Indigent Legal Services

Decisions of Interest

FEBRUARY 26, 2024

CRIMINAL

COURT OF APPEALS

People ex rel. Rankin v Brann | February 20, 2024

SECURING ORDER | MODIFICATION PROCEDURES | ERROR

The People appealed from a Second Department order that remitted the petitioner's habeas corpus proceeding for a CPL 530.60 (2) hearing. Although the appeal was moot, the Court of Appeals applied the mootness exception, reversed, converted the habeas proceeding into a declaratory judgment action, and granted judgment. If a defendant is charged with a new violent felony while out on bail, the securing order may be modified pursuant to CPL 530.60 (1) or (2). If modified pursuant to CPL 530.60 (1), the record must show that the decision was based on the risk of flight factors. Otherwise, it will be presumed that the court modified under CPL 530.60 (2), which requires, among other things, the submission of clear and convincing proof at a hearing. The trial court's failure to follow these procedural requirements was error. Arielle Reid represented the petitioner.
People ex rel. Rankin v Brann (2024 NY Slip Op 00850)

People v Ramirez | February 20, 2024

PROSPECTIVE JURORS | FACE MASKS | AFFIRMED

The appellant appealed from a Second Department order affirming his conviction for aggravated vehicular homicide (three counts), 2nd degree manslaughter, and other crimes after a jury trial. The Court of Appeals affirmed. The trial was held in April 2021. Prospective jurors were required to wear face masks in the courthouse but could lower their masks and use a clear plastic face shield while being questioned. Neither the appellant's due process rights nor his right to be present and observe jury selection were violated by the face mask requirement. He was able to observe prospective jurors fully while they were questioned, and could observe all prospective jurors, except for their noses and mouths, throughout jury selection. This slight restriction was permissible when weighed against the safety of all the individuals present in the courtroom. Further, the trial court did not err by refusing to grant a mistrial because the decedent's spouse cried in the courtroom—a court is not required to keep spectators from displaying any emotion absent prejudice to a party.
People v Ramirez (2024 NY Slip Op 00848)

People v Aguilar | February 20, 2024

JURY NOTE | MEANINGFUL RESPONSE | AFFIRMED

The appellant appealed from a First Department order affirming his conviction for 2nd degree murder, attempted 2nd degree murder, and 1st degree assault after a jury trial. The Court of Appeals affirmed. The trial court responded meaningfully to a jury note by rereading the elements of all of the offenses. The court was not required to reread the justification defense instruction. The jury specifically asked for all the definitions contained in the charges for the alleged crimes.

People v Aguilar (2024 NY Slip Op 00849)

People v Boone | February 22, 2024

SORA CLASSIFICATION | RELEASE TO CIVIL COMMITMENT | AFFIRMED

The appellants appealed from First Department orders affirming their level three sexually violent offender adjudications. The Court of Appeals affirmed, with two judges dissenting and one recusing. SORA requires sex offender classification to occur 30 days prior to discharge, parole or release. Under a plain reading of SORA, this 30-day deadline is properly measured from the person's release from DOCCS upon completion of a prison sentence, even if that person is being released to civil confinement under SOMTA. Measuring the deadline from release from civil confinement would be practically unworkable and undermine public safety. In the dissent's view, the legislative intent of SORA and SOMTA is to protect the community from risk of recidivism posed by individuals convicted of sex offenses. Assessing risk when the person's release to the community is not imminent does not measure actual risk, nor does it promote public safety.

People v Boone (2024 NY Slip Op 00928)

People v Watts | February 22, 2024

SORA HEARING | COMPETENCY NOT REQUIRED | AFFIRMED

The appellant appealed from a First Department order affirming his level two sex offender adjudication. The Court of Appeals affirmed, with three judges dissenting. The appellant, who has severe schizophrenia and psychosis, was found incompetent to stand trial for a period of five years before he was found competent and pleaded guilty to sexual abuse and assault. He decompensated in prison and upon completion of his sentence was transferred to an OMH facility for treatment under MHL article 9. Although physically present, the appellant was not lucid during his SORA hearing. The majority held that due process does not preclude a court from determining a sex offender's risk level when the person lacks capacity to comprehend the assessment proceedings; SORA provides sufficient safeguards to minimize the risk of inaccurate risk-level classification and balance the competing private and public interests. In the dissent's view, an offender's competency at the risk classification hearing is an indispensable requirement of due process.

