

# Decisions of Interest

JANUARY 29, 2024

## CRIMINAL

### THIRD DEPARTMENT

***People v Hafer*** | January 25, 2024

CONDITIONAL PLEA | IMPERMISSIBLE | REMITTED

The appellant appealed from a Washington County Court judgment convicting him of attempted 2<sup>nd</sup> degree kidnapping based on his guilty plea. The Third Department reversed and remitted for County Court to give the appellant a chance to withdraw his plea. After County Court precluded the appellant from proffering as a defense his ignorance of the age of the complainants and their inability to consent, he entered an *Alford* plea with the understanding that he could challenge the preclusion ruling on appeal. However, conditional pleas like this are generally not permitted in NY and the preclusion decision is not reviewable. Because the appellant did not receive the full benefit of his bargain, he was entitled to a chance to withdraw the plea. Craig Meyerson represented the appellant.

[People v Hafer \(2024 NY Slip Op 00341\)](#)

***People v Moore*** | January 25, 2024

SENTENCE MODIFIED | MUST RUN CONCURRENTLY

The appellant appealed from a Schenectady County Court judgment convicting him of 2<sup>nd</sup> degree murder, 2<sup>nd</sup> degree conspiracy, and 2<sup>nd</sup> degree CPW (2 counts) after a jury trial, and from an order of that court summarily denying his CPL 440.10 motion. The Third Department affirmed the conviction but modified the sentence. As the People conceded, the sentences for the CPW convictions could not run consecutively to the sentences for the murder and conspiracy convictions. Paul Connolly represented the appellant.

[People v Moore \(2024 NY Slip Op 00337\)](#)

### SECOND DEPARTMENT

***People v Nagle*** | January 24, 2024

COMPLAINANT'S MENTAL HEALTH | RIGHT TO CROSS-EXAMINATION

The appellant appealed from an Orange County Court judgment convicting him of 1<sup>st</sup> degree sexual abuse, forcible touching, and 2<sup>nd</sup> degree criminal trespass. The Second Department reversed and remitted for a new trial. County Court erred by denying the appellant access to the complainant's mental health records and precluding defense counsel from cross-examining her about her mental health. Without the complainant's

testimony, the evidence of the appellant's guilt was not overwhelming. Mary Zugibe Raleigh represented the appellant.

[People v Nagle \(2024 NY Slip Op 00329\)](#)

***People v Anthony N.*** | January 24, 2024

CPL 330.20 (6) | MANDATORY HEARING | REVERSED

The appellant appealed from a Queens County Supreme Court order committing him to a secure psychiatric facility for six months based on its summary finding that he had a dangerous mental disorder after he pleaded not responsible by reason of mental disease or defect. The Second Department reversed and remitted. Although the commitment order had expired, the appeal was not moot; a finding of a dangerous mental disorder has lasting impacts. It was reversible error to issue the commitment order without an initial, mandatory CPL 330.20 (6) hearing. Mental Hygiene Legal Services (Michael D. Neville, Felicia B. Rosen, and Dennis B. Feld, of counsel) represented the appellant.

[People v Anthony N. \(2024 NY Slip Op 00328\)](#)

***People v Gomez*** | January 24, 2024

EXCESSIVE SENTENCE | MODIFIED

The appellant appealed from a Suffolk County Court judgment convicting him of 2<sup>nd</sup> degree robbery (seven counts) and sentencing him to an aggregate 25 years with 9 years of PRS. The Second Department modified by running all sentences concurrently, resulting in an aggregate 15 years with 5 years of PRS, and otherwise affirmed. Sabato Caponi represented the appellant.

[People v Gomez \(2024 NY Slip Op 00327\)](#)

## APPELLATE TERM

***People v Cook*** | 2023 WL 9380818

RIGHT TO COUNSEL | INEFFECTIVE WAIVER | REVERSED

The appellant appealed from a Town of Southold Justice Court judgment convicting her of violating certain provisions of the Town Code. The Appellate Term, Second Department reversed and remitted. The appellant's purported waiver of her right to counsel was ineffective. When the court asked the appellant if she had "considered engaging counsel," she responded that she did not "have the funds for counsel." She never explicitly stated that she wanted to proceed pro se, and the court did not alert her to the dangers of self-representation. Nor did it inquire about relevant factors bearing on the voluntariness of her waiver, like age, education, and experience with the judicial system. Additionally, the court did not provide the appellant with an appropriate accommodation for her disability. Her diagnoses prevented her from speaking both loudly and clearly; the provision of a microphone was inadequate. Thomas E. Scott represented the appellant.

