Indigent Legal Services

Decisions of Interest

APRIL 29, 2024

CRIMINAL

COURT OF APPEALS

People v Fisher | April 23, 2024

GROSSLY UNQUALIFIED JUROR | REVERSED

The appellant appealed from a Third Department order affirming his 3rd degree CSCS conviction. The Court of Appeals reversed and ordered a new trial. A juror reported that the appellant had followed her home after the first day of jury selection. Rather than promptly reporting her concern to the court, she waited three days—until the jury was already deliberating and the alternates had been excused—and expressed her safety concern to the other jurors. This juror's strongly held, prejudicial beliefs were unrelated to the evidence at trial. Introducing those beliefs into deliberations rendered her grossly unqualified. Her equivocal response about whether she could be fair and impartial and her one-word affirmative responses to the court's formulaic questions did not cure the problem. Lisa A. Burgess represented the appellant.

Oral Argument

People v Fisher (2024 NY Slip Op 02129)

People v Williams | April 23, 2024

IDENTIFICATION SUPPRESSED | INDEPENDENT SOURCE HEARING REQUIRED

The appellant appealed from a First Department order affirming his 3rd degree CSCS conviction. The Court of Appeals reversed and ordered an independent source hearing and new trial. An undercover officer allegedly bought heroin from the appellant through an intermediary. The officer walked behind them during the sale and never met the appellant face-to-face. Other officers arrested the appellant nearby based on the undercover's description. He made a confirmatory identification back at the precinct, which was suppressed as fruit of an illegal arrest. The trial court erred in permitting the officer to later identify the appellant in court without record support for an independent source determination. The officer's suppression hearing testimony did not show that his in-court identification would be derived from his pre-arrest interactions with the appellant and not the post-arrest confirmatory identification. The Center for Appellate Litigation (Carola M. Beeney, of counsel) represented the appellant.

Oral Argument

People v Williams (2024 NY Slip Op 02128)

People v Mosley | April 23, 2024

NON-EYEWITNESS IDENTIFICATION | REVERSED

The appellant appealed from a Fourth Department order affirming his conviction for 2nd degree CPW (two counts) and 1st degree reckless endangerment. The Court of Appeals reversed and ordered a new trial. Only a grainy surveillance video connected the appellant to the shooting. An officer who was not at the shooting was permitted to identify him in the video at trial. This type of non-eyewitness testimony may be admissible where the witness is sufficiently familiar with an individual and the jury needs help making its independent assessment. But here, the officer first met the appellant at the precinct months after the shooting and never had any "street" encounters with him. Though his testimony referenced the shape of the appellant's nose, the video was so blurred that the shooter's nose was not apparent. Further, the jury did not need the officer's help; the shooter was not wearing a disguise and there was no indication that the appellant's appearance had changed since the shooting. Hiscock Legal Aid Society (Thomas Leith, of counsel) represented the appellant.

Oral Argument

People v Mosley (2024 NY Slip Op 02125)

People v Weinstein | April 25, 2024

MOLINEUX | *SANDOVAL* | REVERSED

The appellant appealed from a First Department order affirming his conviction for 1st degree criminal sexual act and 3rd degree rape. The Court of Appeals reversed, vacated the conviction, and remitted for a new trial. The rape prosecution was not untimely because the statute of limitations was tolled during periods that the appellant was outside of New York. But the trial court erred in admitting the testimony of three women who alleged that the appellant committed acts of sexual misconduct against them years before and after the charged offenses. This proof was not necessary for any non-propensity purpose. The complainants were not equivocal as to consent, and the *Molineux* testimony was not needed to show forcible intent. Further, the trial court's *Sandoval* ruling—which permitted the prosecution to cross-examine the appellant about instances of bullying and fits of anger—was an abuse of discretion which impermissibly impacted the appellant's decision whether to testify and served only to display his loathsome character. Together these errors deprived the appellant of his constitutional right to a fair trial. Arthur L. Aidala represented the appellant.

