

OCTOBER 13, 2021

CRIMINAL

COURT OF APPEALS

People v Shanks | Oct. 12, 2021

WAIVER OF APPEAL | RIGHT TO COUNSEL

In the trial court, the defendant did not validly waive the right to appeal or forfeit his Sixth Amendment right to counsel. A unanimous COA reversed a Third Department order affirming the defendant's conviction of 3rd degree grand larceny and ordered a new trial. The colloquy and written waiver did not indicate that some rights to appeal would survive the waiver, and the written document erroneously indicated that the waiver was an absolute bar to taking a direct appeal. The COA did not decide whether a valid appeal waiver would extinguish a defendant's claim that his right to counsel was violated at trial. As to the counsel issue, this was not a rare case where a defendant forfeited the right to assigned counsel. The two attorneys who had asked to be relieved due to difficulties with defendant did not say that his conduct was egregious. Other attorneys were relieved due to a conflict of interest, illness, or departure from the state—all factors beyond the defendant's control. Thus, he should not have been forced to face trial without counsel. Judge Fahey wrote the opinion. Kathy Manley represented the appellant.

https://www.nycourts.gov/reporter/3dseries/2021/2021_05450.htm

People v Torres | Oct. 12, 2021

RIGHT OF WAY LAW | NEW YORK CITY

The Court of Appeals upheld the Right of the Way (ROW) Law. That New York City law made it a misdemeanor for a driver, while failing to exercise due care, to cause physical injury to a pedestrian or bicyclist who had the right of way. The two defendants, who were convicted based on fatal accidents on Manhattan streets, contended that the U.S. and State Constitutions required more than ordinary negligence for criminal liability. However, New York has long recognized the constitutionality of strict liability offenses; and the U.S. Supreme Court has not held that ordinary negligence may never be criminalized. The ROW Law was not preempted. The State legislature did not intend to occupy the field or to make exclusive the mental states set forth in Penal Law Article 15. The VTL authorized NYC to pass laws relating to the right of way. The fact that the ROW Law created a misdemeanor offense for conduct that was only a traffic infraction under the VTL did not present a conflict for preemption purposes. Judge Wilson concurred.

https://www.nycourts.gov/reporter/3dseries/2021/2021_05448.htm

FIRST DEPARTMENT

People v Dula | Oct. 12, 2021

PEOPLE'S APPEAL | NO SUPPRESSION

The People appealed from an order of New York County Supreme Court, which granted the defendants' motions to suppress physical evidence. The First Department reversed and remanded. Supreme Court found that police observed a moving vehicle with a New Jersey license plate on which "Garden State" was obscured by a frame, in violation of the VTL. That specific finding was not adverse to the People, so it was not reviewable on the People's appeal. Concerns about allowing police to make pretextual traffic stops based on trivial violations did merit consideration. However, the finding that the police officers reasonably believed that a traffic violation occurred was dispositive as to the existence of probable cause to stop the car.

https://nycourts.gov/reporter/3dseries/2021/2021_05465.htm

People v Williams | Oct. 12, 2021

DVSJA | AFFIRMED

The defendant appealed from an order of New York County Supreme Court, which denied her CPL 440.47 motion for resentencing under the DVSJA. The First Department affirmed. The evidence did not show that the crime victim's behavior toward the defendant constituted substantial abuse. While abuse "at the time" of the offense need not occur simultaneously, there must be a temporal nexus between the abuse and the offense.

https://nycourts.gov/reporter/3dseries/2021/2021_05467.htm

FOURTH DEPARTMENT

People v Santy | Oct. 8, 2021

SUPPRESSION | NO REASONABLE SUSPICION

The defendant appealed from an Onondaga County Court judgment, convicting him of 3rd degree CPCS, upon his plea of guilty. The Fourth Department reversed and dismissed the indictment. County Court should have suppressed the cocaine found. A pat-down search of a traffic offender was not authorized unless, when the vehicle was stopped, police possessed a reasonable suspicion that the defendant was armed or posed a threat to officer safety. Such predicate was lacking here, where the defendant made no evasive moves or statements about weapons, was not aggressive, and had no telltale bulges in his clothes. His flat affect and partial disrobement during the stop were odd but did not indicate possible looming danger. Hiscock Legal Aid Society (Tyler Bugden, of counsel) represented the appellant.

https://nycourts.gov/reporter/3dseries/2021/2021_05439.htm

People v Thigpen-Williams | Oct. 8, 2021

PLEA | COERCED

The defendant appealed from a Genesee County Court judgment, convicting him of 5th degree CPCS, upon his plea of guilty. The Fourth Department reversed and remitted. The plea was coerced and involuntary. During the colloquy, the court warned the defendant that, if he were convicted at trial, he would receive the maximum, to run consecutively to a previously imposed sentence. A defendant must not be induced to plead guilty by the threat of a heavier sentence if he is convicted after trial. The unpreserved issue was reached in the interest of justice. Legal Aid Bureau of Buffalo (Allyson KehI-Wierzbowski, of counsel) represented the appellant.

https://nycourts.gov/reporter/3dseries/2021/2021_05429.htm

People v Osborn | Oct. 8, 2021

RESTITUTION | HEARING

The defendant appealed from an Onondaga County Court judgment, convicting him of 2nd and 3rd degree grand larceny, upon his plea of guilty. The Fourth Department vacated a restitution order and remitted. County Court erred in denying a hearing as to the amount of restitution. Under Penal Law § 60.27 (2), when a court requires restitution, a hearing must be conducted upon the defendant's request. Hiscock Legal Aid Society (Philip Rothschild, of counsel) represented the appellant.

