

# Decisions of Interest

MARCH 4, 2024

## CRIMINAL

### SECOND DEPARTMENT

***People v Matthew M.*** | February 28, 2024

INVALID WOA | RIGHT TO COUNSEL | MISCHARACTERIZED

The appellant appealed from a Queens County Supreme Court judgment convicting him of attempted 2<sup>nd</sup> degree CPW based on his guilty plea and an amended judgment that revoked his previously imposed probation term and imposed a time-served sentence on his prior YO adjudication. The Second Department affirmed but found the waiver of appeal invalid. Supreme Court mischaracterized the waiver by telling the appellant that "you give up your right to have an attorney assigned to represent you on appeal, if you cannot afford one." Appellate Advocates (Sarah B. Cohen, of counsel) represented the appellant.

[People v Matthew M. \(2024 NY Slip Op 01023\)](#)

### SECOND CIRCUIT

***Thomas v United States*** | February 21, 2024

IAC | NOTICE OF APPEAL NOT FILED | HEARING REQUIRED

The appellant appealed from a NDNY District Court order that denied his federal habeas petition. The Second Circuit vacated and remanded. The appellant alleged that trial counsel was ineffective because he disregarded his instruction to file an appeal from his resentencing. Generally, vague allegations of attorney error will not entitle a habeas petitioner to an evidentiary hearing. But a hearing is required where, as here, the petitioner claimed that his attorney failed to file a requested notice of appeal (see *Campusano v United States*, 442 F3d 770 [2d Cir 2006]). [NOTE: NYSBA, Committee on Mandated Representation, 2021 Revised Standards for Providing Mandated Representation, I-7 (j) (i-ii) (requiring trial counsel to advise client of right to appeal and file notice of appeal upon request)].

[Thomas v United States \(No. 22-2026\)](#)

[Revised Standards for Providing Mandated Representation](#)

***United States v Sims*** | February 15, 2024

SPECIAL CONDITION | GANG AFFILIATION | INSUFFICIENT RECORD

The appellant appealed from a NDNY District Court judgment imposing a special condition of supervised release that prohibited him from associating with any Jungle Junkies gang members. The Second Circuit vacated the special condition and remanded to develop the record to support its imposition. National Crime Information Center records

identified the appellant as a Jungle Junkies gang member (31 members of this Albany-based gang were charged and convicted under RICO in the early 2000s). The appellant consistently denied being a member. He acknowledged that his tattoo, which displayed the names of friends who died during his childhood, included the names of several known gang members. But he explained that he knew these people long before they were charged. There was no indication that the instant offense was gang related, the appellant had no gang-related criminal history, and the court provided little explanation for why the special condition was reasonably related to rehabilitation.

[United States v Sims \(No. 21-3015\)](#)  
[2011 DOJ Press Release](#)

## APPELLATE TERM

***People v Burnett*** | February 8, 2024

CPL 30.30 | SUA SPONTE DISMISSAL | REVERSED

The People appealed from a Nassau County District Court order that sua sponte dismissed charges based on CPL 30.30. The Appellate Term, Second Department reversed and remitted. A motion to dismiss must be made in writing and on reasonable notice to the People. The District Court erroneously dismissed the accusatory instruments when there was no written motion and the People had no notice that the court was considering dismissal.

[People v Burnett \(2024 NY Slip Op 50195\[U\]\)](#)

***People v Williams*** | February 9, 2024

CPL 30.30 | ONE COUNT INSUFFICIENT | COC STILL VALID

The appellant appealed from a Kings County Criminal Court order convicting him of unlicensed operation of a motor vehicle based on his guilty plea. The Appellate Term, Second Department affirmed. After the People filed their COC and SOR, the appellant moved to dismiss one count of the information as facially insufficient and to dismiss the entire instrument on 30.30 grounds. Criminal Court dismissed the one count as insufficient but denied the rest of the motion. CPL 30.30 requires the People to certify that all counts of an information are facially sufficient but provides no sanctions if the People's COC is inaccurate—sanctions are only provided for non-compliance. Alternatively, even if an inaccurate certification of the sufficiency of one count could render a COC illusory as to all counts, Criminal Court would only do so if the People filed the COC in bad faith (*cf. People v Matos*, 78 Misc 3d 322 [Crim Ct, Kings County 2023]).

[People v Williams \(2024 NY Slip Op 24059\)](#)

## TRIAL COURTS

***People v Gerard M.*** | 2024 WL 763925

SINGER | UNREASONABLE DELAY | DISMISSED

Gerard M. moved to dismiss an indictment charging him with 1<sup>st</sup> degree criminal sexual act and 1<sup>st</sup> degree rape based on unconstitutional pre-indictment delay. Bronx County Supreme Court granted the motion. The only reason for the 12-year delay in prosecution appeared to be minimal efforts by the police to apprehend Gerard M. The case was not particularly complex, and the evidence was as strong as it would ever get from the outset.

The complainant's account of what happened, her prompt complaint, and her examination at a hospital all occurred on or about the date she filed the complaint in 2009. Although a defendant need not show prejudice, here the prejudice was manifold—during the delay, police lost the case file with the original paperwork. William Shanahan represented Gerard M.

[People v Gerard M. \(2024 NY Slip Op 50176\[U\]\)](#)

### ***People v Bailey*** | 2024 WL 854556

COC/SOR ILLUSORY | UNCONVERTED ACCUSATORY INSTRUMENT | DISMISSED

Bailey moved to dismiss misdemeanor charges on speedy trial grounds. Bronx County Criminal Court granted the motion. The People failed to convert the accusatory instrument before announcing their readiness for trial. The People's first supporting deposition, sent to defense counsel via a OneDrive folder, had the wrong caption and no indication that it was being served for purposes of conversion. The second supporting deposition, emailed to defense counsel, had the proper caption but no signature. Since the People gave no explanation for their failure to procure a properly signed supporting deposition, they lacked the requisite good faith and due diligence. The Bronx Defenders (Abhi Hu, law graduate supervised by Edie Joseph, Esq.) represented Bailey.

[People v Bailey \(2024 NY Slip Op 50207\[U\]\)](#)

### ***People v Colley*** | 2024 WL 878618

COC/SOR ILLUSORY | CONVERSION ON 90<sup>TH</sup> DAY | DISMISSED

Colley moved to dismiss misdemeanor charges on speedy trial grounds. Bronx County Criminal Court granted the motion. The People waited until 11:16 p.m. on the 90<sup>th</sup> day to convert a misdemeanor complaint to an information and filed their COC at the same time. This prevented Colley from being arraigned on the information before the end of their statutory speedy trial time. The People gave no explanation why the delay in converting the complaint was not solely attributable to them. They could not validly declare readiness for trial before Colley's arraignment on the converted instrument, making their COC illusory. The Bronx Defenders (Eleanor Khirallah, of counsel) represented Colley.

[People v Colley \(2024 NY Slip Op 50210\[U\]\)](#)

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