

Decisions of Interest

APRIL 8, 2022

CRIMINAL

FIRST DEPARTMENT

People v Ledezma | April 5, 2022

CHALLENGE FOR CAUSE | REVERSAL

The defendant appealed from a judgment of New York County Supreme Court, convicting him of 3rd degree sexual abuse. The First Department reversed and remanded for a new trial. The trial court improperly denied the defendant's for-cause challenges against prospective jurors who indicated that they were inclined to believe the alleged victims because they had proceeded to trial. The court should have made further inquiries to elicit an unequivocal assurance of the panelists' impartiality and their ability to follow the court's instructions. Steven Lynch represented the appellant.

https://nycourts.gov/reporter/3dseries/2022/2022_02236.htm

People v Headley | April 5, 2022

ATTEMPT | NOT DANGEROUSLY NEAR

The defendant appealed from a judgment of NY County Supreme Court. The First Department modified. The defendant argued that he was merely present in the front passenger seat of a car that was also occupied by the primary conspirator. In a police sting operation, this car was leading a convoy of cars containing conspirators en route to commit what they thought would be an armed robbery involving a large shipment of drugs, following two months of planning. Such evidence sufficiently supported the conviction of 4th degree conspiracy. However, the police stop of conspirators' vehicles heading to a robbery location several miles away—which had yet to be identified to the conspirators by the sting operators—was insufficient to prove attempted 1st degree robbery. The defendant and the others were not dangerously near to committing robbery. The Office of the Appellate Defender (Alba Morales and Alyssa Barnard-Yanni, of counsel) represented the appellant.

https://nycourts.gov/reporter/3dseries/2022/2022_02234.htm

People v Coachman | April 7, 2022

DEADLY FORCE | HARMLESS ERROR

The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of 1st degree manslaughter. The First Department affirmed. The defendant's theory was that he only used nondeadly force and was defending himself against the victim's nondeadly force. At counsel's request, the court instructed the jury on the justifiable

use of ordinary, nondeadly physical force. Over defense objection, the court also instructed the jury on the justifiable use of deadly force. That was error. There was no reasonable view of the evidence that the victim was using, or was about to use, deadly physical force against the defendant. Nevertheless, any error was harmless.

[People v Coachman \(2022 NY Slip Op 02346\) \(nycourts.gov\)](#)

SECOND DEPARTMENT

People v Kagan | April 6, 2022

JUDGE | BIAS

The defendant appealed from an order of Kings County Supreme Court, which denied his CPL 440.10 motion to vacate a 1999 judgment convicting him of 2nd degree murder. The Second Department reversed, vacated, and remitted for a new trial. The defendant, who is white, was charged with shooting a Black man. In 2011, the judge who had presided over the nonjury trial reviewed the trial transcript and realized that his experiences as a civil rights activist had improperly influenced his analysis and decision-making. Given such hearing proof, the defendant's fundamental right to a fair trial before an unbiased fact-finder was violated. Richard Mischel represented the appellant.

[People v Kagan \(2022 NY Slip Op 02283\) \(nycourts.gov\)](#)

People v Kahrone H. | April 6, 2022

FEES | VACATED

The defendant appealed from three judgments of Kings County Supreme Court, adjudicating him a youthful offender. The Second Department modified by vacating fees. DNA databank fees may not be imposed upon a YO. Further, New York repealed statutes authorizing imposition of a mandatory surcharge and crime victim assistance fee upon a YO. The 2020 amendments applied retroactively to cases pending on direct appeal on the effective date of the legislation. Appellate Advocates (Lynn W.L. Fahey, of counsel) represented the appellant.

[People v Kahrone H. \(2022 NY Slip Op 02281\) \(nycourts.gov\)](#)

McFadden v McDonald | April 6, 2022

FOIL | ART. 78 | RELIEF

The petitioner appealed from an order/judgment of Nassau County Supreme Court, which denied his CPLR Article 78 petition against the Nassau County Police Department. The respondent had denied his FOIL request relating to the criminal investigation underlying his convictions. The Second Department modified and directed the release of certain documents. The NCPD had denied the request on a specious basis—that the document descriptions were not specific enough. In affirming the denial, Supreme Court had improperly relied on grounds that the NCPD did not assert in its administrative denial. A reviewing court was powerless to affirm an administrative action by substituting a basis deemed more adequate or proper.

