APPELLATE DIVISION

Plea Cases

People v Johnson, 12/21/18 – ***ALFORD* PLEA / VACATED**
The defendant appealed from a judgment convicting him of 2nd degree assault and 4th degree grand larceny. In the interest of justice, the **Fourth Department** held that County Court erred in accepting the defendant's *Alford* plea, where the record lacked strong evidence that he acted with the intent to deprive the owner of the subject property. The plea was vacated, and the matter was remitted. The Ontario County Public Defender (Bradley Keem, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_08802.htm

People v Clause, 12/21/18 – **PROBATION REVOCATION / VACATED**
The defendant appealed from a judgment of Niagara County Supreme Court which revoked the sentence of probation imposed following her plea of guilty of 1st degree vehicular manslaughter and other crimes. The Fourth Department vacated the revocation and continued probation with additional conditions. At the time of the crime, the defendant was 18 and had no other criminal history. She completed substance abuse counseling and complied with reporting requirements. A treating psychologist opined that incarceration would impede her progress toward a sober, productive lifestyle; and the probation officer recommended against incarceration. Further, the defendant was employed full-time, intended to re-enroll in college classes, and committed no crimes after the underlying conviction. Erin McCampbell represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_08815.htm

People v Holz, 12/21/18 – **DISSENT / SUPPRESSION**
The defendant appealed from a Monroe County Supreme Court judgment convicting him, upon his plea of guilty, of 2nd degree burglary. The Fourth Department affirmed. The P.J. dissented. The case turned on the interpretation of CPL 710.70 (2), which states: "An order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty." In full satisfaction of a two-count indictment, the defendant pleaded guilty to count one, alleging that he committed a burglary. Count two alleged a second burglary at the same location two days later. The trial court denied suppression of physical evidence relevant to that count. In the view of the dissenter, the suppression issue was reviewable upon the instant appeal. For support, the dissent cited several Third Department cases rejecting a restrictive interpretation of the above-cited statute.
http://nycourts.gov/reporter/3dseries/2018/2018_08763.htm

Family Court

Alivia F. (John F.), 12/19/18 – **RIGHT TO COUNSEL / REVERSED**
The father appealed from an order of Suffolk County Family Court finding that he neglected the subject children and releasing them to the custody of the non-respondent mother. The **Second Department** reversed. A respondent in an Article 10 proceeding has a right to counsel. He may waive that right, provided that he makes a knowing, voluntary, and intelligent waiver. The trial court must conduct a searching inquiry. Family Court failed to: (1) detail dangers and disadvantages of self-representation; (2) adequately apprise the father of the importance of having an attorney in a neglect proceeding, particularly where there was a related criminal matter; (3) adequately explore factors bearing on a competent waiver; and (4) ensure that he acknowledged his understanding of the perils of self-representation. Francine Moss represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_08649.htm

Matter of King v King, 12/10/18 – **DEFAULT ORDER / VACATED**
The wife appealed from an order of Warren County Family Court which denied her motion to vacate a default order of protection. The **Third Department** reversed. To vacate a default judgment, the movant is generally required to demonstrate a reasonable excuse for the failure to appear and a meritorious defense. No such showing is required where fundamental due process rights have been denied. In the instant case, the wife was not given notice that matters raised by Family Court sua sponte would be addressed at the hearing. Jeffrey McMorris represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_08724.htm

Kristie GG. v Sean GG., 12/20/18 – **HEARSAY / NOT FOR ARTICLE 8**
The father appealed from orders of Otsego County Family Court in a family offense proceeding. The **Third Department** reversed. Family Court erred in admitting hearsay testimony of the children in the fact-finding portion of the Article 8 proceeding. Family Ct Act § 1046 (a) (vi) applies only in hearings under Family Ct Act articles 10 and 10-A and in Article 6 proceedings involving abuse or neglect. Without the hearsay, there was an insufficient basis to find that the father committed a family offense. Dennis Laughlin represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_08718.htm

Happy Holidays!

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