

## CRIMINAL

### SECOND DEPARTMENT

***People v Delcid*, 7/24/19 – DWI AND AUO / INCLUSORY COUNTS**

The defendant appealed from a judgment of Nassau County Supreme Court, convicting him of DWI as a felony and 1<sup>st</sup> and 2<sup>nd</sup> degree AUO of a motor vehicle, upon a jury verdict. The Second Department vacated the DWI and 2<sup>nd</sup> degree AUO convictions and dismissed those counts, since they were inclusory concurrent counts of 1st degree AUO. The defendant's further contention, that the mandatory surcharge and crime victim assistance fee had to be reduced, could be raised before Supreme Court. Nassau Legal Aid Society (Tammy Feman and Marquetta Christy, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05788.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05788.htm)

### THIRD DEPARTMENT

***People v Adamo*, 7/25/19 – 440 HEARING ORDERED / COERCED AND IAC**

The defendant appealed from an order of Rensselaer County Court, which summarily denied his CPL 440.10 motion to vacate a judgment convicting him of attempted 2<sup>nd</sup> degree murder. The Third Department reversed and ordered a hearing. One morning in 2014, the defendant went to see his estranged wife at the marital residence and stabbed her 31 times. In 2015, he appeared in court to enter into a plea agreement. But when he said that he had been coerced, County Court adjourned the matter, and counsel said that he would move to withdraw from representation. Three days later, represented by the same attorney, the defendant pleaded guilty. In 2017, he moved to vacate the judgment on the basis that the plea was not knowing, voluntary, and intelligent, and that he received ineffective assistance. The defendant submitted evidence that, at the time of the crime and the plea, he was suffering from mental health issues and had been prescribed various medications. Two expert affidavits addressed possible drug-induced psychoses. Further development of the record was required to determine whether the defendant's mental capacity was impaired at the time of his plea. Further, questions were raised about IAC. Counsel purportedly insisted that the defendant had "absolutely no defense"—despite possible defenses of involuntary intoxication or not being responsible by reason of mental disease or defect. An attorney letter stated that, should the defendant refuse to plead guilty, counsel would no longer represent him, and his family could be disgraced. Matthew Hug represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05813.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05813.htm)

## FAMILY

### NJ APPELLATE DIVISION

*NJ Dept. of Children and Families v L.O.*, 6/17/19 –

**ADMINISTRATIVE HEARING / RIGHT TO COUNSEL**

In a matter of first impression, the NJ Appellate Division held that an indigent parent or guardian, substantiated for child abuse or neglect, had a right to counsel for an administrative hearing and appeal, given the magnitude of the potential consequences of such proceedings. A listing on the Child Abuse Registry injured parents' good names; harmed their ability to obtain employment in various fields jobs; could prevent them from fostering or adopting children; and could provide a basis for an action to terminate the parents' custodial rights or to otherwise limit their relationships with their children. There was no logical reason for maintaining a distinction between an abuse action, where there was a right to counsel, and an administrative proceeding, where there was not. The right to counsel at the administrative hearing went hand in glove with the right to appellate counsel. On remand, the ALJ was to use a list, maintained by the NJ Administrative Office of Courts, naming attorneys eligible for pro bono assignment for matters in which litigants were entitled to counsel, but the NJ legislature had made no provision for the Public Defender to provide representation. The appellate court anticipated that, at some future time, the state legislature might provide funding for such representation.

<https://law.justia.com/cases/new-jersey/appellate-division-published/2019/a0007-15.html>

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