Oral Argument

People v Weinstein (2024 NY Slip Op 02222)

People v Baez | April 25, 2024

CHAIN OF CUSTODY | LEGALLY SUFFICIENT | DISSENT

The appellant appealed from a Second Department order affirming his 4th degree CPCS conviction. The Court of Appeals affirmed with two judges dissenting. During the appellant's arrest, an officer retrieved a torn bag of cocaine that had fallen from his pocket. She tied it off in a nylon glove, brought it back to the station, placed it in a narcotics envelope, and left it on a desk for her partner to voucher in the morning. The only other person at the station was an administrative officer tasked with watching over evidence recovered during arrests. Even if the evidence was left unattended for a period, there

were reasonable assurances of its identity and unchanged nature; the drugs remained safely under police control in an identifiable location. Any discrepancies in the descriptions of the evidence were logical and raised weight and credibility issues only. In the dissent's view, the People failed to establish an unbroken, reliable chain of custody—an issue of law requiring a judicial determination.
Oral Argument
People v Baez (2024 NY Slip Op 02225)

People v Dunton | April 23, 2024
CORAM NOBIS | PEOPLE'S APPEAL | REVERSED
The People appealed from a Third Department order granting the appellant's writ of error coram nobis based on appellate counsel's failure to argue that he was improperly removed from the courtroom without warning during trial. The Court of Appeals reversed, with one judge dissenting, and remitted to the Third Department to consider undecided issues. The court directed that the appellant be cuffed while the jury rendered its verdict because he had a history of sudden, unprovoked violence at Riker's and in the courthouse. As the verdict was read, the appellant laughed and then verbally abused the jury. The totality of the appellant's misconduct made a warning impracticable; delay would have further disrupted the proceedings and risked physical danger to those present. Thus, the appellant's rights were not violated, and appellate counsel was not ineffective for omitting a meritless claim. In the dissent's view, a brief warning was practicable, and his unwarned removal was a mode of proceedings error requiring reversal.
Oral Argument
People v Dunton (2024 NY Slip Op 02130)

People v Franklin | April 25, 2024
CONFRONTATION CLAUSE | CJA REPORT | NOT TESTIMONIAL
The People appealed from a Second Department order that reversed the appellant's 2nd degree CPW conviction and ordered a new trial. The Court of Appeals reversed, with two judges dissenting, and remitted to the Second Department to consider undecided issues. An out-of-court statement is testimonial when its primary purpose was to create a substitute for trial testimony. Here, the trial court admitted a Criminal Justice Agency (CJA) Interview Report authored by a non-testifying former employee as proof that the appellant self-reported his residence as the basement of a house—where the gun was found. The primary purpose of a CJA report is administrative; they are routinely prepared for all arrestees in NYC to provide self-reported information about suitability for pretrial release. They are not created to establish facts relevant to a later criminal prosecution. That the report here became relevant during the trial did not alter its primary purpose. In the dissent's view, the report was testimonial because it was created for use as a fact-finding tool to determine pretrial release at arraignment and could affect the prosecution.
Oral Argument
People v Franklin (2024 NY Slip Op 02227)

FAMILY

SECOND DEPARTMENT

Matter of Barrows v Ryan | April 24, 2024

CHILD SUPPORT | INVALID CONSENT | REVERSED

The mother appealed from a Westchester County Family Court order that denied her objections to a child support order. The Second Department reversed, granted the objections, and remitted for a child support hearing. The mother's consent to the support order was not knowing and voluntary. After the mother stated that she believed the father's income to be higher than what he reported, the support magistrate erroneously advised that she would bear the burden of proving the father's income at a hearing. Joan Iacono represented the mother.

Matter of Barrows v Ryan (2024 NY Slip Op 02186)

Matter of Olivos v Quiroz | April 24, 2024

UCCJEA | SUBJECT MATTER JURISDICTION | DISMISSAL REVERSED

The father appealed from an Orange County Family Court order that summarily dismissed his custody petition for lack of subject matter jurisdiction. The Second Department reversed. The father was entitled to a hearing to determine whether Family Court had jurisdiction under the UCCJEA. The mother represented that the parties were divorced in Peru and that she was awarded custody of the children by a Peruvian court. But the children had lived in the United States for about two years, both parties provided New York addresses to the court, and it was disputed whether a Peruvian court had made an initial custody determination. Michelle Neusch represented the father.

