Indigent Legal Services

Decisions of Interest

MARCH 25, 2024

CRIMINAL

COURT OF APPEALS

People v Estrella | March 19, 2024

TORTURE | PEOPLE'S APPEAL | AFFIRMED

The People appealed from a First Department order that vacated the respondent's 1st degree murder conviction as legally insufficient. The Court of Appeals affirmed. The subsection for the infliction of torture requires that a course of conduct actually inflict extreme physical pain on the victim. Neither planning to inflict pain, psychological pain, nor a single isolated act that inflicts pain establish a course of conduct. Although some injuries sustained by the victim caused extreme physical pain—which does not have to rise to the level of serious physical injury—the People failed to prove that the appellant "relished" or "evidenced a sense of pleasure" from inflicting that pain. At best, the proof showed that he took pride in having killed the victim. Steven N. Feinman represented the respondent.

Oral Argument

People v Estrella (2024 NY Slip Op 01499)

People v Labate | March 21, 2024

POST-READINESS DELAY | PEOPLE'S APPEAL | AFFIRMED

The People appealed from an Appellate Term order reversing the conviction and dismissing the misdemeanor charge. The Court of Appeals affirmed. On three successive trial dates, the People stated that they were not ready and requested adjournments without explanation. Where the People fail to offer a reason for their request to adjourn a trial date—either during calendar call or in response to a 30.30 motion—they are chargeable with the entire delay, not just the length of the requested adjournment. Appellate Advocates (Brian J. Perbix, of counsel) represented the respondent.

Oral Argument

People v Labate (2024 NY Slip Op 01582)

People v Bohn | March 19, 2024

TORTURE | SUFFICIENT PROOF | AFFIRMED

The appellant appealed from a Second Department order affirming his 1st degree murder conviction after a jury trial. The Court of Appeals affirmed. The proof—which included a voicemail audiorecording of the crime during which the appellant repeatedly taunted and strangled the victim, medical testimony about the victim's injuries, and the appellant's

prior threats and abusive conduct towards the victim—sufficiently established that the appellant intended to torture the victim and derived pleasure from doing so.
Oral Argument
People v Bohn (2024 NY Slip Op 01500)

FIRST DEPARTMENT

People v J.G. | March 19, 2024
YO DETERMINATION | RECORD UNCLEAR | REMANDED
The appellant appealed from Bronx County Supreme Court judgments convicting him of 2nd degree promoting prison contraband and 3rd degree attempted CSCS and adjudicating him a YO on 2nd degree robbery and 2nd degree OGA (two counts) charges. The First Department remanded for YO determinations on the other convictions. Although the court stated at sentencing that it would not grant YO status on those charges, the record was unclear whether the court had considered doing so or improperly ruled it out as a part of the plea agreement. The Legal Aid Society of NYC (Laura Boyd, of counsel) represented the appellant.
Oral Argument (starts at 6:56)
People v J.G. (2024 NY Slip Op 01520)

FOURTH DEPARTMENT

People v Lostumbo | March 22, 2024
SORA | DUE PROCESS VIOLATION | REVERSED
The appellant appealed from an Onondaga Supreme Court judgment adjudicating him a level two sexually violent offender. The Fourth Department reversed and remitted. Supreme Court erred in assessing 10 points under risk factor 12 for failure to accept responsibility—which was not recommended by the Board and resulted in a presumptive risk level two—because he was not given the required notice and meaningful opportunity to contest the assessment. Although the People recommended assessing points under that factor, the court rejected the theory proffered by the People and assessed points based on a different ground, one which neither the Board nor the People had advanced. Cambareri & Brenneck (Kenneth H. Tyler, Jr., of counsel) represented the appellant.
People v Lostumbo (2024 NY Slip Op 01639)

