Indigent Legal Services

Decisions of Interest

JUNE 20, 2023

CRIMINAL

COURT OF APPEALS

People v Holmes | June 13, 2023

RIGHT TO COUNSEL | NO "SEARCHING INQUIRY" | REVERSED

The defendant appealed from a First Department order affirming his conviction of 2nd degree burglary based on his guilty plea. The Court of Appeals reversed and ordered a new trial. The trial court correctly recognized that the defendant unequivocally requested to proceed pro se but failed to conduct the requisite "searching inquiry" to ensure that his waiver of the right to counsel was knowing, voluntary and intelligent. The Center for Appellate Litigation (Megan D. Byrne, of counsel) represented the appellant.

People v Holmes (2023 NY Slip Op 03186)

People v Bradford | June 13, 2023

CPL 440.10 | STUN BELT | COVERT USE | HEARING REQUIRED

The defendant appealed from a Fourth Department order affirming the denial of his pro se CPL 440.10 motion. The Court of Appeals reversed and remanded for a hearing. Neither County Court nor the People were aware that the Sheriff's Department required the defendant to wear a stun belt during his trial. The use of the stun belt was error because the court had not articulated a particularized need for the restraint. However, this was not a mode of proceedings error and was otherwise unpreserved, and County Court did not abuse its discretion in denying his CPL 440 motion on this ground. But it was error to summarily deny the portion of the motion contending that trial counsel was ineffective for failing to object to the use of the stun belt. A hearing was required to determine if counsel had been aware of the use of the restraint. Judges Rivera and Wilson dissented, finding that the use of the stun belt was a mode of proceedings error and that defense counsel's failure to object constituted ineffective assistance of counsel warranting a new trial. Thomas P. Theophilos represented the appellant.

People v Bradford (2023 NY Slip Op 03187)

People ex rel. E.S. v Superintendent, Livingston Corr. Facility | June 15, 2023

SARA | YOUTHFUL OFFENDER | DECLARATORY JUDGMENT

The respondents appealed from a Fourth Department order that converted the habeas corpus proceeding to an article 78 proceeding and granted the petition. The Court of Appeals reversed, converted the proceeding to a declaratory judgment action, and declared that the SARA school grounds restriction applies to youthful offenders. A person who is "serving a sentence" for an enumerated offense against a minor victim and is

released on parole is prohibited from coming within 1,000 feet of school grounds (*see* Executive Law § 259-c [14]). Under the plain language of the statute, this restriction applies to those serving a youthful offender sentence. This construction is not inconsistent with the objectives of youthful offender statutes; once the youthful offender serves the sentence, the school ground condition will be lifted and the youthful offender will receive the "fresh start" provided under the statute.
People ex rel. E.S. v Supt., Livingston Corr. Facility (2023 NY Slip Op 03298)

People ex rel. Rivera v Superintendent, Woodbourne Corr. Facility | June 15, 2023

SARA | EX POST FACTO

The petitioner appealed from a Third Department order that converted the habeas corpus proceeding to a declaratory judgment action and declared that the respondents' implementation of SARA did not violate the Ex Post Facto Clause. The Court of Appeals affirmed. The petitioner did not demonstrate that the SARA school grounds restriction violated the Ex Post Facto Clause when applied to sex offenders whose crimes predated the 2005 amendments to SARA. There is a strong presumption that legislative enactments are constitutional, and only the clearest proof will override legislative intent and transform a denominated civil remedy into a criminal penalty. The statute's carceral impact on the group of affected offenders was unclear from the record. That the restriction promotes the aims of deterrence and incapacitation does not render its sanctions criminal. Significantly, the restriction is rationally related and carefully tailored to the nonpunitive purpose of ensuring that certain high-risk sex offenders do not have contact with minors while serving their sentences.
People ex rel. Rivera v Supt., Woodbourne Corr. Facility (2023 NY Slip Op 03299)

