

Plea Cases – Immigration

***People v Manley*, 12/13/18 – PLEA VOLUNTARY / CLAIM OF INEPT COUNSEL REJECTED**
The defendant, a non-citizen, appealed from an order of Warren County Court which denied his CPL 440.10 motion after a hearing. He was charged with drug sale and possession counts. Following plea negotiations, he pleaded guilty to one count of 3rd degree criminal possession of a controlled substance; waived his right to appeal; and received a sentence of three years in prison, followed by post-release supervision. At the time of the plea, he had overstayed his legal right to be in the U.S. After deportation proceedings were commenced, the defendant moved to vacate the conviction based on counsel's misinformation about deportation consequences. Since the ineffective assistance claim implicated the voluntariness of the plea, it survived the appeal waiver; and it was preserved by a post-allocation motion. The defendant and his wife testified that counsel told them that the "best" or "only" option for the defendant was to accept the plea offer because, even if he went to trial and was acquitted of the charges, he would not avoid deportation. The defendant claimed that his only concern was deportation and that he did not care about the risk of a long prison term. Counsel testified that he advised the defendant that, regardless of whether he pleaded guilty to criminal sale or possession, it was "more than likely" that he would be deported. Further, counsel said that he informed the defendant that, if convicted after trial, he would be sentenced to a prison term of up to 18 years. Counsel did not recall telling the defendant that he would be deported even if acquitted of the charges. According to counsel, although there would be proceedings regarding the defendant's immigration status, this circumstance would be a "different ball game," as the defendant would not have been convicted of crimes subjecting him to removal under federal law. Deferring to County Court's credibility determinations, the **Third Department** find that counsel fulfilled his obligations and that the plea was voluntary.

http://nycourts.gov/reporter/3dseries/2018/2018_08581.htm

Plea Cases – Other Issues

***People v Gannon*, 12/13/18 – SCI / JURISDICTIONAL DEFECT**

The defendant appealed from a judgment of Saratoga County Court convicting her upon a plea of guilty of 1st degree criminal sexual act and 1st degree sexual abuse. After police discovered that the defendant had assisted her husband in having inappropriate sexual contact with her two minor daughters, she waived indictment and agreed to be prosecuted by an SCI. The **Third Department** held that the waiver and SCI were jurisdictionally defective with respect to 1st degree sexual abuse, because the relevant provision of the Penal Law was not in effect when the alleged criminal conduct occurred. The waiver of the right to appeal did not preclude the issue. The plea as to the errant count was vacated, and the count was dismissed. Brian Quinn represented the appellant.

http://nycourts.gov/reporter/3dseries/2018/2018_08582.htm

***People v Hall*, 12/13/18 – GUILTY PLEA AND WAIVER / PURPORTED DEFECT WAIVED**

The defendant appealed from a judgment of Albany County Supreme Court, convicting him upon his plea of guilty of 5th degree criminal possession of a controlled substance. He

had been charged in an indictment with attempted 3rd degree criminal possession of a controlled substance and another crime. He was sentenced as a second felony offender to two years, followed by post-release supervision. The **Third Department** rejected the contention that the guilty plea was defective because 5th degree drug possession is not a lesser included offense of attempted 3rd degree possession. The claim that the plea ran afoul of CPL 220.10 did not survive the plea or appeal waiver. In any event, there was no jurisdictional impediment to the plea. The assertion as to ineffective assistance survived the waiver of appeal to the extent that it implicated the voluntariness of the plea; but the claim was unreserved.

http://nycourts.gov/reporter/3dseries/2018/2018_08583.htm

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