2021 NY Slip Op 03859

(2nd Dept) (6/18/21 DOI)

Request for a downward departure should have been granted. The RAI overassessed the risk of reoffense, given several factors: (1) the few images on the defendant's cell phone; (2) the lack of child pornography on his laptop; (3) the brief period at issue; (4) the defendant's lack of a criminal history; and (5) a psychosexual evaluation report finding a low risk of reoffense.

http://nycourts.gov/reporter/3dseries/2021/2021_03859.htm

People v Montufar-Tez

2021 NY Slip Op 04158

(2nd Dept) (7/2/21)

SORA determination reversed. Due process violation. SORA court sua sponte assessed additional points not requested by the People or the Board. A defendant had a right to notice of points sought to be assigned.

https://nycourts.gov/reporter/3dseries/2021/2021_04158.htm

POST-CONVICTION

Civil rights litigation

Snow v Rochester Police Officer

193 AD3d 1346

(4th Dept) (5/3/21 DOI)

Plaintiff was entitled to a trial on excessive force in Section 1983 action. There were triable issues as to the degree of her resistance, the threat she posed, and the possibly unreasonable force used in response. For similar reasons, the defendants were not entitled to judgment as a matter of law as to qualified immunity.

http://nycourts.gov/reporter/3dseries/2021/2021_02638.htm

DLRA

People v Williams

194 AD3d 758

(2nd Dept) (5/7/21 DOI)

Where a defendant was eligible for DLRA relief, there was a statutory presumption in favor of resentencing. That presumption was not overcome by the factors invoked by County Court—the defendant’s criminal history, the quantity of drugs, and his disciplinary infractions.

http://nycourts.gov/reporter/3dseries/2021/2021_02831.htm

DVSJA

People v Lagas

2021 NY Slip Op 21086

(Sup Ct) (3/25/21 DOI)

Resentencing under DVSJA. As child, the defendant was severely sexually abused by his uncle for several years and suffered trauma which continued throughout his adult life and led to his drug addiction. To get cash to buy drugs, the defendant committed burglaries, including the instant crime. Positive testimony from therapist and recovery coach. The court distinguished between trauma as a causal factor of crime and the lower statutory standard of “significant contributing factor.”

http://www.nycourts.gov/reporter/3dseries/2021/2021_21086.htm

People v Rangel

2021 NY Slip Op 03995

(1st Dept) (6/25/21 DOI)

Denial of resentencing pursuant to the DVSJA. The sentencing court had imposed the minimum, which was within the range of reduced sentences available under the DVSJA. The defendant had completed the incarceratory sentence. Given her history and need for services, the PRS period was not excessive.

http://nycourts.gov/reporter/3dseries/2021/2021_03995.htm

People v S.M.

2021 NY Slip Op 21180

(Co Ct) (7/12/21 DOI)

DVSJA resentencing granted. The defendant been convicted of 1st degree robbery and sentenced to 9½ years’ imprisonment followed by five years’ post-release supervision (PRS). She was resentenced to four years’ incarceration plus 2½ years’ PRS. Her release before the resentencing hearing did not affect her eligibility. She did not have to establish that the abuse was the exclusive or even overriding factor for her

criminal conduct. The defendant had an impeccable institutional record. She had developed an excellent reentry plan. PRS was a burden, especially for domestic violence survivors.

https://nycourts.gov/reporter/3dseries/2021/2021_21180.htm

People v D.M.

2021 NY Slip Op 21178

(Sup Ct) (7/12/21 DOI)

Defendant's DVSJA resentencing granted. The defendant had been convicted of 1st degree manslaughter and sentenced to 15 years' imprisonment with five years' PRS. She was resentenced to five years' imprisonment plus four years' PRS. A psychiatrist testified about the defendant's complex trauma history and abuse by the codefendant. Incarceration was re-traumatizing. The DVSJA called for compassion. She completed treatment programs. Community-based programs available upon release were far more effective than prison in allowing survivors to rebuild relationships with their families and contribute to society.

https://nycourts.gov/reporter/3dseries/2021/2021_21178.htm

FOIL

Matter of Faustino

191 AD3d 504

(1st Dept) (3/4/21 DOI)

Reversal of denial of petition to compel respondents to disclose body camera videos from an NYPD deadly force incident and the denial of counsel fees and costs. Given voluntary disclosure, the merits were moot, but not the fees/costs, which must be ordered when reasonably incurred by a petitioner who substantially prevailed where there was no reasonable basis for denying access. The petitioner prevailed—so what that compliance was voluntary. The respondents articulated no factual basis for the law enforcement exemption.

http://nycourts.gov/reporter/3dseries/2021/2021_00907.htm

Habeas corpus

People ex rel. Johnson v Uhler

191 AD3d 1065

(3rd Dept) (2/4/21 DOI)

The petitioner properly submitted the habeas corpus application without notice (CPLR 7002 [a]). The court did not issue the writ (CPLR 7003 [a]), so the petitioner's obligation to serve the respondent was not triggered (CPLR 7005). Thus, dismissal based on lack of service incorrect. However, habeas relief was unavailable where the petitioner's claims were, or could have been, raised on direct appeal or via a 440 motion. No basis existed to depart from traditional orderly procedure. Dismissal was correct.

http://nycourts.gov/reporter/3dseries/2021/2021_00603.htm

People ex rel. Figueroa v Keyser

193 AD3d 1148

(3rd Dept) (4/1/21 DOI)

Denial of habe affirmed. The petitioner sought release based on his health conditions, age, and Covid-19 risks. He did not show deliberate indifference by prison officials. To the extent that the lawful sentence became grossly excessive due to pandemic risks, the petitioner had not shown that his punishment was so grossly proportionate to his offense as to be unconstitutionally cruel and unusual punishment.

http://nycourts.gov/reporter/3dseries/2021/2021_02035.htm

MHL Art. 10

State of NY v Michael M.

193 AD3d 1343

(4th Dept) (5/3/21 DOI)

New trial in MHL Art. 10 respondent, who made a timely request and understood the risks of going pro se, as revealed during the requisite inquiry. The trial court erred in denying the request.

http://nycourts.gov/reporter/3dseries/2021/2021_02636.htm

State of NY v John T.

194 AD3d 902

(3rd Dept) (5/7/21 DOI)

In a MHL Article 10 proceeding, standby counsel should do victim cross-examinations under relevant balancing test. Appellate court assumed for argument's sake that the respondent had right to go pro se.

http://nycourts.gov/reporter/3dseries/2021/2021_02862.htm

Record on appeal

People v Meyers

191 AD3d 1406

(4th Dept) (2/12/21 DOI)

Reconstruction hearing needed. Record lacked jury selection, opening statements, summations, final jury instructions, the handling of a jury note, and the verdict. The transcription of testimony included notations such as "omitted" and "blah, blah."

http://nycourts.gov/reporter/3dseries/2021/2021_00919.htm

SARA

People ex rel. E.S. v Livingston Corr. Fac.

