Indigent Legal Services

Decisions of Interest

JANUARY 31, 2022

CRIMINAL

FOURTH DEPARTMENT

People v Ringrose | Jan. 28, 2022

PLEA VACATED | LOST BENEFIT

The defendant appealed from a Monroe County Court judgment, convicting him of 2nd degree rape (two counts). The Fourth Department reversed and vacated the plea. When the defendant pleaded guilty in Monroe County, the court informed him that the aggregate 16-year term would run concurrently with a 14-to-24-year term already imposed in Ontario County, so the plea would result in little or no more prison time. However, upon appeal, the Ontario County sentence was reduced to four years Thus, the defendant lost the benefit of the Monroe County deal. Brian Shiffrin represented the appellant.
People v Ringrose (2022 NY Slip Op 00569) (nycourts.gov)

People v Adams | Jan. 28, 2022

BREATH TEST |NON-OFFENSE

The defendant appealed from a judgment of Onondaga County Supreme Court, convicting him of DWI as a class E felony, refusal to submit to a breath test (VTL § 1194 [1] [b]), and another offense. The Fourth Department modified. A conviction for a nonexistent offense was a nonwaivable error that required no preservation, was not forfeited by a guilty plea, and could be corrected sua sponte by the reviewing court, as was done here. The above-cited purported traffic infraction was not a cognizable offense for which a person could be charged in criminal court. Therefore, the defendant's guilty plea to refusing a breath test was vacated, and the count was dismissed.
People v Adams (2022 NY Slip Op 00562) (nycourts.gov)

People v Harris | Jan. 28, 2022

BREATH TEST |NON-OFFENSE

The defendant appealed from a Monroe County Court judgment, convicting him of DWI as a class E felony, refusal to submit to a breath test, and other offenses. The Fourth Department modified. Since the defendant was convicted by the jury of a nonexistent offense, the breath test count was dismissed.
People v Harris (2022 NY Slip Op 00568) (nycourts.gov)

People v Farrell | Jan. 28, 2022

OP | VICTIM OR WITNESS

The defendant appealed from a judgment of Erie County Supreme Court, convicting him of 1st degree criminal contempt, and entering orders of protection against him. The Fourth Department modified, by amending one OP to delete stay-away and no-contact directives as to the defendant's son. In a criminal action, such an order may be issued only in favor of a victim or witness. The son was neither. His protection could be addressed in Family Court. Legal Aid Bureau of Buffalo (Nicholas DiFonzo) represented the appellant.
People v Farrell (2022 NY Slip Op 00608) (nycourts.gov)

People v Wilson | Jan. 28, 2022

ENHANCED SENTENCE | NOT FINE

The defendant appealed from a Yates County Court judgment, convicting him of 1st degree reckless endangerment. The Fourth Department modified in the interest of justice. The plea court improperly enhanced the defendant's sentence by imposing a fine that was not part of the negotiated agreement and by not giving him the opportunity to withdraw his plea. The remedy was to vacate the $1,000 fine to conform the sentence to the promise. Ryan Muldoon represented the appellant.
People v Wilson (2022 NY Slip Op 00593) (nycourts.gov)

M/O State of NY v Scott M. | Jan. 28, 2022

DANGEROUSNESS | NOT PROVEN

The respondent appealed from an order of the Wyoming County Supreme Court in a MHL Article 10 proceeding, which revoked SIST, adjudged him a dangerous sex offender requiring confinement to a secure treatment facility, and so confined him. The Fourth Department reversed and dismissed. The petitioner did not prove, by clear and convincing evidence, that the respondent was "presently unable to control his sexual conduct." The record showed only the possibility that he had touched an unknown adult female. The petitioner's expert failed to address the respondent's successful integration into the community while under strict supervision. Todd Monahan represented the appellant.
Matter of State of New York v Scott M. (2022 NY Slip Op 00595) (nycourts.gov)

