Indigent Legal Services

Decisions of Interest

NOVEMBER 13, 2023

CRIMINAL

FIRST DEPARTMENT

People v Robinson | November 9, 2023

MIRANDA NOT REQUIRED | NO CUSTODY | HARMLESS ERROR

The appellant appealed from a New York County Supreme Court judgment convicting him of 3rd degree robbery after a nonjury trial. The First Department affirmed. Although police handcuffed the appellant and another individual after breaking up a physical altercation between them, the appellant was not in custody and police were not required to read him *Miranda* warnings before asking "What happened?" A reasonable innocent person in that situation would have believed that the police were still gathering information about the fight. Further, any error was harmless in light of the overwhelming proof of guilt.
People v Robinson (2023 NY Slip Op 05669)

SECOND DEPARTMENT

People v H. | November 8, 2023

YOUTHFUL OFFENDER | WARRANTED | CONVICTION REPLACED

The appellant appealed from a Kings County Supreme Court resentence based on his conviction of 2nd degree CPW which denied him youthful offender treatment. The Second Department reversed in the interest of justice, vacated the conviction, replaced it with a YO finding, and remitted for further proceedings. The case had previously been remitted by the Court of Appeals for resentencing (37 NY3d 1076) based on Supreme Court's failure to make an on-the-record determination regarding whether he was YO eligible. Here, the People conceded that, under the facts of this case, the defendant should have been afforded YO treatment. Appellate Advocates (Hannah Kon, of counsel) represented the appellant.
People v H. (2023 NY Slip Op 05620)

People v Mensah | November 8, 2023

PROBATION CONDITION | NOT REASONABLY RELATED | MODIFIED

The appellant appealed from a Kings County Supreme Court judgment convicting him of 2nd degree assault based on his guilty plea. The Second Department modified by deleting a probation condition that required the appellant to consent to a search of his person, vehicle, or home by a probation officer and/or the officer's agent, and consent to the

seizure of any illegal drugs, paraphernalia, or other contraband found during the search. This condition was not reasonably related to the appellant's rehabilitation—he was a first-time offender, was not armed with a weapon during the offense, and was not in need of substance abuse treatment. Appellate Advocates (Mark W. Vorkink, of counsel) represented the appellant.
People v Mensah (2023 NY Slip Op 05622)

People v Bautista | November 8, 2023

POOR CONFINEMENT CONDITIONS | PLEA NOT COERCED

The appellant appealed from a Westchester County Court judgment convicting him of 4th degree grand larceny and 3rd degree burglary based on his guilty plea. The Second Department affirmed. The appellant's claim that his plea was coerced by the poor conditions of his pretrial confinement was not preserved for review. His statements on the record about the poor conditions were made as part of a list of challenges he faced—not as factors that influenced his decision to plead guilty. Additionally, the court granted his subsequent request for an adjournment to think about the plea offer, and there was no further indication that his decision to plead guilty was affected by the conditions of confinement.
People v Bautista (2023 NY Slip Op 05617)

THIRD DEPARTMENT

People v Riley | November 9, 2023

DVSJA | ABUSE NOT SIGNIFICANT CONTRIBUTING FACTOR | AFFIRMED

The appellant appealed from a Washington County Court order denying her CPL 440.20 motion. The Third Department affirmed. The appellant claimed that her trial counsel's failure to seek a lesser sentence under the DVSJA (Penal Law § 60.12) constituted ineffective assistance of counsel. However, trial counsel was not expected to make a motion that had little to no chance of succeeding. The appellant was convicted of 2nd degree assault after hitting and injuring her then three-year-old son. It was undisputed that she had been subjected to substantial physical abuse by the child's father prior to his incarceration. Even if psychological abuse continued during his incarceration through letters and phone calls, the appellant failed to establish that the abuse was a significant contributing factor to her criminal behavior. This was not an isolated incident, and her actions were apparently motivated by her frustration with the child's behavior.
People v Riley (2023 NY Slip Op 05645)

SECOND CIRCUIT

United States v Lajeunesse | November 1, 2023

NO SENTENCING ALLOCUTION | OVERLY BROAD WOA | REMANDED

The appellant appealed from a NDNY District Court judgment convicting him of possession and receipt of child pornography based upon his guilty plea. The Second Circuit remanded for resentencing and otherwise affirmed. The district court failed to provide the appellant with a chance to address the court in person at sentencing. His

broad appeal waiver of any sentence of “210 months or less” did not bar the appeal. The right to allocution, although not constitutional, is an “absolute right” that is essential to the sentencing process. Without it, the district court lacked access to important information about the appellant’s attitude towards his commission of the crime. Although the appellant had submitted a written letter to the court, in-person communications provide “an infinitely better opportunity to evaluate the sincerity of claims of contrition and remorse.”
United States v Lajeunesse (Docket No 22-178)