People v Watts (2024 NY Slip Op 00926)

People v Seignious | February 22, 2024

PEOPLE'S APPEAL | SEXUALLY MOTIVATED FELONY | REVERSED

The People appealed from a First Department order reversing the respondent's 2nd degree burglary conviction. The Court of Appeals unanimously reversed, reinstated the conviction, and remitted to the First Department. The respondent was charged with 2nd degree burglary as a sexually motivated felony after he assaulted several women outside of a dormitory before pursuing them into the building. The trial court did not err in charging 2nd degree burglary as a lesser included offense. A sexually motivated burglary conviction does not require the People to prove that the intruder intended to commit a sex crime; they must only prove that the burglary was motivated by sexual gratification. When the People specify the intruder's intended crime, it restricts the theory of the case and requires a more circumscribed jury instruction. But that argument was not raised here. The defense argued that the People were precluded from submitting the lesser included offense of 2nd degree burglary altogether, not that a narrower instruction was required.
People v Seignious (2024 NY Slip Op 00927)

SECOND DEPARTMENT

People v Olmedo | February 21, 2024

SORA | ACTS NOT SEPARATED BY 24 HOURS | REVERSED

The appellant appealed from a Queens County Supreme Court order designating him a level two sexually violent offender. The Second Department reversed and designated him a level one sexually violent offender. While the People submitted evidence that the appellant engaged in two or more acts of sexual contact with the victim, they did not establish that the acts were separated by at least 24 hours as required to assess points on factor 4 for duration of offense. Without the 20 points assessed under factor 4, the appellant's points total fell within the range for a presumptive level one designation. The Legal Aid Society of NYC (Sylvia Lara Altreuter, of counsel) represented the appellant.
People v Olmedo (2024 NY Slip Op 00918)

People v Bautista-Gonzalez | February 21, 2024

PEOPLE'S APPEAL | CPL 30.30 | AFFIRMED

The People appealed from two Kings County Supreme Court orders dismissing indictments on speedy trial grounds. The Second Department affirmed. The contested periods of pretrial delay were not excludable. The People failed to establish that certain periods of delay were attributable to adjournments requested by or consented to by the respondent. The remaining period of delay was not excludable because the respondent's reciprocal discovery obligations did not constitute "other proceedings concerning the defendant" under CPL 30.30 (4) (a). The Legal Aid Society of NYC (A.E. Lowe, of counsel) represented the respondent.
People v Bautista-Gonzalez (2024 NY Slip Op 00911)

THIRD DEPARTMENT

People v Ferrer | February 22, 2024

CPL 440 | SUMMARY DENIAL | REMITTED FOR HEARING

The appellant appealed from a Broome County Court judgment convicting him of 2nd degree burglary (two counts) after a jury trial and an order that summarily denied his CPL 440.10 motion. The Third Department affirmed the conviction but reversed the denial of the 440 motion and remanded for a hearing. The appellant's 440 motion alleged that he was denied the effective assistance of counsel by his attorney's failure to object to the use of an electric stun belt restraint during the trial. County Court did not make the required finding that the use of the stun belt was justified by a specifically identified security reason, and defense counsel raised no objection to its use. Given the clear error in using the belt in the absence of an articulated, particularized need, County Court erred by denying the 440 motion without a hearing. G. Scott Walling represented the appellant.
People v Ferrer (2024 NY Slip Op 00947)

TRIAL COURTS

People v Tavares | 2024 WL 678158

COC/SCOC INVALID | REDACTED *GIGLIO* MATERIAL | DISMISSED

Tavares moved to dismiss DWI and related charges on speedy trial grounds. Bronx County Criminal Court granted the motion. The People did not turn over *Giglio* impeachment material for all police witnesses prior to serving and filing their COC. When the *Giglio* material was subsequently turned over, it contained multiple redactions. The initial withholding and subsequent redactions contravened the express language and overall intent of the discovery statute and invalidated the initial COC and two SCOCs. Defense counsel's failure to provide prompt notification of the outstanding discovery material did not excuse the People's blatant lack of due diligence. The Bronx Defenders (Meg Tiley, of counsel) represented Tavares.
People v Tavares (2024 NY Slip Op 50156[U])

