Indigent Legal Services

Decisions of Interest

AUGUST 1, 2022

CRIMINAL

SECOND DEPARTMENT

People v Cardona | July 27, 2022

CRIMINAL NEGLIGENCE | INSUFFICIENT PROOF

The defendant appealed from an Orange County Court judgment, convicting him of criminally negligent homicide and reckless driving. The Second Department reversed. The convictions arose from a single-car collision. The defendant was driving at 74 mph when he lost control, went down an embankment, and crashed into a tree. His passenger died. In the interest of justice, the appellate court found the evidence legally insufficient. The mental states of criminal negligence and recklessness required a substantial, unjustifiable risk of death or injury; blameworthy conduct contributing to that risk; and a gross deviation from reasonable behavior. While the defendant's conduct reflected poor judgment, the proof failed to establish that he engaged in an affirmative act beyond driving faster than the speed limit. Van Lindt & Taylor represented the appellant.
People v Cardona (2022 NY Slip Op 04733)

People v Mayancela | July 27, 2022

ASSAULT & ROBBERY | INSUFFICIENT PROOF

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of various crimes. The Second Department modified. The complainant was stabbed many times by members of a rival gang. In the interest of justice, the appellate court found the evidence legally insufficient as to 1st degree gang assault, 1st and 2nd degree assault, and 1st degree robbery. The complainant sustained multiple lacerations and wounds to his neck, head, chest, and abdomen, which were treated with sutures. The injuries had caused the victim to have diminished grip strength in his left hand and to suffer numbness in his left arm for a while after the attack. There was no proof of the victim's serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. However, the evidence established that the defendant acted with the intent to inflict serious physical injury and came "dangerously near" to committing the completed crime. The convictions were reduced to attempted crimes. Joseph DeFelice represented the appellant.
People v Mayancela (2022 NY Slip Op 04741)

People v Wolfe | July 27, 2022

PRS DURATION | PLEA VACATED

The defendant appealed from a Dutchess County Court judgment, convicting him of 1st degree course of sexual conduct against a child. The Second Department reversed, vacated the plea, and remitted. To plead knowingly, voluntarily, and intelligently, a defendant must be informed of the specific period of post-release supervision to be imposed or the maximum potential duration. Salvatore Adamo represented the appellant.
People v Wolfe (2022 NY Slip Op 04745)

People v Hay | July 27, 2022

MARIJUANA CONVICTION | NULLITY

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of multiple crimes. Pursuant to CPL 160.50 (5), his conviction of unlawful possession of marihuana became a nullity by operation of law—independent of any appeal and without any action by the appellate court. The conviction of 2nd degree burglary was vacated and that count was dismissed; it was an inclusory concurrent count of 2nd degree burglary as a sexually motivated felony. Appellate Advocates (Tammy Lin, of counsel) represented the appellant.
People v Hay (2022 NY Slip Op 04737)

THIRD DEPARTMENT

People ex rel. Jones v Collado | July 28, 2022

SARA | DECLARATORY JUDGMENT

The petitioner appealed from an Ulster County Court judgment, which dismissed his habeas corpus petition. The Third Department reversed. During incarceration for rape, the petitioner became paralyzed and was then housed in a wheelchair-accessible unit at Shawangunk Correctional Facility. After being adjudicated a level-three sex offender, the petitioner was prohibited from residing within 1,000 feet of school grounds, pursuant to SARA. Upon reaching his maximum release date, the petitioner could not find SARA-compliant housing in New York City, and he was not released to an assigned RTF because the facility was not wheelchair-accessible. During the pendency of the appeal, the petitioner was released. But the mootness exception applied, and the appellate court converted the proceeding to a declaratory judgment action. County Court should not have dismissed the petition based on the lack of an affidavit by a person possessing personal knowledge. The statute did not contain such requirement. The respondents erred in not releasing the petitioner to an RTF and in asserting that he was in RTF status at Shawangunk because he was given a workbook for a therapeutic course designed for RTF participants; had access to a resource room with employment and housing materials; and had an assigned parole officer. The petitioner wrongly remained confined in the maximum-security prison for eight months past the expiration of his determinate sentence. When a level-three offender reached his maximum expiration date, DOCCS had to release him to an approved residence or an RTF. Legal Aid Society, NYC (Laura Jones) represented the appellant.
People ex rel. Jones v Collado (2022 NY Slip Op 04768)

People v McGill | July 28, 2022

DISSENT | SENTENCE

The defendant appealed from a judgment of Rensselaer County Supreme Court, convicting him of 1st degree robbery, upon his plea of guilty. The Third Department affirmed. Two dissenters would have reduced the sentence from 12 years to time served. The shotgun used by the defendant was unloaded, and he was not in the victim's room when the stabbing took place. The defendant was 18 at the time of the incident. Months after sentencing, he had a malignant brain tumor removed; and doctors said that the tumor could recur.

