

Decisions of Interest

OCTOBER 31, 2022

FAMILY

COURT OF APPEALS

Matter of D.L. v S.B. | Oct. 25, 2022

ICPC | OUT-OF-STATE NONCUSTODIAL PARENTS

The father appealed from a Second Department order affirming the summary dismissal of his custody petition by Suffolk County Family Court. He sought sole custody of the subject child, who had been removed from the mother's care in a neglect proceeding. The father lived in North Carolina and the mother in New York. Resolving a split among the Departments, the Court of Appeals held that the Interstate Compact on the Placement of Children did not apply to out-of-state noncustodial parents seeking custody of their children who were in the custody of New York social services agencies. The plain language of the statute indicated that the ICPC was limited to cases of placement for foster care or adoption—substitutes for parental care not implicated when custody was granted to a noncustodial parent. The matter was moot since the father had surrendered his parental rights during the pendency of the appeal, but the issue was reviewed pursuant to an exception to the mootness doctrine. *See City of New York v Maul*, 14 NY3d 499 (substantial, novel question was likely to recur and evade review). Acting Chief Judge Cannataro wrote for a unanimous court. Christine Gottlieb represented the appellant.

[Matter of D.L. v S.B. \(2022 NY Slip Op 05940\)](#)

CRIMINAL

FIRST DEPARTMENT

People v Heyworth | Oct. 27, 2022

MODE OF PROCEEDINGS | JURY NOTE

The defendant appealed from a judgment of New York County Supreme Court, convicting him of 2nd degree assault. The First Department reversed and ordered a new trial. The trial court's failure to read to the parties the entirety of a note submitted just before the jury reached a verdict deprived counsel of meaningful notice. The note was not shown to counsel, and the court's paraphrase omitted significant aspects, including a request for reinstruction on the count charging 2nd degree assault—the only count of which the defendant was found guilty. The fact that the jury announced that it had reached a verdict

before the note was read did not cure the mode-of-proceedings error. The Center for Appellate Litigation (Abigail Everett, of counsel) represented the appellant.

[People v Heyworth \(2022 NY Slip Op 06072\)](#)

***People v Jones* | Oct. 25, 2022**

CURATIVE INSTRUCTION | PRESERVATION

The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of 2nd degree murder and 2nd degree CPW. The First Department affirmed. An error raised on appeal, regarding a detective's testimony which misrepresented information that led to the defendant's arrest, was cured by County Court's instruction to the jury to disregard the testimony. After such instruction, counsel did not object or request a mistrial. Thus, no issue was presented for review. Further, the record belied the defendant's contention that the testimony was "powerfully incriminating" and could not be overcome by curative instructions.

[People v Jones \(2022 NY Slip Op 05960\)](#)

SECOND DEPARTMENT

***People v Ruiz* | Oct. 26, 2022**

SENTENCE | IMPROPERLY ENHANCED | VACATED

The defendant appealed from a Dutchess County Court judgment, convicting him of 1st degree vehicular manslaughter. The Second Department modified the sentence by vacating a \$2,000 fine that was not part of the negotiated plea agreement. Under the circumstances of the case, imposition of the fine was an improper enhancement of the agreed-upon sentence. The valid waiver of appeal did not prevent consideration of the issue. The Dutchess County Public Defender (Andrew Ellis, of counsel) represented the appellant. [NOTE: cf. *People v Sanchez*, 164 AD3d 1545, 1547 (3d Dept 2018) (even though defendant had not been advised of possible fine, enhancing sentence by imposing \$5,000 fine was not abuse of discretion—given his violent criminal history, untruthfulness during probation interview, and lack of remorse)].

[People v Ruiz \(2022 NY Slip Op 06016\)](#)

***People v Jeffriesel* | Oct. 26, 2022**

SENTENCE | IMPROPER SPECULATION | VACATED

The defendant appealed from a Suffolk County Court judgment, convicting her of six counts of 4th degree criminal possession of stolen property and five counts of 4th degree grand larceny, following a jury trial. The Second Department affirmed the judgment but vacated the sentence. The sentencing court improperly speculated that the defendant had committed additional, similar crimes for which she had not been charged. Her argument about improper testimony by a police detective, which included statements the court had previously found inadmissible, was unpreserved for appellate review since no timely objection was made. It was only after the detective had finished testifying on redirect that defense counsel made a motion for a mistrial, which was properly denied. Richard Herzfeld represented the appellant.

[People v Jeffriesel \(2022 NY Slip Op 06012\)](#)

People v Wright | Oct. 26, 2022

ANDERS | NEW COUNSEL

The defendant appealed from a Suffolk County Court judgment, convicting him of 7th degree CPCS and another crime. Appellate counsel submitted an *Anders* brief. The Second Department assigned new counsel. The brief contained an inadequate statement of facts and did not analyze potential appellate issues or address facts in the record that might support an appeal. Appellate counsel failed to act as an advocate for the appellant and analyze whether there were any nonfrivolous issues that could be raised on appeal. Instead, counsel acted as “a mere advisor to the court.”

[People v Wright \(2022 NY Slip Op 06020\)](#)

THIRD DEPARTMENT

People v Ferretti | Oct. 27, 2022

SCI | DEFECTIVE

The defendant appealed from a Franklin County Court judgment, convicting him of failure to report a change in internet status. The Third Department reversed. The defendant’s assertion that the SCI was jurisdictionally defective was not precluded by his guilty plea or waiver of the right to appeal and was not subject to the preservation requirement. Even if generalized language in the SCI, coupled with a statutory reference, otherwise would be sufficient to allege material elements of the crime, such reference was negated by inclusion of conduct—establishing a Facebook account—that did not constitute the crime charged. The defendant had no duty to report to DCJS the mere fact that he had set up such an account. Noreen McCarthy represented the appellant.

[People v Ferretti \(2022 NY Slip Op 06030\)](#)

People ex rel. Harris v Howard | Oct. 27, 2022

HABEAS | COVID-19

The petitioner appealed from a judgment of Sullivan County Supreme Court, which dismissed his CPLR Article 70 petition without a hearing. The Third Department affirmed. The petitioner failed to meet his burden of demonstrating that his detention at a state prison was illegal or unconstitutional. He submitted affidavits alleging that, in failing to implement Covid-19 protocols, prison officials showed a deliberate indifference to the substantial risk of serious harm posed by his medical conditions. But the opposition papers were sufficient to controvert such claim.

[People ex rel. Harris v Howard \(2022 NY Slip Op 06046\)](#)