

Decisions of Interest

MAY 6, 2024

CRIMINAL

FIRST DEPARTMENT

People v Jamison | April 30, 2024

JURY NOTE | O'RAMA VIOLATION | REVERSED

The appellant appealed from a New York County Supreme Court judgment convicting him of 1st degree criminal contempt (three counts). The First Department reversed and ordered a new trial. The court did not notify defense counsel of the contents of a jury note or that it ever responded to the note. Although the note referenced only one of the three counts, the three charges arose from a course or repetition of conduct in violation of an order of protection and were factually related. The Legal Aid Society of NYC (Paul Wiener, of counsel) represented the appellant.

[Oral Argument \(starts at 1:06:27\)](#)

[People v Jamison \(2024 NY Slip Op 02286\)](#)

People v Middleton | May 2, 2024

CPL 30.30 | NO EXPLICIT WAIVER | DISMISSED

The appellant appealed from a New York County Supreme Court judgment convicting her of attempted 2nd degree assault. The First Department reversed and dismissed the indictment. The court should have granted the appellant's CPL 30.30 motion. The appellant did not explicitly waive her speedy trial rights during plea negotiations. Mere silence is not a waiver. The Center for Appellate Litigation (Molly Booth, of counsel) represented the appellant.

[Oral Argument \(starts at 56:43\)](#)

[People v Middleton \(2024 NY Slip Op 02382\)](#)

THIRD DEPARTMENT

People v Walker | May 2, 2024

INSUFFICIENT EVIDENCE | ACCOMPLICE LIABILITY | DISMISSED

The appellant appealed from an Albany County Court judgment convicting him of 1st degree assault, 1st degree criminal use of a firearm, and 2nd degree CPW. The Third Department reversed and dismissed the indictment. The trial evidence was legally insufficient. There was no evidence that the appellant planned or knew that the victim was going to be attacked; was aware that someone had a gun; participated in the physical altercation that occurred before the shooting; or shared a community of purpose with the

unidentified shooter. Capezza Hill, LLP (Thomas A. Capezza, of counsel) represented the appellant.

[Oral Argument](#)

[People v Walker \(2024 NY Slip Op 02346\)](#)

People v Pica-Torres | May 2, 2024

ADA FORMER LAW CLERK | CONFLICT OF INTEREST | HELD AND REMITTED

The appellant appealed from a Broome County Court judgment convicting him of 2nd degree murder, attempted 2nd degree murder, 1st degree arson, and 2nd degree arson. The Third Department held the appeal and remitted for a special prosecutor to be assigned. It was disclosed at oral argument that the ADA arguing the appeal was the trial judge's law clerk at the time of trial. This created a conflict of interest disqualifying her from appearing on behalf of the People without the appellant's prior written consent waiving the conflict. Appellate counsel's post-argument, qualified waiver that the appellant does "not object . . . at this time" was inoperative. Although the appellate brief was written by a different ADA, the entire office was disqualified based on the apparent absence of required screening procedures.

[Oral Argument](#)

[People v Pica-Torres \(2024 NY Slip Op 02345\)](#)

FOURTH DEPARTMENT

People v Almonte | May 3, 2024

KIDNAPPING | MERGER DOCTRINE | RESERVED AND REMITTED

The appellant appealed from an Ontario County Court judgment convicting him of 2nd degree kidnapping, 2nd degree strangulation, 3rd degree assault, and 1st degree criminal contempt after trial. The Fourth Department reserved decision and remitted. The trial court erred in denying the appellant's motion to dismiss the kidnapping charge under the merger doctrine. The merger doctrine was judicially created to prevent overcharging in kidnapping cases where there is minimal asportation or where the restraint and the underlying crime are essentially simultaneous. The trial court concluded that the doctrine did not apply since the appellant was not charged with menacing as a lesser included offense. But the merger doctrine applies whether or not a lesser included offense is charged. Remittal was required to determine the People's undecided, alternative argument (*see People v LaFontaine*, 92 NY2d 470 [1998]). Banasiak Law Office, PLLC (Piotr Banasiak, of counsel) represented the appellant.

[Oral Argument \(starts at 26:46\)](#)

[People v Almonte \(2024 NY Slip Op 02426\)](#)

People v Parker | May 3, 2024

PEOPLE'S APPEAL | MRTA RETROACTIVE | AFFIRMED

The People appealed from an Erie County Supreme Court order that granted the respondent's CPL 440.20 motion and resentenced him as a first felony offender. The Fourth Department affirmed. The respondent successfully moved to vacate his prior felony marijuana conviction under Marijuana Regulation and Taxation Act (MRTA). This invalidated the enhanced sentence he received in this case as a second felony offender.

