

Decisions of Interest

APRIL 17, 2023

CRIMINAL

FIRST DEPARTMENT

People v Arroyo | April 13, 2023

GRAVITY KNIFE | CHARGE DISMISSED

The defendant appealed from a New York County Supreme Court judgment convicting him of 4th degree CPW based on his guilty plea. The First Department vacated the judgment and dismissed the accusatory instrument in the interest of justice. Although the legislative amendment that decriminalized the simple possession of gravity knives does not apply retroactively, the People consented to dismissal of the defendant's conviction based on the circumstances of this case. The Legal Aid Society of NYC (Kristina Schwarz, of counsel) represented the appellant.

[People v Arroyo \(2023 NY Slip Op 01945\)](#)

SECOND DEPARTMENT

People v Motta | April 12, 2023

SORA HEARING | INEFFECTIVE ASSISTANCE OF COUNSEL

The defendant appealed from a Nassau County Supreme Court order that designated him a risk level three sex offender. The Second Department reversed and remanded. The order appealed from was not entered on consent. Defense counsel agreed that the defendant was a presumptive level three but did not indicate that the defendant consented to a level three designation. Defense counsel failed to litigate any aspect of the adjudication which deprived the defendant of his right to meaningful representation. Joseph A. Hanshe (Kimberly M. Ball, of counsel) represented the appellant.

[People v Motta \(2023 NY Slip Op 01908\)](#)

THIRD DEPARTMENT

People v West | April 13, 2023

CRIMINAL MISCHIEF | SCI | JURISDICTIONALLY DEFECTIVE

The defendant appealed from a Hamilton County Court judgment convicting her of 2nd degree assault and 3rd degree criminal mischief based on her guilty pleas which satisfied two separate SCIs. The Third Department reversed and dismissed the criminal mischief charge but affirmed the assault conviction. The SCI charging criminal mischief was jurisdictionally defective. Although a charging instrument may incorporate by reference the statutory provisions applicable to the crime charged, if the defining statute contains an exception, it must allege that the crime is not within that exception. The SCI did not allege that the defendant had no right to cause the property damage, or that she had a

reasonable ground to believe that she had such right. Edward S. Graves represented the appellant.

[People v West \(2023 NY Slip Op 01921\)](#)

People v Burton | April 13, 2023

ARSON/MURDER | INCLUSORY CONCURRENT COUNTS

The defendant appealed from a Broome County Court judgment convicting him of 1st degree arson, 1st degree murder (3 counts), 2nd degree murder (two counts), and other charges. The Third Department modified by reversing the convictions for 2nd degree murder and dismissing those counts. The 2nd degree murder counts were inclusory concurrent counts of his 1st degree murder convictions (see CPL 300.40 [3] [b]), requiring their dismissal. Kathy Manley represented the appellant.

[People v Burton \(2023 NY Slip Op 01919\)](#)

APPELLATE TERM, FIRST DEPARTMENT

People v White | 2023 WL 2923202

PARTIAL DISMISSAL | REMAND NOT REQUESTED

The defendant appealed from a Bronx County Criminal Court judgment convicting him of 7th degree CPCS and disorderly conduct (two counts) based on his guilty plea. The Appellate Term reversed and dismissed the disorderly conduct convictions but affirmed the CPCS conviction. The People conceded that the accusatory instruments charging disorderly conduct were facially insufficient. However, even if the defendant had established that his guilty plea to CPCS was conditioned on the promise of a concurrent sentence, the proper remedy would be vacatur of the conviction and remand for further proceedings—not dismissal of the CPCS charges, which was the sole relief the defendant sought.

[People v White \(2023 NY Slip Op 50321\[U\]\)](#)

TRIAL COURTS

People v Eleazar | 2023 WL 2881819

POLICE MISCONDUCT RECORDS | CPL 30.30 | DISMISSED

The defendant challenged the validity of the People's COC and moved for dismissal of the charges against him based on CPL 30.30. New York County Criminal Court held that the COC was invalid and dismissed the charges. The People disclosed letters summarizing police officers' misconduct records, but disclosure of the underlying documents related to both substantiated and unsubstantiated misconduct was required. Moreover, once the People indicate that an officer will be a witness, they may not declare that they are no longer going to call that officer to avoid disclosure of misconduct records and invalidation of their COC. The Legal Aid Society of NYC (Robert Jereski, of counsel) represented the defendant.

[People v Eleazar \(2023 NY Slip Op 50316\[U\]\)](#)

People v Payne | 2023 WL 2881810

PROTECTIVE ORDER | NYPD IAB RECORDS | DENIED

The People provided redacted Internal Affairs Bureau (IAB) logs concerning named NYPD officers based on Bronx County Criminal Court's disclosure order. They explained

that the NYPD did not give them the unredacted records. The court ordered the People to provide the unredacted records or file a motion for a protective order. The People moved for a protective order and the motion was denied. The People’s primary assertions—that the redacted information was irrelevant and non-discoverable and that some of the allegations investigated were unfounded—did not provide a good-cause basis to issue a protective order. The impeachment value of such material is for defense counsel, not the People or IAB, to determine. The Bronx Defenders (William John, of counsel) represented the defendant.

[People v Payne \(2023 NY Slip Op 23101\)](#)

***People v T.R.* | 2023 WL 2918936**

JD REMOVAL | NO EXTRAORDINARY CIRCUMSTANCES

The People sought to prevent removal of the adolescent offender’s (AO) case to the JD part of Family Court. Erie County Youth Part denied the motion. The AO was charged with 1st degree attempted robbery. Although a serious charge, that offense is not required to remain in the Youth Part. The People’s claims that the AO threatened violence and that a weapon was displayed—which was neither possessed by the AO nor recovered—do not constitute extraordinary circumstances that should prevent removal. Giovanni Genovese represented the adolescent offender.

[People v T.R. \(2023 NY Slip 50314\[U\]\)](#)

***Matter of J.B. v K.S.G.* | 2023 WL 2851170**

ERPO STATUTE | CONSTITUTIONAL

The respondent challenged the constitutionality of CPLR article 63-a (the ERPO statute), arguing that it improperly infringed on the Second Amendment right to possess firearms. Cortland County Supreme Court denied the motion. The decision in *G.W. v C.N.* overstated the role of physicians in MHL article 9 proceedings and incorrectly concluded that ERPO requires proof of mental illness (see *Matter of G.W. v C.N.*, 78 Misc 3d 289 [Sup Ct, Monroe County 2022]; see also *Matter of R.M. v C.M.*, 2023 NY Slip Op 23088 [Sup Ct, Orange County 2023]). ERPO only incorporated the MHL definition of “likelihood to result in serious harm”—not any provisions related to mental illness. The ERPO analysis is a fact-based inquiry as to whether the respondent’s conduct evinces the likelihood of harm. Further, ERPO provides ample procedural protections against improper deprivation of Second Amendment rights.

[Matter of J.B. v K.S.G. \(2023 NY Slip 23099\)](#)

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