

Decisions of Interest

APRIL 10, 2023

CRIMINAL

U.S. SUPREME COURT

Brown v Louisiana | April 3, 2023

ANGOLA 5 | DEATH ROW | *BRADY* | CERT DENIED | DISSENT

The U.S. Supreme Court denied petitioner's writ of certiorari from a Louisiana Supreme Court order reinstating his conviction and death sentence. Justice Jackson, joined by Justices Sotomayor and Kagan, dissented. Petitioner and his four codefendants (the Angola 5) were convicted of 1st degree murder after a prison guard was killed during their attempted prison break. The petitioner admitted being present for the attempted prison break but denied being involved with the guard's death. Before petitioner's trial, the prosecution obtained a statement from an uninvolved inmate who claimed that one of the codefendants confessed that he and another codefendant—not petitioner—had decided to kill the guard. The prosecution did not disclose the statement until after petitioner's sentencing. In the dissent's view, this violated the petitioner's *Brady* rights, as the statement was favorable and material to the petitioner's penalty phase.

[Brown v Louisiana \(2023 WL 2744925\)](#)

FIRST DEPARTMENT

People v Graham | April 6, 2023

PERSISTENT VIOLENT FELON | UNCONSTITUTIONAL PREDICATE

The defendant appealed from a NY County Supreme Court judgment convicting him of 2nd degree CPW (two counts) and sentencing him as a persistent violent felony offender. The First Department remanded for a ruling on the defendant's claim that his 2002 predicate conviction was unconstitutionally obtained. The defendant claimed that he would not have pleaded guilty in 2002 had he known that the sentence would include PRS. PRS was not mentioned in 2002; it was added at his 2010 resentencing (*see People v Sparber*, 10 NY3d 457 [2008]). The trial court did not decide the defendant's prejudice claim, and instead held that his challenge was barred because he declined a chance to withdraw the 2002 plea during the 2010 resentencing. But that opportunity—which occurred when he had only weeks left on his 8½-year sentence—would not have remedied the alleged constitutional defect. Center for Appellate Litigation (John L. Palmer, of counsel) represented the appellant.

[People v Graham \(2023 NY Slip Op 01852\)](#)

People v Taylor | April 6, 2023

BURGLARY | DOCTOR'S OFFICE | WEIGHT OF THE EVIDENCE

The defendant appealed from a NY County Supreme Court judgment convicting him of 3rd degree burglary (seven counts). The First Department dismissed one of the burglary charges and remanded for resentencing. The verdict convicting the defendant of the burglary of a doctor's office—based solely on the presence of his DNA on an open soda can in the reception area—was against the weight of the evidence. The office manager's testimony failed to address whether there was an innocent explanation for its presence. Center for Appellate Litigation (Anjali Pathmanathan, of counsel) represented the appellant.

[People v Taylor \(2023 NY Slip Op 01848\)](#)

SECOND DEPARTMENT

People v Cortez-Moreno | April 5, 2023

SORA | DANGEROUS INSTRUMENT | AFFIRMED ON OTHER GROUNDS

The defendant appealed from a Nassau County Supreme Court order designating him a level three sex offender. The Second Department affirmed, but on different grounds. The defendant was improperly assigned 30 points on risk factor 1 for being “armed with a dangerous instrument.” Although he threatened to use a machete, there was no evidence that he actually had one. But he should have been assigned 10 points on this factor for the use of forcible compulsion, resulting in a presumptive risk level two. Supreme Court had not addressed the People's alternative request for an upward departure to a level three but, based on its own findings of fact and conclusions of law, the First Department held that an upward departure was warranted.

[People v Cortez-Moreno \(2023 Slip Op 01811\)](#)

THIRD DEPARTMENT

People v Camlin | April 6, 2023

SCI DISMISSED | NOT SIGNED IN OPEN COURT

The defendant appealed from a Schenectady County Court judgment convicting him of 5th degree CPCS based on his guilty plea. The Third Department reversed and dismissed the SCI, which was jurisdictionally defective. The waiver of indictment was signed by the defendant and dated, but the record did not show that the waiver was signed by the defendant in open court as constitutionally required. Erin C. Morigerato represented the appellant.

[People v Camlin \(2023 NY Slip Op 01821\)](#)

People v Winter | April 6, 2023

CORRECTION LAW § 168-A | OFFENSE NOT REGISTERABLE

The defendant appealed from an Ulster County Court judgment convicting him of 3rd degree burglary as a sexually motivated felony based on his guilty plea and requiring him to register as sex offender upon his release. The Third Department vacated the provision certifying the defendant as a sex offender required to register, in the interest of justice.

Burglary as a sexually motivated felony is not a registerable offense as defined by Correction Law § 168-a (2), and County Court improperly imposed a SORA registration requirement on the defendant. The Kingston County Public Defender (Carly P. Burkhardt, of counsel) represented the appellant.

[People v Winter \(2023 NY Slip Op 01820\)](#)

TRIAL COURTS

People v Diallo | 2023 WL 2748853

COC/SOR | NO DUE DILIGENCE | SPEEDY TRIAL | DISMISSED

The Bronx County Criminal Court invalidated the People’s COC/SOR and dismissed the information on speedy trial grounds. The People argued that, although they failed to provide discovery within the statutory timeframe, they had exercised due diligence. But they did nothing to obtain the discovery for the first 76 days of the prosecution, and their efforts thereafter were passive at best. Furthermore, they could have requested an extension, but failed to do so. Thus, the COC and SOR were invalid. Because there were at least 102 days chargeable to the People, dismissal was required. The Legal Aid Society (Benjamin R. Williams, of counsel) represented the defendant.