TRIAL COURTS

People v Palacios | 2023 WL 7291803

SINGLE INDICTMENT | MISDEMEANOR AND FELONY CHARGES | SIX-MONTH 30.30 TIME

Palacios moved to dismiss misdemeanor charges on speedy trial grounds. New York County Supreme Court denied the motion. The charges against Palacios arose from two separate incidents. Initially, he was charged with misdemeanors relating to the second incident, and he was later charged with a felony relating to the earlier incident. After the misdemeanor 30.30 period had expired, Palacios was indicted in a concurrent presentation for both incidents in single indictment. An initial charge starts the speedy trial clock running, but the charges upon which a defendant is ultimately accused and prosecuted determines the applicable 30.30 period. Here, the criminal action commenced upon Palacios’ arrest following the second incident, but the six-month felony speedy trial period applied to all charges contained in the single indictment.
People v Palacios (2023 NY Slip Op 23347)

FAMILY

FIRST DEPARTMENT

Matter of Lashawn K. v Administration for Children's Servs. | November 9, 2023

STANDING | OPPORTUNITY TO ESTABLISH | DISMISSAL REVERSED

The petitioner appealed from a New York County Family Court order that dismissed her custody/visitation petition with prejudice. The First Department reversed and remanded. Family Court erred when it dismissed the petition for lack of standing without giving the petitioner a chance to show extraordinary circumstances, which is one of several bases for standing. New York Legal Assistance Group (Jacquelin Hacker, of counsel) represented the petitioner.
Matter of Lashawn K. v Administration for Children's Servs. (2023 NY Slip Op 05662)

SECOND DEPARTMENT

Matter of Bristow v Patrice | November 9, 2023

SOLE LEGAL CUSTODY | NOT WARRANTED | MODIFIED

The father appealed from a Dutchess County Family Court order that, after a hearing, denied his request for parenting time not restricted to public locations and awarded the mother sole legal custody. The Second Department modified by removing the provision granting sole legal custody to the mother and otherwise affirmed. The proof did not show that the parties' relationship was so acrimonious that it prevented them from making joint decisions, and the forensic evaluator recommended continued shared decision-making authority. However, the father failed to show that a change in circumstance warranted granting him unrestricted parenting time. Thomas T. Keating represented the father.
Matter of Bristow v Patrice (2023 NY Slip Op 05603)

Matter of Otero v Walker | November 9, 2023

SOLE CUSTODY | DEFAULT | REMITTED

The father appealed from a Suffolk County Family Court order that granted the mother's modification petition seeking sole legal and residential custody of the child based on the father's default and denied the father's attorney's request to schedule an inquest on the mother's petition. The Second Department reversed the denial of an inquest, vacated the award of sole custody to the mother, remitted for an inquest, and otherwise dismissed the father's appeal. Family Court erred by granting the mother's petition without considering any evidence or testimony, despite the father's attorney providing a reasonable excuse for the father's absence. Salvatore C. Adamo represented the father.
Matter of Otero v Walker (2023 NY Slip Op 05607)

CIVIL

SUPREME COURT

Melendez v T.M. | 2023 WL 7291778

ERPO | CONSTITUTIONAL

The respondent moved to dismiss an ERPO application on the grounds that the statute is unconstitutional under the First, Second, Fifth and Sixth Amendments of the US and NY Constitutions. Westchester County Supreme Court denied the motion. The petitioner sought an ERPO after respondent sent a letter to the Governor stating that, after losing his job of 30 years, he had "a different perspective on active shooter scenarios." The respondent's comparison of the ERPO statute to the MHL is inapplicable; the ERPO statute does not require proof of a mental illness that necessitates expert testimony (*see Matter of J.B. v K.S.G.*, 79 Misc 3d 296, 301 [Sup Ct, Cortland County 2023]). The statute otherwise provides due process and does not violate the Second Amendment; its reasonable restrictions have a substantial relationship to public safety. The respondent—

who retained counsel and had no firearms in his possession—lacked standing to raise challenges based on the right against self-incrimination and to the assignment of counsel. Melendez v T.M. (2023 NY Slip Op 51169[U])

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