

## **NYS Court of Appeals Criminal Decisions; October 20, 2022**

### **People v. Baines**

This is a unanimous opinion, authored by Judge Troutman. This sex crime defendant represented himself prior to trial for 21 months. He was not, however, properly warned by the court and thus did not provide a knowing, intelligent and voluntary waiver of his right to counsel during his pre-trial proceedings. Defendants have a constitutional right to either be represented by counsel or to represent themselves. *People v. Silburn*, 31 NY3d 144, 150 (2018). A trial court must conduct a ‘searching inquiry’ to explore the issue once a defendant unequivocally and timely requests permission to represent him or herself *pro se*. The litigant must be warned of the singular importance of being represented by counsel and the inherent dangers of proceeding without an attorney. *People v. Arroyo*, 98 NY2d 101, 103-104 (2002). No set catechism is required. The warnings may be provided in a nonformalistic and flexible manner. Viewing the record as a whole, the trial court here did not meet its obligation by generally commenting that the defendant was putting himself “in a bad position” and that it was “not a great idea” to represent himself. The First Department was thus modified and the matter remitted to Supreme Court to afford the defendant an opportunity to file and litigate pre-trial motions.

(The Court also observed the appointment of standby counsel remains within the trial court’s discretion after it provides warnings on the limits of such representation. *Silburn*, 31 NY3d at 151. Such warnings were not provided here.)

### **People v. Murray**

This is a unanimous decision authored by Judge Garcia. Defendant’s robbery / assault trial was coming to a close. Two alternate jurors were discharged following the summations, while the sitting jurors were sent to lunch. No deliberations had begun. One of the jurors was removed for misconduct. The trial court then erroneously substituted the removed juror with a discharged alternate juror. Defense counsel moved for a mistrial and objected to this procedure. CPL 270.35(1) must be strictly complied with. The “discharged juror,” who was by definition relieved of further juror responsibilities, was no longer “available for service.” (Incidentally, had jury deliberations begun, written consent from the defense would have been required.) The First Department was reversed and a new trial ordered.