Indigent Legal Services

Decisions of Interest

MARCH 25, 2022

CRIMINAL

COURT OF APPEALS

People v Bush | March 22, 2022

DISSENT | PLEA | PRESERVATION

The defendant appealed from an order of the Second Department affirming a judgment convicting him of 7th degree CPCS. At issue was whether he was required to preserve his claim that his guilty plea was not knowing, voluntary, and intelligent where, until sentence was pronounced, he was not made aware that he would be subject to a one-year conditional discharge. The Court of Appeals affirmed, in an opinion by Chief Judge DiFiore. Judge Rivera dissented, joined by Judges Wilson and Troutman. The defendant had pleaded guilty to a reduced charge in exchange for 20 days' community service. In error, the lower court imposed additional year-long conditions that had not been mentioned. The defendant had no chance to preserve his claim by objecting, prior to sentencing, that he was denied the benefit of the bargain. Since he had served his sentence, the indictment should be dismissed.

People v Bush (2022 NY Slip Op 01956) (nycourts.gov)

Alvarez v Annucci | March 22, 2022

DISSENT | SARA | PRS

The petitioner appealed from an order of Queens County Supreme Court, granting respondent's motion to dismiss his CPLR Article 78 petition in the nature of mandamus, seeking to compel his release. The Court of Appeals affirmed, holding that the school-grounds residency restriction in the Sexual Assault Reform Act applied to offenders under post-release supervision. Judge Wilson dissented, and Judge Rivera concurred in the dissent. SARA's plain language provided that the residency restriction applied only to those "on parole and conditionally released." The majority's creative take on the statute trespassed on the legislative domain. Whereas parole provided a means for early release, PRS was a way for reintegration into a community after the prison component of a sentence was completed. The majority functionally extended the carceral sentences of multitudes of people who had completed their prison terms. No empirical evidence showed that the SARA restrictions prevented recidivism or violent crime.

Matter of Alvarez v Annucci (2022 NY Slip Op 01957) (nycourts.gov)

Ferreira v Binghamton | March 22, 2022

DISSENT | NEGLIGENCE | NO-KNOCK WARRANTS

Answering a question certified by the Second Circuit, the New York Court of Appeals held that, when police planned and executed a no-knock search warrant at an identified residence, there arose a special duty to individuals there. The federal appellate court had sought guidance as to whether to reinstate a $3 million jury verdict for the plaintiff, who was not the target of the raid and was shot in the stomach and seriously injured by officers serving a no-knock warrant. Judge Singas wrote for the majority. Judge Wilson authored a dissent in which Judge Rivera concurred. The special duty doctrine did not *restrict*, but instead *expanded* upon, when the government could be liable for negligence, absent an ordinary duty of care. Typically, the doctrine came into play when the government undertook a duty it would not otherwise have by acting to protect a specific individual from harm by a third party. Under settled negligence doctrine, municipalities had an ordinary duty of reasonable care in planning and executing no-knock warrants. The majority's opinion made New York a regressive outlier. Other states did not require a special duty where a governmental actor directly harmed the plaintiff.

Ferreira v City of Binghamton (2022 NY Slip Op 01953) (nycourts.gov)

FIRST DEPARTMENT

People v Winston | March 24, 2022

INDICTMENT AMENDMENT | PREJUDICIAL

The defendant appealed from a judgment of New York County Supreme Court, convicting him of 3rd degree assault, attempted 3rd degree assault, and two counts of 2nd degree aggravated harassment. The First Department modified. The defendant was charged with 2nd degree assault and attempted 2nd degree assault, both as hate crimes. Toward the end of the People's case, defense counsel contended that the factual statement of the indictment failed to allege a material element of the assault charges—that the victim's injuries were caused by a deadly weapon or a dangerous instrument. The trial court improperly amended the indictment by replacing the defective 2nd degree offenses with the lesser included offenses of 3rd degree assault and attempted 3rd degree assault, both as hate crimes. The defendant was prejudiced by the amendment, which changed the theory of the prosecution. While the People no longer had to prove that the defendant used a deadly weapon or a dangerous instrument, the jury was likely unduly influenced by the testimony about the weapon/instrument used. The assault convictions were vacated, and the counts were dismissed with leave to resubmit.

People v Winston (2022 NY Slip Op 02080) (nycourts.gov)

People v Lanzot | March 22, 2022

PLEA VOLUNTARY | HEALTH

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 2nd degree burglary. The First Department affirmed. Under the plea deal, the defendant was released pending sentence to enter a nursing home. There was no evidence that he was coerced into pleading guilty to obtain medical care. Further, at the time of the plea, evidence indicated that he was not terminally ill, and no promise was made that he would avoid prison even if his health improved.

People v Lanzot (2022 NY Slip Op 01973) (nycourts.gov)

SECOND DEPARTMENT

People v Ellerbee | March 23, 2022

CONFRONTATION CLAUSE | TRIAL PENALTY

The defendant appealed from a judgment of Kings County Supreme Court. The Second Department modified. In the interest of justice, the appellate court held that the defendant's Confrontation Clause rights were violated by testimony used to establish an element of 3rd degree AUO of a motor vehicle. The defendant was not given a chance to cross-examine a DMV employee who was directly involved in sending out the suspension notices or who had personal familiarity with the mailing practices or his driving record. A new trial was ordered on the AUO count. In the interest of justice, the reviewing court also held that the defendant was penalized for exercising his right to a jury trial. Prior to trial, the Supreme Court offered 1½ years plus 2 years' post-release supervision, stating "You should understand the way I operate…before trial with me you get mercy; after trial you get justice." For his 4th degree CPCS conviction, the defendant was sentenced to 5 years in prison plus 2 years PRS. The reviewing court cut the prison term to 3 years. Appellate Advocates (Anders Nelson, of counsel) represented the appellant.
People v Ellerbee (2022 NY Slip Op 02016) (nycourts.gov)