193 AD3d 57

(4th Dept) (2/8/21 DOI)

Article 78 annulling SARA school-ground mandatory condition granted. The petitioner had been adjudicated a youthful offender following an attempted rape conviction. Neither the SARA statute nor legislative history indicated that the mandatory condition was intended to be imposed on YOs. Further, so doing would contravene the purpose of YO treatment.

http://nycourts.gov/reporter/3dseries/2021/2021_00705.htm

CPL 330.20 motion

Matter of James Q.

192 AD3d 1370

(3rd Dept) (3/18/21 DOI)

Reversal in CPL 330.20 proceeding. The petitioner presented ample evidence to support continued secure confinement. The challenged decision was perplexing and unsupported by the record. The respondent continued to suffer from a dangerous mental disorder, requiring confinement in a secure facility.

http://nycourts.gov/reporter/3dseries/2021/2021_01545.htm

CPL 440.10 motions

Affirmed

People v Green

190 AD3d 1094

(3rd Dept) (1/14/21 DOI)

Three errors, based on the record on direct appeal and a 440 motion, did not constitute ineffective assistance. Counsel explained why he did not call a weak eyewitness. While counsel did not remember why he did not question a potential witness about bias, the appellate court was unperturbed by the lapse, as well as by his forgetfulness in not seeking a detailed jury charge regarding the voluntariness of the defendant's statement.
http://nycourts.gov/reporter/3dseries/2021/2021_00207.htm

People v Dray

192 AD3d 542

(1st Dept) (3/18/21 DOI)

Summary denial of 440 motion affirmed. The defendant stated that counsel was ineffective in failing: (1) to tell him that the decision to testify was his; and (2) to request an intoxication charge. In opposition, defense counsel stated that he told the defendant it was his absolute right to testify at trial; and an intoxication defense was not meritorious. The reviewing court held that the defendant did not show prejudice as to his decision to testify, and counsel's tactical decisions would not be second-guessed.

http://www.nycourts.gov/reporter/3dseries/2021/2021_01559.htm

People v Sposito

193 AD3d 1296

(3rd Dept) (4/22/21 DOI)

One justice dissented in appeal regarding denial of 440 motion. Defense counsel rendered ineffective assistance in waiving a *Huntley* hearing and failing to consult with, or call, experts on issue of whether the victim was physically helpless.

http://nycourts.gov/reporter/3dseries/2021/2021_02441.htm

People v Lopez

193 AD3d 1077

(2nd Dept) (4/29/21 DOI)

The defendant's CPL 440.10 motion was denied. The DA moved to dismiss the appeal since the defendant had been deported and was not available to obey the mandate of the court. The Second Department granted the motion, without prejudice to a motion to reinstate the appeal if the defendant returned.

http://nycourts.gov/reporter/3dseries/2021/2021_02546.htm

Mandamus

M/O Cruz v D'Emic

194 AD3d 927

(2nd Dept) (5/21/20)

Article 78 / mandamus to compel Supreme Court justice to issue written orders deciding the petitioner's motion to reargue as to CPL 440.10 motion. Granted. Clear legal right to the order.

http://nycourts.gov/reporter/3dseries/2021/2021_03175.htm

People's appeals

People v McGhee

36 NY3d 1063

(COA) (3/25/21 DOI)

A witness's statement, disclosed by the People after the defendant's trial, was not material for purposes of his *Brady* claim. The "reasonable possibility" standard was not met, where the undisclosed witness's description of the shooter did not differ in any material respect from that of the eyewitness who identified the defendant in court.

http://www.nycourts.gov/reporter/3dseries/2021/2021_01836.htm

People v Saunders

193 AD3d 766

(2nd Dept) (4/15/21 DOI)

440 grant upheld based on IAC. The defendant was a citizen of Jamaica and an LPR. His guilty plea rendered him deportable. Counsel misadvised him about that consequence. Prejudice was shown; the defendant could rationally have decided to go to trial, where he had resided here since 1988 and had 5 kids.

http://nycourts.gov/reporter/3dseries/2021/2021_02181.htm

Reversed

People v Reed

191 AD3d 1382

(4th Dept) (2/8/21 DOI)

Summary denial of 440 motion reversed. The defendant raised a triable factual issue regarding counsel's ineffective assistance in failing to make a sufficient motion to dismiss on CPL 30.30 grounds. Claim that period when defendant purportedly tried to flee apprehension was excludable was based on mere speculation of a police investigator.

http://nycourts.gov/reporter/3dseries/2021/2021_00758.htm

People v Lanier

191 AD3d 1094

(3rd Dept) (2/18/21 DOI)

Reversal of denial of 440 motion after a hearing. New trial. No legitimate strategy could validate counsel's failure to investigate a potential alibi witness and witnesses who would have refuted testimony about the location of an eyewitness at the time of the shooting.

http://nycourts.gov/reporter/3dseries/2021/2021_01094.htm

People v Stetin

192 AD3d 1331

(3rd Dept) (3/18/21 DOI)

Hearing needed on 440 motion asserting IAC in failure to do a proper investigation. The defendant had proof that he lived at the victim's residence, refuting trial evidence of unlawful entry. Further, three affiants said that the victim recanted.

http://nycourts.gov/reporter/3dseries/2021/2021_01529.htm

People v Breedan

193 AD3d 756

(2nd Dept) (4/15/21 DOI)

440 denial reversed. A codefendant was initially represented by Michael Vecchione, who then joined the DA's office and approved a plea offer made to the defendant before he went to trial. Vecchione may have used privileged information learned as counsel for the alleged accomplice.

http://nycourts.gov/reporter/3dseries/2021/2021_02173.htm

People v Davis

193 AD3d 967

(2nd Dept) (4/22/21 DOI)

Reversal of denial of CPL 440.10 motion after a hearing. Hearing evidence showed that defense counsel failed to contact and interview five witnesses who were present at the party where the shooting occurred. Even if certain witnesses' criminal records provided a strategic basis to not call them, it did not excuse the failure to investigate them as possible witnesses.

http://nycourts.gov/reporter/3dseries/2021/2021_02408.htm

People v Jennings

194 AD3d 1418

(4th Dept) (5/19/21 DOI)

Error to deny CPL 440.10 motion. Hearing was needed to determine whether the defendant validly waived counsel's potential conflict of interest and whether the conflict operated on the defense.

http://nycourts.gov/reporter/3dseries/2021/2021_02937.htm

People v Ramos

194 AD3d 964

(2nd Dept) (5/21/20)