People v Acosta | March 22, 2024
SORA | DUE PROCESS VIOLATION | REVERSED
The appellant appealed from a Monroe County Supreme Court order adjudicating him a level two sex offender. The Fourth Department reversed and remitted. Supreme Court deprived the appellant of due process by sua sponte assessing 25 points on factor 2 after the SORA hearing, when the People and the Board had only sought 5 points on that factor. The court determined at the hearing that a total of 60 points should be assessed, which included 5 points on factor 2 and resulted in a presumptive level one classification. The People then renewed a request for an upward departure, which was not addressed by the court. The court later entered a written order that included 25 points on factor 2,

which increased the total points assessed to 80 and made the appellant a presumptive level two—but the appellant had no notice that the court was considering assessing those additional points. The Monroe County Public Defender (Timothy S. Davis, of counsel) represented the appellant.
People v Acosta (2024 NY Slip Op 01626)

People v Steele | March 22, 2024
SIROIS | RIGHT TO BE PRESENT | REVERSED
The appellant appealed from an Erie County Court judgment convicting him of 2nd degree CPW. The Fourth Department reversed and remitted for a new trial. The appellant was denied the right to be present for a material stage of the trial when the court precluded him and defense counsel from being present at a *Sirois* hearing. The court allowed the defense to submit pre-written questions before the hearing. But this was not a valid substitute for the appellant's ability to confront the witnesses and assist counsel in real time and in response to live testimony. Thomas J. Eoannou represented the appellant.
People v Steele (2024 NY Slip Op 01642)

People v Zona | March 22, 2024
SEXUAL ABUSE | DUPLICITOUS COUNT | NEW TRIAL
The appellant appealed from a Monroe County Court judgment convicting her of 1st degree sexual abuse. The Fourth Department reversed and granted a new trial. The complainant's trial testimony rendered the count charging 1st degree sexual abuse duplicitous. That count alleged an instance of sexual abuse occurring between July 2012 and January 2013. But the complainant testified to multiple acts that occurred during that period. Dismissal with leave to re-present was not required because the errors were not with the indictment and could be corrected by a charge specifying the applicable proof. Further, double jeopardy was not implicated since the appellant was acquitted of a course of conduct charge, as opposed to having been acquitted of some single act crimes and not others. Easton Thompson Kasperek Shiffrin, LLP (David M. Abbatoy, of counsel) represented the appellant.
Oral Argument (starts at 14:07)
People v Zona (2024 NY Slip Op 01652)

People v Wiggins | March 22, 2024
RACIALLY BIASED JURY | AFFIRMED | DISSENT
The appellant appealed from an Erie County Court judgment convicting him of 2nd degree murder, 1st degree assault, and 2nd degree CPW. The Fourth Department affirmed with two justices dissenting. In the dissent's view, the record indicated that jury deliberations were tainted by racial bias and the court should have granted the appellant's request for a mistrial. A juror reported that approximately six of the jurors had expressed bigotry, including comments that all Black people look the same in the dark and are categorically different than white people. The alleged racial bias harbored by half of the jury warranted, at the very least, an individual inquiry into whether the jurors could perform their duty without bias or prejudice.
Oral Argument (starts at 48:00)
People v Wiggins (2024 NY Slip Op 01659)

People v Shawn G.G. | March 22, 2024

DVSJA RESENTENCING | NOT ELIGIBLE | SENTENCE UNDER 8 YEARS

The appellant appealed from a Jefferson County Court order denying his pro se CPL 440.47 resentencing application. The Fourth Department affirmed. The appellant was not eligible for resentencing because he was not serving a sentence of 8 years or more for an eligible offense. He was on postrelease supervision at the time he committed 3rd degree CPCS and other offenses. He received concurrent sentences, the longest of which was 7 years for the CPCS conviction. DOCCS treated this sentence as consecutive to an undischarged portion of a prior sentence, resulting in an aggregate term of more than 8 years. However, the appellant specifically sought resentencing on the CPCS conviction, and the combination of these sentences did not transform the CPCS sentence into a term longer than 8 years.

