

Decisions of Interest

OCTOBER 16, 2023

CRIMINAL

SECOND DEPARTMENT

People v Heft | October 11, 2023

DVSJA | SENTENCE REDUCED

The defendant appealed from an Orange County Court judgment convicting her of 2nd degree CPW and sentencing her to two years of incarceration and five years of PRS, based on her guilty plea. The Second Department modified by reducing her sentence to one year plus five years of PRS. While County Court had granted the defendant's application for an alternative sentence under the DVSJA, the reviewing court further reduced her sentence in the interest of justice. Mark Diamond represented the appellant.

[People v Heft \(2023 NY Slip Op 05148\)](#)

People v Perez | October 11, 2023

SORA | RIGHT TO BE PRESENT | REVERSED

The defendant appealed from a Kings County Supreme Court order designating him a level two sex offender. The Second Department reversed and remitted. The defendant was not present at the SORA hearing, and the record was silent as to whether he had received notice or declined to appear. Because the record failed to establish that the defendant voluntarily waived his right to be present, a new risk level assessment hearing was required. The Legal Aid Society of NYC (Rebecca R. Martin, of counsel) represented the appellant.

[People v Perez \(2023 NY Slip Op 05161\)](#)

People v Isaacs | October 11, 2023

SORA | ONE SCORE PER FACTOR | REVERSED

The defendant appealed from a Nassau County Supreme Court order designating him a level two sexually violent offender. The Second Department reversed and designated him a level one sexually violent offender. The defendant was improperly assessed a total of 45 points under risk factor one. Supreme Court erred in assessing 15 points for inflicting physical injury and, under the same risk factor, an additional 30 points for being armed with a dangerous instrument. Only the points associated with the most serious wrongdoing within a risk factor may be assessed. Stacy E. Albin-Leone represented the appellant.

[People v Isaacs \(2023 NY Slip Op 05159\)](#)

THIRD DEPARTMENT

People v Knapp | October 12, 2023

COERCION | LEGALLY INSUFFICIENT | MODIFIED

The defendant appealed from a Fulton County Court judgment convicting him or 1st degree sexual abuse, 1st degree coercion, and endangering the welfare of a child. The Third Department reversed the coercion conviction as legally insufficient and otherwise affirmed. The indictment alleged that the defendant coerced the complainant into providing explicit photographs of herself. But the trial evidence showed that he coerced her into exposing herself through a hole in her bedroom wall. The People could not try to prove an alternative theory at trial. Proof that varies from the indictment may compromise the notice to the accused and the grand jury's exclusive power to determine the charges. O'Connell & Aronowitz (Stephen R. Coffey, of counsel) represented the appellant.

[People v Knapp \(2023 NY Slip Op 05168\)](#)

TRIAL COURTS

People v Champion | 2023 WL 6781423

CPL 30.30 | DISCOVERY | DISMISSED

The defendant moved to dismiss the charges against him on speedy trial grounds based on the People's failure to disclose body worn camera (BWC) audit logs. New York County Criminal Court granted the motion. The People had disclosed "BWC metadata," a screenshot summary of officers' entries. But the summaries did not provide the author and date/time of each entry, or whether there had been any modifications or deletions. The full audit logs were in the People's constructive possession—the NYPD was required to provide them to the People, and the fact that the NYPD uses a private company to maintain evidence did not absolve the People of their discovery obligations. The Legal Aid Society of NYC (Tyler Ross, Shanti Narra, and Seth Gross, of counsel) represented the defendant.

[People v Champion \(2023 NY Slip Op 23312\)](#)

People v Ashraf | 2023 WL 6614724

CPL 30.30 | DISCOVERY | DISMISSED

The defendant moved to dismiss drunk driving charges against him on speedy trial grounds based on the People's failure to comply with their discovery obligations. Richmond County Criminal Court granted the motion. The People failed to disclose any 911 or radio run recordings, as well as the existence and identity of a tow truck driver who called 911. The People could not unilaterally conclude that the tow truck driver's identity and contact information were not relevant; whether they intend to call a potential witness is irrelevant to their discovery obligations. The People did not exercise due diligence in attempting to ascertain the existence of these discoverable materials and information. The Legal Aid Society of NYC (Joanna Cowen, of counsel) represented the defendant.