CPL 440.10 motion to vacate a judgment of conviction. Reversal and new trial. Counsel was ineffective in failing to investigate the alibi defense; impeach the complainant with her grand jury testimony; and object when the People elicited precluded testimony.

http://nycourts.gov/reporter/3dseries/2021/2021_03200.htm

People v Bernard

2021 NY Slip Op 03601

(2nd Dept) (6/11/21 DOI)

Denial of 440 reversed. In motion, the defendant argued IAC based on counsel's failure to advise him of clear immigration consequences of his pleas. The plea transcript did not indicate that counsel advised the defendant about such consequences. Moreover, it appeared that a decision to reject the plea offer would have been rational. The defendant and his partner had four children in this country.

http://nycourts.gov/reporter/3dseries/2021/2021_03601.htm

People v Mack

2021 NY Slip Op 09382

(4th Dept) (6/18/21 DOI)

Hearing on CPL 440.10 motion ordered. The motion court erred in limiting the scope of the hearing on ineffective assistance to alleged errors that could not have been raised on direct appeal.

http://nycourts.gov/reporter/3dseries/2021/2021_03982.htm

People v Regan

2021 NY Slip Op 04161

(3rd Dept) (7/2/21)

Denial of CPL 440.10 motion reversed. County Court erred in concluding that sufficient facts appeared in the record to resolve allegations of actual innocence and ineffective assistance of counsel and in not addressing the merits of those matters. Two dissenters said indictment should have been dismissed based on violation of constitutional speedy trial rights. No good reason for the pre-indictment delay of four years.

https://nycourts.gov/reporter/3dseries/2021/2021_04161.htm

CPL 440.20 motions

People v Bell-Bradley

191 AD3d 1386

(4th Dept) (2/8/21 DOI)

Reversal and remittal of denial of CPL 440.20 motion. Argument that federal conviction was not equivalent to a NY felony was not determined in the direct appeal.

http://nycourts.gov/reporter/3dseries/2021/2021_00761.htm

FAMILY

Article 3 - JD

M/O Jaydin R.

190 AD3d 745

(2nd Dept) (1/14/21 DOI)

Dismissal of JD finding regarding making a terroristic threat. The youth made reckless statements to a fellow junior high student, but there was no proof of intent to intimidate a civilian population.

http://nycourts.gov/reporter/3dseries/2021/2021_00176.htm

M/O Erika UU.

192 AD3d 1367

(3rd Dept) (3/18/21 DOI)

JD's statutory right to a speedy fact-finding hearing was violated. After her limited waiver of such right waiver expired, hearing should have been held in three days, but it took 50 days.

http://nycourts.gov/reporter/3dseries/2021/2021_01543.htm

Article 4 – Child support

Michael J.F. v Jennifer M.B.

192 AD3d 556

(1st Dept) (3/25/21 DOI)

Child support order entered on consent invalidated for noncompliance with Family Ct Act § 413 (1) (h) requirements as to stating presumptive support amount, parties' incomes and saying whether or why there was a deviation from the CSSA amount.

http://nycourts.gov/reporter/3dseries/2021/2021_01718.htm

M/O Saber v Saccone

192 AD3d 1400

(3rd Dept) (3/25/21 DOI)

Following of willfulness vacated where father did not validly waive right to counsel at confirmation hearing.

http://nycourts.gov/reporter/3dseries/2021/2021_01811.htm

M/O Milano v Anderson

192 AD3d 1668

(4th Dept) (3/29/21 DOI)

Appeal moot. Child turned 21. Father could not recoup overpayments if he won appeal, given strong public policy against such relief.

http://nycourts.gov/reporter/3dseries/2021/2021_01903.htm

M/O Anthony L. v Bernadette R.

193 AD3d 510

(1st Dept) (4/15/21 DOI)

In prior support order, the appellate court directed that the Support Magistrate issue further findings regarding the reduction of support. Upon retrial, doctrine of law of the case did not apply to the prior evidentiary rulings.

http://nycourts.gov/reporter/3dseries/2021/2021_02248.htm

M/O Geraghty v Muniz

193 AD3d 729

(2nd Dept) (4/15/21 DOI)

Child support order modified. Mother's personal injury award was properly considered, but amount order reduced her income below the self-support reserve.

http://nycourts.gov/reporter/3dseries/2021/2021_02155.htm

M/O Rodriguez v Starks

194 AD3d 1063

(2nd Dept) (5/28/21 DOI)

Family Court should not have provided that dismissal of petition for an upward modification was with prejudice to any subsequent petition to modify. Family Court has continuing jurisdiction to modify pursuant to Family Ct Act § 451.

http://nycourts.gov/reporter/3dseries/2021/2021_03325.htm

Winter v Winter

2021 NY Slip Op 03865

(2nd Dept) (6/18/21 DOI)

Reversal in willful violation/child support matter based on IAC. Defense was inability to work due to a medical condition, but counsel failed to produce proof from medical professional.

http://nycourts.gov/reporter/3dseries/2021/2021_03865.htm

M/O Messiana v Pena

2021 NY Slip Op 03841

(2nd Dept) (6/18/21 DOI)

The father was properly ordered contribute to child's college education, even absent special circumstances or an agreement.

http://nycourts.gov/reporter/3dseries/2021/2021_03841.htm

Article 5 - Paternity

M/O Corp. Counsel v Tyrone M.

191 AD3d 427

(1st Dept) (2/4/21 DOI)

Proper to estop "father" from obtaining genetic markings test. The 18-year-old children viewed him as their father for their entire lives. Despite the limited relationship in recent years, the children's best interests would be served by precluding him from disputing paternity.

http://nycourts.gov/reporter/3dseries/2021/2021_00623.htm

M/O Ryan M.E. v Shelby S.

191 AD3d 1315

(4th Dept) (2/8/21 DOI)

Order of filiation upheld as to petitioner who commenced paternity proceeding soon after child's birth. But Family Court erred in not also granting that part of the petitioner's motion that sought to vacate an acknowledgment of paternity filed by another man.

http://nycourts.gov/reporter/3dseries/2021/2021_00717.htm

M/O Kirk M.B. v Rachel S.

191 AD3d 1315

(4th Dept) (3/22/21)

Order to do genetic marker testing reversed. Family Court should have held a hearing to determine best interests. The presumption of legitimacy applied.

http://nycourts.gov/reporter/3dseries/2021/2021_01602.htm

Montgomery County DSS v Trini G.

2021 NY Slip Op 03489

(3rd Dept) (6/4/21 DOI)

Family Court erred in equitably estopping the respondent from denying paternity and rejecting his request for a genetic marker test. The mother and her boyfriend co-parented the child, and the respondent had only sporadic contact.

http://nycourts.gov/reporter/3dseries/2021/2021_03489.htm

Article 6 – Custody/Visitation

Affirmed

M/O Griselda N.G. v Yvette C.

