Indigent Legal Services

Decisions of Interest

JANUARY 9, 2023

CRIMINAL

FIRST DEPARTMENT

People v Conyers | Jan. 5, 2023

NOT REGISTERABLE | MODIFIED

The defendant appealed from a judgment of New York County Supreme Court, which convicted him, after a nonjury trial, of attempted 2nd degree burglary as a sexually motivated felony, 3rd degree burglary as a sexually motivated felony, and another crime, and certified him as a sex offender. The First Department modified in the interest of justice by vacating the sex offender certification. The convictions were not registerable sex offenses. *See People v Simmons* (203 AD3d 106). The Center for Appellate Litigation (Bryan Furst, of counsel) represented the appellant.

People v Conyers (2023 NY Slip Op 00042)

TRIAL COURTS

G.W. v C.N. | 2022 WL 17972654

ERPO | UNCONSTITUTIONAL

The respondent moved to quash a pending Temporary Extreme Risk Protection Order issued by Monroe County Supreme Court and to prevent issuance of an ERPO. Supreme Court vacated the TERPO, dismissed the petition, and declared CPLR Article 63-a unconstitutional because it allowed the infringement of a fundamental constitutional right without adequate due process protections. Article 63-a permitted the entry of a TERPO and ERPO against an individual who was "likely to engage in conduct that would result in serious harm to himself, herself, or others." Such an order impacted the right to bear arms. Mental Health Law used the same definition of "likelihood to result in serious harm" as the ERPO statute to justify involuntary hospitalization of a patient for treatment. However, the MHL required the opinion of a physician that the individual presented a serious risk of harm, whereas Article 63-a allowed a court to deprive an individual of Second Amendment rights based on a lay opinion of risk. Daniel Strollo represented respondent.

G.W. v C.N. (2022 NY Slip Op 22392)

People v Critten | 2022 NY Slip Op 51315(U)

COC INVALID | 30.30 DISMISSAL

The defendant moved for an order deeming the People's COC invalid and dismissing the information pursuant to CPL 30.30. New York County Criminal Court granted the motion. Underlying documents relating to substantiated allegations of police misconduct were discoverable under CPL 245.20(1)(k). The People's failure to disclose them invalidated their COC.

They made no effort to obtain the documents, even after defense counsel informed them of the omission. The People did not apply for a protective order or claim "special circumstances." The Legal Aid Society of NYC (Khushboo Sapru, of counsel) represented the defendant.
People v Critten (2022 NY Slip Op 51315[U])

People v Marling | 2022 WL 18046525

COC INVALID | 30.30 DISMISSAL

The defendant moved pursuant to CPL 30.30 to dismiss an appearance ticket charging him with the misdemeanor offense of driving while impaired by drugs. Justice Court in the Town of Ogden granted the motion. The People's COC was rendered invalid when they later filed a notice stating that they were not ready for trial because the arresting officer was not available for unstated reasons. Information subsequently provided by the People did not sufficiently establish that the officer could not testify because of thumb surgery more than one month prior to the original trial date. The Monroe County Public Defender's Office (Andrew Kyg, of counsel) represented the defendant.
People v Marling (2022 NY Slip Op 22397)

People v N.F. | 2022 NY Slip Op 51318(U)

SORA | DOWNWARD DEPARTURE

Richmond County Supreme Court designated the defendant a presumptive level-two sex offender but granted his request for a downward departure to risk level one. In this internet child pornography case, several mitigating factors tended to establish a lower likelihood of re-offense or danger to the community but were not considered by the Guidelines. First, the defendant received points pursuant to risk factor 8 for being under age 20 when he committed his first sex crime. But not recognized was the fact that he was a child sexual abuse victim himself. Second, the RAI did not account for measures taken to preclude the defendant from accessing the internet. Third, he willingly and successfully engaged in extensive treatment for sex offenders and for substance abuse, and he took responsibility for his actions. Finally, rehabilitation based on the totality of the record was a mitigating factor not reflected in the Guidelines or the RAI. James Maynard represented the defendant.
People v N.F. (2022 NY Slip Op 51318(U))

FAMILY

THIRD DEPARTMENT

Linda UU. v Dana VV. | Jan. 5, 2023

FAMILY OFFENSE | DISSENT

The grandmother appealed from an order of Schenectady County Family Court which granted the mother's custody modification petition and dismissed the grandmother's custody modification and family offense petitions. The Third Department affirmed. An order issued after the challenged custody order did not render the grandmother's appeal moot. The later order modified the grandmother's visitation but did not impact her right to pursue the custody appeal. However, the mother's behaviors in the aggregate did not rise to the level of extraordinary circumstances. Regarding the family offense, an incident in which the mother cursed at the grandmother outside a Head Start building during pick-up time was a personal altercation, not disorderly conduct. Justice Lynch dissented as to the family offense dismissal. A Head Start employee saw the

argument between the mother and grandmother; heard the mother; and observed other adults and children react to the mother's yelling and swearing. She recklessly created a risk that public safety, peace or order would be disrupted.
Linda UU. v Dana VV. (2023 NY Slip Op 00013)

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