[People v Diallo \(2023 NY Slip Op 50255\[U\]\)](#)

People v Rivera | 2023 WL 2779065

REARGUE | COC/SOR | DUE DILIGENCE

Following reargument, the Queens County Supreme Court adhered to its decision that the People’s COC was invalid because they did not exercise due diligence in disclosing all Law Enforcement Officer Witness (LEOW) disclosure letters. While disclosure of LEOW letters generally satisfies the People’s discovery obligations, letters for some of the officers did not exist at the time of the initial disclosure. However, the People took no additional steps to obtain these letters and, regardless, they had direct access to the relevant information. The People could not circumvent their discovery obligations by later retracting their designation of these officers as potential witnesses. The court may only consider sanctions for belated discovery if it first determines that the COC was filed in good faith after due diligence—the defendant is not required to show prejudice for the COC to be deemed invalid. Queens Defender (Kim Barr, of counsel) represented the defendant.

[People v Rivera \(2023 NY Slip Op 50261\[U\]\)](#)

People v Jeffcoat | 2023 WL 2820192

DWI | *MIRANDA* | PROBABLE CAUSE | SUPPRESSION

The Nassau County District Court suppressed the defendant’s statements and all physical evidence. The defendant was charged with DWI after a car crashed into a building. Police found the car inside the building, unoccupied. The defendant exited the building and police stopped him and questioned him. He had watery/bloodshot eyes, smelled of alcohol, and his leg was bloodied. No one else was in the building. The defendant was arrested and searched; a key fob for the make of the car was found in his pocket. At the hospital, the defendant submitted to a blood test. He was *Mirandized* for the first time and invoked his right to remain silent. The defendant was in custody from his first interaction

with police. There was no probable cause for his arrest; no one observed him in or operating the vehicle. Gregory Grizopoulos represented the defendant.

[People v Jeffcoat \(2023 Slip Op 50306\[U\]\)](#)

People v Theresa G. | 2023 WL 2764721

DVSJA | CPL 440.47 | RESENTENCE

Kings County Supreme Court granted the defendant's DVSJA petition and resentenced her to 4 years plus 1½ years of PRS. In 2018, the defendant pleaded guilty to 1st degree assault and was sentenced to 8 years plus 5 years of PRS. The defendant was undisputedly a victim of extreme domestic violence. She had no criminal history, steady employment, family/community support, and a clean prison record. The People argued that she was ineligible for resentencing because she stabbed her boyfriend from behind as a result of anger and excessive drinking. But, even if true, the history of domestic violence was still a significant contributing factor to the defendant's criminal behavior. Appellate Advocates (Courtney Crosby, of counsel) represented the defendant.

[People v Theresa G. \(2023 Slip Op 23087\)](#)

Matter of R.M. v C.M. | 2023 WL 2764723

ERPO | STATUTE UNCONSTITUTIONAL

The Orange County Supreme Court declared the ERPO statute (CPLR 6340-6347) unconstitutional and dismissed the petition. Under the ERPO statute, the court is required to determine whether the respondent is likely to cause serious harm to himself or others. But unlike the procedure set forth in Mental Hygiene Law § 9.39, an ERPO court is expected to make this determination without input from a mental health professional. The court joined the Monroe County Supreme Court in holding that, "in order to pass constitutional muster," the ERPO statute must provide further procedural guarantees, such as a physician's determination that the respondent poses a risk to self or others, before a TERPO or ERPO may be granted. Larkin Ingrassia, LLP represented the respondent.

[Matter of R.M. v C.M. \(2023 NY Slip Op 23088\)](#)

FAMILY

THIRD DEPARTMENT

Matter of Alachi I. (Shelby J.) | April 6, 2023

NEGLECT FINDING | REVERSED | PETITION DISMISSED

The mother appealed from a March 2020 Otsego County Family Court order that adjudicated her children neglected. The Third Department reversed and dismissed the petition. DSS failed to establish that the children's physical or mental health was impaired or in imminent danger of being impaired or that the mother failed to exercise a minimum degree of care in supervising the children. Any parent would have struggled in her situation, living in a homeless shelter with three young children after fleeing from an abusive relationship. The mother tried to open a preventative services case with DSS to

get help. Instead, DSS filed a neglect petition against her and removed her children while she was in Georgia tending to a custody proceeding commenced by her abuser. The delay in bringing the appeal to the Court illustrated that “justice delayed is justice denied.” [NOTE: As to delays in this case, the appeal was perfected in January 2022 but was not decided until April 2023]. The Rural Law Center of NY (Keith Schockmel, of counsel) represented the mother.

[Matter of Alachi I. \(Shelby J.\) \(2023 NY Slip Op 01822\)](#)

Matter of Alda X. v Aurel X. | April 6, 2023

CUSTODY MODIFICATION | NO JURISDICTION | NJ ORDER

Both parents appealed from an Albany County Family Court order which, among other things, partially granted modification of an existing custody order. The Third Department reversed and remanded. The initial custody order was issued by a New Jersey court which retained jurisdiction because the father continued to live in NJ. Family Court did not have jurisdiction to modify the existing NJ order—nothing in the record showed that NJ relinquished jurisdiction or that NY was deemed a more convenient forum. Further, Family Court must ensure that proceedings are properly recorded. Many sections of the recordings of these proceedings were unintelligible. Family Court indicated at one point that the mother required an interpreter, but no interpreter was scheduled, and it was indeterminable whether the proper inquiry was conducted into the necessity of an interpreter.

[Matter of Alda X. v Aurel X. \(2023 NY Slip Op 01826\)](#)

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