192 AD3d 592

(1st Dept) (3/25/21 DOI)

Order appealable, though mother did not appear on final date of the proceeding, and her attorney did not participate. The proceedings had effectively concluded. Only the possible redirect of the respondent had not occurred. Order did not state that it was entered on default.

http://nycourts.gov/reporter/3dseries/2021/2021_01852.htm

Anders brief

M/O Thomas v Mobley

2021 NY Slip Op 04023

(2nd Dept) (6/25/21 DOI)

In custody relocation case after a hearing, appellate counsel filed an *Anders* brief. Nonfrivolous issues existed, including whether the mother established that the relocation would be in the child's best interests.

http://nycourts.gov/reporter/3dseries/2021/2021_04023.htm

Consent

M/O Ortega v Sanchez

194 AD3d 940

(2nd Dept) (5/21/20)

Custody appeal dismissed. Mother consented to custody award. No appeal lies. CPLR 5511. To extent that the mother asserted consent was invalid, her remedy was to move in Family Court to vacate the order.

http://nycourts.gov/reporter/3dseries/2021/2021_03185.htm

Decision withheld

M/O Renee S. v Heather U.

2021 NY Slip Op 03635

(3rd Dept) (6/11/21 DOI)

Decision withheld as to order involving grandmother's application. As petitioner, the grandmother was not eligible for assigned counsel. But she became potentially eligible when the mother thereafter filed a petition listing her as a respondent. Further, while the great aunt, the primary legal custodian, did not file a cross

petition, she was seeking sole legal custody. Family Court failed to advise grandmother of rights. Remittal to determine if grandmother would have been financially eligible.

http://nycourts.gov/reporter/3dseries/2021/2021_03635.htm

Default

M/O Goldstein v Goldstein

190 AD3d 971

(2nd Dept) (1/28/21 DOI)

Motions to vacate default orders were properly denied, despite the liberal policy of granting such relief. The father offered no reasonable excuse as to a family offense matter and had no meritorious defense as to a custody proceeding.

http://nycourts.gov/reporter/3dseries/2021/2021_00430.htm

M/O Melissa F. v Raymond E.

193 AD3d 1123

(3rd Dept) (4/1/21 DOI)

Reversal of order denying motion to vacate a default order granting custody to the maternal grandparents. Oversleeping was a reasonable excuse, where father was depressed over the recent sudden death of the child's mother and exhausted after long shift at new job. Meritorious defense: no hearing held, no finding of extraordinary circumstances, no "best interests" analysis.

http://nycourts.gov/reporter/3dseries/2021/2021_02026.htm

M/O Williams v Worthington

194 AD3d 825

(2nd Dept) (5/14/21 DOI)

Default order should have been vacated. The law favored resolution on the merits in custody proceedings, so defaults were liberally vacated. The mother showed a reasonable excuse and meritorious cause.

http://nycourts.gov/reporter/3dseries/2021/2021_03040.htm

M/O Alexis D. v Tyquazia E.

2021 NY Slip Op 04170

(3rd Dept) (7/2/21)

Reversal of order denying motion to vacate prior default orders and granting custody and OP. The mother said she was mistaken as to the time of the court date, which was apparently not for a fact-finding hearing. Her failure to appear was not part of a pattern. Thus, she showed a reasonable excuse. There was also a meritorious defense. Family Court failed to take sworn testimony at an evidentiary hearing.

https://nycourts.gov/reporter/3dseries/2021/2021_04170.htm

First Amendment

Christie BB. v Isaiah CC.

194 AD3d 1130

(3rd Dept) (5/7/21 DOI)

Small confederate flag painted near mother's driveway was not in the best interests of mixed-race child. If it was not removed, its continued presence would constitute a change in circumstances relevant in any future "best interests" analysis.

http://nycourts.gov/reporter/3dseries/2021/2021_02847.htm

Michael B. invoked

M/O Magana v Delph
2021 NY Slip Op 03589
(2nd Dept) (6/11/21 DOI)

Order granting sole custody to father reversed. AFC's brief alleged new developments, including that the father told the child that the mother was evil, and the child no longer wanted to see the mother. Thus, the record was not sufficient to determine best interests. *See M/O Michael B.*, 80 NY2d 299.

http://nycourts.gov/reporter/3dseries/2021/2021_03589.htm

Modified

M/O Marino v Sanfilippo
190 AD3d 974
(2nd Dept) (1/28/21 DOI)

The mother was neglectful of her two children, and a grandmother and father were properly each awarded custody of one of the children. But Family Court should have directed that, prior to exercising their final decision-making authority, the father and grandmother consulted with the mother regarding the children's health, medical care, education, religion, and general welfare.

http://nycourts.gov/reporter/3dseries/2021/2021_00432.htm

M/O Kelly CC. v Zaron BB.
191 AD3d 1101
(3rd Dept) (2/18/21 DOI)

Modification. The mother made sound decisions about education and health and was entitled to have dad consult her and consider her positions before making final decisions. Further, she should have the right to attend all medical appointments and school meetings, and should be access to medical and school records.

http://nycourts.gov/reporter/3dseries/2021/2021_01098.htm

M/O Rivas v Rivas
193 AD3d 745
(2nd Dept) (4/15/21 DOI)

Father granted sole legal custody. Modified. While the parties had issues, their relationship was not so acrimonious that joint legal custody was unworkable.

http://nycourts.gov/reporter/3dseries/2021/2021_02164.htm

M/O Scott W. v Krizzia G.
194 AD3d 406
(1st Dept) (5/7/21 DOI)

Given the child's serious behavioral issues in school and the overlap between school and health issues, letting the mother make decisions in both areas made sense.

http://nycourts.gov/reporter/3dseries/2021/2021_02741.htm

M/O Hardy v Hardy
194 AD3d 1043
(2nd Dept) (5/28/21 DOI)

A court may not order a parent to undergo counseling or treatment as a condition of a future application for parental access.

http://nycourts.gov/reporter/3dseries/2021/2021_03320.htm

M/O Nicole L. v David M.

2021 NY Slip Op 03487

(3rd Dept) (6/4/21 DOI)

Guardianship to the maternal aunt proper, but error to not address request of father for visitation, despite his abandonment of child.

http://nycourts.gov/reporter/3dseries/2021/2021_03487.htm

M/O Brown v Simon

2021 NY Slip Op 03831

(2nd Dept) (6/18/21 DOI)

Evidence did not support the father's allegations that the child was sexually assaulted by her older sister while in the mother's care. Child reacted negatively to the mother, but her preferences were not dispositive. Father was guilty of alienating behavior. However, for stability, physical custody should remain with him. Weekly reunification therapy was ordered to rebuild the mother-child relationship. Errant dad to pay.

http://nycourts.gov/reporter/3dseries/2021/2021_03831.htm

M/O Madelyn E. P.

