

CRIMINAL

FIRST DEPARTMENT

People v Glenn | November 28, 2023

PFO STATUS VACATED | SENTENCE REDUCED

The appellant appealed from a New York County Supreme Court judgment convicting him of 3rd degree burglary (12 counts) after a jury trial and sentencing him as a persistent felony offender to concurrent terms of 15 years to life. The First Department modified in the interest of justice by vacating the persistent felony offender adjudication and sentencing the appellant, as a second felony offender, to concurrent 3 ½ to 7-year terms. The People consented to the reduction, which was based on, “among other things, [the appellant’s] advanced age, his health problems and history of drug addiction, the nonviolent nature of his offenses, his positive behavior while incarcerated, and his sentence of 15 years to life in an unrelated case.” The Office of the Appellate Defender (Karen Brill, of counsel) represented the appellant.

[People v Glenn \(2023 NY Slip Op 06094\)](#)

People v Worrell | November 28, 2023

SORA | IMPROPER OVERRIDE | UPWARD DEPARTURE WARRANTED

The appellant appealed from a New York County Supreme Court order adjudicating him a level three sex offender. The First Department affirmed. Supreme Court erroneously applied the override provision for the infliction of serious physical injury. The appellant was convicted of 1st degree robbery based on the use or threatened use of a dangerous instrument, not for causing serious physical injury, and the record failed to otherwise establish that the victim sustained serious physical injury. However, the People proved that an upward departure to a level three was warranted based on the egregiousness of the offense and the appellant’s extensive history of similar sex offenses. The mitigating circumstances cited by the appellant did not warrant a downward departure.

[People v Worrell \(2023 NY Slip Op 06093\)](#)

THIRD DEPARTMENT

People v Wilcox | November 30, 2023

SORA | IAC | REMITTED

The appellant appealed from a Chemung County Court order that classified him a level three sex offender. The Third Department reversed and remitted. The appellant was deprived of his right to the effective assistance of counsel. Counsel raised a single, meritless challenge to the assessment of points on factor 9 based on the appellant's prior YO; did not challenge any other points proposed by the Board, thereby excusing the People from presenting any proof at the hearing; and failed to request a downward departure even though the circumstances of the appellant's prior YO and caselaw supported a reasonable argument for a departure. Eric K. Schillinger represented the appellant.

[People v Wilcox \(2023 NY Slip Op 06175\)](#)

People v Gaddy | November 30, 2023

FORFEITURE VACATED | NO AGREEMENT

The appellant appealed from a Clinton County Court judgment convicting her of 3rd degree CPCS based on her guilty plea. The Third Department vacated a provision mandating forfeiture of \$832 and otherwise affirmed. Civil forfeiture may only be included as a condition of a negotiated plea bargain if the parties agree to it. Here, the appellant indicated her understanding of the available sentencing options but did not agree to a forfeiture. County Court also erred by making the forfeiture a component of the sentence instead of entering a separate order. Adam G. Parisi represented the appellant.

[People v Gaddy \(2023 NY Slip Op 06170\)](#)

People v Kelsey | November 30, 2023

SORA | NO FACTUAL FINDINGS | REMITTED

The appellant appealed from St. Lawrence County Court orders that classified him a level two sex offender and denied his motion to reargue. The Third Department reversed and remitted. County Court entered the SORA risk level order after a hearing at which the appellant waived his appearance but submitted a lengthy memorandum. The order did not set forth findings of fact and conclusions of law but referenced the hearing, stating that findings of fact supporting the points assessed had been set forth at the hearing. However, the hearing transcript was not included in the record, which prevented meaningful appellate review.

[People v Kelsey \(2023 NY Slip Op 06186\)](#)

People v McCarty | November 30, 2023

DISCOVERY | POLICE DISCIPLINARY RECORDS | AFFIRMED

The appellant appealed from a Schenectady County Court judgment convicting him of predatory sexual assault against a child and endangering the welfare of a child after a jury trial. The Third Department affirmed. The People's COC was not rendered illusory by their subsequent discovery disclosures. A report prepared at the request of DSS was not within the People's possession or control. Further, CPL 245.20 does not require automatic disclosure of the entire disciplinary record of every law enforcement officer involved in the

case—only items and information “that relate to the subject matter of the case.” The People made diligent, good faith efforts to ascertain what materials existed prior to filing their COC, the subsequent disclosures were reasonable under the circumstances, and the appellant was not prejudiced.