[People v Cook \(2023 NY Slip Op 23420\)](#)

# TRIAL COURTS

## ***People v Lopez*** | 2024 WL 237758

HUNTLEY | ROADSIDE DETENTION | STATEMENTS SUPPRESSED

Lopez sought suppression of statements relating to DWI charges filed against him. Queens County Criminal Court partially granted the motion. Lopez was stopped for driving the wrong way down a one-way street without his headlights on. There was an open container of alcohol in the center console and he displayed clear indicia of intoxication. After asking some general questions, an officer told Lopez, “I can smell the alcohol from over here,” and told another officer arriving on scene that Lopez was impaired by alcohol. These comments transformed the encounter from an ordinary roadside detention to *Miranda* custody. Any questions asked after that point were likely to elicit an incriminating response and, in the absence of *Miranda* warnings, must be suppressed. The Legal Aid Society of NYC (Edward Franco-Lopez, of counsel) represented Lopez.

[People v Lopez \(2024 NY Slip Op 50056\[U\]\)](#)

## ***People v Rowe*** | 2024 WL 237747

FACIAL INSUFFICIENCY | SOR ILLUSORY | DISMISSED

Rowe moved to dismiss the charge of 3<sup>rd</sup> degree criminal possession of a forged instrument on speedy trial grounds. Queens County Criminal Court granted the motion. The allegations in the information, if true, did not establish Rowe’s knowledge that the instrument—a temporary Georgia license plate—was forged. The differences between the plate in this case and a genuine Georgia license plate would not be readily apparent to a layperson, so guilty knowledge could not be inferred without additional facts. The Legal Aid Society of NYC (Laura Eraso, of counsel) represented Rowe.

[People v Rowe \(2024 NY Slip Op 24013\)](#)

## ***People v Sanchez*** | 2024 WL 237750

GRAND JURY MINUTES | COC/SOR INVALID | DISMISSED

Sanchez moved to dismiss felony drug charges on speedy trial grounds based on the People’s failure to turn over the grand jury minutes before filing their COC/SOR. Kings County Supreme Court granted the motion. The People’s statement that they requested the minutes was insufficient to establish due diligence. They neither proffered a reason for the delay nor demonstrated that they engaged in any effort to expedite production of the minutes. They did not request additional time for disclosure or submit facts to support a finding of special circumstances. The People’s failure to establish the requisite good faith and due diligence in securing the grand jury minutes rendered their COC/SOR invalid and illusory. Brooklyn Defender Services (Sophia Rivero, of counsel) represented Sanchez.

[People v Sanchez \(2024 NY Slip Op 50059\[U\]\)](#)

## FAMILY

### SECOND DEPARTMENT

#### ***Matter of Kim v Becker*** | January 24, 2024

CUSTODY | WEEKEND ACCESS | MODIFIED

The mother appealed from a Suffolk County Family Court order awarding sole legal and residential custody to the father and parental access to her on Monday mornings through Wednesday evenings and one weekend per month. The Second Department modified by increasing the mother's weekend parenting time. One weekend per month with the school-aged child effectively deprived the mother of significant quality time. Both parents were fit; there was no evidence that weekend overnights with the mother would be harmful to the child or that she had forfeited her parental access. Gassman Baiamonte Gruner (Stephen Gassman and Karen Bodner, of counsel) represented the mother.

[Matter of Kim v Becker \(2024 NY Slip Op 00310\)](#)

#### ***Matter of Martynchuk v Vasylovska*** | January 24, 2024

CHANGE IN CIRCUMSTANCES | REVERSED & REMITTED

The father appealed from a Kings County Family Court order dismissing his modification petition after a change in circumstances hearing. The Second Department reversed and remitted for an expedited hearing. When the child was four years old, the parents consented to an order granting the mother sole physical and legal custody and the father four hours of parental access per week. Less than a year later, the father sought to increase his parenting time. The limited parenting scheduled had allowed him to develop a meaningful relationship with the child, which he wanted to strengthen with more parenting time. During the appeal, the AFC reported that the now eight-year-old child wanted to spend more time with the father. Given the four-year lapse in time—including the two-year period between the father's filing and the hearing—the child's best interests may have changed, requiring a new hearing. Steven P. Forbes represented the father.

[Matter of Martynchuk v Vasylovska \(2024 NY Slip Op 00313\)](#)

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