Indigent Legal Services

Decisions of Interest

DECEMBER 2, 2022

CRIMINAL

FIRST DEPARTMENT

People v Arias | Nov. 29, 2022

PROBATION CONDITION | UNRELATED

The defendant appealed from a judgment of New York County Supreme Court, convicting him of attempted 2nd degree robbery and sentencing him to five years' probation, upon his plea of guilty. The First Department struck the probation condition requiring the defendant to consent to a search by a probation officer of his person, vehicle, or home for "illegal drugs, drug paraphernalia, gun/firearm, or other weapon or contraband." The condition was improper because the defendant's offense did not involve substance abuse or a weapon; he had no history involving substance abuse or weapons; and the condition was not necessary to his rehabilitation. Since the legality of the sentence was implicated, the issue survived the waiver of appeal. Legal Aid Society, NYC (Laura Boyd, of counsel) represented the appellant.
https://nycourts.gov/reporter/3dseries/2022/2022_06760.htm

People v Watts | Nov. 29, 2022

MENTAL COMPETENCY | SORA

The defendant appealed from an order of Bronx County Supreme Court adjudicating him a level-two sexually violent offender. The First Department affirmed. The SORA court was not required to determine the defendant's mental competency before the classification hearing under the statute or the Due Process clause. *See People v Parris*, 153 AD3d 68, 75-81 (2d Dept 2021), *lv denied* 30 NY3d 904 (2017).
https://nycourts.gov/reporter/3dseries/2022/2022_06762.htm

People v Sanchez | Nov. 29, 2022

SUPPRESSION | COMBINED FACTORS

The defendant appealed from a judgment of New York County Supreme Court convicting him of 2nd degree murder and two counts of 2nd degree CPW. The First Department affirmed. Supreme Court properly denied the defendant's suppression motion. A combination of factors resulted in reasonable suspicion that justified the seizure—even though each factor considered in isolation may have been equivocal. Based on its interest of justice powers and the People's consent, the appellate court vacated the surcharge and fees imposed at sentencing.
https://nycourts.gov/reporter/3dseries/2022/2022_06767.htm

SECOND DEPARTMENT

People v Brendan V. | Nov. 30, 2022

YO | SURCHARGE & FEE

The defendant appealed from two judgments of Kings County Supreme Court, one convicting him of 2nd degree assault, and the other adjudicating him a youthful offender, upon his plea of guilty to petit larceny. The Second Department affirmed the denial of YO status for the assault conviction. The lower court had properly considered the nature and circumstances of the crime, which resulted in severe injuries to the complainant, and the defendant's subsequent petit larceny conviction. In the interests of justice, the appellate court vacated the mandatory surcharge and fees for the assault conviction. *See* CPL 420.35 (2-a) (c). Also vacated were the mandatory surcharge and crime victim assistance fee imposed upon the YO adjudication, pursuant to 2020 amendments repealing statutes authorizing such surcharge and fee. The amendments applied retroactively to cases pending on direct appeal on the law's effective date.
https://nycourts.gov/reporter/3dseries/2022/2022_06822.htm

THIRD DEPARTMENT

People v Watford | Dec. 1, 2022

NO SUPPRESSION | AFFIRMED

The defendant appealed from a Clinton County Court judgment, convicting him of 3rd degree CPCS (two counts), unlawful possession of marihuana, and another crime, following a nonjury trial. The Third Department affirmed, rejecting the defendant's contention that a trooper unlawfully asked him to exit a vehicle during a stop, requiring suppression of evidence and statements. Although such argument was not raised prior to the appeal, County Court expressly decided the question, thus preserving it for review. *See* CPL 470.05 (2). Having made a lawful stop, the trooper was authorized to order the defendant to step out of the vehicle, as a precautionary measure and without particularized suspicion. The trooper's order was reasonable, given the information available at the time of the stop, the odor of marihuana, and the defendant's nervous demeanor. Further, the facts provided probable cause. The appellate court noted—though not applicable here—that under the MRTA, effective March 31, 2021, the odor of cannabis no longer provided reasonable cause to believe that a crime had been committed. *See* Penal Law § 222.05 (3) (a).
https://nycourts.gov/reporter/3dseries/2022/2022_06836.htm

People v Gonyea | Dec. 1, 2022

440 DENIAL | IAC | AFFIRMED

The defendant appealed from a Washington County Court judgment, convicting him of 2nd degree murder and another crime, and from an order summarily denying his CPL 440.10 motion to vacate such judgment. The defendant contended that the evidence before the grand jury as to the murder count was primarily based upon inadmissible hearsay and that the remaining evidence failed to support the theory of guilt. Because such arguments were directed toward the sufficiency of the grand jury evidence, they were forfeited by the defendant's guilty plea. In his post-conviction motion, the defendant

contended that counsel was ineffective. When determining how and when to raise IAC arguments, defendants no longer had to distinguish between claims based on the record versus matters outside the record, pursuant to an amendment to CPL 440.10. *See* L 2021, ch 501. In his motion, the defendant urged that counsel was ineffective in failing to pursue various pretrial hearings. But the motion did not establish that there were no legitimate or strategic reasons for forgoing the motions, where counsel negotiated a favorable plea agreement.
https://nycourts.gov/reporter/3dseries/2022/2022_06835.htm

FAMILY

FIRST DEPARTMENT

Matter of Zuri F. | Nov. 29, 2022
NEGLECT / INSUFFICIENT PROOF
The father appealed from an order of Bronx County Family Court, which found that he neglected the subject child. The First Department reversed and dismissed the petition. ACS failed to prove that the father committed domestic violence in the child's presence. There was no evidence that the single incident was part of a larger pattern of violence or that the child was impacted by the incident. Marion Perry represented the appellant.
https://nycourts.gov/reporter/3dseries/2022/2022_06747.htm

SECOND DEPARTMENT

Matter of Mark M.L. | Nov. 30, 2022
PERMANENT NEGLECT | AFFIRMED
The mother appealed from a dispositional order of Queens County Family Court, which terminated her parental rights. The Second Department affirmed. Since the order was made upon the mother's default, review was limited to matters that were the subject of the contest in Family Court—the finding that she had permanently neglected the child. The proof established that the petitioner exercised diligent efforts, and the mother failed to plan for the future of the child. The appellate court rejected the contentions of the petitioner and AFC that the appeal was untimely taken. There was no record evidence regarding when the order was served with notice of entry. *See* Family Ct Act § 1113 (appeal must be taken no later than 30 days "after service by a party or attorney for the child upon appellant of any order from which the appeal is taken"; 30 days from receipt of the order by the appellant in court; or 35 days from the mailing of the order to the appellant by the clerk of the court—whichever is earliest). [NOTE: While CPLR 5513 requires that service of a notice of entry is necessary to start the appeal clock, the provision does not apply to Family Court matters, according to a Third Department decision. *See Matter of Miller v Mace*, 74 AD3d 1442, *lv denied* 15 NY3d 705.]
Matter of Mark M. L. (2022 NY Slip Op 06805)

Coward v Biddle | Nov. 30, 2022

CONTEMPT | COUNSEL FEES

The mother appealed from orders of Suffolk County Family Court, which granted the father's application for awards of counsel fees in a custody proceeding. Family Court had the authority to award such fees pursuant to Domestic Relations Law § 237 (b) and Family Ct Act § 651 (b). The instant awards, totaling $7,500, were proper based first on the mother's frivolous conduct and then on her contemptuous behavior in failing to pay the initial award. She did not substantiate her claims that she was unable to pay. Family members and a fiancé defrayed her living and vacation expenses.

Coward v Biddle (2022 NY Slip Op 06800)

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