2021 NY Slip Op 04228

(2nd Dept) (7/12/21 DOI)

Family Court improperly delegated the matter of parental access to the petitioner. Upon remittal, appropriate schedule to be set.

https://nycourts.gov/reporter/3dseries/2021/2021_04228.htm

M/O Edwards v Ferris

2021 NY Slip Op 04306

(4th Dept) (7/12/21 DOI)

Although parent's unilateral removal of the child from jurisdiction was an adverse factor, the mother acted in good faith to escape the threat of violence, and the record supported the determination that relocation to Arizona would enhance the child's life in myriad ways.

https://nycourts.gov/reporter/3dseries/2021/2021_04306.htm

Reversed

M/O Weilert v Weilert

191 AD3d 788

(4th Dept) (2/12/21 DOI)

Family Court erred in not appointing an AFC. Having counsel for the children in a contested custody matter was strongly preferred and should have occurred here, where the children were from 12 to 16 years old.

http://nycourts.gov/reporter/3dseries/2021/2021_00850.htm

M/O Rosado v Cornielle

191 AD3d 988

(2nd Dept) (2/25/21 DOI)

The grant of temporary custody to the father was not sound. The mother had been the primary custodian since at least 2016, when the father relocated to Pennsylvania, she had not presented her evidence, and there were many controverted issues. The matter was remitted for a hearing.

http://nycourts.gov/reporter/3dseries/2021/2021_08188.htm

M/O Conroy v Vaysman

191 AD3d 977

(2nd Dept) (2/25/21 DOI)

Denial of mother's motion to enjoin the father from relocating with the child to NJ. The Second Department reversed such denial and remitted for a new hearing. Family Court erred in deciding the motion without conducting a *Tropea* analysis.

http://nycourts.gov/reporter/3dseries/2021/2021_08182.htm

M/O Ofori v St. Louis

192 AD3d 809

(2nd Dept) (3/11/21 DOI)

Reversal of custody order. Family Court gave too little weight to relevant factors, including the preferences of the children, and too much weight to the mother's lack of transportation, even though the father could provide rides. Custody was transferred to father. Matter remitted to set access schedule for mother.

http://nycourts.gov/reporter/3dseries/2021/2021_01417.htm

M/O Tasheanna CC. v Debron EE.

192 AD3d 1359

(3rd Dept) (3/18/21 DOI)

Error to grant mother's custody mod petition. She did not show change of circumstances. The record did not demonstrate the claimed inability of the parents to communicate; the father's mistreatment of the children; or his thwarting of her visits or calls. No need for a "best interests" analysis.

http://nycourts.gov/reporter/3dseries/2021/2021_01539.htm

M/O Michael J.M. v Lisa M.H.

192 AD3d 1470

(4th Dept) (3/22/21)

Error to deny non-respondent father's custody petition, under FCA §1055-b (a-1). The matter was remitted for a determination on the father's petition and reconsideration of the Article 10 disposition.

http://nycourts.gov/reporter/3dseries/2021/2021_01573.htm

M/O Chaloeicheep v Hanrahan

192 AD3d 1014

(2nd Dept) (3/25/21 DOI)

Reversal. Transfer of custody from father to the mother. He did not return child after a visit and induced the mother to rush to Brooklyn and summon police intervention was necessary.

http://nycourts.gov/reporter/3dseries/2021/2021_01765.htm

M/O Myers v Myers

192 AD3d 1681

(4th Dept) (3/29/21 DOI)

Error to dismiss custody mod. petition. The 3rd grade child's excessive school absences constituted the requisite change in circumstances.

http://nycourts.gov/reporter/3dseries/2021/2021_01916.htm

M/O Johnson v Kelly

193 AD3d 735

(2nd Dept) (4/15/21 DOI)

Order regarding father-daughter visitation was unsound, since relationship was badly frayed. The mother and son may have influenced the daughter's negative attitude, but her feelings had to be considered. A forensic evaluation was needed; the matter was remitted.

http://nycourts.gov/reporter/3dseries/2021/2021_02158.htm

M/O Coleman v Lymus

193 AD3d 930

(2nd Dept) (4/22/21 DOI)

Denial of custody petition reversed. Family Court should have had in camera interview with the child.

http://nycourts.gov/reporter/3dseries/2021/2021_02389.htm

M/O Vazquez v Bahr

193 AD3d 946

(2nd Dept) (4/22/21 DOI)

Reversal of order directing modest parental access, without a hearing. The Second Department reversed. Since there were disputed factual issues regarding the children's best interests, the matter was remitted for a hearing and new determination.

http://nycourts.gov/reporter/3dseries/2021/2021_02397.htm

M/O Georgiou-Ely v Ely

194 AD3d 715

(2nd Dept) (5/7/21 DOI)

Remittal court set a parental access schedule for the father, but there was no record of any conferences or hearings nor required findings. To permit appellate review, the trial court was required to state the facts deemed essential to its determination. A hearing was needed to determine the best interests of the children, who were of such age and maturity that their preferences had to be discerned.

http://nycourts.gov/reporter/3dseries/2021/2021_02796.htm

M/O Lopez v Reyes

2021 NY Slip Op 03840

(2nd Dept) (6/18/21 DOI)

Proof did not show that the father was less capable of providing a stable home than the mother. On school days, her work schedule required her to leave the children alone in the morning, and they were often tardy. Given that they were 12 and 14 at the time of the proceedings, the children's desire to live with the father deserved great weight. Custody transferred to him.

http://nycourts.gov/reporter/3dseries/2021/2021_03840.htm

M/O John U. v Sara U.

2021 NY Slip Op 03892

(3rd Dept) (6/18/21 DOI)

Ambiguity as to whether agreement meant the children would be home-schooled, as they were when the agreement was signed, or attend public school, as they had at other times. In light of absence of unequivocal mandate, no contempt. Hearing needed to discern the parties' intent.

http://nycourts.gov/reporter/3dseries/2021/2021_03892.htm

M/O Dobson v Messervey

2021 NY Slip Op 03962

(4th Dept) (6/18/21 DOI)

Father more stable and fit parent. Mother unemployed addict but inexplicably awarded custody, which reviewing court transferred to father.

http://nycourts.gov/reporter/3dseries/2021/2021_03962.htm

M/O Daniel G. v Marie H.

