Indigent Legal Services

Decisions of Interest

JULY 31, 2023

CRIMINAL

SECOND DEPARTMENT

People v West | July 27, 2023

HARSH AND EXCESSIVE | BURGLARY | DISSENT

The defendant appealed from a Queens County Supreme Court judgment convicting him of 2nd degree burglary (four counts) and related offenses and sentencing him to an aggregate term of 34 years to life. The Second Department affirmed, with one justice dissenting. In the dissent's view, the sentence was harsh and excessive. The defendant cannot be considered for parole until he is 68 years old—tantamount to a life sentence. His sentencing exposure, as a persistent violent felony offender, was between 16 and 25 years to life on each burglary conviction. The gravity of the offenses, his criminal history, and public safety were already accounted for by the persistent violent felony offender sentence; further enhancement was not warranted. The burglaries occurred in the daytime when no one was home, and the sentence was grossly disproportionate to the harm caused. Further, the defendant has been diagnosed and treated for schizophrenia and bipolar disorder since he was 17; he received Social Security disability benefits and lived in a group home for people with mental illness.

People v West (2023 NY Slip Op 03932)

THIRD DEPARTMENT

People ex rel. Marrero v Stanford | July 27, 2023

LESS IS MORE | NON-TECHNICAL VIOLATION | SPECIFIC CONDITION

The People and the petitioner cross-appealed from a Franklin County Supreme Court order that, among other things, found that the petitioner was a technical parole violator and directed DOCCS to release him to parole supervision. The Third Department reversed Supreme Court's order and dismissed the petitioner's habeas corpus petition. A non-technical violation does not have to violate a special condition of parole; the violation must be of a specific condition that is reasonably related to the offense and intended to help protect the public from similar re-offense. The petitioner absconded from parole. His intentional avoidance of supervision violated a condition reasonably related to his sex offense that sought to protect the public from a repeat offense.

People ex rel. Marrero v Stanford (2023 NY Slip Op 03964)

FOURTH DEPARTMENT

People v Reid | July 28, 2023

FAILURE TO REGISTER | DISCRETE VIOLATION | REVERSED

The defendant appealed from a Monroe County Court judgment convicting him of failure to register and/or verify status as a sex offender. The Fourth Department reversed and dismissed the indictment. The trial evidence varied from the theory alleged in the indictment. As a level one sex offender, the defendant was required to appear for an updated picture within 20 days of the 3-year anniversary of his initial registration. The trial evidence showed that he failed to appear as required during the 40-day window surrounding his July 2016 registration anniversary. But the indictment charged him with failing to appear in December 2018, two years later. The Monroe County Public Defender (James A. Hobbs, of counsel) represented the appellant.

People v Reid (2023 NY Slip Op 04036)

People v Sanford | July 28, 2023

ALFORD PLEA | INSUFFICIENT EVIDENCE OF GUILT | REVERSED

The defendant appealed from a Steuben County Court judgment convicting him of 1st degree criminal contempt based on his *Alford* plea. The Fourth Department reversed in the interest of justice and remitted. During the plea, the defendant maintained that there was insufficient evidence that he struck the victim to support the physical contact element of 1st degree criminal contempt. The court's further inquiry failed to ascertain the strength of the proof as to that element. Thus, the record lacked the requisite strong evidence of the defendant's guilt. Rosemarie Richards represented the appellant.

People v Sanford (2023 NY Slip Op 04037)

People v Thorpe | July 28, 2023

LEGALLY INSUFFICIENT EVIDENCE | PHYSICAL INJURY | BITE

The defendant appealed from an Oswego County Court judgment convicting him of aggravated family offense, 2nd degree aggravated harassment, 3rd degree burglary, 3rd degree larceny, and 4th degree larceny. The Fourth Department vacated the aggravated family offense and harassment convictions, dismissed those counts, and otherwise affirmed. The evidence of physical injury was legally insufficient to support those charges. The defendant bit the complainant on the arm. Although a bite is painful, the complainant only sustained a bruise that hurt for 2-3 days at a pain level 6, without any broken skin or bleeding. The complainant did not seek medical attention, take pain medication, or miss work. There was no evidence that she was unable to perform any activities or that her physical condition was impaired. Keem Appeals, PLLC (Bradley E. Keem, of counsel) represented the appellant.