People v Stevens | Jan. 28, 2022

SORA | LEVEL REDUCED

The defendant appealed from a County Court order classifying him a level-two sex offender. The Fourth Department modified, finding that the defendant was a level-one offender. The SORA adjudication stemmed from the defendant's 1996 Virginia conviction for the statutory rape of a 14-year-old when he was age 18—an isolated incident. The defendant completed sex offender and substance abuse treatment and was not convicted of another sex crime. His presumptive classification overestimated his dangerousness and risk of recidivism. The Wayne County Public Defender (Bridget Field, of counsel) represented the appellant.
People v Stevens (2022 NY Slip Op 00581) (nycourts.gov)

People v Talluto | Jan. 28, 2022

SORA | ABSURD RESULT

The defendant appealed from an Oswego County Court order, designating him a "sexually violent offender." The Fourth Department affirmed, reluctantly. Under the plain meaning of Correction Law § 168-a (7) (b), a "sexually violent offense" encompassed a conviction of a felony in another jurisdiction for which the offender was required to register in that jurisdiction. The defendant's Michigan conviction met that test. Two justices dissented. The above-cited errant rest was likely the result of a drafting error, and its literal application led to an absurd result. There was no proof that the defendant's out-of-state sexual offense involved violence or use of force, and his crime would not be a sexually violent offense if committed here. The law should be interpreted so that the designation as a sexually violent offender was reserved for those who fit the valid part of the definition—covering a conviction in another jurisdiction that included all essential elements of a NY sexually violent offense.

People v Talluto (2022 NY Slip Op 00575) (nycourts.gov)

People v Koeberle | Jan. 28, 2022

NO RULING | SO DECISION RESERVED

The defendant appealed from a County Court judgment, convicting him of 1st degree rape and other crimes. The Fourth Department held the case and remitted. At the close of the People's proof, when the defendant moved for a trial order of dismissal, the trial court reserved decision. The defendant renewed his motion after presenting defense proof and after the verdict, but County Court never ruled. Such inaction could not be deemed a denial of the motion. The Ontario County Public Defender (Bradley Keem, of counsel) represented the appellant.

People v Koeberle (2022 NY Slip Op 00532) (nycourts.gov)

People v Fudge | Jan. 28, 2022

SUBSTITUTED DECISION | AFFIRMANCE

The defendant appealed from a judgment convicting him of 4th degree CPCS. On its own motion, the Fourth Dept. substituted this decision for a prior opinion. Suppression of proof from a vehicle search was aptly denied. A trained officer's detection of the scent of street-level PCP constituted probable cause. Credibility determinations deserved deference.

People v Fudge (2022 NY Slip Op 00560) (nycourts.gov)

FAMILY

FOURTH DEPARTMENT

Cooley v Roloson | Jan. 28, 2022

CUSTODY | PETITION REINSTATED

The father appealed from an order of Seneca County Family Court, which granted the mother's motion to dismiss his custody modification petition at the close of his proof. The Fourth Department reversed. The father testified that he and the mother could no longer agree on visitation time and that extreme acrimony had developed between them. Such change of circumstances warranted an inquiry into best interests. The petition was reinstated and the matter remitted. Charles Greenberg represented the appellant.
Matter of Cooley v Roloson (2022 NY Slip Op 00534) (nycourts.gov)

Matter of Matthew M. | Jan. 28, 2022

ARTICLE 10 | ARGUMENTS TOO LATE

The petitioner agency appealed from an order of Erie County Family Court, which denied motions seeking to direct the respondent mother to submit to a parenting assessment and mental health evaluation, pursuant to Family Ct Act § 251. At oral argument on the motions, Family Court indicated that it would instead order a risk assessment by a mental health professional. At that time, or in a submission before the written decision was rendered, the agency could have advanced arguments in support of the requested relief. Having failed to do so, the petitioner could not properly raise its contentions for the first time on appeal.
Matter of Matthew M. (Wakissa T.) (2022 NY Slip Op 00605) (nycourts.gov)

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