CRIMINAL

COURT OF APPEALS

People v Iverson, 5/27/21 – **DEFAULT / NOT AUTHORIZED**
The two defendants were charged with traffic infractions. Each pleaded not guilty and demanded a trial but failed to timely appear for trial. A judicial hearing officer at the Traffic and Parking Violations Agency rendered default judgments against them. Appellate Term reversed. In People's appeals, the Court of Appeals affirmed, finding that VTL § 1806-a did not authorize the judgments. The 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

People v Mabry, 5/27/21 – **BACKPACK SEARCH / INVALID**
The COA reversed the challenged Appellate Division order and remanded. 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. Because Supreme Court denied suppression without reaching the People's alternative argument, the matter was remitted. Legal Aid Society, NYC (Denise Fabiano, of counsel) represented the appellant.
http://www.nycourts.gov/reporter/3dseries/2021/2021_03348.htm

FIRST DEPARTMENT

People v Buchanan, 5/27/21 – **SENTENCE EXPOSURE / PLEA OF GUILTY**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of 2nd degree burglary (three counts) and from an order denying his CPL 440.10 motion to vacate the judgment. The First Department reversed and remanded. When offered 9 years, the defendant was told that the maximum term was 45 years, but it was 20 years, given the capping statute. The disparity rendered the plea involuntary. The defendant had no practical ability to raise this issue prior to sentencing, and he did raise the claim in his 440 motion, giving the plea court a chance to correct its error. Center for Appellate Litigation (Alexandra Mitter, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03386.htm

People v Jackson, 5/25/21 – **SENTENCE EXPOSURE / WAIVER OF COUNSEL**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of 1st degree auto stripping, 3rd degree criminal mischief (six counts), and other crimes. The First Department dismissed one mischief count and reduced the stripping count to 2nd degree, because of the lack of proof regarding reasonable repair costs. The waiver of the right to counsel was invalid, where the sentencing exposure was not explained, and a searching inquiry was not done.
http://nycourts.gov/reporter/3dseries/2021/2021_03288.htm

People v Alvarez, 5/25/21 – **CPL 30.30 / DISMISSAL**
The defendant appealed from a judgment of Bronx County Supreme Court, convicting her of leaving the scene of an incident without reporting. The First Department reversed and dismissed. Supreme Court erred in excluding 93 days of pre-readiness delay in which the People failed present to the grand jury. They did not show the complainant's unavailability or her necessity, given that she did not remember the accident. The lower court also erred in excluding 83 days of 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 in court, and silence did not constitute consent to an adjournment. The Office of the Appellate Defender (Kami Lizarraga, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03286.htm

SECOND DEPARTMENT

People v Legrand, 5/26/21 – **KIDNAPPING / DISMISSAL**
The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 2nd degree kidnapping and other crimes. The Second Department dismissed the kidnapping count based on legally insufficiency. 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. Appellate Advocates (Priya Raghavan, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03333.htm

People v Bertrand, 5/26/21 – **SORA / IAC**
The defendant appealed from an order of Kings County Supreme Court, designating him a level-two sex offender. The Second Department reversed and ordered a new hearing. The defendant was convicted in federal court of possession of child pornography. On appeal, he raised the issue of ineffective assistance at the SORA hearing. The Court of Appeals had soundly rejected the only argument counsel made—challenging points under risk factors 3 (number of victims) and 7 (victims were strangers), based in the nature of the offense. Counsel's failure to apply for a downward departure, based on an overassessment of risk, revealed a misunderstanding of relevant law. Legal Aid Society of NYC (Susan Epstein, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03338.htm

APPELLATE TERM – SECOND DEPT.

