Indigent Legal Services

Decisions of Interest

AUGUST 21, 2023

CRIMINAL

FIRST DEPARTMENT

People v Julio | August 17, 2023

BATSON | IMPROPER LIMITATION ON CHALLENGE

The defendants appealed from New York County Supreme Court judgments convicting them of 1st degree robbery, 2nd degree robbery (two counts), and attempted 1st degree gang assault after a jury trial. The First Department reversed and ordered a new trial. Supreme Court improperly limited the defendants' presentation of their *Batson* challenges. The People used peremptory challenges to strike five nonwhite prospective jurors during three rounds of jury selection. Defense counsel raised a *Batson* challenge as to all five stricken prospective jurors, but the court limited the inquiry to the two strikes used in the third round. When defense counsel challenged the People's subsequent strike of a sixth nonwhite juror, the court stated it was "not going to address that." The court should have required the People to provide race neutral explanations for all six of the challenged strikes. The Legal Aid Society of NYC (David Crow of counsel) and Selendy Gay Elsberg PLLC (Claire Elizabeth O'Brien of counsel) represented appellant Julio and the Center for Appellate Litigation (Elizabeth Lagerfeld, of counsel) represented appellant Harrell.

People v Julio (2023 NY Slip Op 04349)

SECOND CIRCUIT

Farhane v United States | August 11, 2023

DENATURALIZATION | COLLATERAL CONSEQUENCE

The petitioner appealed from a District Court—SDNY judgment denying his habeas petition seeking to vacate his 2006 conviction. The Second Circuit affirmed, with one judge concurring and one judge dissenting. The petitioner claimed that his attorney was ineffective for not warning him of the risks of civil denaturalization and possible deportation resulting from his guilty plea. The Second Circuit reaffirmed the direct/collateral distinction in evaluating ineffective assistance claims in the post-*Padilla* context and held that civil denaturalization is a collateral consequence not covered by the Sixth Amendment. Denaturalization is not a "nearly automatic" consequence of conviction—unlike deportation for noncitizen offenders. In the dissent's view, the direct/collateral dichotomy that the *Padilla* Court found inapt in the context of deportation was similarly ill-suited to evaluating the petitioner's claim. Applying the *Strickland* test,

counsel's failure to advise the petitioner of the risks of denaturalization and deportation was objectively unreasonable.
Farhane v United States (22-1666)

TRIAL COURTS

People v Gonzalez | 2023 WL 5255442

VTL § 1192 | NARCAN | NO PROBABLE CAUSE

The defendant moved to suppress CPL 710.30 noticed statements, police observations, and blood test results. Queens County Criminal Court granted the motion. An officer testified that he arrested the defendant for violating VTL § 1192 (4) after he responded to a car accident and saw EMTs using Narcan to revive him, and that Narcan is used to resuscitate a person who is "under the influence of drugs." The People failed to elicit testimony about the officer's experience with Narcan or the drug or class of drugs for which Narcan is used. Thus, there was no evidence to support a finding of probable cause that the defendant was impaired "by a drug listed in Public Health Law § 3306." The Legal Aid Society of NYC (Benjamin P.D. Mejia, of counsel) represented the defendant.
People v Gonzalez (2023 NY Slip Op 23251)

FAMILY

SECOND DEPARTMENT

Matter of Cohen v Escabar | August 16, 2023

INFANT | NO CAPACITY | FAMILY OFFENSE PROCEEDING

The respondent appealed from a Suffolk County Family Court order of protection issued upon a finding that he committed a family offense. The Second Department reversed and dismissed the proceeding. The respondent was 17 years old when his 16-year-old ex-girlfriend commenced a family offense proceeding against him. Although the respondent did not appear at the hearing, the order was not entered on default because his attorney participated in his absence. But the respondent lacked capacity to appear before Family Court. At 17 years old, he was an infant who could only appear in court by a parent or guardian. His lack of capacity rendered the order of protection void. Glenn Gucciardo represented the appellant.
Matter of Cohen v Escabar (2023 NY Slip Op 04313)

Matter of Jada W. (Fanatay W.) | August 16, 2023

PETITIONER'S APPEAL | DISMISSAL REVERSED | DISSENT

The petitioner appealed from a Kings County Family Court order that dismissed a neglect petition against the mother after a fact-finding hearing. The Second Department reversed, reinstated the petition, entered a finding of neglect, and remitted for a dispositional hearing. One justice dissented. In the dissent's view, the petitioner failed to establish that the mother neglected the child. The petition alleged that the mother failed to provide proper supervision because she left the child in the care of her 15-year-old son, who she

knew or should have known was sexually abusing the child. But the proof failed to establish that the son had abused the child. The child's age-inappropriate knowledge about sex and her repetition of allegations to different people did not sufficiently corroborate her out-of-court statements about abuse.
Matter of Jada W. (Fanatay W.) (2023 NY Slip Op 04318)

TRIAL COURT

Matter of Peggy RR. v Jenell RR. | 2023 WL 5282677

ICPC | INAPPLICABLE | CHILD NOT IN PLACEMENT

Saratoga County Family Court awarded the petitioner-grandmother, who lives in West Virginia, custody of the child. The grandmother filed an article 6 custody petition before DSS filed an article 10 petition against the mother. The child had always lived in NY but had not been placed in foster care or DSS custody. The Appellate Division Departments are split on the application of the Interstate Compact on the Placement of Children (ICPC) to out-of-state noncustodial parents—but the Third Department has held that the ICPC must be applied when a child is in placement and is being sent out of state. The ICPC was designed to prevent states from unilaterally shifting their foster care responsibilities to other states. Therefore, the ICPC only needs to be invoked if a child is in placement under article 10; it did not need to be applied here.
Matter of Peggy RR. v Jenell RR. (2023 NY Slip Op 23252)

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