Indigent Legal Services

Decisions of Interest

JANUARY 8, 2025

CRIMINAL

APPELLATE DIVISION, FIRST DEPARTMENT

People v Alvarez | December 31, 2024

PROBATION | IMPROPER CONDITION | MODIFIED

Appellant appealed from a New York County Supreme Court judgment convicting him of second-degree CPW and sentencing him to 5 years' probation. The First Department modified the judgment by striking the condition of probation prohibiting appellant from using public transportation for 3 years and vacated the surcharges and fees, despite the valid waiver of appeal. The condition prohibiting the use of public transportation was not reasonably related to appellant's rehabilitation as he had no history of misconduct on public transit. Accordingly, the judgment was modified to strike the condition. Center for Appellate Litigation (Abigail Everett, of counsel) represented Alvarez.

People v Alvarez (2024 NY Slip Op 06662)

Oral Argument (starts at 00:24:56)

People v Marcus T. | December 31, 2024

YOUTHFUL OFFENDER | FAILURE TO CONSIDER | REVERSED AND REMANDED

Appellant appealed from a New York County Supreme Court judgment convicting him of second-degree CPW and second-degree assault. The First Department reversed and remanded for a youthful offender determination. As the prosecution conceded, appellant was eligible for youthful offender treatment without any presumption of ineligibility due to the nature of the crimes. Center for Appellate Litigation (Katia A. Barron, of counsel) represented Marcus T.

People v Marcus T. (2024 NY Slip Op 06666)

Oral Argument (starts at 02:17:06)

People v Boone | December 31, 2024

EXCESSIVE SENTENCE | ROBBERY AND ASSAULT | REDUCED

Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree robbery and third-degree CPW and sentencing him to an aggregate term of 20 years' imprisonment and 5 years' PRS. The offense involved stealing money from the complainants while threatening them with a knife. The First Department reduced the sentence to an aggregate term of 16 years' imprisonment and 5 years' PRS and otherwise affirmed. Steven A. Feldman represented Boone.

People v Boone (2024 NY Slip Op 06667)

People v Lamberty | December 31, 2024

SUPPRESSION | IMPROPER SEARCH INCIDENT TO ARREST | REVERSED AND DISMISSED

Appellant appealed from a New York County Supreme Court judgment convicting him of tampering with evidence and resisting arrest. The First Department reversed the denial of suppression, reversed the judgment, and dismissed the indictment. The prosecution failed to demonstrate that the search of appellant's fanny pack was incident to a lawful arrest because the evidence did not establish that the officer arrested appellant or actually intended to do so before opening the bag, as required by *People v Reid*. The Legal Aid Society of NYC (Sylvia Lara Altreuter, of counsel) represented Lamberty.

People v Lamberty (2024 NY Slip Op 06669)

Oral Argument (starts at 02:20:45)

People v Fernandez | December 31, 2024

PROBATION | IMPROPER CONDITION | MODIFIED

Appellant appealed from a New York County Supreme Court judgment convicting him of leaving the scene of an incident without reporting and sentencing him to 3 years' probation. The First Department modified the judgment by striking the condition of probation requiring appellant to consent to searches for illegal drugs or weapons. The court improperly imposed the condition where appellant was not under the influence or armed with a weapon during the crime and had no history of violence. Thus, the consent-to-search condition was not reasonably related to appellant's rehabilitation. While the challenge did not require preservation and would survive a valid waiver of the right to appeal, the waiver was invalid. The plea court failed to explain that the right to appeal was separate and distinct from the trial rights being waived, mischaracterized the finality of the waiver, and did not determine whether appellant understood the written waiver. Center for Appellate Litigation (Abigail Everett, of counsel) represented Fernandez.