[Matter of McFadden v McDonald \(2022 NY Slip Op 02265\) \(nycourts.gov\)](#)

THIRD DEPARTMENT

People v Casatelli | April 7, 2022

CPL 60.42 | PROOF EXCLUDED

The defendant appealed from a judgment of Albany County Supreme Court, convicting him of 1st degree rape, 2nd degree burglary, and another crime. The Third Department affirmed. Pursuant to CPL 60.42, the trial court properly prevented counsel from cross-examining a physician assistant regarding the fact that the victim had HPV, a sexually transmitted disease. The People agreed to redact medical records to eliminate reference to such diagnosis, and counsel agreed not to cross-examine about it. But counsel then tried to do so, arguing that the People opened the door by introducing photos of the complainant depicting redness that might have been caused by HPV. No expert medical proof supported such contention, and counsel was given the chance to explore whether explanations other than nonconsensual sex could explain the condition. Two justices dissented in part, opining that the sentence imposed on the defendant as a second felony offender—an aggregate prison term of 37 years plus post-release supervision—should be modified by directing that the sentences would run concurrently.

[People v Casatelli \(2022 NY Slip Op 02313\) \(nycourts.gov\)](#)

People v Maloy | April 7, 2022

440.20 MOTIONS | NO COURT APPROVAL

The defendant appealed from a Sullivan County Court order, which denied his CPL 440.20 motion. The Third Department modified. The challenged order stated that the arguments made were decided or could have been raised in the defendant's prior motion and precluded him from filing additional applications without prior court approval. If Penal Law § 70.30 (limitations on length of multiple consecutive sentences) applied, CPL 440.20 was not the proper vehicle to seek relief; it was up to correctional authorities to determine how sentences should be executed. County Court did not err in denying the assignment of counsel. A criminal defendant did not have an unqualified right to counsel in collateral proceedings, and the instant motion lacked merit. However, County Court erred in requiring court approval for further motions. The rule invoked applied to civil matters. Jane Bloom represented the appellant.

[People v Maloy \(2022 NY Slip Op 02312\) \(nycourts.gov\)](#)

FAMILY

FIRST DEPARTMENT

Matter of Kamonie U. | April 5, 2022

FCA § 1091 | DENIED

The AFC appealed from an order of Bronx County Family Court, which denied a Family Ct Act § 1091 motion. The First Department affirmed. The statute allowed reentry into the

foster care system of youth between age 18 and 21 who were discharged from care due to their failure to consent to the continuation of placement. As the AFC argued, a return to care could serve the child—by providing housing, and services. But the AFC only speculated about when the child might be released, and it was not clear that the child would be discharged from jail if Family Court ordered a return to foster care.

https://nycourts.gov/reporter/3dseries/2022/2022_02245.htm

SECOND DEPARTMENT

Salim v Freeman | April 6, 2022

UIFSA | REVERSED

The mother appealed from an order of Suffolk County Family Court, denying her dismissal of the father's child support petition, filed in New York pursuant to the Uniform Interstate Family Support Act. The Second Department reversed. The mother sought dismissal based on a support order issued in Virginia. Under UIFSA, the state issuing a support order retained continuing jurisdiction over such orders so long as a litigant continued to reside in the issuing state. Since the father lived in Virginia, that state had jurisdiction, and NY could not modify support. Jessica Sparacino represented the appellant.

[Matter of Salim v Freeman \(2022 NY Slip Op 02268\) \(nycourts.gov\)](#)



Cynthia Feathers

Director, Appellate & Post-Conviction Representation

New York State Office of Indigent Legal Services

80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

(518) 949-6131 | cynthia.feathers@ils.ny.gov | (she/her/hers)