

Decisions of Interest

AUGUST 22, 2022

CRIMINAL

SECOND DEPARTMENT

People v Reeves | Aug. 17, 2022

ADJOURNMENT | FAIR TRIAL

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 1st degree robbery. The Second Department reversed. Where fundamental rights were involved, the trial court's discretion to deny an adjournment was narrowly construed. Here the lower court should have granted a one-day continuance for the defendant's daughter to travel from out of state to New York. Further, Supreme Court should have denied the People's request for a missing witness charge as to the daughter, who was knowledgeable about her father's alibi. It was illogical to allow a jury to draw an adverse inference based on the failure of the defendant to call a witness when he was unable to do so. The errant rulings deprived him of a fair trial. Appellate Advocates (Leila Hull, of counsel) represented the appellant.

[People v Reeves \(2022 NY Slip Op 04979\)](#)

People v Lester | Aug. 17, 2022

GRAVITY KNIFE | DISMISSED

The defendant appealed from a 2018 judgment of Queens County Supreme Court convicting him of various crimes. The Second Department modified. The conviction of 4th degree CPW was predicated on simple possession of a gravity knife. Even though the statute decriminalizing such act did not take effect until 2019, that count was dismissed in the interest of justice. The conviction of 3rd degree criminal possession of marijuana became a nullity by operation of law, pursuant to CPL 160.50 (5). Appellate Advocates (Patricia Pazner, of counsel) represented the appellant.

[People v Lester \(2022 NY Slip Op 04977\)](#)

People v Matos | Aug. 17, 2022

SORA | REVIEW

The defendant appealed from a Kings County Supreme Court order adjudicating him to be a level-three sex offender. The Second Department affirmed. A SORA certification could be challenged upon an appeal from the judgment of conviction—but not upon an appeal from the order designating the risk level. See *People v Hernandez*, 93 NY2d 261 (certification as sex offender reviewable as part of judgment of conviction); *People v*

Miguel, 140 AD3d 497 (1st Dept) (where defendant challenged certification on ground that conviction was not for registrable offense, issue had to be raised on direct appeal from judgment); see also *People v David*, 203 AD3d 739 (2nd Dept) (SORA certification not part of sentence; challenge based on non-registrable offense could not be raised in CPL 440.20 motion). Since the defendant failed to appeal from the judgment of conviction, the appellate court could not review his contention that his certification was unlawful because the underlying crime was not a sex offense for SORA purposes.

[People v Matos \(2022 NY Slip Op 04984\)](#)

People v Ramos | Aug. 17, 2022

INEFFECTIVENESS | CORAM NOBIS

The defendant appealed from a Suffolk County Court order denying his CPL Article 440 motions. The Second Department affirmed. The motions were procedurally barred since the issues raised appeared on the face of the record and were subject to review on direct appeal. The defendant's contention as to ineffective assistance of appellate counsel was not properly before the court. Such claim had to be asserted in an application for a writ of error coram nobis. See *People v Wingate*, 184 AD3d 738.

[People v Ramos \(2022 NY Slip Op 04978\)](#)

People v White | Aug. 17, 2022

INEFFECTIVENESS | *ANDERS* BRIEF

The defendant appealed from an Orange County Court judgment, convicting him of 1st degree robbery. Assigned counsel submitted an *Anders* brief. The Second Department assigned new counsel. Appellate counsel appeared to suggest that an excessive-sentence argument would be frivolous because the defendant's punishment—twice the statutory minimum—was negotiated. However, it was well-established that the Appellate Division had authority to reduce a negotiated sentence. See *People v Thompson*, 60 NY2d 513. Appeals that presented arguable, albeit marginal, issues must be perfected to fulfill the defendant's right to zealous appellate representation.

[People v White \(2022 NY Slip Op 04981\)](#)

COUNTY COURT

People v Clement | Aug. 18, 2022

INVALID COC | CPL 30.30 | UNPUBLISHED

The defendant appealed from a Town Court order denying his motion to invalidate the People's COC and SOR and dismiss accusatory instruments charging him with aggravated DWI and other offenses. County Court reversed and dismissed all charges. The People failed to timely provide bodycam video footage and results of a field sobriety test. Thus, the COC and SOR were invalid, and the People were not ready for trial within 90 days of arraignment. Regarding the failure to provide the subject discovery, the People did not seek a stay of automatic discovery based on good cause. The lower court erred in denying relief to the defendant based on his failure to prove prejudice; such showing was irrelevant. His plea of guilty did not foreclose review of the speedy trial claim, given CPL 30.30 (6) (order finally denying motion to dismiss on speedy trial grounds reviewable

on appeal from ensuing judgment of conviction entered upon plea of guilty). The Wayne County Public Defender's Office (Scott Turner, of counsel) represented the appellant.

FAMILY

SECOND DEPARTMENT

Bauman v Bauman | Aug. 17, 2022

CIVIL CONTEMPT | DEADBEAT

The husband appealed from an order of Nassau County Supreme Court holding him in civil contempt for failure to pay arrears and counsel fees, pursuant to the judgment of divorce. The Second Department modified. The wife established by clear and convincing evidence that the judgment included an unequivocal mandate directing the arrears payments. In disobeying the directives, the husband prejudiced the wife. Further, he failed to show that he was unable to pay the amounts owed. However, the trial court erred in granting counsel fees. The wife did not demonstrate compliance with 22 NYCRR 1400.3 regarding retainer agreements.

[Bauman v Bauman \(2022 NY Slip Op 04945\)](#)

THIRD DEPARTMENT

Chester HH. v Angela GG. | Aug. 18, 2022

CUSTODY MOD DISMISSAL | REVERSED

The father and AFC appealed from an order of Tompkins County Family Court, which granted the mother's motion to dismiss his custody modification petition. The Third Department reversed. The mother and teenage child lived in Michigan, where a court had granted joint legal custody to the parties, sole physical custody to the mother, and parenting time to the father. Family Court granted emergency custody to him based on the mother's alleged neglect. However, the lower court later dismissed his petition, finding a lack of jurisdiction under the UCCJEA, and denied an AFC request for a hearing, citing a Michigan Social Services report. When the appeal was taken, the appellants moved for a stay pending appeal, and the appellate court granted the motion and reinstated the temporary order granting the father sole custody. See Family Ct Act § 1114 (b). A hearing was warranted based on allegations that, among other things, the mother's home was rodent-infested and lacked electricity and hot water, and that she failed to have the child attend school or go to the doctor. The Social Services report relied upon was unsigned, redacted, vague, contradictory, and the product of an inadequate investigation. Family Court should have held a hearing to determine whether temporary emergency jurisdiction should continue. The matter was remitted. Lisa Miller represented the father. Thomas Shannan represented the child.

[Chester HH. v Angela GG. \(2022 NY Slip Op 05002\)](#)