Matter of Olivos v Quiroz (2024 NY Slip Op 02199)

Matter of Eddy A. P. C. (Maria G. C. S.) | April 24, 2024

SIJS | CHILDREN'S APPEAL | REVERSED

The children appealed from a Kings County Family Court order denying their motion for specific findings enabling them to petition for special immigration juvenile status after a hearing. The Second Department reversed. The record supported a finding that reunification with the mother was not viable due to her abandonment of the children. While in Guatemala the mother provided little to no emotional support or protection from the threat of gang violence. She then abandoned the children entirely when she moved to the U.S. and, once they arrived in the U.S., she neglected them. Jones Day (Jennifer Del Medico, Jack L. Millman, and Graziella Pastor, of counsel) represented the children.

Oral Argument (starts at 38:40)

Matter of Eddy A.P.C. (Maria G.C.S.) (2024 NY Slip Op 02187)

Matter of James L. (Zong H. L.). | April 24, 2024

NEGLECT | NOT DOMESTIC VIOLENCE | REVERSED

The father appealed from a Nassau County Family Court order finding that he neglected and derivatively neglected the children. The Second Department reversed the findings pertaining to the younger child and otherwise affirmed. DSS did not prove that the father

neglected the younger child by engaging in acts constituting domestic violence when he punched someone during a dispute over rent money. Nor did it present evidence that the younger child observed this incident and was impaired or in imminent danger of impairment. Gail Jacobs represented the father.
Matter of James l. (Zong H.L.) (2024 NY Slip Op 02196)

THIRD DEPARTMENT

Matter of Akhtar v Naeem | April 25, 2024
CHILD SUPPORT | INDIGENCY | ARREARS CANCELLED
The father appealed from a Saratoga County Family Court order that denied his request to cancel child support arrears in excess of $500 based on indigency. The Third Department modified and remitted for a recalculation of total arrears. The father established that he was unable to work while he was being treated for kidney failure. Although there were some omissions in his paperwork, they did not pertain to the 17-month period at issue. Family Court also erred in denying a credit for overpayments he made after the middle child turned 21. Gerald A. Norlander represented the father.
Oral Argument
Matter of Akhtar v Naeem (2024 NY Slip Op 02240)

CIVIL

COURT OF APPEALS

Matter of Alcantara v Annucci | April 25, 2024
FISHKILL RTF | NO COMMUNITY-BASED OPPORTUNITIES
The appellants in this converted declaratory judgment action appealed from a Third Department order reversing Albany County Supreme Court's grant of partial summary judgment in their favor. The Court of Appeals reversed, with three judges dissenting. DOCCS failed to comply with its obligations under Corrections Law § 73 to provide community-based educational, vocational and employment opportunities outside of Fishkill Correctional Facility to individuals being held at its residential treatment facility (RTF). DOCCS has discretion in operating its RTFs. And there is no doubt that securing SARA-compliant, community-based opportunities would be challenging. But DOCCS cannot categorically refuse to try to secure community-based opportunities for all RTF residents—all of whom have already completed their prison sentence. Willkie Farr & Gallagher LLP (Matthew Freimuth, of counsel) represented the defendants.
Oral Argument
Matter of Alcantara v Annucci (2024 NY Slip Op 02224)

SECOND DEPARTMENT

People ex rel. Ellis v Imperati | April 26, 2024

HABEAS CORPUS | BAIL | WRIT SUSTAINED

The petitioner in this habeas corpus proceeding asserted that Dutchess County Court was without authority to set bail because the charged crime of making a terroristic threat is a nonqualifying offense. The Second Department sustained the writ and set various nonmonetary conditions of release. CPL 510.10 (4) provides conflicting provisions as to whether making a terroristic threat constitutes a qualifying offense. CPL 510.10 (4) (a) is a general provision which provides that all violent felonies, with two non-relevant exceptions, are qualifying offenses. CPL 510.10 (4) (g) is a specific provision which expressly exempts making a terroristic threat as a qualifying offense. Under principles of statutory construction, the specific provision controls. Moreover, to construe making a terroristic threat as a qualifying offense would render superfluous the language exempting it under subsection g. The Dutchess County Public Defender (Andrew D. Ellis, of counsel) represented the petitioner.

People ex rel. Ellis v Imperati (2024 NY Slip Op 02269)

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