People v Shawn G.G. (2024 NY Slip Op 01620)

TRIAL COURTS

People v Davis | 2023 WL 10410946

CONSTITUTIONAL SPEEDY TRIAL | SUBSTANTIAL DELAY | DISMISSED

Davis moved to dismiss an indictment charging him with 1st degree course of sexual conduct against a child on constitutional speedy trial grounds. Columbia County Court granted the motion. The substantial delay (2,079 days) was largely due to the People's inaction. The People failed to advise the court that they had not pursued an appeal of the dismissal of a prior indictment against Davis, the result of which would have affected whether the instant indictment was triable. The People knew or should have known that there was no practical impediment to scheduling trial of the instant indictment and it was incumbent upon the People to inform the court of that fact. The Columbia County Public Defender (Jessica Howser, of counsel) represented Davis.

People v Davis (2023 NY Slip Op 23430)

APPELLATE TERM

People v Jalloh | March 19, 2024

CPCS PLEA | INVOLUNTARY | REMANDED

The appellant appealed from a New York County Criminal Court judgment convicting him of 7th degree CPCS based on his guilty plea. The Appellate Term, First Department reversed and remanded. The appellant's plea was involuntary because he only admitted to possessing marijuana—which does not support a conviction for possession of a controlled substance.

People v Jalloh (2024 NY Slip Op 50284[U])

People v Key | March 19, 2024

CPCS CHARGE | JURISDICTIONAL DEFECT | DISMISSED

The appellant appealed from a Bronx County Criminal Court judgment convicting him of 7th degree CPCS based on his guilty plea. The Appellate Term, First Department reversed

and dismissed the charge. The accusatory instrument was jurisdictionally defective—the facts alleged were insufficient to show that the appellant constructively possessed the contraband at issue. The appellant's mere presence in the apartment where the drugs were found did not establish that he exercised dominion and control over them.
People v Key (2024 NY Slip Op 50285[U])

FAMILY

SECOND DEPARTMENT

Matter of Kiarah V.R. (Virginia V.) | March 20, 2024

DERIVATIVE NEGLECT | REVERSED

The mother appealed from Kings County Family Court orders granting summary judgment on derivative neglected petitions. The Second Department reversed and remitted for fact-finding hearings. ACS failed to establish that the mother derivatively neglected her younger children based on her alleged failure to address mental health issues that were the basis for neglect findings relating to her older children over 10 years prior. The earlier neglect findings were not so proximate in time to establish that the underlying conditions still existed. Brooklyn Defender Services (Jessica Marcus and Deborah Frankel, of counsel) and Kramer Levin Naftalis & Frankel LLP (Karen S, Kennedy and Drew Zagami, of counsel) represented the mother.
Oral Argument (starts at 19:02)
Matter of Kiarah V.R. (Virginia V.) (2024 NY Slip Op 01552)

Matter of Franklin v Quinones | March 20, 2024

CHILD SUPPORT | PARENTAL ALIENATION | REVERSED

The father appealed from Kings County Family Court orders that (1) denied his custody modification petition to the extent that he sought custody of the child; and (2) denied his motion to suspend his child support obligation. The Second Department affirmed the custody order, reversed the child support order, and granted the father's motion. Family Court correctly determined that giving the father further parental access would be detrimental to the child. However, his child support obligations should have been suspended. The evidence did not establish that the father had sexually abused the child, but it did show that the mother had alienated the child from the father. David Laniado represented the father.
Matter of Franklin v Quinones (2024 NY Slip Op 01541)

Matter of Holley v Mills | March 20, 2024

UCCJEA | HEARING REQUIRED | REVERSED

The father appealed from a Kings County Supreme Court (IDV part) order that dismissed his custody modification petition for lack of jurisdiction. The Second Department reversed and remitted. In 2018, the court granted the mother's application to relocate to Connecticut with the child. In 2022, the court awarded the mother sole custody and suspended the father's parental access upon his default. The father then filed a

modification petition seeking sole custody. The court summarily dismissed the father's modification petition based on the mother and child having moved out of the state years prior. This was error. Because the court had made previous custody determinations, it would ordinarily retain exclusive, continuing jurisdiction under the UCCJEA. A hearing was required to determine whether the child had maintained a significant connection with NY and if there was substantial evidence available in NY. Lisa A. Manfro represented the father.
Matter of Holley v Mills (2024 NY Slip Op 01542)

