

## CRIMINAL

### FIRST DEPARTMENT

***People v Conner*, 6/4/20 – POLICE MISCONDUCT / CREDIBILITY**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 4<sup>th</sup> degree grand larceny and 5<sup>th</sup> degree criminal possession of stolen property. The First Department reversed and ordered a new trial. The trial court erred in denying the defendant's request to cross-examine a police sergeant regarding allegations of misconduct in a civil lawsuit, in which it was claimed that the sergeant arrested the plaintiff without suspicion of criminality and lodged false charges against him. The civil complaint contained allegations bearing on the sergeant's credibility at the instant trial. The error was not harmless: the sergeant's credibility was critical, because he was the only eyewitness to the crime. While his testimony was corroborated by other evidence, on its own, none of the corroborative proof was sufficient to prove guilt. The Office of the Appellate Defender (Joseph Nursey, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03200.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03200.htm)

***People v Alston*, 6/4/20 – WEAPON CONVICTION / VACATED**

The defendant appealed from an order of NY County Supreme Court, which denied his CPL 440.10 motion to vacate a judgment convicting him of 3<sup>rd</sup> degree CPW and other crimes. The First Department reversed and dismissed that count of the indictment. The People agreed that the conviction should be vacated in light of legislation amending Penal Law § 265.01 to decriminalize the simple possession of gravity knives—even though the law did not apply retroactively. The Center for Appellate Litigation (Benjamin Wiener, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03183.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03183.htm)

***People v Tavaréz*, 6/4/20 – CREATIVE PLEA ARGUMENT / UNPRESERVED**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 1<sup>st</sup> degree attempted rape. The First Department affirmed. The defendant claimed that his guilty plea under a valid count of the indictment was impacted by a more serious, jurisdictionally defective charge. The plea court had advised the defendant that he was facing a life sentence, if convicted after trial. Such information was inaccurate, because the only class A felony count was defective. The appellate court held that a claim that a defective count impacted a decision to plead guilty was not exempt from the requirement for preservation, such as via a plea withdrawal motion. In any event, there was no basis to reverse here. The record did not show that the allegedly defective count influenced the defendant's choice to plead guilty under a valid count. At the time of his plea, he was aware that the People had recognized a problem with the language of the predatory sexual assault count and were taking steps to cure the defect. The defendant was correctly advised of his potential sentencing exposure.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03185.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03185.htm)

## SECOND DEPARTMENT

### ***People v Jemmott*, 6/3/20 – PROBATION / TERM NOT PRONOUNCED**

The defendant appealed from a sentence imposed by Kings County Supreme Court upon his plea of guilty. The Second Department reversed. The lower court did not pronounce the length of the term of probation in open court. The matter was remitted for resentencing in accordance with CPL 380.20. The Legal Aid Society of NYC (Desiree Sheridan, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03130.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03130.htm)

## THIRD DEPARTMENT

### ***People ex rel. Carroll v Keyser*, 6/4/20 – HABEAS RELIEF / REVERSED**

The respondents appealed from an order of Sullivan County Supreme Court, which granted the petitioner's CPLR Article 70 habeas corpus application on behalf of inmate Jalil Muntaqim, who was discharged to a private residence to serve his sentence under DOCCS jurisdiction. The Third Department reversed. The inmate was a 68-year-old black inmate at Sullivan Correctional Facility, where he was serving concurrent terms of 25 years to life following his 1975 murder convictions. The petitioner alleged that Muntaqim's advanced age, race, and medical conditions left him in significant danger, due to Covid-19, and violated federal and state constitutional proscriptions against cruel and unusual punishment. During the pendency of this appeal, Muntaqim became infected and was currently hospitalized; but the appellate court found that the appeal was not moot or that the exception to the mootness doctrine applied. The petitioner failed to meet the ultimate burden of showing that Muntaqim's detention was illegal. While the petitioner arguably established that facility conditions posed a substantial risk of serious harm, there was no showing of deliberate indifference by prison officials, who detailed many steps taken to prevent the spread of the virus. One could infer from actions taken subsequent to the challenged order that DOCCS had failed to initially grasp the severity of the COVID-19 threat and was now adapting to the situation. But deliberate indifference meant more than being caught flat footed. Failures to promptly alleviate significant risks—while no cause for commendation—could not be equated with unconstitutional punishment. The petitioner further alleged that, although the sentence was lawful when imposed, it became grossly excessive due to the risks created by the pandemic. The reviewing court found it doubtful that a sentence proper that was at the time of imposition could become grossly disproportionate as a result of changed conditions, and opined that such a challenge should be raised in a post-conviction motion to the sentencing court. In any event, Muntaqim's punishment was not so grossly disproportionate to his offense as to amount to cruel and unusual punishment.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03169.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03169.htm)