[People v Ashraf \(2023 NY Slip Op 51068\[U\]\)](#)

People v Jacobs | 2023 WL 6629867

DUNAWAY/WADE HEARING | IDENTIFICATION | PRECLUDED

The defendant moved to preclude certain identification evidence based on the People's insufficient CPL 710.30 notice. Queens County Supreme Court granted the motion. Although the defendant was identified by the complainant in a photo array, an NYPD detective also showed the complainant's uncle a single still image of the defendant and asked him to confirm the defendant's identity. The uncle later identified the defendant using the same single image during his grand jury testimony. The People never served notice of the identification by the complainant's uncle, which could not have been confirmatory as he had only interacted with the defendant once for a few minutes. Justyna Mielczarek represented the defendant.

[People v Jacobs \(2023 NY Slip Op 51075\[U\]\)](#)

Matter of Johnson v DOCCS and Board of Parole | October 12, 2023

NO TRUE BILL | NO NON-TECHNICAL VIOLATION | REVERSED

The defendant appealed from a DOCCS determination revoking his PRS based on a non-technical violation that would have constituted a felony if charged in a criminal court. Rochester City Court reversed. DOCCS alleged that the defendant violated the terms of his PRS by possessing a loaded firearm outside of his home, which resulted in him being charged with several counts of CPW. Prior to commencement of the parole revocation hearing, the criminal charges were dismissed by a grand jury. The findings of a grand jury constitute findings of a part of a superior court. Thus, the alleged conduct underlying the criminal charges could not serve as a basis to sustain a non-technical parole violation. The Monroe County Public Defender (David Juergens, of counsel) represented the defendant.

FAMILY

SECOND DEPARTMENT

Matter of Abel J.R. (Estilia R.) | October 11, 2023

TPR | AFFIRMED | DISSENT

The mother appealed from a Westchester Family Court order terminating her parental rights based on abandonment. The Second Department affirmed, with one justice dissenting. In the dissent's view, Family Court erred in precluding the mother from presenting or eliciting on cross-examination evidence of events that occurred prior to the statutory abandonment period. By doing so, the court improperly prevented her from showing that the petitioner had previously discouraged her from visiting and communicating with the child to such a degree that she felt any further attempts would have been futile. Evidence of the agency's conduct outside of the abandonment period may be relevant to assessing parental intent.

[Matter of Abel J.R. \(Estilia R.\) \(2023 NY Slip Op 05139\)](#)

CIVIL

FIRST DEPARTMENT

Matter of NYP Holdings, Inc. v NYC Police Dept. | October 12, 2023

FOIL | ARTICLE 78 | ATTORNEYS' FEES GRANTED

The parties cross-appealed from a New York County Supreme Court judgment that granted an Article 78 petition and denied the petitioner's request for attorneys' fees. The First Department modified by granting the petitioner's request for attorneys' fees and otherwise affirmed. The petitioners sought disclosure of substantiated and unsubstantiated disciplinary records of certain officers. At issue was whether the repeal of Civil Rights Law § 50-a applied retroactively to records created prior to June 12, 2020. The reviewing court held that it did. The petitioner substantially prevailed in the proceeding and the respondents had no reasonable basis for denying access to most of the records for more than one year. The petitioner was therefore entitled to attorneys' fees and costs. Davis Wright Tremaine LLP (Jeremy A. Chase, of counsel) represented the petitioner.

[Matter of NYP Holdings, Inc. v NYC Police Dept. \(2023 NY Slip Op 05193\)](#)

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