MRTA applies retroactively for predicate felony purposes. Although procedural statutes do not usually apply retroactively, there is an exception for ameliorative amendments such as this which reduce the punishment for a particular crime. Thomas Eoannou represented the respondent.

[Oral Argument \(starts at 1:15:13\)](#)

[People v Parker \(2024 NY Slip Op 02414\)](#)

People v Carmichael | May 3, 2024

AUO | MANDATORY FINE | INVOLUNTARY PLEA

The appellant appealed from a Monroe County Supreme Court judgment convicting him of 1st degree AUO and other related charges. The Fourth Department vacated the plea and remitted. Supreme Court's failure to inform the appellant of the mandatory fine imposed on the AUO conviction rendered the plea involuntary. The Monroe County Public Defender (Sabrina Asha Bremer, of counsel) represented the appellant.

[Oral Argument \(starts at 42:35\)](#)

[People v Carmichael \(2024 NY Slip Op 02427\)](#)

People v Hunt | May 3, 2024

TRIAL TESTIMONY | DUPLICITOUS COUNTS | REVERSED AND REMANDED

The appellant appealed from a Wayne County Court judgment convicting him of EWOC (three counts) and 3rd degree sexual abuse (three counts). The Fourth Department reversed the conviction under four counts of the indictment and dismissed those counts with leave to re-present. The complainant's testimony rendered those counts duplicitous because she was unable to identify the number of times that the appellant touched her during the relevant period or the specifics of each occurrence. The Wayne County Public Defender (Bridget L. Field, of counsel) represented the appellant.

[People v Hunt \(2024 NY Slip Op 02471\)](#)

People v Cockrell | May 3, 2024

SORA | NUMBER OF VICTIMS | REVERSED

The appellant appealed from an Onondaga County Supreme Court order adjudicating him a level two sex offender. The Fourth Department reversed and remitted. The SORA court erred in assessing 20 points under risk factor 3 for number of victims; 17-year-olds are statutorily excluded from the class of victims under the Penal Law provision to which he pleaded guilty. Remittal was required to determine the People's alternative request for an upward departure. Hiscock Legal Aid Society (Kristen M. McDermott, of counsel) represented the appellant.

[People v Cockrell \(2024 NY Slip Op 02439\)](#)

People v Bish | May 3, 2024

CPL 30.30 | POST-READINESS DELAY | DISMISSED

The appellant appealed from an Erie County Court judgment convicting him of 3rd degree burglary based on his guilty plea. The Fourth Department reversed and dismissed the indictment. Generally, the People are chargeable only with the period of post-readiness adjournment that they requested; any further delay caused by the court's convenience in calendaring is excludable. But the People must create a record explaining the reason for

and the length of their request. Here, the entire contested period was chargeable to the People; they gave no explanation for the adjournment or the length of time requested. The Legal Aid Bureau of Buffalo (Kerry A. Conner, of counsel) represented the appellant.

[Oral Argument \(starts at 1:23:53\)](#)

[People v Bish \(2024 NY Slip Op 02409\)](#)

People v Manning | May 3, 2024

REOPENED PEOPLE'S CASE | AFFIRMED

The appellant appealed from a Monroe County Supreme Court judgment convicting him of 2nd degree CPW. The Fourth Department affirmed. The trial court did not abuse its discretion by allowing the People to reopen their case to submit proof that the weapon met the definition of a rifle. The omission was easily cured by the uncontroverted testimony of the firearm examiner; the missing element was not seriously contested; and the appellant was not prejudiced by an alleged misappropriation of defense work product—noticing a facial requirement that was previously uncontested did not rise to the level of attorney work product.

[Oral Argument \(starts at 1:01:30\)](#)

[People v Manning \(2024 NY Slip Op 02431\)](#)

TRIAL COURTS

People v Alford | 2024 WL 1868901

OUT-OF-STATE FELONY | NOT EQUIVALENT

Alford challenged the People's designation of his second violent predicate felony offender status based on his prior Connecticut conviction. Kings County Supreme Court granted the motion. The CT felony of 2nd degree strangulation or suffocation was not equivalent to the NY felony of 2nd degree strangulation. Under NY law, 2nd degree strangulation requires "physical injury or impairment," whereas the CT statute does not. The Legal Aid Society of NYC (Olga Eleni Karounos, of counsel) represented Alford.

