

Indigent Legal Services

Decisions of Interest

SEPTEMBER 17, 2021

CRIMINAL

COURT OF APPEALS

People v Dogan | Sept. 14, 2021

CPL 440.10 MOTION | DENIED

The Court of Appeals affirmed the challenged Fourth Department order. County Court properly denied the defendant's CPL 440.10 motion without a hearing. He failed to sufficiently allege a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

https://www.nycourts.gov/reporter/3dseries/2021/2021_04956.htm

Court of Appeals | CAL Update

<https://www.appellate->

[litigation.org/siteFiles/SiteManager/NYCA.Update.Sept.2021%20\(1\)2.pdf](https://www.appellate-litigation.org/siteFiles/SiteManager/NYCA.Update.Sept.2021%20(1)2.pdf)

SECOND DEPARTMENT

People v Slide | Sept. 15, 2021

CORAM NOBIS | GRANTED

Based on ineffective assistance of counsel, the defendant sought a writ of error coram nobis to vacate an order affirming his conviction. The Second Department granted the application and remitted. Former appellate counsel failed to contend that County Court erred in not determining if the defendant should be adjudicated a youthful offender. Shortly before the brief was filed, *People v Rudolph* (21 NY3d 497) held that, in every case in which the defendant was eligible, CPL 720.20 (1) required a YO determination—even where the defendant failed to request it or agreed to forgo it in a plea deal.

https://nycourts.gov/reporter/3dseries/2021/2021_04982.htm

THIRD DEPARTMENT

Brown v Board of Parole | Sept. 16, 2021

PAROLE | DENIED

The petitioner appealed from a judgment of Sullivan County Supreme Court, which upheld the denial of parole release. The Third Department affirmed. The respondent did emphasize the petitioner's crime, as the petitioner asserted, but equal weight need not be given to each statutory factor considered. The deportation order against the petitioner was simply another factor to consider. No matter that a disciplinary determination against him was reversed after the parole hearing, given his other disciplinary violations.

https://nycourts.gov/reporter/3dseries/2021/2021_05003.htm

FAMILY

THIRD DEPARTMENT

Ryan P. v Sarah P. | Sept. 16, 2021

NEGLECT | CUSTODY

The mother appealed from Tioga County Family Court orders, which found that she neglected her children and granted the father's custody modification petition. The Third Department affirmed. The mother failed to preserve her arguments that Family Court erred in hearing the Article 10 and 6 petitions together and in awarding custody before the dispositional hearing. She also argued that Family Ct Act § 1052 was violated by the single order both granting custody to the father and placing her under DSS supervision. However, custody was ordered before the dispositional hearing. At oral argument, the mother's attorney argued ineffective assistance of trial counsel, but the unbriefed issue was not properly before the Court.

https://nycourts.gov/reporter/3dseries/2021/2021_04993.htm

Small v Yezzi | Sept. 16, 2021

DIVORCE | INTERMEDIATE ORDER

In matrimonial proceedings, the husband appealed from a Washington County Supreme Court order granting the wife's motion to strike his answer. The Third Department dismissed the appeal. The challenged 2019 decision found that the husband willfully failed to comply with disclosure. Thereafter, a 2020 final judgment was entered in favor of the wife. The husband's right to appeal from the intermediate order terminated upon the entry of the final judgment. *See Matter of Aho*, 39 NY2d 241. He did not appeal from the judgment—so as to bring up for review the nonfinal order, pursuant to CPLR 5501 (a) (1). The appellate court declined to exercise its discretion to deem his appeal as having been taken from the judgment.

https://nycourts.gov/reporter/3dseries/2021/2021_04995.htm

Travis A. v Vilma B. | Sept. 16, 2021

DIVORCE | FRAUD

The wife appealed from a judgment of Cortland County Supreme Court annulling the parties' marriage. The Third Department reversed. The husband's claim of fraud in the inducement was premised on his claim that the wife persuaded him to marry her through false representations of love and affection solely to gain an immigration benefit. His proof did not show that the marital breakup was due to any cause other than general incompatibility. Jonathan Lamberti represented the wife.

https://nycourts.gov/reporter/3dseries/2021/2021_04996.htm

Cynthia Feathers, Esq.

ILS | NYS Office of Indigent Legal Services

Director, Quality Enhancement for Appellate

And Post-Conviction Representation

80 S. Swan St., Suite 1147, Albany, NY 12210

(518) 949-6131 | Cynthia.Feathers@ils.ny.gov