Indigent Legal Services

Decisions of Interest

APRIL 22, 2024

CRIMINAL

COURT OF APPEALS

People v Sims | April 18, 2024

ENHANCED SENTENCE | AFFIRMED

The appellant appealed from a Third Department order affirming his 2nd degree CPCS conviction and imposing an enhanced sentence. The Court of Appeals affirmed. The sentencing court conducted an adequate inquiry and provided an opportunity to dispute the factual basis of the alleged violation of the plea conditions before imposing an enhanced sentence. The appellant's ineffective assistance of counsel claims are more appropriately brought in a collateral or post-conviction CPL 440.10 motion. Further, the appellant's post-plea statements to a probation officer did not require further inquiry by the court regarding the voluntariness of his plea.

Oral Argument

People v Sims (2024 NY Slip Op 02083)

People v Dufresne | April 18, 2024

SORA CLASSIFICATION| CIVIL COMMITMENT | AFFIRMED

The appellant appealed from a First Department order affirming the level three sexually violent predicate offender adjudication. The Court of Appeals affirmed. The SORA court properly rejected the appellant's request for an indefinite adjournment of the classification hearing pending resolution of a MHL article 10 civil commitment proceeding (*see People v Boone*, __NY3d __, 2024 NY Slip Op 00928 [2024]).

People v Dufresne (2024 NY Slip Op 02084)

SECOND DEPARTMENT

People v Liston | April 17, 2024

WEIGHT OF THE EVIDENCE | ACQUITTED ON OTHER CHARGES | DISMISSED

The appellant appealed from a Kings County Court judgment convicting him of endangering the welfare of a child. The Second Department reversed and dismissed the indictment. The jury's acquittal on counts charging rape and forcible touching rendered the verdict against the weight of the evidence. Those charges were based on essentially the same conduct as the endangering charge. Once the jury discredited the complainant's testimony about the rape and forcible touching charges, there was no evidence that the

appellant knowingly acted in a manner likely to be injurious to the welfare of a child. Appellate Advocates (Anna Jouravleva, of counsel) represented the appellant.
Oral Argument (starts at 7:04)
People v Liston (2024 NY Slip Op 02066)

People v Joseph D. | April 17, 2024
PROBATION | COMMUNITY SERVICE | MODIFIED
The appellant appealed from a Rockland County Court sentence adjudicating him a youthful offender and imposing a 6-month jail term and 5 years of probation, including a condition that he perform 10 hours of community service per week, based on his guilty plea. The Second Department deleted the community service condition and otherwise affirmed. Even if the appellant's attorney's statements at sentencing could be construed as consent to community service, he did not consent to the amount and conditions that were imposed. Goldstein & Rayner (John S. Edwards, of counsel) represented the appellant.
People v Joseph D. (2024 NY Slip Op 02064)

APPELLATE TERM

People v Jones | April 15, 2024
SORA | ACCEPTANCE OF RESPONSIBILITY | FIFTH AMENDMENT
The appellant appealed from a New York City Criminal Court order that adjudicated him a level two sex offender. The Appellate Term, First Department reversed and remitted. The court should not have assessed points on factor 12 for failure to accept responsibility. The appellant denied guilt while his appeal from the underlying conviction was pending. An admission could have been used against him in a retrial. Requiring him to accept responsibility at that time violated his Fifth Amendment right against self-incrimination. Because the error affected the People's decision to not request an upward departure, they were entitled to seek a departure on remand.
People v Jones (2024 NY Slip Op 024115)

TRIAL COURTS

People v J.M. | 2024 WL 1667237
JUVENILE SUSPECT | ILLEGAL ARREST | EVIDENCE SUPPRESSED
J.M., a 15-year-old juvenile, moved to suppress physical evidence and statements. New York County Supreme Court granted the motion. J.M. was arrested based on a radio run matching his general location and partially matching his description. Officers approached, immediately cuffed him from behind, said they were going to the precinct, and searched him. At the precinct, he was forced to undress and was left handcuffed to a bench in his underwear for eight hours. There was neither reasonable suspicion nor probable cause for his arrest—the radio run gave only the common law right to inquire. His statements at the scene, even if spontaneous, were induced by the sudden and forceful arrest. The physical evidence—his clothes and photos of his clothes and hands—was obtained as a direct result of his illegal arrest. Although he made custodial statements more than 8 hours

later, being cuffed to a bench in his underwear increased the coerciveness of the situation. Further, he was not advised of his right to have a guardian present, and the record did not show that it was necessary to question him (*see* CPL 140.20 [6]). The Legal Aid Society of NYC (Sarah Legler and Timothy Pruitt, of counsel) represented J.M.
People v J.M. (2024 NY Slip Op 50445[U])

People v Mendoza | 2024 WL 1667232

DISCOVERY | SPEEDY TRIAL | DISMISSED

Mendoza moved to dismiss DWI and related charges arising from a car accident on speedy trial grounds. Bronx County Criminal Court granted the motion. Over four months after his arrest and about six weeks after filing their initial COC/SOR, the People obtained a warrant for a blood sample that was taken at the emergency room the night of the crash. A month later, they served a supplemental COC, including an OCME toxicology report. The People provided no reasonable explanation for the four-month delay between sending a preservation letter to the hospital about the sample and their request for a warrant. Although a new ADA was assigned to the case, it was apparent from the complaint that Mendoza had submitted to a blood draw, and the People made no efforts to coordinate with the arresting officer to get a warrant until after the COC was filed. Peter Batalla represented Mendoza.
People v Mendoza (2024 NY Slip Op 24119)