FOURTH DEPARTMENT

Matter of Justice H.M. (Julia S.) | March 22, 2024
NEGLECT | DISMISSED
The mother appealed from an Erie County Family Court order placing the family under supervision, bringing up for review the underlying neglect finding. The Fourth Department reversed and dismissed. The respondent did not establish that the mother neglected the children. Although the mother's apartment may have been unsanitary, a caseworker testified that it "met minimal standards." And the children's hygiene, while not optimal, did not result in any actual or imminent harm. The older child was not educationally neglected—he was not required to attend school because he turned six after December 1st. Further, petitioner did not present any diagnostic or medical evidence of the mother's alleged mental illness nor establish causation between her mental health and any actual or imminent harm to the children. Caitlin M. Connelly represented the mother.
Oral Argument (starts at 48:07)
Matter of Justice H.M. (Julia S.) (2024 NY Slip Op 01653)

Matter of Kaleta v Kaleta | March 22, 2024
CUSTODY | RELOCATION UNDULY WEIGHED | REVERSED
The mother appealed from an Erie County Supreme Court order that modified a divorce settlement agreement to grant the father primary physical custody of their child. The Fourth Department reversed, granted the mother primary physical custody, and remanded to determine a visitation schedule for the father. The parents separated when the child was 1 year old and the mother moved from their shared home near Buffalo to the Syracuse area. They shared custody until the child entered elementary school but could not agree on a primary residence for school purposes. Both parents had stable homes and were fit and willing to coparent. Supreme Court gave undue weight to the mother's move away from the father, expected the mother to move back, and ignored the child's significant ties to the Syracuse area. Further, the mother's work schedule was more compatible with the child's school schedule. Mattingly Cavagnaro LLP (Christopher S. Mattingly, of counsel) represented the mother.
Matter of Kaleta v Kaleta (2024 NY Slip Op 01650)

CIVIL

SECOND DEPARTMENT

Matter of R.M. v C.M. | March 20, 2024

ERPO | FACIALLY CONSTITUTIONAL | REVERSED

The Attorney General, as intervenor, appealed from an Orange County Supreme Court order and judgment that declared the ERPO statute unconstitutional and dismissed the petition. The Second Department reversed and remitted. The ERPO statute is facially constitutional. Unlike Mental Hygiene Law § 9.39, ERPO does not apply solely to people with mental illness or require a finding of mental impairment; thus, expert medical testimony is not required. The term "serious harm" is not unconstitutionally vague; abstract words which convey a sufficiently accurate concept may be used in a civil statute. ERPO is consistent with the Nation's historical tradition of firearm regulation in keeping dangerous people from carrying guns; it contains ample procedural safeguards and bears a substantial relationship with public safety. A search under ERPO may be justified based on probable cause that the respondent possessed firearms in violation of court order or under the special needs exception. And, if weapons are seized or surrendered, such evidence may be suppressed in a criminal proceeding, negating any Fourth or Fifth Amendment concerns.

Oral Argument (starts at 48:41)
Matter of R.M. v C.M. (2024 NY Slip Op 01545)

Matter of Gallagher v D.M. | March 20, 2024

ERPO | MINOR RESPONDENT | NO STANDING

The Attorney General, as intervenor, appealed from an Orange County Supreme Court order that declared the ERPO statute unconstitutional and dismissed the petition. The Second Department reversed and remitted. Because the respondent was a minor less than 16 years old, he had no general right to keep and bear arms. He therefore lacked standing to challenge the ERPO statute on Second Amendment grounds.

Oral Argument (starts at 1:14:20)
Matter of Gallagher v D.M. (2024 NY Slip Op 01539)

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