

Decisions of Interest

DECEMBER 11, 2023

CRIMINAL

SECOND DEPARTMENT

People v Scott | December 6, 2023

RIGHT TO CHOOSE COUNSEL | VIOLATION | REMANDED

The appellant appealed from a Kings County Supreme Court judgment convicting him of 2nd degree murder after a jury trial. The Second Department reversed and granted a new trial before a different judge. After the appellant was indicted, he requested an adjournment to retain a different lawyer. He claimed that his assigned counsel had not met with him, failed to appear for several control appearances, and filed an omnibus motion that contained factual inaccuracies, and that attorney-client communication had broken down completely. An adjournment to obtain new counsel cannot be used as a delay tactic. But here, Supreme Court violated the appellant's right to counsel by summarily denying his request and telling him his only alternative was to proceed pro se; the request was supported by serious complaints against assigned counsel. Appellate Advocates (Yvonne Shivers, of counsel) represented the appellant.

[People v Scott \(2023 NY Slip Op 06261\)](#)

SECOND CIRCUIT

United States v Chaires | December 7, 2023

NY DRUG CONVICTIONS | NOT PREDICATE OFFENSES | PLAIN ERROR

The appellant appealed from a NDNY District Court judgment convicting him of unlawfully distributing cocaine base (two counts) and sentencing him as a career offender. The Second Circuit remanded for resentencing. Because Penal Law § 220.39 (1) is categorically broader than its federal analog (*see United States v Minter*, 80 F4th 406 [2d Cir 2023]), neither of the appellant's two prior NY drug convictions were valid predicate offenses. Although the appellant did not preserve this argument, the clarity of *Minter's* holding established plain error. Errors are plain when they are clear at the time of appeal, even if not so at the time of sentencing, and the miscalculation of the sentencing guideline range had a potentially serious impact on the sentence imposed.

[United States v Chaires \(No. 20-4162\)](#)

TRIAL COURTS

People v Saquijxol | 2023 WL 8442055

MAPP/DUNAWAY | REFUSAL | EVIDENCE SUPPRESSED

Following a combined *Mapp/Dunaway/refusal* hearing, Queens County Criminal Court suppressed all evidence flowing from Saquijxol's unlawful seizure. After receiving a radio run for a motor vehicle accident, two police officers arrived and saw Saquijxol being interrogated by officers already at the scene. Saquijxol was arrested for DWI and asked to submit to a chemical breath test. He was read the standard VTL § 1194 refusal warnings in English and played a video in Spanish, to which he responded "no." The People failed to prove the legality of the seizure because the officers who first arrived at the scene did not testify at the hearing, and the lawfulness of the initial police interaction was not established. Further, had the *Mapp/Dunaway* motion been denied, the refusal would have been suppressed. The video played in Spanish was not an accurate warning of the consequences of refusing a chemical test. The Legal Aid Society of NYC (Susan Crile, of counsel) represented Saquijxol.

[People v Saquijxol \(2023 NY Slip Op 51325\[U\]\)](#)

People v Hooks | 2023 WL 8442050

CPL 245 | COC INVALID | LACK OF DUE DILIGENCE

Hooks challenged the People's COC and SOR as invalid and illusory based on, among other things, their failure to provide disclosure regarding the body-worn camera of an officer who was present at Hooks' arrest, that officer's memo book, and *Giglio* material. Kings County Criminal Court granted the motion. The People conceded that they overlooked discovery related to the officer in question but claimed that any such information was tangential and not subject to disclosure. Nonetheless, the People failed to establish their due diligence in locating discoverable material about that officer and other police disciplinary records before they filed their COC. The Legal Aid Society of NYC (Leila Selchaif, of counsel) represented Hooks.

[People v Hooks \(2023 NY Slip Op 51322\[U\]\)](#)

People v Fashaw | 2023 WL 8509172

CPL 440.10 | IAC | HEARING GRANTED

Fashaw moved under CPL 440.10 to vacate his 1st degree robbery conviction based on his guilty plea. He alleged that trial counsel was ineffective for failing to adequately investigate his background to pursue a more favorable plea bargain and incorrectly preventing him from pursuing an insanity defense and that, had counsel not rejected that defense, he would have proceeded to trial. New York County Supreme Court denied the first claim based on lack of prejudice but granted a hearing as to "whether counsel provided ineffective assistance to the extent he refused to allow Fashaw to present an insanity defense at trial." The decision to assert an insanity defense is ultimately left to the defendant. The Center for Appellate Litigation (Alison Haupt, of counsel) represented Fashaw.

[People v Fashaw \(2023 NY Slip Op 51333\[U\]\)](#)

SECOND DEPARTMENT

Matter of Tremont N. F. (Angela N.) | December 6, 2023

NEGLECT PETITION | DISMISSAL AFFIRMED

The petitioner ACS appealed from a Kings County Family Court order that dismissed a neglect petition filed against the mother. The Second Department affirmed. The petition alleged that the mother suffered from mental illness which impaired her ability to care for her child. However, ACS failed to establish a causal connection between the mother's mental illness and any actual or potential harm the child might suffer. There was no proof that the mother had placed the child in imminent danger or was unable to care for the child, and the child appeared to be well cared for. William C. Hoffman represented the mother.

[Matter of Tremont N. F. \(Angela N.\) \(2023 NY Slip Op 06253\)](#)

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