2021 NY Slip Op 04178

(3rd Dept) (7/2/21)

Reversal. Record did not support the decision to transfer custody of the son to the father, who lived in Massachusetts. The daughter had lived with the father since 2016. The boy had lived with the mother for the last six years and was strongly bonded to her. Family Court gave insufficient weight to teen’s wishes.
https://nycourts.gov/reporter/3dseries/2021/2021_04178.htm

SIJS

M/O Briceyda M. A. X.

190 AD3d 752

(2nd Dept) (1/14/21 DOI)

Reversal of denial of children’s motions seeking findings needed to petition for SIJS status. Reuniting the children with the father was not viable due to his abandonment of two children and educational neglect of a third child. Returning to Guatemala would not serve the children’s interests.

http://nycourts.gov/reporter/3dseries/2021/2021_00180.htm

M/O Rosa M. M.-G. v Dimas A.

194 AD3d 815

(2nd Dept) (5/14/21 DOI)

SIJS order reversed. The father had never met nor supported his son. No one was available to care for the child in Nicaragua. Further, he would face gang violence there.

http://nycourts.gov/reporter/3dseries/2021/2021_03033.htm

UCCJEA

M/O Hook v Snyder

193 AD3d 588

(1st Dept) (4/22/21 DOI)

Motion to dismiss custody mod petition should have been granted. on the ground of lack of subject matter jurisdiction. CT court that made the initial custody determination had not determined that it no longer had exclusive, continuing jurisdiction or that NY would be a more convenient forum. The fact that the child lived in NY for several years did not change the result.

http://nycourts.gov/reporter/3dseries/2021/2021_02458.htm

M/O Kassim v Al-Maliki

194 AD3d 719

(2nd Dept) (5/7/21 DOI)

Under UCCJEA, Family Court was required to hold hearing as to whether NY or Yemen was children’s home state, since there were disputed issues of fact as to circumstances under which the parties moved.

http://nycourts.gov/reporter/3dseries/2021/2021_02800.htm

Article 8

M/O Henshaw v Hildebrand

191 AD3d 1237

(4th Dept) (2/8/21 DOI)

Error to dismiss the father’s family offense petition alleging that the mother contacted him 110 times over two days and to dismiss his visitation enforcement petition on the ground that Texas—where the mother lived—would be the better forum. No “inconvenient forum” analysis done; no proof submitted by mother; nor did she make a written motion on notice.

http://nycourts.gov/reporter/3dseries/2021/2021_00653.htm

M/O Vashon H. v Bret I.

191 AD3d 1120

(3rd Dept) (2/18/21 DOI)

UCCJEA did not apply to the family offense petition. The trial court had subject matter jurisdiction, despite the fact that most of the alleged acts were committed in Ohio. Dismissal of petition reversed.

http://nycourts.gov/reporter/3dseries/2021/2021_01103.htm

M/O Cole v Benjamin

192 AD3d 889

(2nd Dept) (3/18/21 DOI)

Reversal and reinstatement of family offense petition. When the allegations were liberally construed, the pleading adequately alleged that the respondent committed 2nd degree harassment.

http://nycourts.gov/reporter/3dseries/2021/2021_08230.htm

M/O Lobb v Nanetti

192 AD3d 1034

(2nd Dept) (3/25/21 DOI)

Finding that father willfully violated terms of a temporary order of protection reversed. The hearing evidence did not show that the father was either served with a copy of the subject order of protection or made aware of its contents.

http://nycourts.gov/reporter/3dseries/2021/2021_01777.htm

McKenzie v Berkovitch

192 AD3d 1413

(3rd Dept) (3/25/21 DOI)

Finding of family offense and order of protection reversed. Petitioner alleged harassment based on secret installation of cameras at her home to record her. Proof did not back up her claims.

http://nycourts.gov/reporter/3dseries/2021/2021_01814.htm

M/O Olsen v Statile

193 AD3d 741

(2nd Dept) (4/15/21 DOI)

The Second Department vacated disorderly conduct finding. Order of protection expired, but appeal not academic. No proof that the appellant's threatening behavior was meant to cause public inconvenience, annoyance or alarm.

http://nycourts.gov/reporter/3dseries/2021/2021_02162.htm

M/O Prince v Ford

2021 NY Slip Op 03591

(2nd Dept) (6/11/21 DOI)

Family offense petition reinstated. In deciding a motion to dismiss for failure to establish a prima facie case, a court must accept the evidence as true and give the petitioner the benefit of every reasonable inference. Family Court failed to apply this standard.

http://nycourts.gov/reporter/3dseries/2021/2021_03591.htm

M/O Sophia M. v James M.

2021 NY Slip Op 03992

(1st Dept) (6/25/21 DOI)

Family offense for harassment. Two-year order of protection. Family Court was not required to consider that a temporary order had been in effect for two years. A provision prohibiting the respondent from

discussing the petitioner or the case with anyone familiar with her did not violate his First Amendment rights, but was lifted because a stay-away provision adequately addressed the harassment.

http://nycourts.gov/reporter/3dseries/2021/2021_03992.htm

M/O Smith v Morrison

2021 NY Slip Op 04171

(3rd Dept) (7/2/21)

Family offense finding, OP reversed. No proof the respondent was following the petitioner around town. The respondent had legitimate reasons for being at the locations described, as opposed to having any intent to harass, annoy, or alarm the petitioner.

https://nycourts.gov/reporter/3dseries/2021/2021_04171.htm

Article 10 – Abuse and neglect

Affirmed

M/O Janiya T.

191 AD3d 681

(2nd Dept) (2/4/21 DOI)

The placement had expired, so that aspect of dispositional order was moot, but adjudication of neglect constituted stigma that might impact mother in future proceedings. Neglect proven by evidence that the mother repeatedly struck the child with leather strap, leaving welts.

http://nycourts.gov/reporter/3dseries/2021/2021_00568.htm

M/O Elijah P.

191 AD3d 984

(2nd Dept) (2/25/21 DOI)

Dismissal of the proceeding as to Saamiyah, pursuant to Family Ct Act § 1051 (c), did not impact finding of derivative neglect. The mother's excessive corporal punishment of the neglected child demonstrated a fundamental defect in understanding of parental duties relating to any children in her care.

http://nycourts.gov/reporter/3dseries/2021/2021_08186.htm

M/O Lazeria F.

193 AD3d 195

(3rd Dept) (2/25/21 DOI)

Not only a parent, but any person legally responsible for the care of a child, can severely abuse a child. See Social Services Law § 384-b (8) (a) (i) (referring to severe abuse only by parent); cf. Family Ct Act § 1051 (e) (severe abuse finding may be made against person legally responsible for child's care).

http://nycourts.gov/reporter/3dseries/2021/2021_01155.htm

M/O Iscela G.