People v Thorpe (2023 NY Slip Op 03981)

People v Santiago | July 28, 2023

BIASED PROSPECTIVE JUROR | FOR-CAUSE CHALLENGE | REVERSED

The defendant appealed from an Ontario County Court judgment convicting him of DWAI and 1st degree AUO. The Fourth Department reversed. County Court erred in denying the defendant's for-cause challenge of a prospective juror. The defendant was stopped driving without a valid license and with his child in the car. There were open containers, the defendant appeared impaired, and he admitted drinking. The prospective juror said

that the presence of child in the vehicle could influence her impartiality. Although she stated in follow-up that she would require the People to prove guilt beyond a reasonable doubt, she later retreated from that assurance. Nothing less than an unequivocal assurance of impartiality can cure a prospective juror's indication of bias. The defendant used a peremptory challenge on this prospective juror, and then exhausted his peremptory challenges. The Ontario County Public Defender (Caitlin M. Connelly, of counsel) represented the appellant.
People v Santiago (2023 NY Slip Op 04035)

People v Johnson | July 28, 2023
DOWNWARD DEPARTURE | FLAWED ANALYSIS
The defendant appealed from an Onondaga County Court order that adjudicated him a level three sex offender. The Fourth Department modified the order by reducing the defendant's risk level to a level two. County Court erred in its analysis of the defendant's request for a downward departure. After determining that the defendant identified mitigating circumstances not adequately accounted for by the risk assessment instrument, the court concluded that the underlying sex offense was so egregious that it could not grant a downward departure under any circumstances—even if a mitigating factor outweighed any aggravating factors. However, the court was required to weigh the mitigating and aggravating factors to determine if a downward departure was warranted. The Hiscock Legal Aid Society (Philip Rothschild, of counsel) represented the appellant.
People v Johnson (2023 NY Slip Op 04075)

People v Maull | July 28, 2023
ATTORNEY JAIL CALL | POLICE EAVESDROPPING | HEARING REQUIRED
The defendant appealed from a Cattaraugus County Court order that summarily denied his CPL 440.10 motion to vacate his 2nd degree murder conviction. The Fourth Department reversed and remitted for a hearing. At sentencing, the defendant informed the court that his trial counsel was in receipt of police notes indicating that the lead murder investigator had eavesdropped on jail calls between the defendant and his attorney on unrelated charges, during which they discussed the murder. The calls occurred after the murder but before the defendant was charged. Ample evidence established that a hearing was required to determine the circumstances and scope of the eavesdropping, whether it led to evidence introduced at trial, and whether trial counsel was ineffective for failing to request a hearing. The Fourth Department also noted that the DA did not file a brief in opposition to the appeal—thereby failing "to perform her duty to the people of her county." Jonathan Rosenberg represented the appellant.
People v Maull (2023 NY Slip Op 04022)

TRIAL COURTS

People v Jones | 2023 WL 4778246
SINGER | UNREASONABLE DELAY | DISMISSED
The defendant moved to dismiss an indictment charging him with 2nd degree murder and 1st degree manslaughter based on unconstitutional pre-indictment delay (*see People v Singer*, 44 NY2d 241 [1978]). Kings County Supreme Court granted the motion. Thirty-one months elapsed between the victim's death and the defendant's indictment. The People's unreasonable delay in commencing prosecution was not excused by changes

to the discovery and bail statutes, employee turnover, prioritization of other cases, or the office's loss of records. Howard Tanner represented the defendant.
People v Jones (2023 NY Slip Op 23226)