https://nycourts.gov/reporter/3dseries/2021/2021_05426.htm

People v Smith | Oct. 8, 2021

CERTIFICATE | ERRORS

The defendant appealed from a Niagara County Court judgment, convicting him of attempted 2nd degree CPW (two counts), upon a plea of guilty. The Fourth Department affirmed but ordered amendments to the certification of disposition to clarify that: (1) the defendant was charged with two counts of 2nd degree CPW under counts two and four; (2) such counts were reduced to attempted 2nd degree CPW; and (3) upon his pleas of guilty to the attempt counts, the defendant was sentenced to determinate terms of seven years, to run concurrently. Connie Lozinsky represented the appellant.

https://nycourts.gov/reporter/3dseries/2021/2021_05414.htm

People v Ealahan | Oct. 8, 2021

ASSAULT | ANGRY CHEF

The defendant appealed from an Onondaga County Court judgment, convicting him of 2nd degree assault. The Fourth Department affirmed, rejecting the contention that the trial court erred in denying a request to charge the lesser included offense of 3rd degree assault. There was no reasonable view of the evidence that the defendant failed to perceive a substantial and unjustifiable risk of physical injury and thus acted with mere criminal negligence. After his shift as a chef ended, the defendant started a heated verbal exchange with the unarmed victim on the street. When he ran into the victim again moments later, the defendant brandished a particularly sharp, professional culinary knife, in response to the victim's stance hinting that a physical altercation was imminent.

https://nycourts.gov/reporter/3dseries/2021/2021_05438.htm

People v Myers | Oct. 8, 2021

DETAINEE | CALLS

The defendant appealed from an Onondaga County Court judgment, convicting him of leaving the scene of an incident that resulted in death without reporting the incident. He contended that County Court erred in refusing to suppress statements made during a three-way phone call initiated by another inmate, given the lack of an eavesdropping warrant. But the governing statute did not cover a call recorded with the consent of one party. Detainees told of the monitoring and recording of calls had no reasonable expectation of privacy in the content of the calls.

https://nycourts.gov/reporter/3dseries/2021/2021_05435.htm

People v Freeland | Oct. 8, 2021

PLEA | INQUIRY DUTY

The defendant appealed from a judgment convicting her of 3rd degree grand larceny, upon a plea of guilty. She did not preserve her challenge to the voluntariness of her plea, and the narrow exception did not apply. Nothing the defendant said during the plea colloquy cast doubt on her guilt and triggered County Court's duty to inquire further. Even if the defendant's statements at sentencing could give rise to such duty, a conclusory claim of innocence was belied by statements in the plea colloquy.

https://nycourts.gov/reporter/3dseries/2021/2021_05441.htm

People ex rel. Brown v Dept. of Corr. | Oct. 8, 2021

HABEAS | EFFECTIVE COUNSEL

The petitioner appealed from a judgment of Orleans County Supreme Court, which dismissed a habeas corpus petition seeking his release based on Covid-related risks. Assuming that the petitioner was entitled to effective assistance, considering his having had the benefit of assigned counsel, he received meaningful representation.

https://nycourts.gov/reporter/3dseries/2021/2021_05423.htm

FAMILY

FIRST DEPARTMENT

Naamye Nyarko B. v Goodwin Edwin C. | Oct. 12, 2021

GHANA | TRAVEL

The mother appealed from an order of New York County Family Court, which permitted the father to travel internationally with the children on 60 days' written notice to her. The First Department reversed. Family Court erred in granting his request to allow such travel, particularly to Ghana, which was not a party to the Hague Convention on Civil Aspects of International Child Abduction. There was no basis to find that such unrestricted travel was in the best interests of the young children. Randall Carmel represented the appellant.

https://nycourts.gov/reporter/3dseries/2021/2021_05453.htm

Matter of Fields v NYS OCFS | Oct. 12, 2021

MALTREATMENT | CONFIRMED

The father appealed from a determination of the State Office of Children and Family Services that he maltreated his daughter. The First Department confirmed and dismissed the Article 78 proceeding. Substantial evidence established that the father choked the child, struck her face, and caused her to fall and suffer injuries, and that he taunted her about suicide. The hearsay evidence considered was relevant and probative and thus admissible. OCFS also properly found that the maltreatment was reasonably related to employment as a childcare provider, adoption of a child, and provision of foster care.

https://nycourts.gov/reporter/3dseries/2021/2021_05456.htm

FOURTH DEPARTMENT

Fowler v Rothman | Oct. 8, 2021

CUSTODY | NOT MOOT

The mother appealed from an order of Onondaga County Family Court, awarding sole custody to the father. The Fourth Department affirmed. The appeal was not moot, despite a subsequent order modifying the mother's visitation. Since the later order provided that the father's custody status would continue, the order on appeal was not superseded.

https://nycourts.gov/reporter/3dseries/2021/2021_05436.htm

Matter of Anastasia P. | Oct. 8, 2021

NEGLECT | AFFIRMED

The mother appealed from an order of Erie County Family Court, finding that she had neglected the child by using cocaine during pregnancy and after giving birth and by refusing to give urine samples several times. She asserted that her participation in a drug treatment program fit under Family Court § 1046 (a) (iii) (drug misuse not prima facie evidence of neglect if user voluntarily takes part in recognized rehabilitative program). But there was no proof that the mother's participation was voluntary.

https://nycourts.gov/reporter/3dseries/2021/2021_05420.htm