[People v McCarty \(2023 NY Slip Op 06173\)](#)

Matter of Clegg v Rounds | November 30, 2023

ARTICLE 78 | WRIT OF PROHIBITION | GRANTED

The Ulster County DA sought a writ prohibiting Ulster County Court from enforcing a decision dismissing an indictment in the underlying criminal case. The Third Department granted the petition. After County Court allowed the defense to choose preclusion of the People’s expert’s testimony as a discovery sanction, the case was rendered legally insufficient and the prosecutor abstained from trial. The petition was not moot because granting it would nullify the trial and avoid double jeopardy implications. County Court did not have authority to delegate its decision-making powers to the defense to choose the preferred discovery sanction. Nor did it have authority to proceed with trial and dismiss the indictment under CPL 290.10 based on the People’s default, which would infringe upon the prosecutor’s executive responsibility to prosecute crimes.

[Matter of Clegg v Rounds \(2023 NY Slip Op 06181\)](#)

TRIAL COURTS

People v Schlesinger | 2023 WL 8247907

CPL 30.30 | DISCOVERY | MOTION TO RENEW DENIED

Schlesinger moved to renew his motion to dismiss on speedy trial grounds based on a new Appellate Term decision. Kings County Supreme Court denied the motion. Schlesinger relied on *People v Hamizane* (80 Misc 3d 7 [App Term, 2d Dept, 9th & 10th Jud Dists 2023]), which held that the People must turn over existing disciplinary records for all potential police witnesses. However, it would be unfair to apply the rule set forth in *Hamizane* retroactively. The People had relied on the court’s earlier rulings and since provided the impeachment materials.

[People v Schlesinger \(2023 NY Slip Op 23366\)](#)

FAMILY

FIRST DEPARTMENT

Matter of Raymond H.B. v Kenneth E.M. | November 28, 2023

FAMILY OFFENSE | INSUFFICIENT PROOF | MODIFIED

The appellant appealed from a New York County Family Court order finding that he committed the family offenses of 2nd degree harassment, 2nd degree aggravated harassment, and 2nd degree menacing. The First Department modified and vacated the aggravated harassment and menacing findings. The record did not support the findings that he committed those offenses. The proof showed that the appellant sent emails threatening to release sexually graphic images of the petitioner which were alarming or

seriously annoying and served no legitimate purpose. But there was no evidence that the appellant contacted the petitioner by phone, touched him, threatened his physical safety or property, placed or tried to place the petitioner in reasonable fear of physical injury, or violated an order of protection. Anne Reiniger represented the appellant.

[Matter of Raymond H.B. v Kenneth E.M. \(2023 NY Slip Op 06079\)](#)

Matter of Joshua A. v Shaquanda T. | November 28, 2023

ENFORCEMENT | NO JURISDICTION | DISMISSAL AFFIRMED

The father appealed from a Bronx County Family Court order that dismissed his enforcement petition. The First Department affirmed. Family Court did not have exclusive, continuing jurisdiction where the father lived in New Jersey at the time he filed his petition, and the mother had moved with the children to North Carolina. Even if no other court had original custody jurisdiction at the time the petition was filed, DRL § 76-a only provides Family Court with discretion to modify a NY custody order if it no longer has exclusive continuing jurisdiction, not to enforce an order.

[Matter of Joshua A. v Shaquanda T. \(2023 NY Slip Op 06077\)](#)

TRIAL COURTS

Matter of Hayden N. (Huguette K.) | 2023 WL 8228012

PERMANENCY HEARING | LACK OF REASONABLE EFFORTS

Monroe County Family Court found, after a permanency hearing, that the Department of Human Services (DHS) failed to exercise reasonable efforts in effecting the permanency plan of return to parent. On several occasions, miscommunication and failures by DHS caseworkers unreasonably frustrated the mother's ability to visit with her child. DHS did little to assist the mother in obtaining services in her primary language of Swahili nor present adequate evidence of whether written information given to the mother was translated into Swahili. DHS' reasonable efforts to support a return to parent goal would require all communications with the mother, whether written or verbal, be conveyed in the mother's primary language. The Monroe County Conflict Defender (Sarah Splain Holt, of counsel) represented the mother.

[Matter of Hayden N. \(Huguette K.\) \(2023 NY Slip Op 51287\[U\]\)](#)

The ILS Decisions of Interest summaries are for informational purposes only and are not intended to provide legal advice to any individual or entity. While every effort has been made to ensure their accuracy, the summaries are provided on an "as is" basis with no express or implied guarantees of completeness, accuracy, or timeliness.



Statewide Appellate Support Center

New York State Office of Indigent Legal Services

80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

(518) 486-6602 | SASC@ils.ny.gov