People v Harris | 2023 WL 4718909
30.30 | POST-MIDNIGHT SERVICE | MOTION GRANTED
The defendant moved for CPL 30.30 dismissal of misdemeanor charges based on the People's failure to timely comply with their discovery obligations. Bronx County Criminal Court granted the motion. The People uploaded their COC and SOR to EDDS at 11:58 p.m. on the 90th day of their 30.30 time, but they served their disclosure on the defense at 12:01 a.m. on the 91st day. Without a reasonable explanation for the belated service upon the defense, the People's untimeliness was not justified. The Legal Aid Society of NYC (Tasaion Miller-Veitch, of counsel) represented the defendant.
People v Harris (2023 NY Slip Op 23220)

United States v Amerson | 2023 WL 4497767
COMPASSIONATE RELEASE | FIRST STEP ACT
The defendant sought compassionate release or a reduction of his 32-year sentence, based on his increased vulnerability to COVID-19 due to several underlying medical conditions. District Court–EDNY granted the motion and reduced his sentence to time served plus 3 years of PRS. The defendant exhausted his administrative remedies with his request of the warden for compassionate release, which was denied. At 64-years old, the defendant suffers from significant health issues, including Type II diabetes, obesity, hypertension, and asthma. His facility's lack of medical care from early evening until early morning and his limited ability to test his blood sugar levels hinder his ability to manage his diabetes while incarcerated. The lack of COVID protections available at his facility resulted in months of lockdown to try to reduce the spread of the virus. The defendant has not had any disciplinary infractions during his 18 years of incarceration and has taken every class available to him at the prison. The totality of these factors rises to extraordinary and compelling levels warranting relief.
United States v Amerson (2023 WL 4497767)

FAMILY

SECOND DEPARTMENT

Rizea v Rizea | July 26, 2023
CUSTODY MODIFICATION | HEARING REQUIRED | REVERSED
The father appealed from a Queens County Supreme Court order that summarily granted the mother's motion to modify the settlement agreement to allow her to relocate with the children to Nassau County; modified the father's parental access; and denied the father's cross motion to enforce the nondisparagement and joint decision-making provisions of the settlement agreement. The Second Department reversed and remitted. The motion papers revealed numerous issues of fact that required a hearing. The court erred in failing to consider the relocation factors set forth in *Matter of Tropea v Tropea*; by delegating authority to the mother to determine whether the father would have parenting time on

weeknights; and failing to specify who would be responsible for transporting the children. The Law Firm of Poppe & Associates, P.C. (Kamelia Poppe, of counsel) represented the father.
Matter of Rizea v Rizea (2023 NY Slip Op 03935)

Matter of Trammell v Gorham | July 26, 2023

GRANDPARENT CUSTODY | PARENTAL DEFAULT | HEARING REQUIRED

The mother appealed from a Kings County Supreme Court (IDV Part) order that denied her motion to vacate the court's order summarily granting the paternal grandmother custody of the child and two orders of protection, all of which were entered upon the mother's default. The Second Department reversed the custody order, remitted for a custody hearing, and otherwise affirmed. The court erred in making a custody determination without a hearing and without making specific findings of fact regarding the child's best interests. The mother's motion to vacate the custody order should have been granted in the interest of justice. Cheryl Charles-Duval represented the mother.
Matter of Trammell v Gorham (2023 NY Slip Op 03929)

FOURTH DEPARTMENT

Matter of Joey L.F. v Jerid A.F. | July 28, 2023

AFC APPEAL | FAMILY OFFENSE | NO STANDING

The AFC appealed from a Niagara County Family Court order dismissing a family offense petition that was filed on the child's behalf by his mother. The Fourth Department dismissed the appeal. The mother did not appeal from the dismissal of her petition, and there was no evidence that she had an interest adverse to the child's that would warrant terminating her role as guardian in the proceeding and permit the AFC to pursue an appeal on the child's behalf.
Matter of Joey L.F. v Jerid A.F. (2023 NY Slip Op 04046)

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