People v McGill (2022 NY Slip Op 04762)

TRIAL COURTS

NYCLA v State | July 25, 2022

PRELIMINARY INJUNCTION | $158 PER HR IN NYC

New York County Supreme Court granted the plaintiffs a preliminary injunction requiring payment of an interim rate of $158 to assigned counsel who represented children and indigent adults in Family Court, criminal court, and other court proceedings **in New York City**. The order is effective as of February 2, 2022—when the OSC was filed. The plaintiffs established a likelihood of success on the merits and showed that, absent equitable relief, 18-B clients would suffer severe, irreparable harm. As to the balancing of the equities, without the increased rates, the constitutional rights of clients would be violated, whereas the defendants were merely being called on to adequately compensate counsel. In opposing relief, the City and State contended that the Legislature was negotiating about the State budget and should set the rates.

Assigned Counsel Pay Presser.pdf (nycla.org)

Counsel Elated Over Order Raising Pay Rate

People v Vargas | 2022 WL 2813544

COC ILLUSORY | 30.30 DISMISSAL

Bronx County Criminal Court held that the People's COC and SOR were illusory and granted the defendant's CPL 30.30 motion to dismiss. A COC could not be used as a placeholder while the People continued to untimely disclose files. The People offered no explanation for a three-month delay in providing an NYPD photograph of cocaine allegedly seized from the defendant or for not disclosing a video of the defendant undergoing tests critical to the DWI prosecution. Finally, no information was provided about other documents not timely filed. While the People extolled their "exemplary due diligence," they did not back up such claim; and they did not seek relief based on "good cause" or "special circumstances." Bronx Defenders (Breanne Chappell, of counsel) represented the defendant.

People v Vargas (2022 NY Slip Op 22227)

People v Carrillo | 2022 NY Slip Op 50680 (U)

COC ILLUSORY | 30.30 DISMISSAL

Bronx County Criminal Court held that the People's COC was invalid and granted the defendant's CPL 30.30 motion to dismiss. When the People certified discovery compliance, they had not produced five police reports or body-worn camera footage. If facing logistical hurdles, the People could have petitioned for relief. They did not do so and instead made arguments previously rejected by trial courts. Substantial compliance was not a relevant standard. Prejudice was not a valid consideration for 30.30 analysis. Legal Aid Society, NYC (Leanne Fornelli, of counsel) represented the defendant.
People v Carrillo (2022 NY Slip Op 50680 U)

FAMILY

SECOND DEPARTMENT

Dubose v Jackson | July 27, 2022

GRANDPARENT | VISITATION

The paternal grandmother appealed from an order of Queens County Family Court denying her petition to modify visitation. The Second Department reversed and remitted. A prior court order provided for visitation "as arranged between the parties." That did not work—the mother refused to allow the grandmother to visit with the child. Such refusal constituted a change in circumstances. Animosity between the mother and grandmother did not mean that a resumption of visitation would be contrary to the best interest of the child. Geanine Towers represented the appellant.
Dubose v Jackson (2022 NY Slip Op 04723)

Uzamere v Idehen | July 27, 2022

FAMILY OFFENSE | CASUAL RELATIONSHIP

The petitioner appealed from orders of Kings County Family Court, dismissing family offense proceedings. A casual acquaintance or ordinary fraternization between two individuals in a business or social context did not establish an intimate relationship. The respondent merely functioned as the petitioner's counsel. Thus, Family Court had properly dismissed the Article 8 petition based on a lack of subject matter jurisdiction.
Uzamere v Idehen (2022 NY Slip Op 04729)

THIRD DEPARTMENT

Benjamin V. v Shantika W. | July 28, 2022

PARENTING TIME | EXPANDED

The father appealed from an order of Ulster County Family Court, which dismissed his custody petition. The Third Department modified. The notice of appeal was improperly taken from a decision, but the appellate court treated the appeal as having been taken from the subsequent order entered on the decision. *See* CPLR 5512 (a), 5520 (c); Family Ct Act § 1112 (a). The AFC in Family Court argued for physical custody to the father, but

the AFC on appeal urged affirmance of the order providing for the mother's custody. None of the attorneys in Family Court requested a *Lincoln* hearing. While not mandated, the best practice would have been to conduct such a hearing to discern the wishes of the children, born in 2010 and 2012. Both parents had serious problems, but the award of custody to the mother made sense, whereas limiting the father to six hours of supervised visitation in Pennsylvania every other week did not. Such outcome was based on sexual abuse allegations against him three decades earlier and was not sought by any party. The matter was remitted for Family Court to set forth a schedule providing for meaningful parental access to the father. Lindsay Kaplan represented the appellant.
Benjamin V. v Shantika W. (2022 NY Slip Op 04774)