People v Jonathan H. | 2024 WL 1627673

DVSJA | NO TEMPORAL NEXUS | SENTENCE NOT EXCESSIVE

Jonathan H. sought to be sentenced under the DVSJA upon his 1st degree assault and 4th degree CPW convictions for stabbing another resident at a homeless shelter. New York County Supreme Court denied the application after a hearing. Jonathan H. argued that the complainant's repeated threats were acutely triggering given his PTSD, which resulted from severe physical and sexual childhood abuse. The court held that co-residents in a homeless shelter do not qualify as members of the same family or household and there was an insufficient temporal nexus between the childhood abuse and the offense. The court rejected the expert's conclusion that the complainant's behavior significantly contributed to the assault, noting the differing explanations for the offense at trial versus the hearing. Further, although Jonathan H. had no criminal history and had an excellent record during his pre-trial incarceration, a sentence of between 5 and 25 years was not unduly harsh given the severity of the offense. New York County Defender Services (Eric Burse and Nicole Guliano, of counsel) represented Jonathan H.
People v. Jonathan H. (2024 NY Slip Op 50419[U])

CIVIL

THIRD DEPARTMENT

Matter of Williams v Panzarella | April 18, 2024

PRISON DISCIPLINARY VIOLATION | ANNULLED

The petitioner filed a CPLR article 78 proceeding challenging an agency determination finding him guilty of lewd conduct after a Tier II hearing. The Third Department annulled the determination and expunged it from his prison record. The petitioner was denied due process when the facility review officer that reviewed the misbehavior report also decided his administrative appeal. The appeal challenged the review officer's actions, including the officer's pre-determination of guilt based on review a video that was to be presented at the hearing. This denied the petitioner a fair and impartial administrative appeal.
Matter of Williams v Panzarella (2024 NY Slip Op 02118)

FAMILY

SECOND DEPARTMENT

Matter of Kaira K. (Karam S.) | April 17, 2024

EDUCATIONAL NEGLECT | COVID-19 | MODIFIED

The mother appealed from a Queens County Family Court order finding that she neglected the subject children. The Second Department reversed a finding of educational neglect and otherwise affirmed. Although the older child had excessive absences throughout the 2020-2021 school year, most of those absences were during the first half of the year due to bussing issues which the mother had remedied, and technological issues that limited the child's virtual attendance during the COVID-19 pandemic. The child's attendance improved during the second half of the year, she successfully completed third grade, and some of the cited absences occurred when the mother did not have residential custody of the child.
Oral Argument (starts at 1:30:10)
Matter of Kaira K. (Karam S.) (2024 NY Slip Op 02054)

Matter of Valedon v Naqvi | April 17, 2024

CUSTODY MODIFICATION | HEARING REQUIRED | REVERSED

The mother appealed from a Westchester County Family Court order that summarily granted the father's modification petition. The Second Department reversed and remitted. Family Court erred in extending the father's weekend parental access without holding a hearing or inquiring into the best interests of the children, especially in light of the parties' controverted allegations. Further, the court did not articulate the factors and evidence material to its determination. Wexler Law Group PLLC (Arlene Gold Wexler, of counsel) represented the mother.
Matter of Valedon v Naqvi (2024 NY Slip Op 02059)

Matter of Hirsch v Beda | April 17, 2024

FAMILY OFFENSE | DISMISSAL REVERSED

The petitioner appealed from a Kings County Family Court order that granted the respondent's motion to dismiss a family offense petition. The Second Department reversed, reinstated the petition, and remitted. The respondent moved to dismiss based on the pendency of another action between the parties in a federal district court. While there was substantial identity of the parties and both cases arose from the same allegations, the relief sought was not substantially the same. Amy J. Barrett represented the petitioner.

Matter of Hirsch v Beda (2024 NY Slip Op 02053)

TRIAL COURTS

Matter of Jake G. v Jorge G. | 2024 WL 1627935

FCA § 1028 | FATHER RETURNED TO HOME

The father moved for permission to return to the home. Kings County Family Court granted the motion, with protective orders, after an emergency FCA § 1028 hearing. ACS filed a neglect petition alleging excessive corporal punishment after the father hit his 12-year-old child with a belt. At the initial appearance, the children were released to the mother and the father was excluded from the home with supervised visits. The father's substantial work schedule made scheduling the visits nearly impossible. Both parents complied with the court's orders; the children reported that they missed their father and did not fear him; use of a belt was not the father's regular discipline practice; the father had started anger management and parenting classes; and the family voluntarily engaged in other services. Under the circumstances, the emotional and mental harm and added stress of continued separation outweighed any physical risk to the children. Brooklyn Defender Services (Julian Motijo, of counsel) represented the father.

Matter of Jake G. v Jorge G. (2024 NY Slip Op 50421[U])

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