

Decisions of Interest

MAY 6, 2022

CRIMINAL

FIRST DEPARTMENT

Stevens v DCJS | May 5, 2022

FAMILIAL DNA | REGS

The petitioners appealed from a judgment of New York County Supreme Court, which denied their CPLR Article 78 petition seeking to annul Familial DNA Search Regulations set forth in 9 NYCRR 6192. The First Department reversed and vacated the challenged regulations. The petitioners' biological brothers were convicted offenders with genetic profiles in the State DNA database, and the respondents were DCJS and the State Commission on Forensic Sciences. The regulations expanded the use of the State DNA database to allow for familial DNA searches in investigations of crimes, pursuant to a comprehensive protocol. The petitioners were at risk of being targets due to their criminal relatives. Because the petitioners were Black, the risk was intensified. Thus, they had standing. The decisions respondents made in promulgating the regulations were policy-driven and inherently legislative. Since the respondents exceeded their authority, the regulations could not stand. The Legal Aid Society of NYC (Terri Rosenblatt and James Pollock) and Gibson Dunn represented the appellants.

[Matter of Stevens v New York State Div. of Criminal Justice Servs. \(2022 NY Slip Op 03062\) \(nycourts.gov\)](#)

People v Garcia | May 3, 2022

CPL 440.20 | CONSTITUTIONAL

The defendant appealed from an order of NY County Supreme Court denying his CPL 440.20 motion to set aside a sentence imposed for 2nd degree CPW. The First Department affirmed. The defendant, who received the minimum term, sought a sentence of time served. But he had not shown that, if infected with Covid, his medical conditions could cause an extreme risk of serious illness or death, thus rendering his sentence unconstitutional. The matter was remitted for surrender proceedings. (In a previous decision, the sentence was stayed pending appeal based in part on the Covid risks.)

[People v Garcia \(2022 NY Slip Op 02959\) \(nycourts.gov\)](#)

[People v Garcia \(2020 NY Slip Op 20262\) \(nycourts.gov\)](#)

SECOND DEPARTMENT

People v Robinson | May 4, 2022

PREDICATE | HEARING

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of attempted 2nd degree CPW, upon his plea of guilty, and sentencing him as a second felony offender. The Second Department modified. The predicate felony was a Connecticut larceny conviction under a statute that defined the crime differently in several subdivisions, some of which were not felonies under NY law. The CT accusatory instrument was not in the record so it was not clear which subdivision applied. In the interest of justice, the defendant's adjudication as a second felony offender was vacated, and the matter was remitted. Appellate Advocates (Sarah Cohen, of counsel) represented the appellant.

[People v Robinson \(2022 NY Slip Op 03010\) \(nycourts.gov\)](#)

People v Buyund | May 4, 2022

NOT SEX OFFENSE | SORA

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 1st degree burglary as a sexually motivated offense, upon his plea of guilty. In the interest of justice, the Second Department modified, vacating the defendant's certification as a sex offender, since the instant crime was not a registerable offense under SORA. Appellate Advocates (Patricia Pazner, of counsel) represented the appellant.

[People v Buyund \(2022 NY Slip Op 03004\) \(nycourts.gov\)](#)

People v Miranda | May 4, 2022

NOT SEX OFFENSE | SEALING

The defendant appealed from an order of Queens County Supreme Court, which denied his CPL 160.59 motion to seal his conviction of attempted 3rd degree promoting prosecution. The Second Department reversed. When the defendant was convicted, "sex offense" as defined in SORA did not include the instant crime. Thus, the motion to seal was not subject to mandatory denial. A hearing was required under CPL 160.59 (6). Randall Unger represented the appellant.

[People v Miranda \(2022 NY Slip Op 03009\) \(nycourts.gov\)](#)

FAMILY

FIRST DEPARTMENT

Tatyana M. v Mark R. | May 3, 2022

FAMILY OFFENSE | JUDICIAL ESTOPPEL

The father appealed from an order of disposition of New York County Family Court, which found that he committed certain family offenses and granted the mother an order of protection. The appellate court rejected the argument that she was judicially estopped from testifying about a 2016 incident. The mother's withdrawal of a 2016 petition did not

constitute a position contrary to her testimony—particularly since the father threatened to post nude photos of her if she did not drop the matter. Also rejected was the argument that the OP should not have included the child. The father committed the offenses in the child’s presence, and the order preserved his visitation rights.

[Matter of Tatyana M. v Mark R. \(2022 NY Slip Op 02951\) \(nycourts.gov\)](#)

Levin v Levin | May 5, 2022

PENDENTE LITE | CHILD SUPPORT

The husband appealed from a child support order issued pendente lite by NY County Supreme Court. The First Department modified. Temporary support orders were rarely modified; generally the remedy was a speedy trial. However, such awards may be modified where, as here, the trial court ordered a double-shelter allowance, i.e. payment of both support under the CSSA and carrying costs on the marital residence. Neither party sought the carrying-costs directive, and Supreme Court did not explain its order. The matter was remitted. Kevin McDonough represented the appellant.

[Levin v Levin \(2022 NY Slip Op 03050\) \(nycourts.gov\)](#)

SECOND DEPARTMENT

Gray v Tyson | May 4, 2022

PARENTAL ACCESS | COSTS

The mother appealed from an order of Queens County Family Court in an Article 6 proceeding. The Second Department modified. Family Court should not have directed the parties to equally share the costs of the mother’s supervised parental access without evaluating the parties’ finances, including the cost of visits and her ability to pay. The matter was remitted. Diana Kelly represented the appellant.

[Matter of Gray v Tyson \(2022 NY Slip Op 02998\) \(nycourts.gov\)](#)

THIRD DEPARTMENT

Nathan PP. v Angela PP. | May 5, 2022

CUSTODY | MODIFICATION

The father appealed from an order of Tompkins County Family Court, which granted the mother’s motion to dismiss his custody modification petition. The Third Department affirmed. The parties had properly stipulated that custody could be altered without a threshold showing of a change of circumstances. However, the father still had to demonstrate that modification was needed to serve the children’s best interests. He failed to make such showing. While asserting that the mother was too controlling as to scheduled access, he did not connect such complaints to the children’s well-being. Further, he failed to substantiate that, due to his unemployment, he could provide additional care for the children and that they would thereby benefit.

[Matter of Nathan PP. v Angela PP. \(2022 NY Slip Op 03031\) \(nycourts.gov\)](#)