People v Ahmeti, 2021 NY Slip Op 50481(U) – **MISSING WITNESS / REVERSED**
The defendant appealed from a judgment of Queens County Criminal Court, convicting him of attempted 3rd degree assault and 2nd degree harassment. The Second Department reversed and dismissed the accusatory instrument. 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. The error was not harmless. Appellate Advocates (Grace DiLaura and Anders Nelson) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_50481.htm

People v Brown, 2021 NY Slip Op 50482 (U) – **VTL PLEA / IMPROPER**
The defendant appealed from a judgment of Queens County Criminal Court, convicting him of 3rd degree aggravated unlicensed operation of a motor vehicle. Appellate Term, Second Department reversed and remitted. The prosecutor consented to defendant pleading guilty to the above-cited charge in satisfaction of all charges, which included a violation of VTL § 1192 (3). The plea court failed to state the basis of such disposition, as required by subdivision (10). Appellate Advocates (Jonathan Schoepp-Wong, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_50482.htm

People v Latta, 2021 NY Slip Op 50484(U) – **CHARGING INSTRUMENT / DEFECTIVE**
The defendant appealed from a judgment of Richmond County Criminal Court, convicting him of disorderly conduct. Appellate Term, Second Department reversed and dismissed. The accusatory instrument, alleging that the defendant possessed marihuana recovered from the rear passenger floor in a black bag, was jurisdictionally defective. Possession was not sufficiently alleged. There was no specific allegation that the marihuana was located within a vehicle, let alone that the defendant owned, or was found inside of, a vehicle. Alan Ross represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_50484.htm

FAMILY

FIRST DEPARTMENT

M/O Kevin W. (Kevin W.), 5/27/21 – **STAY-AWAY ORDER / VACATED**
The father appealed from orders of Bronx County Family Court, which directed him to stay away from the subject child. The First Department reversed and vacated the temporary orders. The appeal was not moot, since the father appealed from the superseding temporary order which, upon the expiration of the original order, extended its same terms without taking any new evidence. 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. ACS did not meet this burden. The Bronx Defenders (David Shalleck–Klein, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03395.htm

M/O Kyriacos L. v Hyunjung K., 5/27/21 – **HARASSMENT / SANCTIONS**
The mother appealed from an order of NY County Family Court, which awarded counsel fees to the father and imposed sanctions against her. The First Department affirmed. The mother engaged in a pattern of harassment against the father and his wife, actively

frustrating and impairing his efforts to maintain a relationship with the child; repeatedly making false accusations of sexual abuse against them; obstructing visits; and threatening and harassing them.
http://nycourts.gov/reporter/3dseries/2021/2021_03379.htm

SECOND DEPARTMENT

DECISION OF THE WEEK

M/O Adonnis M. (Kenyetta M.), 5/26/21 – **ARTICLE 10 / DISSENT**
The former foster mother appealed from an order of Queens County Family Court, which removed the subject boy from her care, and from a permanency order, which set the goal as placement for adoption with the foster parent of the child's half-sister. The Second Department affirmed. When the child was one year old, he was placed with the appellant, 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, despite a possible conflict with his sister's interests; (3) placed too much weight on the policy of keeping siblings together; (3) was too influenced by the views of the sister's father, who had shown no concern for either child; and (4) gave short shrift to proof that the child was very bonded with the appellant and had thrived in her care. The dissent noted that the boy's AFC had never met with him or the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03322.htm

M/O Hardy v Hardy, 5/26/21 – **TREATMENT / FUTURE PETITIONS**
The father appealed from an order of Nassau County Family Court, which granted the maternal grandmother's custody petition. The Second Department modified. While such custody order was supported by the record, Family Court erred in conditioning the father's filing of petitions to modify access on successful completion of an anger management class and a negative drug test. A court may not order a parent to undergo counseling or treatment as a condition of a future application for parental access. Thus, the appellate court eliminated the offending condition. William Sheeckutz represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03320.htm

M/O Rodriguez v Starks, 5/26/21 – **DISMISSAL / FUTURE PETITIONS**
The mother appealed from an order of Suffolk County Family Court in a child support matter. The Second Department modified. Family Court should not have provided that dismissal of her petition for an upward modification was with prejudice to any subsequent petition to modify. Family Court has continuing jurisdiction to modify a prior support order pursuant to Family Ct Act § 451. John Rodriguez represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03325.htm