People v Spadaccino | 2024 WL 679484

COC/SCOC INVALID | LACK OF DUE DILIGENCE | DISMISSED

Spadaccino moved to dismiss a 3rd degree stalking charge on speedy trial grounds. Webster Town Court granted the motion. The People filed their COC without providing several 911 recordings and four police reports that were referenced in a police field case report. The People later turned over one police report, claiming that the other three did not exist, and the 911 recordings, claiming that they were recovered by searching for the victim's address and phone number instead of the case index number. The existence or nonexistence of the police reports should have been explored as part of the initial discovery, and the 911 recordings should have been searched by the victim's address and phone number when the initial search failed. The Monroe County Public Defender (Sara Gaylon, of counsel) represented Spadaccino.
People v Spadaccino (2024 NY Slip Op 24045)

People v Mercano | 2024 WL 698345

COC INVALID | NO LACK OF NOTICE | DISMISSED

Mercano moved to dismiss misdemeanor charges on speedy trial grounds. Bronx County Criminal Court granted the motion. After the People filed their COC, defense counsel advised that the arresting officer had been involved in an accident while driving Mercano's vehicle from the arrest site. The court ordered disclosure of any records pertaining to the accident. Nearly three months later, the People turned over an NYPD motor vehicle collision worksheet, claiming that the assigned ADA was informed of the collision only days earlier. Because the court had ordered disclosure of the paperwork months prior, the People were estopped from arguing that they lacked notice of the accident report, and the People's failure to act reasonably and with due diligence rendered their COC invalid. Giovanni Escobedo represented Mercano.

People v Mercano (2024 NY Slip Op 24047)

FAMILY

SECOND DEPARTMENT

Matter of Josiah v London | February 21, 2024

VIOLATION/MODIFICATION | SUBJECT MATTER JURISDICTION | REVERSED

The mother appealed from a Dutchess County Family Court order that summarily granted the father's motion to dismiss her violation and modification petitions for lack of subject matter jurisdiction. The Second Department reversed and reinstated the petitions as to the one minor child and remitted. Family Court awarded residential custody to the father, who lived in North Carolina, and parental access to the mother. Four years later, the mother filed violation and modification petitions alleging that the father had relocated to Georgia without her consent. A hearing was required to determine whether Family Court had jurisdiction under DRL § 76. There were disputed issues of fact regarding the youngest child's home state on the date of commencement of the proceedings. Arza Rayches Feldman represented the mother.

Matter of Josiah v Londo (2024 NY Slip Op 00904)

THIRD DEPARTMENT

Matter of Joseph XX. v Jah-Rai YY. | February 22, 2024

RELIGION | IMPROPER INTERVENTION | MODIFIED

Cross-appeals from an Albany County Family Court order that modified a custody order to mandate counseling for the parents to address issues about religion, prohibited the child's attendance at religious services or instruction until an agreement was reached, and found that the mother willfully violated the custody order. The Third Department vacated the directives about religion, dismissed the violation petition, and otherwise affirmed with one justice partially dissenting. The mother objected to the child being introduced to the father's religion, or any organized religion, before age 13. The initial custody order did not address religion, and the categories where religion has been

considered a factor in determining best interest did not apply (*see Aldous v Aldous*, 99 AD2d 197 [3d Dept 1984])—making Family Court's intervention in the parents' religious dispute improper. Preventing the father from taking the child out of state in August 2020 out of concern about COVID-19 did not constitute a willful violation. In the dissent's view, the parents' vociferous disagreement about religion warranted a determination of the issue, and vacatur of the directives about religion effectively provided the father authority to fully immerse the child in his religion.
Matter of Joseph XX. v Jah-Rai YY. (2024 NY Slip Op 00950)

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