NYS Court of Appeals Criminal Decisions for April 1, 2021

People v. Olds

This is a unanimous memorandum affirming the Fourth Department. The defendant's vindictive sentence argument is unpreserved. No objection was lodged at sentencing; no motion to withdraw the plea was filed. There is no record support for any illegal sentence argument.

People v. Epakchi

All of this for a traffic ticket. This is a 5 to 1 decision, a successful People's appeal authored by the Chief Judge. Judge Wilson wrote the dissent. The defendant was charged with a stop sign violation under VTL § 1172(a). The defendant's request for a supporting deposition went unanswered. The first Suffolk County judicial hearing officer ordered the state to file a deposition. A second hearing officer assigned to the case dismissed the traffic ticket. The state then served a superseding simplified traffic information and supporting deposition. A new motion to dismiss was denied. The defendant was convicted after trial. The Appellate Term reversed the judgment of the judicial hearing officer as a matter of discretion in the interest of justice. The Court of Appeals reversed the Appellate Term.

At issue is a rule followed by the Appellate Term for the 9th and 10th Judicial Districts which prohibited, except if special circumstances were shown, a reprosecution of a traffic infractions based on facial insufficiency because of the prosecution failing to file a requested supporting deposition. *See*, CPL 100.25(2); 100.40(2). The Appellate Term believed not following its rule would defeat the very purpose of CPL 100.40(2), disregard the interests of judicial economy and erode confidence in the criminal justice system. However, the Appellate Term's rule was not authorized by the Criminal Procedure Law. It also predated (and contravened) *People v. Nuccio*, 78 NY2d 102, 103-105 (1991), a case which *permitted* a reprosecution after a traffic ticket was dismissed for facial insufficiency. This is in contrast to when an indictment is dismissed for legal insufficiency, as a court order is then required for representation to a grand jury. *See*, CPL 210.20(4). The majority concluded the Appellate Term's rule was an abdication of the judiciary's responsibility to promote respect for the law and would be incapable of meaningful appellate review.

In his **dissent**, Judge Wilson indicates the Court of Appeals is the only NYS criminal court without discretionary interest of justice powers. The purpose of such authority is "to allow the letter of the law gracefully and charitably to succumb to the spirit of justice." *People v.*

Rickert, 58 NY2d 122, 126 (1983). Under article VI, § 3, of the New York Constitution, however, the Court of Appeals' jurisdiction in noncapital cases is limited to questions of law. Though Judge Wilson wished it were otherwise, the Court did not have jurisdiction over this appeal, as the Appellate Term's decision was based on an exercise of discretion in the interest of justice premise. *See*, 450.90; 470.15(3)(c). Still, the majority concluded it was considering a question of law that was fully litigated; moreover, it was not bound by a lower court's characterization of its own order. Judge Wilson discussed at length the need for legislation to fix the problem of the state's highest court being unable to review interest of justice decisions, in terms of: (1) harmonizing and maintaining statewide uniformity in the law, (2) doing substantial justice, (3) judicial efficiency, (4) developing the law and (5) fostering public confidence in the judicial system. In Judge Wilson's estimation, the majority's decision will permit selective reviewability for the Court where there is detected a pattern or presumption in the lower court's exercise of interest of justice jurisdiction. But the Court of Appeals should not cherry pick the cases it deems as jurisdictionally sufficient.

Finally, Judge Wilson provides an extensive and thoughtful overview of the history of the interest of justice authority that intermediate appellate courts possess. (In foot note 1, we are also provided statutory examples of *trial* courts' interest of justice related powers, in both the criminal and civil contexts.) For whatever reason, the intermediate appellate courts, created in 1894, have gained statutory discretionary power over time (including in 1919 the authority to reduce sentences, a predecessor to CPL 470.15(6)(b) and (3)(c)), while the Court of Appeals has not. *In terms of the Court's recent history, Judge Wilson observes the Court used to actually have a back log in cases, as described in foot note 6. However, the Court since 1990 has averaged just 209 cases a year, compared to 580 annually in the three decades prior to 1985.*