<u>NYS Court of Appeals Criminal Decisions for March 16, 2023</u>

People v. Guerra

This is a 4 to 2 memorandum, affirming the First Department. The defendant was prosecuted for assaulting the victim with a knife. He claimed self-defense. The trial court permitted cross-examination of only two of the complainant's four prior violent youthful offender ("YO") incidents, and only for the purpose of addressing credibility. The propriety of the limiting jury instructions was at issue. The Court declined to expand the *People v. Miller*, 39 NY2d 543, 553 (1976) rule, precluding the admission of a complainant's prior violent acts where justification is claimed unless the defendant had been made aware of the specific acts at the time of the assault. The majority favored the confidentially-based policy purposes behind YO adjudications over the defendant's rights to confront the complainant.

Judge Wilson authored the **dissent**. The defendant, who had no history of violence, stabbed the victim with a penknife attached to his keys because the other person was attempting to cut him with a broken beer bottle. The combatants had consumed alcohol and were strangers prior to their altercation. The People had the burden to disprove justification beyond a reasonable doubt. The defendant claimed self-defense under PL § 35.15(2)(a), in that he reasonably believed the complainant was about to use deadly physical force. The jury was instructed on justification and had to determine who the initial aggressor was. Other jurisdictions disagree regarding the *Miller* rule, which Judge Wilson opines is misguided and obsolete. *See generally*, *Stokes v. People*, 53 NY 164, 175 (1873) (addressing earlier version of the *Miller* rule); *People v. Druse*, 103 NY 655, 655 (1886) (same). Apparently, only Maine is in line with our state. The parties on the ground did not consider the *Miller* caselaw before deciding how to act. Moreover, rape shield law protections notwithstanding, complainant / witnesses do not have, nor deserve, the same protections from facing prior bad acts as defendants do under the *Molineux* and *Sandoval* doctrines. In sum, "[i]nnocent people go to prison and guilty people go free when [courts] exclude relevant evidence." The defendant had the right to present a "complete defense." *Crane v. Kentucky*, 476 US 683, 690 (1986).

People v. Regan

This is a 4 to 2 decision dismissing the indictment on speedy trial grounds. Judge Wilson authored the majority opinion. Judge Garcia dissented for the reasons stated by the majority in *People v. Regan*, 196 AD3d 735, 737 (3d Dep't 2021). Judge Singas wrote a separate and passionate dissent. The rape conviction and the Third Department are

reversed, and the indictment is dismissed, based on the four-year delay between the alleged criminal acts and the indictment.

The rape complainant reported the allegation to the police within hours of the incident. Within days, her boyfriend provided a DNA sample. That result came five months later. The complainant identified the defendant as the assailant, a person she knew well. The defendant denied the allegation. The defendant's DNA, which ultimately was found on the complainant's underwear and led to an indictment, was not secured until three years after the alleged crime. This was some two and half years after law enforcement knew the DNA from someone other than the complainant's boyfriend was present on the complainant's underwear. The prosecution had practically all of its non-DNA evidence early on in the investigation.

The majority addressed the pre-trial due process factors set out in *People v. Taranovich*, 37 NY2d 442 (1975), in evaluating this potential deprivation of the constitutional right to a speedy trial. *See*, NY Const., art. I, § 6 (due process); US Const., amend. VI (speedy trial). These non-exhaustive factors address: (1) the extent of the delay, (2) the reason for the delay, (3) the nature *(complexity / seriousness)* of the underlying charge, (4) whether there was extended pre-trial detention, and (5) whether the defendant was impaired because of the delay. *Id*. at 445. No one factor is determinative in this holistic framework. Both pre and post indictment delay are analyzed with these factors. *See*, *People v. Johnson*, 39 NY3d 92, 93-98 (2022); *People v. Wiggins*, 31 NY3d 1, 9-12 (2018); *People v. Vernace*, 96 NY2d 886, 887 (2001); *People v. Singer*, 44 NY2d 241, 253 (1978).

Here, the length of the delay was excessive. The majority is highly critical of St. Lawrence County's apparent incompetence. Law enforcement offered no explanation for numerous portions of the time delay. It was two years before the police finally concluded they needed the defendant's DNA. It took 38 months after the reported crime for the DA to seek a warrant for this. They apparently ***did not know*** of this readily available procedure, long recognized by the Court. *See*, *Matter of Abe A.*, 56 NY2d 288 (1982). Indeed, the People's negligence is not "a neutral factor" under *Taranovich*. It was, of course, the People's burden to establish good cause for the delay. A point of contention between the majority and the dissent was the principal that lengthy pretrial delays may be excused where good cause exists, but not where *no explanation* is provided. A defendant may be entitled to dismissal in such a case, even where no prejudice is affirmatively shown. *See again*, *Singer*, 44 NY2d at 254. Because time's erosion of exculpatory evidence and testimony "can rarely be shown," *Wiggins*, 31 NY3d at 18, quoting *Doggett v. US*, 505 US 647, 655 (1992), prejudice will be presumed. While there's always the need to investigate and gather evidence, the DA's burden to explain herself is not lightened by the apparent absence of bad faith. Here, the crime was serious, but not complex. The complainant was cooperative and the only missing piece was the defendant's DNA (which would have conclusively disproved the defendant's denial). The interests of all *(the defendant, the*

public, the prosecution and the complainant) are served by a prompt prosecution. Here, the DA inexcusably dropped the ball.