193 AD3d 521

(1st Dept) (4/15/21 DOI)

Error to deny petition charging derivative neglect as to one child. Respondent was the father. He did not testify, so court could draw a negative inference against him. Derivative neglect proven based on the respondent's violent attack on the mother and three other children when the subject child was not present.

http://nycourts.gov/reporter/3dseries/2021/2021_02263.htm

M/O Bryce E.W.

193 AD3d 749

(2nd Dept) (4/15/21 DOI)

Family Court did not violate due process by interviewing the child outside the presence of the mother or counsel. At a dispositional hearing, the court's focus was on best interests, including avoiding emotional harm to the child and allowing him/her to speak freely.

http://nycourts.gov/reporter/3dseries/2021/2021_02167.htm

M/O Balle S.

194 AD3d 1394

(4th Dept) (5/10/21 DOI)

Neglect upheld based on excessive corporal punishment. Fact that child did not require medical attention did not preclude a finding of neglect, where harm was indicated by her pain and fear. The other children were derivatively neglected; it did not matter that they were not present during incident.

http://nycourts.gov/reporter/3dseries/2021/2021_02914.htm

Dismissed

M/O Bradley Q.

191 AD3d 1194

(3rd Dept) (2/25/21 DOI)

Fact-finding hearing mooted appeals from orders of removal and requiring disclosure. The respondent could raise the discovery issue on appeal from an eventual dispositional order.

http://nycourts.gov/reporter/3dseries/2021/2021_01167.htm

Modified

M/O Noah C.

192 AD3d 1676

(4th Dept) (3/29/21 DOI)

Proof did not establish neglect based on inadequate food/shelter or excessive corporal punishment. As to the latter ground, the petitioner agency did not introduce proof to corroborate one child's statement that the parents caused certain injuries.

http://nycourts.gov/reporter/3dseries/2021/2021_01911.htm

Reversed, parent appeal

M/O Iven J. E.

190 AD3d 851

(2nd Dept) (1/22/21 DOI)

Denial of 1028 application for return of children reversed. The mother mostly complied with the service plan, and understood the harm that observing domestic violence would have on the children.

http://nycourts.gov/reporter/3dseries/2021/2021_00309.htm

M/O Diana XX. v Nicole YY.

192 AD3d 235

(3rd Dept) (1/22/21 DOI)

Summarily, Family Court found that NY was not a convenient forum, declined a transfer of jurisdiction, and dismissed the grandmother's petitions. On appeal, all parties agreed that Family Court made many errors, that reversal was required, and that a different judge should be assigned. The appellate court agreed with the parties. Family Court had jurisdiction over neglect proceedings when, as here, NY was the home state at the relevant time. NY was in a better position than Tennessee to render a disposition as to neglect.

http://nycourts.gov/reporter/3dseries/2021/2021_00352.htm

M/O Lexie CC.

190 AD3d 1165

(3rd Dept) (1/22/21 DOI)

Neglect finding reversed. The mother admitted to using marihuana to cope with her husband's domestic violence and substance abuse. But there was no proof that she used pot in the children's presence or was rendered unable to care for them. She agreed to a safety plan; sought an evaluation when a child had behavioral issues; and obtained proper medical care for him.

http://nycourts.gov/reporter/3dseries/2021/2021_00342.htm

M/O David W. (Patrizio C.)

191 AD3d 1349

(4th Dept) (2/8/21 DOI)

Neglect and derivative neglected reversed. Agency did not establish that child was in the father's vehicle when he rear-ended the mother.

http://nycourts.gov/reporter/3dseries/2021/2021_00734.htm

M/O Clezidor v Lexune

192 AD3d 792

(2nd Dept) (3/11/21 DOI)

Reversed and remitted. Family Court improperly delegated authority to determine parental access to mother and child. There was a potential for influence of the child by the stepmother. She had been awarded guardianship of the boy and was married to the father, who opposed to parental access for the mother.

http://nycourts.gov/reporter/3dseries/2021/2021_01409.htm

M/O Michael J.M. v Lisa M.H.

192 AD3d 1480

(4th Dept) (3/22/21)

Error to deny non-respondent father's custody petition, under FCA §1055-b (a-1). The matter was remitted for a determination on the father's petition and reconsideration of the Article 10 disposition.

http://nycourts.gov/reporter/3dseries/2021/2021_01573.htm

M/O Kavon A.

192 AD3d 1096

(2nd Dept) (4/1/21 DOI)

Reversal. Error to deny nonparty paternal grandmother § 1028 hearing. After kids were found neglected by mother, they were placed with appellant. When she failed to pass clearance check, kids were removed and placed in foster home. Denial of the requested hearing violated the appellant's due process rights.

http://nycourts.gov/reporter/3dseries/2021/2021_01972.htm

M/O Myiasha K.D.

193 AD3d 850

(2nd Dept) (4/15/21 DOI)

Article 10 order reversed. The uncle inappropriately struck the child, but the petitioner did not establish that such action rose to the level of excessive punishment or that the child suffered harm.

http://nycourts.gov/reporter/3dseries/2021/2021_02290.htm

M/O Kevin W.

194 AD3d 663

(1st Dept) (5/28/21 DOI)

Family Court properly held a § 1027 hearing to determine whether to issue the order. The applicable standard was whether the relief sought—a temporary OP on behalf of the child—was necessary to eliminate an imminent risk, not whether there was “good cause shown” for such order. Agency did not meet burden. http://nycourts.gov/reporter/3dseries/2021/2021_03395.htm

M/O Nabil H. A.
2021 NY Slip Op 04129
(2nd Dept) (7/2/21)

Neglect finding reversed. Petitioner agency failed to show harm resulting from the mother’s refusal to consent to administering Risperdal to her child and her failure to sign admissions paperwork for the child to stay at a medical center where she had been brought for emergency psychiatric care. https://nycourts.gov/reporter/3dseries/2021/2021_04129.htm

Reversal, agency appeal

M/O Lily BB. (Stephen BB.)
191 AD3d 1126
(3rd Dept) (2/18/21 DOI)

Error to dismiss abuse and neglect petition. Relatively low threshold for corroboration of out-of-court statements of the victim was satisfied. Finding that the father plausibly explained that he touched the child’s private areas to treat her for eczema was contradicted by record proof. Remand to different judge. http://nycourts.gov/reporter/3dseries/2021/2021_01106.htm

M/O Zamir F. (Richardo B.)
193 AD3d 932
(2nd Dept) (4/22/21 DOI)

Dismissal of neglect petition. Family Court should not have credited the opinion of the father’s expert, who speculated that the petitioner’s expert tainted her interviews by engaging in play and friendly discussion and that family members may have influenced child to fabricate his claims. The five-year-old had age-inappropriate sexual knowledge. http://nycourts.gov/reporter/3dseries/2021/2021_02391.htm