People v Worley | June 15, 2023

SORA | UPWARD DEPARTURE | NOTICE REQUIRED

The defendant appealed from a Second Department order affirming his level 3 sex offender designation. The Court of Appeals remitted for a new SORA hearing. The Board scored 115 points on the risk assessment instrument, resulting in the defendant's presumptive level 3 designation. The defendant objected to the 15 points assessed on risk factor 12 because he was never referred to sex offender treatment. The court agreed—reducing his total score to 100 and a presumptive risk level 2—but stated that an upward departure was warranted based on the defendant's extensive disciplinary history. Defense counsel objected and argued that the court could not upwardly depart absent a request from the People, on notice. The court then invited the ADA to request an upward departure. The ADA obliged, and the court granted the application. The defendant's due process rights were violated because he was not given a meaningful opportunity to be heard. Appellate Advocates (William G. Kastin, of counsel) represented the appellant.
People v Worley (2023 NY Slip Op 03300)

People v Weber | June 15, 2023

SORA | REMITTAL AFTER APPEAL | DISSENT

The defendant appealed from a Fourth Department order affirming his designation as a level 3 sex offender. The Court of Appeals affirmed. In a prior appeal, the Fourth Department reversed an order classifying the defendant as a level 3 offender based on erroneously scored points but, instead of reducing the risk level to a 2, remitted for a hearing on whether an upward departure was warranted. On remittal, the People requested an upward departure for the first time and the request was granted. Even though the People had not requested a departure in the original SORA proceeding, remittal was proper. A SORA court cannot assess a departure request until an offender's presumptive risk level has been determined. Remittal did not grant the People affirmative relief; it merely provided an opportunity for the People to maintain the relief they originally requested—a level 3 designation. Judge Wilson dissented. The People could have initially sought an upward departure in the alternative but did not. Appellate courts are not authorized to grant relief to a nonappealing party, and the opportunity to raise an omitted argument was plainly affirmative relief.

People v Weber (2023 NY Slip Op 03301)

People v Anthony | June 15, 2023

SORA | MITIGATING FACTORS | DISSENT

The defendant appealed from a Second Department order affirming his level 3 sex offender designation and denying his request for a downward departure. The Court of Appeals affirmed. The Second Department did not abuse its discretion when it credited the defendant's proffered mitigation factors, but nonetheless concluded that a downward departure was not warranted. Judges Rivera and Wilson dissented. The SORA Guidelines focus on the aggravating nature of risk factors and do not account for mitigating influences of the same factors. The Guidelines work in one direction—upwardly graduating an offender's risk level based on points within specific categories—but never work downward based on positive, rehabilitative factors. Even if the Guidelines consider the subject matter of each respective factor when considering the presence of aggravators, that same subject matter is not disqualified from consideration in a mitigation analysis. The Appellate Division abused its discretion by failing to recognize and apply this distinction.

People v Anthony (2023 NY Slip Op 03303)

FIRST DEPARTMENT

People v Ames | June 13, 2023

DANGEROUS INSTRUMENT | INSUFFICIENT PROOF

The defendant appealed from a New York County Supreme Court judgment convicting him of 2nd degree assault as a hate crime, 3rd degree assault as a hate crime, and 2nd degree aggravated harassment after a jury trial. The First Department vacated the 2nd degree assault conviction, dismissed that count, and otherwise affirmed. The proof that the defendant used subway tracks as a dangerous instrument, a necessary element of the 2nd degree assault charge, was legally insufficient. The trial evidence was consistent with the complainant falling onto the tracks during an altercation with the defendant. Even if the defendant caused the complainant to fall, this was insufficient to establish the

People's theory that the defendant intended the complainant to be injured by striking the tracks. The Center for Appellate Litigation (Allison Haupt, of counsel) represented the appellant.
People v Ames (2023 NY Slip Op 03205)

New York County Lawyers Assn. v State of New York | June 13, 2023

CITY APPEAL | 18-B RATE HIKE | RETROACTIVE

The City of New York appealed from a New York County Supreme Court order which granted the motion of the 10 bar association plaintiffs seeking a preliminary injunction for an interim increase in 18-B compensation rates. The First Department affirmed. The increase from $75 to $158/hour was to apply until superseded by legislative action (the legislature increased 18-B rates in May 2023). While not disputing that the court properly directed a rate increase, the City contended that the rise in pay should be prospective from the July 25, 2022 order date, not retroactive to the February 2, 2022 motion date. Kramer Levin Naftalis & Frankel LLP, New York (Michael J. Dell, of counsel) represented the respondents.
New York County Lawyers Assn. v State of New York (2023 NY Slip Op 03199)