In **dissent**, Judge Singas set out the horrible position female sex crime victims have been historically placed in terms of convincing the male authorities that a crime had in fact been committed. Indeed, women were once the legal property of their fathers and husbands. Incredibly, a husband's rape of his wife was for a long time not even criminalized. In our state, a woman's word alone that she had been raped was legally insufficient until 1974. Over time, the corroboration and prompt outcry requirements for sex crime victims have thankfully been discarded. The mid-70's also brought us the rape shield law to protect sex crime victims from having to address most prior sexual conduct while testifying. Because of the gravity of the crime, our legislature has now (as of 2006) even removed the statute of limitations for rape and certain other sex crimes. Yet the majority has effectively imposed a statute of limitations itself. Despite the victims usually knowing their assailant, rape is not reported to the authorities nearly as often as other crimes. This was of course a very serious crime -- and had complexities. The complainant here promptly reported the crime and identified the defendant (who she knew) as the perpetrator. Moreover, the defendant was not incarcerated during the pre-indictment delay and no prejudice to the defendant's case was established. While longer delays have been tolerated in murder prosecutions (e.g., *Decker* [15 years] and *Verance* [17 years]), the jury's first-degree rape guilty verdict has been nullified. The majority's decision, according to the dissent, was a step backward for women in the criminal justice system.

NYS Court of Appeals Criminal Decisions for March 21, 2023

People v. Ba

This is the entire ruling of the court: "Order insofar as appealed from reversed and case remitted to the Appellate Term, First Department, for a determination whether defendant's sentence is unduly harsh or severe (CPL 470.45 [6] [b])." The defendant pleaded guilty to a single count of unlicensed general vending, a misdemeanor under NYC's administrative code, for selling trademark counterfeit designer handbags. *See also*, PL § 165.71 There was a fine range of between $250 and $1,000. The defendant was offered a choice: 3 days of community service or a $500 fine. He chose the fine and then argued on appeal it was harsh and unnecessary. The Appellate Term "perceive[d] no basis for reducing the fine" as the defendant "received the precise sentence for which he had bargained, which was within the permissible statutory range." *See*, 73 Misc. 3d 148(A).

Judge Garcia authored a **concurrence** and is joined by the acting Chief and Judges Singas and Troutman. Judge Troutman authored a separate concurrence and is joined by Judges Rivera and Wilson.

Judge Garcia observes that intermediate appellate courts possess the broad discretionary power to modify or reduce even a legal sentence as a matter of discretion in the interests of justice where the term is unduly harsh or severe under the circumstances. *See*, NY Const., art. VI, §§ 4(k), 7(a) and 8(a); CPL 470.15(6)(b) and 470.25(1); *People v. Delgado*, 80 NY2d 782, 783 (1992) (recognizing the appellate courts' "broad, plenary power" to reduce a sentence "without deference to the sentencing court"); *People v. Pollenz*, 67 NY2d 264, 267-269 (1986); *People v. Thompson*, 60 NY2d 513, 519-520 (1983). This authority is not subject to legislative restriction and exists notwithstanding whether there was a bargained-for-plea or whether the sentence was "legal." The sentencing court is not required to provide a basis for its decision. Here, the matter should be remitted for the Appellate Term to clarify the basis for its decision.

Judge Troutman, echoing the same principles, observed that a negotiated plea does not impact an intermediate court's plenary sentencing reduction authority. *See again*, *Pollenz*, 67 NY2d at 267-268. This becomes even more important considering that most criminal cases result in guilty pleas. *See also*, NYSACDL's "The New York State Trial Penalty: The Constitutional Right Under Attack" (2021); accessible at:
chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.nacdl.org/getattachment/1d691419-3dda-4058-bea0-bf7c88d654ee/new_york_state_trial_penalty_report_final_03262021.pdf.

The concurrence describes this as "an inherent power of those courts enshrined in the New York State Constitution." This authority is a useful means of diminishing sentencing disparity and ensuring the imposition of fair sentences, particularly for the indigent, people of color and the innocent who might otherwise enter a guilty plea.

Some stream of consciousness commentary: It's nice to see the *entire* Court affirmatively agreeing on the *constitutional* sources for appellate courts' unreviewable plenary authority to modify or reduce a sentence without explanation. It's also refreshing to see NYSACDL's *Trial Penalty* publication being cited by our state's highest court. Moreover, as observed by Judge Troutman, sentencing courts in our state, analogous to federal courts under 18 U.S.C. § 3553(a), must exercise their discretion after considering all of the circumstances and the purposes of imposing penal sanctions: societal protection, rehabilitation and deterrence. *People v. Farrar*, 52 NY2d 302, 305 (1981).

People v. Baldwin

The entire decision: “The appeal should be dismissed upon the ground that the issues presented have become moot (*see People v McLaine*, 64 NY2d 934, 934 [1985]; *see also People v Chi Fong Chen*, 100 NY2d 527, 528 [2003]).”

Judge Wilson authored a separate **concurrence**, observing that the Third Department’s longtime erroneous standard for intermediate appellate courts reviewing sentences as a matter of discretion in the interests of justice *(i.e., requiring either extraordinary circumstances or an abuse of discretion)* is, as of May of 2022, no longer being followed. *See generally*, *e.g.*, *People v. Garrick*, 213 AD3d 999, 1000 (3d Dep’t 2023); *see also* CPL 470.15(6)(b); *People v. Delgado*, 80 NY2d 782, 783 (1992); *People v. Epackchi*, 37 NY3d 39, 43-45 (2021).