### ***People v McCray*, 6/4/20 – APPELLATE DELAY / DUE PROCESS**

The defendant appealed from a judgment of Essex County Supreme Court, which revoked his probation and imposed a sentence of imprisonment. The Third Department affirmed. The defendant argued that he was deprived of his right to due process by 14 months of stenographic delays. Further, because his release from custody mooted a challenge to the

resentence, the appellate court should vacate with prejudice the finding that he violated parole, the defendant urged. The reviewing court held that the defendant had not established that the unfortunate appellate delay resulted in prejudice so as to warrant the remedy sought. He was not entitled to leniency just because he admitted to violating probation; and it was within the trial court's discretion to impose the maximum resentence. [http://nycourts.gov/reporter/3dseries/2020/2020\\_03154.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03154.htm)

## FAMILY

### FIRST DEPARTMENT

***Matter of Lavdie H. v Saimira V.*, 6/4/20 – SIJS/ REVERSED**

The petitioner appealed from a Bronx County Family Court order, which denied the subject child's motion for an order of special findings enabling him to petition for special immigrant juvenile status (SIJS). The First Department reversed. The child was unmarried and under the age of 21 at the time of the order. Family Court's appointment of a guardian (petitioner) rendered the child dependent on a juvenile court. The evidence—that since 2014, the child had had no contact with his parents and received no support from them—indicated that reunification was not viable, due to neglect or abandonment. The parents' consent to the appointment of a guardian and waiver of service showed an intent to relinquish their parental rights. Family Court should not have refused to consider proof of circumstances that occurred between the child's 18<sup>th</sup> and 21st birthday. It was not in his best interests to return to Albania, where he suffered political persecution. The child had had no recent contact with his parents and was not sure if they would accept him if he returned; and he was doing well in the petitioner's care. Natraj Bhushan represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03177.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03177.htm)

### SECOND DEPARTMENT

***Matter of Bryce L. (David B.)*, 6/3/20 – VOP / REVERSED**

The father appealed from an order of Kings County Family Court, which found that he willfully violated a temporary order of protection and committed him to jail for three months—enforcement of which was stayed pending appeal. The Second Department reversed. The failure of Family Court to personally serve the father with the order to show cause upon initiation of the contempt proceeding was a jurisdictional defect. Brooklyn Defender Services (Piyali Basak and Kathryn Lissy, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03107.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03107.htm)

***Matter of Rosa Y. A. P. v Jose B. P. T.*, 6/3/20 –  
PATERNITY / EQUITABLE ESTOPPEL**

The appellant appealed from an order of Queens County Family Court, which held that he was equitably estopped from disclaiming paternity, denied his application for genetic marker testing, and adjudicated him to be the father of the two subject children. The Second Department affirmed. The appellant had long assumed the role of a parent, led the children

to believe that he was their father, and provided financial support for most of their lives. Thus, the application of equitable estoppel was in the children's best interests.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03115.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03115.htm)

## THIRD DEPARTMENT

*Matter of Terry PP. v Domiyon PP.*, 6/4/20 –

### GRANDMOTHERS / COMPETING PETITIONS

After the parents were charged with neglecting their child, born in 2016, the grandmothers filed competing petitions for custody. Schenectady County Family Court awarded custody to the paternal grandmother, upon consent of the parents, who admitted to neglect. The maternal grandmother appealed. The Third Department upheld the custody order. The appellant did show extraordinary circumstances, where the parents had been incarcerated and used drugs and the child tested positive for drugs at birth. However, the challenged order was in the child's best interests. For most of his life, the child had been in the capable care of the paternal grandmother, who was more apt to facilitate visitation between the child and the parents. The record indicated that the grandmothers would foster contact between the subject child and his brothers, who lived with the maternal grandmother.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_03155.htm](http://nycourts.gov/reporter/3dseries/2020/2020_03155.htm)

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