SECOND DEPARTMENT

People v Pryor | June 15, 2023

INVOLUNTARY GUILTY PLEA | REVERSED

The defendant appealed from a Dutchess County Court judgment convicting him of 3rd degree CPCS based on his guilty plea. The Second Department reversed. The defendant's plea was not knowing, voluntary, and intelligent. The court mentioned that the sentence would include PRS, but it did not specify the period of PRS to be imposed. Nor did it state the maximum potential duration of PRS that could be imposed. The Dutchess County Public Defender (Steven Levine and Marcus Hyde, of counsel) represented the appellant.
People v Pryor (2023 NY Slip Op 03241)

THIRD DEPARTMENT

People v Sharlow | June 15, 2023

AGE ELEMENT | INSUFFICIENT EVIDENCE

The defendant appealed from a Saint Lawrence County Supreme Court judgment convicting him of predatory sexual assault against a child (two counts), 1st degree criminal sexual act (two counts), 1st degree rape (four counts), 2nd degree rape, 3rd degree rape (three counts), 1st and 3rd degree incest, and endangering the welfare of a child after a jury trial. The Third Department vacated and dismissed the convictions for 1st degree incest and both counts of 1st degree criminal sexual act. The convictions for criminal sexual act must be dismissed as lesser inclusory counts of predatory sexual assault. The proof did not establish that the complainant was young enough to meet the age element required for 1st degree incest. Matthew Hug represented the appellant.
People v Sharlow (2023 NY Slip Op 03260)

M.K. v State of New York | June 15, 2023

STATE APPEAL | LIABILITY | STRIP SEARCH

The State appealed from an interlocutory judgment entered in the Court of Claims imposing liability for correction officer misconduct. The Third Department affirmed. The claimant sought damages for injuries suffered when he was gratuitously demeaned during a strip search at a state prison. The officers had violated a directive requiring that strip searches be conducted in a professional, non-degrading manner. Under the doctrine of respondeat superior, where general foreseeability exists, even intentional torts may fall within the scope of employment.

M.K. v State of New York (2023 NY Slip Op 03268)

TRIAL COURTS

People v Dennis | 2023 WL 3940424

SEARCH WARRANT| *AGUILAR-SPINELLI* TEST | EVIDENCE SUPPRESSED

The defendant moved to controvert a search warrant authorizing the search of his apartment for clothes worn by another individual when that person discharged a firearm and to suppress the pistol found in the defendant's private bedroom. Kings County Supreme Court granted the motion. The supporting affidavit submitted by an officer on the NYPD Warrants Squad did not satisfy the second prong of the *Aguilar-Spinelli*; it failed to establish how the officer learned or knew that the shooter resided at the apartment. The fact that the Warrants Squad arrested the shooter at the defendant's apartment did not alone support a reasonable inference that he also resided there. Brooklyn Defender Services (Richard Torres, of counsel) represented the defendant.

People v Dennis (2023 NY Slip Op 50561[U])

FAMILY

US SUPREME COURT

Haaland v Brackeen | June 15, 2023

ICWA | CONSTITUTIONAL | 7-2 OPINION

In an opinion by Justice Barrett, SCOTUS ruled that Congress had the power to enact the Indian Child Welfare Act (ICWA), the 1978 law designed to keep Native American children with Native American families. Justice Gorsuch wrote a concurrence, joined by Justices Sotomayor and Jackson. In affirming the constitutionality of ICWA, the Court was safeguarding tribal members' rights and restoring the original balance between federal, state, and tribal powers. ICWA was a response to the mass removal of Indian children aimed at destroying tribal identity and assimilating Indians into broader society. Fifty years ago, more than 90% of non-related adoptions of Indian children were made by non-Indian couples. These separations were often based on poverty and were carried out without due process. The statute had stemmed such removals and borne out that it was in the best interests of Indian children to be raised in Indian homes. In adopting ICWA, Congress

had lawfully secured the rights of Indian parents to raise their children, of Indian children to grow up in their culture, and of Indian communities to resist fading into the twilight of history.
Haaland v Brackeen (No. 21-376)

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