Article 10-A

M/O Leila I. (Marie V.A.)
191 AD3d 878
(2nd Dept) (2/18/21 DOI)
Framework of Article 10-A proceedings discussed. http://nycourts.gov/reporter/3dseries/2021/2021_01046.htm

M/O Adonnis M.
194 AD3d 1048
(2nd Dept) (5/28/21 DOI)

When the child was one year old, he was placed with the appellant foster mother, who wished to adopt him. Family Court later granted a motion for his placement for adoption with the godmother caring for his older half-sister. Two justices dissented. Family Court: (1) did not consider the boy’s best interests as distinct from his sister’s; (2) did not appoint a separate AFC for him; (3) placed too much weight on keeping siblings together; (3) was too influenced by the views of the sister’s father; and (4) gave short shrift to proof that the child was very bonded with the appellant and had thrived in her care. http://nycourts.gov/reporter/3dseries/2021/2021_03322.htm

TPR

Affirmed

M/O Zowa D.P.

190 AD3d 744

(2nd Dept) (1/14/21 DOI)

The mother defaulted by failing to appear in court for the final day of the fact-finding hearing. No appeal lies from an order entered on default. However, the adjournment denial was appealable because that request was the subject of a contest below. Such ruling was proper, based on several factors.

http://nycourts.gov/reporter/3dseries/2021/2021_00175.htm

M/O Ricardo T. Jr. (Ricardo T. Sr.)

191 AD3d 890

(2nd Dept) (2/18/21 DOI)

Appeal of TPR order academic where child had been legally adopted and father had taken no action to stay or challenge adoption. Permanent neglect finding reviewable due to the stigma and potential future impact. No authority allowed a post-adoption order providing for the requested father-child contact.

http://nycourts.gov/reporter/3dseries/2021/2021_01053.htm

M/O Malachi S.

2021 NY Slip Op 03732

(4th Dept) (6/14/21 DOI)

Denial of motion to vacate default order affirmed. Father failed to appear at the hearing; and his attorney, although present, did not participate. Thus, the father's unexplained failure to appear was a default. A reasonable excuse and meritorious defense were not shown. The right to be present for termination hearings is not absolute. Father was notified of the hearing; willfully failed to appear; and forfeited any right to be present—regardless of whether he was warned that the hearing would proceed in his absence.

http://nycourts.gov/reporter/3dseries/2021/2021_03732.htm

Default

M/O Jonathan N.

194 AD3d 815

(2nd Dept) (5/14/21 DOI)

Default TPR order should have been vacated based on excuse and merit. Further, at the first appearance, for which the father arrived late, he was not offered assigned counsel, even though he had a right to representation when facing potential termination of his parental rights.

http://nycourts.gov/reporter/3dseries/2021/2021_03034.htm

Reversed

M/O Beulah J.

191 AD3d 1395

(4th Dept) (2/8/21 DOI)

The father and child appealed from TPR order. Order vacated. New dispositional hearing needed. Order made child a legal orphan. AFC who jointly represented the three subject children at trial failed to effectively advocate the appellant child's position regarding adoption.

http://nycourts.gov/reporter/3dseries/2021/2021_00767.htm

M/O Xavier XX v Godfrey YY.

192 AD3d 1210

(3rd Dept) (3/4/21 DOI)

Reversal in the interest of justice of order finding abandonment and terminating parental rights. Permanency plan goal as to the mother was return of the child. That could not be reconciled with abandonment proceeding, purpose of which was to free child for adoption by terminating the parents' rights. Petition dismissed.

http://nycourts.gov/reporter/3dseries/2021/2021_01295.htm

Grace G. (Gloria G.)

194 AD3d 712

(2nd Dept) (5/7/21 DOI)

TPR reversed. Suspended judgment should have been entered. Mother had called and visited weekly, fostering a strong bond. Further, she had completed drug treatment and parenting classes, received therapy and preventive services, obtained an associate degree, and secured an apartment.

http://nycourts.gov/reporter/3dseries/2021/2021_02795.htm

Adoption / surrender / revocation

M/O L.S. (Diana A.)

195 AD3d 1

(1st Dept) (4/1/21 DOI)

Reversal of order denying revocation of conditional judicial surrender of parental rights under SSL § 383-c. The First Department reversed. A material condition was that the parental grandmother would adopt the child. The grandmother declined to do so.

http://nycourts.gov/reporter/3dseries/2021/2021_02085.htm

M/O Bilinda S. v Carl P.

193 AD3d 1355

(4th Dept) (5/3/21 DOI)

DRL Law § 112-b proceeding. The mother violated provisions of her contact agreement with the adoptive parents, which was incorporated into a judicial surrender of parental rights. The lower court properly held that it was in the best interests of the child to enforce the agreement.

http://nycourts.gov/reporter/3dseries/2021/2021_02646.htm

M/O William N. v Maria D.

194 AD3d 939

(2nd Dept) (5/21/20)

Paternity petition properly dismissed. Any rights of the putative father were extinguished upon the child's adoption. DRL § 117 not applied literally if against child's best interests, but strict application OK here.

http://nycourts.gov/reporter/3dseries/2021/2021_03184.htm

Divorce

Rennert v Rennert

192 AD3d 1513

(4th Dept) (3/22/21)

Contempt finding reversed. Judiciary Law § 756 requirements as to notice and warning was violated—a jurisdictional defect.

http://nycourts.gov/reporter/3dseries/2021/2021_01630.htm

M/O Emig v Emig

192 AD3d 1024

(2nd Dept) (3/25/21 DOI)

Reversal and new hearing regarding reducing maintenance and child support duties under stipulation of settlement in judgment of divorce. Under Family Ct Act §451 (3) (b), the court could modify a support obligation upon a showing that the payor's income decreased by 15%, if reduction was involuntary, and diligent efforts were made to secure suitable employment. Support Magistrate did not evaluate whether extreme hardship would result absent reduction in maintenance.

http://nycourts.gov/reporter/3dseries/2021/2021_01772.htm

Indictor v Indictor

192 AD3d 1089

(2nd Dept) (4/1/21 DOI)

Custody order reversed. Trial court did not hold a hearing, do a "best interests" analysis or interview the teenagers in chambers. Remittal.

http://nycourts.gov/reporter/3dseries/2021/2021_01968.htm

Park v Park

193 AD3d 1065

(2nd Dept) (4/29/21 DOI)

Reversal of child support order. The trial court had the authority to modify the support obligations based on a substantial change in circumstances, despite an agreement restricting modifications, but erred in rendering the order without conducting a hearing.

http://nycourts.gov/reporter/3dseries/2021/2021_02536.htm