[People v Alford \(2024 NY Slip Op 24129\)](#)

People v Manigat | 2024 WL 1868977

FACIAL INSUFFICIENCY | COC/SOR ILLUSORY | DISMISSED

Manigat moved to dismiss a 3rd degree coercion charge on speedy trial grounds. Kings County Criminal Court granted the motion. The accusatory instrument was facially insufficient because it failed to allege that Manigat's statements compelled or induced any conduct by the complainant. This rendered the People's initial COC/SOR and three subsequent SCOCs/SORs illusory since not all charges contained in the accusatory instrument met the requirements of CPL 100.15 and 100.40, as required by CPL 30.30 (5-a). The People's act of filing three SCOCs on an information with obvious insufficient factual pleadings belied their assertion that they acted in good faith. The Legal Aid Society of NYC (Stephanie Salomon, of counsel) represented Manigat.

[People v Manigat \(2024 NY Slip Op 50497\[U\]\)](#)

People v Valentin | 2024 WL 1846527

BODY-WORN CAMERA | COC INVALID | DISMISSED

Valentin moved to reargue a motion to dismiss misdemeanor charges on speedy trial grounds. Bronx County Criminal Court granted the motion and dismissed the charges. The People disclosed body-worn camera footage—which they previously claimed did not exist—more than six months after filing their COC. The People would have known that the footage existed if they had even cursorily reviewed the discovery. The People’s failure to proffer a reasonable explanation for the belated disclosure belied their claim of due diligence. The Bronx Defenders (Lisa Boesen and Alice Thompson, of counsel) represented Valentin.

[People v Valentin \(2024 NY Slip Op 50487\[U\]\)](#)

People v Mesa | 2024 WL 1846516

IAB RECORDS | COC INVALID | DISMISSED

Mesa moved to dismiss misdemeanor charges based on speedy trial grounds. Queens County Criminal Court granted the motion. Despite filing a COC and stating readiness for trial, the People failed to disclose IAB records for one of their police witnesses. Since the People were silent about their efforts to obtain and produce the impeachment records, it could not be said that they acted with due diligence. The Legal Aid Society of NYC (Laura Eraso, of counsel) represented Mesa.

[People v Mesa \(2024 NY Slip Op 50488\[U\]\)](#)

FAMILY

THIRD DEPARTMENT

Matter of Steven OO. v Amber PP. | May 3, 2024

LIMITED PARENTING SCHEDULE | REVERSED AND REMITTED

The mother appealed from a Washington County Family Court order that modified custody and limited her parental access. The Third Department reversed and remitted. The record supported Family Court’s change in circumstances determination. The mother did not appreciate the risk of exposing the children to the grandfather, who had committed a sexual offense against the older child; her home was found to be unsafe and unsanitary; and the parents had difficulty communicating. But there was no basis for drastically reducing the mother’s parenting time from 50/50 to a weekly dinner and biweekly outing. There was no evidence that she was ever inappropriate with the children. Given the passage of time and post-hearing developments, including the grandfather’s death, remittal for a new hearing was required. Lisa A. Burgess represented the appellant.

[Matter of Steven OO. v Amber PP. \(2024 NY Slip Op 02353\)](#)

Matter of Winter II. (Kerriann II.) | May 2, 2024

NEGLECT | NO DEFAULT | AFFIRMED

The mother appealed from Schenectady County Family Court orders finding her guilty of neglect and modifying the permanency plan. The Third Department affirmed. Although the mother failed to appear for three pretrial appearances and the fact-finding hearing,

the neglect order was not entered on default. The mother attended the first two appearances and opposed the petition. Her attorney requested an adjournment and diligently participated at the hearing on her behalf. Further, Family Court did not declare the mother in default and entered the neglect finding based on the evidence.

[Matter of Winter II. \(Kerriann II.\) \(2024 NY Slip Op 02350\)](#)

CIVIL

FOURTH DEPARTMENT

Matter of Abbatoy v Baxter | May 3, 2024

ARTICLE 78 | FOIL | FORMER CIVIL RIGHTS LAW § 50-A

The petitioner appealed from a Monroe County Supreme Court judgment dismissing an article 78 petition seeking to compel the respondents to disclose law enforcement disciplinary records under FOIL. The Fourth Department reversed and granted the petition. The repeal of Civil Rights Law § 50-a removed an exception to the general rule requiring disclosure of government records under FOIL. It is not a retroactive application of the repeal to order disclosure of disciplinary records predating it, but merely a recognition that police departments cannot rely on an exception that no longer exists. Easton Thompson Kasperek Shiffrin, LLP (David M. Abbatoy, of counsel) represented the petitioner.

[Oral Argument \(starts at 1:43:40\)](#)

[Matter of Abbatoy v Baxter \(2024 NY Slip Op 02393\)](#)

The ILS Decisions of Interest summaries are for informational purposes only and are not intended to provide legal advice to any individual or entity. While every effort has been made to ensure their accuracy, the summaries are provided on an “as is” basis with no express or implied guarantees of completeness, accuracy, or timeliness.



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