Indigent Legal Services

Decisions of Interest

MAY 13, 2022

CRIMINAL

FIRST DEPARTMENT

Sun Surety Ins. v People | May 12, 2022

BAIL FORFEITURE | AFFIRMED

The surety appealed from an order of New York County Supreme Court, which denied its CPLR 5015 motion to vacate bail forfeiture judgments. The First Department affirmed. After the surety's client—the defendant in an underlying proceeding—failed to appear at his sentencing, Supreme Court found his absence unexcused and issued two written bail forfeiture orders. The People duly proceeded against the surety pursuant to CPL 540.10. Thus, the motion to vacate was properly denied.

Matter of Sun Sur. Ins. v People of the State of N.Y. (2022 NY Slip Op 03184) (nycourts.gov)

SECOND DEPARTMENT

People v Samaroo | May 11, 2022

PADILLA | HEARING

The defendant appealed from an order of Queens County Supreme Court, which summarily denied his CPL 440.10 motion to vacate a judgment convicting him of 4th degree criminal sale of marihuana. The Second Department remitted for a hearing regarding whether the defendant was deprived of effective assistance by counsel's misadvice regarding immigration consequences. As to prejudice, the defendant's prior conviction of a removable offense and strong prosecution evidence were not dispositive. His rejection of the plea offer would have been rational, where he had lived in this country since age 10, was married, had two children, was employed, and was the family's sole financial support. Mark Diamond represented the appellant.

People v Samaroo (2022 NY Slip Op 03128) (nycourts.gov)

THIRD DEPARTMENT

People v Velett | May 12, 2022

MOLINEUX | HARMLESS

The defendant appealed from a Fulton County Court judgment, convicting him of 1st degree sexual abuse and EWC. The Third Department affirmed. After a *Molineux* hearing, County Court found inadmissible the defendant's 1999 sexual abuse conviction. However, a detective testified about such conviction and revealed that the victim was age 6. County Court told the jury to disregard the testimony. The improper disclosure was highly prejudicial, because it could have led the jury to believe that the defendant had a propensity for committing the instant crime. But the error was harmless, given the overwhelming proof of guilt and the limiting instruction.

People v Velett (2022 NY Slip Op 03148) (nycourts.gov)

People v Boodrow | May 12, 2022

ADVERSE POSITIONS | AFFIRMED

The defendant appealed from an Albany County Court judgment, convicting him of 3rd degree larceny. The Third Department affirmed, rejecting the defendant's claim that counsel took positions adverse to his interests and thereby created a conflict necessitating new counsel. The trial court's decision to deny a conclusory pro se motion was not influenced by a brief, arguably adverse remark by counsel. Further, in requesting a 730 exam over defendant's objection, counsel sought to act in the client's interest.

People v Boodrow (2022 NY Slip Op 03144) (nycourts.gov)

People v Manson | May 12, 2022

HARSH SENTENCE | APP DIV DUTY

The defendant appealed from a Washington County Court judgment, convicting him of attempted 1st degree promoting prison contraband. The Third Department affirmed. On appeal, excessive sentence was the only issue raised. The People erroneously urged that the appeal should be dismissed pursuant to CPL 450.10 (1). That statute did purport to disallow an appeal as of right where the sole issue was excessiveness of the agreed-upon sentence imposed upon a guilty plea. However, decades ago, such provision was found to contravene the State Constitution. Absent an appeal waiver, the intermediate appellate court had a constitutional duty to entertain all criminal appeals from final judgments. Defendants who pleaded guilty did not lose their right to invoke the Appellate Division's interest-of-justice jurisdiction to reduce their sentence. However, the instant sentence was sustained.

People v Manson (2022 NY Slip Op 03151) (nycourts.gov)

FAMILY

FIRST DEPARTMENT

Rosylyn J. v Charise J. | May 10, 2022

SUA SPONTE | NO APPEAL AS OF RIGHT

The petitioner appealed from an order of Bronx County Family Court, which dismissed her petition for guardianship. The First Department dismissed the appeal and granted counsel's application to withdraw. Since the order appealed from was issued sua sponte—not to resolve an application made on notice—it was not appealable as of right. *See* CPLR 5701 (a) (3); *see also* Family Ct Act § 165 (a) (where method of procedure is not set forth in Family Court Act, CPLR shall apply to extent appropriate); Family Ct Act § 1112 (a) (if no appeal as of right lies, order may be appealed in Appellate Division's discretion). No nonfrivolous issues existed. The children were placed in Social Services' care for the purpose of adoption before the pleading was filed.

Matter of Rosylyn J. v Charise J. (2022 NY Slip Op 03075) (nycourts.gov)

Sarah L. v Pnina P. | May 12, 2022

PRIVATE SCHOOL | EXPENSES

The respondent appealed from a child support order of New York County Family Court. The First Department modified. The court rejected the petitioner's argument that the appellate court lacked jurisdiction to hear the appeal. The notice of appeal was timely filed. If the respondent failed to timely serve the notice, the petitioner was not prejudiced so the defect was excused, pursuant to CPLR 2001 and 5520 (a). The award of educational expenses for private school was vacated. While the parties had anticipated that their five-year-old child would attend private school, the respondent's income was limited, and he was responsible for supporting the child's two half-sisters. Further, the petitioner had greater income. Nicole Trivlis represented the appellant.

Matter of Sarah L. v Pnina P. (2022 NY Slip Op 03176) (nycourts.gov)

Bernadette R. v Anthony V.L. | May 10, 2022

SUPPORT VIOLATION | COUNSEL FEES

The father appealed from an order of New York County Family Court directing him to pay $62,000 in counsel fees. The First Department affirmed. The lower court properly concluded that the mother's retainer agreement was not fatal to her counsel fees motion. By statute, such fees for willfully violating a child support order were mandatory. To deny this fees request would allow the father to avoid adverse consequences for his violation.

Matter of Bernadette R. v Anthony V .L. (2022 NY Slip Op 03087) (nycourts.gov)

SECOND DEPARTMENT

Grace E. W.-F. v Zanovia W. | May 11, 2022

ABANDONMENT | REVERSED

The mother appealed from orders of Kings County Family Court, which found that she abandoned her children and terminated her parental rights. The Second Department reversed. The agency did not prove that the mother evinced an intent to forego her parental rights. During the abandonment period, she visited the children twice, saw them at a family gathering, bought clothing for them, spoke with the caseworker many times, and objected to the change in the permanency goal from reunification to kinship adoption. After the filing of the petitions, the mother's interactions with the children were positive, according to a caseworker. Such conduct outside the abandonment period was not determinative but was potentially relevant in assessing parental intent. Lauri Gennusa represented the appellant.

Matter of Grace E. W.-F. (Zanovia W.) (2022 NY Slip Op 03119) (nycourts.gov)

Aponte v Jagnarain | May 11, 2022

FAMILY OFFENSE | CUSTODY

The mother appealed from orders of Nassau County Family Court, denying her motion to vacate an order of protection and modifying custody. The Second Department affirmed. No reasonable excuse was offered for the mother's failure to appear for the continued hearing. She had discharged her attorney, and the court had denied an adjournment request. That was reasonable where the mother previously discharged counsel under similar circumstances. As to the parental access decision and order, Family Court properly incorporated testimony of a witness from the family offense hearing. The prior testimony referred to the same subject, the mother had the chance to cross-examine the witness at the family offense hearing, and she could have called the witness at the custody hearing.

Matter of Aponte v Jagnarain (2022 NY Slip Op 03111) (nycourts.gov)
Matter of Aponte v Jagnarain (2022 NY Slip Op 03112) (nycourts.gov)

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