People v Ramunni | March 23, 2022

BRADY | POLLING JURY

The defendant appealed from a judgment of Richmond County Supreme Court. The Second Department reversed. The evidence was legally insufficient to establish 2nd degree assault. Although the defendant was present at the scene when complainant #2 was hit with a stun gun by an unknown individual, proof did not show that the defendant shared a community of purpose with that individual. The count was dismissed. A new trial was ordered on the charges of 1st degree gang assault and 1st degree assault, due to a *Brady* violation. A 911 caller who witnessed the brawl described an individual who did not match the defendant. The People failed to disclose the caller's identity and contact information. Defense counsel was also erroneously precluded from questioning a witness about a police report and an alleged prior inconsistent statement of complainant #1. Finally, Supreme Court committed reversible error in accepting the verdict after polling the jury. When asked if the verdict was hers, juror #9 said, "Um, I'm not sure, with some, but most of them, yes." The court's follow-up "yes or no" question was posed in the presence of the remaining jurors, despite evidence that #9 may have succumbed to pressure to vote with the majority, even though she did not agree on all counts. Appellate Advocates (Benjamin Welikson, of counsel) represented the appellant.
https://nycourts.gov/reporter/3dseries/2022/2022_02022.htm

THIRD DEPARTMENT

People v Ortiz | March 24, 2022

VICTIM STATEMENT | OMITTED

The defendant appealed from a judgment of Ulster County Court, convicting him of 3rd degree rape, upon his plea of guilty. The Third Department modified. The defendant argued that County Court's decision to withhold the victim's statement violated CPL 390.50, which mandated disclosure of presentence reports to the parties for sentencing purposes. The information gathered during a PSI generally included a victim impact statement. County Court did not set forth reasons for excluding the victim's declaration. The defendant had no opportunity to review the statement, which was heavily relied upon by the sentencing court. The sentence was vacated. Given the information that County Court was privy to, remittal to a different judge was warranted.

People v Ortiz (2022 NY Slip Op 02041) (nycourts.gov)

FAMILY

FIRST DEPARTMENT

Adam N. v Darah D. | March 22, 2022

FORUM NON CONVENIENS | CALIFORNIA NOT NY

The mother appealed from a New York County Family Court order, granting the father's petition to dismiss her Article 6 petition on the ground of forum non conveniens. The Fourth Department affirmed. Family Court properly held that California, not NY, was the better forum to determine whether the child should live with the father in CA or the mother in Norway. The mother did not explain what proof from her eight years in NY would be probative as to her petition to relocate to Norway. Family Court properly considered that evidence as to the child's development and emotional well-being was present primarily in CA, where the child had lived since March 2020, pursuant to a court order.

Matter of Adam N. v Darah D. (2022 NY Slip Op 01971) (nycourts.gov)

THIRD DEPARTMENT

Jennifer JJ. v Jessica JJ. | March 24, 2022

DISSENT | SURRENDER | POST-ADOPTION

The respondent biological mother appealed from an order of Otsego County Family Court, which granted the petitioner's Article 6 applications for modification of a prior order of visitation. The Third Department affirmed. Two justices dissented in part. The respondent executed voluntary judicial surrenders of two children, with a condition providing for post-adoption contact. There was inadequate support in the record for terminating the biannual supervised mother-daughter visits. Courts should adopt a careful and restrained

approach in reviewing post-adoption contact agreements, since the resulting deprivation from a lack of enforcement is significant and substantial. Further, the challenged order failed to address the provision entitling the mother to photos and an update twice a year. Thus, the respondent remained entitled to those benefits.
Matter of Jennifer JJ. v Jessica JJ. (2022 NY Slip Op 02043) (nycourts.gov)

Corey O. v Angela P. | March 24, 2022

DISSENT | AFC | CONFLICT

The mother appealed from orders of Broome County Family Court, which granted the father's custody applications. Two justices dissented. The AFC was formerly a Family Court judge and had presided over a custody matter involving the mother. The instant matter should be remitted to develop the record and determine if Judiciary Law § 17 was violated based on a conflict that could not be waived. The question to be resolved was whether the "matter" over which the AFC presided in his judicial capacity was the same "matter" presently before the court. Too narrow a construction of "matter" would stifle the statute's purpose in Family Court matters.
Matter of Corey O. v Angela P. (2022 NY Slip Op 02044) (nycourts.gov)

Stephanie R. v Walter Q. | March 24, 2022

FATHER | FORGOING VISITS

The father appealed from an order of Tompkins County Family Court, which granted the mother's custody application. The Third Department affirmed. After the father was convicted of 2nd degree criminal contempt for violating an order of protection in favor of the mother, Family Court suspended his visitation until he completed a batterer's program. Although such order was not the subject of this appeal, the father's actions giving rise to such order should be considered in any future application for unsupervised visitation. In suspending parental access, Family Court had considered the father's decision to forgo visitation by remaining incarcerated rather than being released with an ankle bracelet. In addition, the appellate court was advised at oral argument that the father had not enrolled in a batterer's program.
Matter of Stephanie R. v Walter Q. (2022 NY Slip Op 02042) (nycourts.gov)

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