People v Fernandez (2024 NY Slip Op 06671)

In re People v Northern Leasing Systems, et al | January 2, 2025

FEE DISGORGMENT | ORDER GROSSLY INEQUITABLE | MODIFIED

In 2020, Northern Leasing Systems was found to be in violation of Executive Law § 63[12] for "engag[ing] in repeated and persistent fraud pertaining to unconscionable equipment finance leases for credit card processing equipment, and that they attempted to enforce the lease obligations…through abusive pre-litigation and litigation practices aimed at manufacturing unlawful default judgments in debt collection actions." The trial court then directed restitution of $680,990,038 against the Northern Leasing respondents based on payments collected in connection with the fraudulent lease scheme, minus the value of leased equipment and further ordered disgorgement of approximately $9,303,157 in attorneys' fees paid to the attorney respondents as ill-gotten gains obtained in assisting the fraudulent scheme. The First Department affirmed the restitution order as within the court's discretion. The disgorgement of attorneys' fees was also proper without a showing that each fee was based on legal work tied to the fraud. However, the First Department modified that portion of the disgorgement order that held an associate of the firm, Babad, jointly and severally liable for the full amount. Accordingly, the disgorgement award was modified to limit Babad's liability to fees he earned in connection with the lease issue and collection matters. Rottenberg Lipman Rich P.C. (Robert A. Freilich, of counsel) represented Babad.

Matter of People of the State of New York v Northern Leasing Sys., Inc. (2025 NY Slip Op 00030)
Oral Argument (starts at 00:31:04)

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Charles v Shea | December 31, 2024

ARTICLE 78 | DENIAL OF LIMITED CARRY HANDGUN LICENSE | *BRUEN* VIOLATION | MODIFIED & REMITTED

Respondents, NYC Corporation Counsel, moved to recall and vacate the Second Department's May 2024 order affirming the denial of petitioner's application to renew his limited carry handgun license. The Second Department granted the motion, recalled and vacated the order, and remitted the matter to respondents for a new determination of petitioner's application. As conceded by respondents, the "proper cause" licensing standard under New York law is unconstitutional and violates the Second Amendment of the United States Constitution, pursuant to *New York State Rife & Pistol Assn., Inc. v Bruen*, 597 US 1 [2022]. However, the remedy of mandamus is not available to compel approval of appellant's application as it involves an exercise of judgment or discretion by the License Division. The Bellantoni Law Firm, PLLC (Amy L. Bellantoni, of counsel) represented Charles.
Matter of Charles v Shea (2024 NY Slip Op 06683)

TRIAL COURTS

People v Meade | 2024 WL 5250703 | 2024 WL 5250685

GRAND JURY | FLAWED JUSTIFICATION INSTRUCTION | INDICTMENT DISMISSED

Meade was charged with second-degree murder and second-degree manslaughter for causing the death of his half-brother by stab wounds during a struggle in Meade's apartment, where the decedent attacked Meade with a fire extinguisher. Tompkins County Court granted the defense motion to dismiss the indictment due to defective grand jury proceedings. After granting reargument to the prosecution, County Court adhered to its prior determination, with modified reasoning. While the prosecution instructed the grand jury on justification under PL § 35.15[2], the charge was incomplete because it omitted the PL § 35.20[3] instruction on the justified use of deadly force against one who is reasonably believed to be committing a burglary. Moreover, while the prosecution legitimately gave the "initial aggressor" instruction based on the facts presented, this too was flawed by omitting the definition of "dangerous instrument." While not always necessary, here the jury needed it to determine whether the decedent's use of the fire extinguisher made him the initial aggressor. These failures rendered the instructions "so misleading or incomplete as to substantially undermine the integrity of the proceedings." The likelihood of prejudice was established by (1) the grand jurors' request to consider a manslaughter charge after only the second-degree murder charge was initially submitted, and (2) by the non-unanimous votes on both the murder and manslaughter counts. County Court acknowledged the prosecution's ability to seek leave to resubmit the case to a new grand jury pursuant to CPL § 210.20[4]. The prosecution has since appealed to the Third Department and the case is now pending on appeal. Madeline Weiss represented Meade.

People v Meade (2024 NY Slip Op 51767(U))
People v Meade (2024 NY Slip Op 51768(U))

FAMILY

APPELLATE DIVISION, FIRST DEPARTMENT

Matter of I.E. v J.I. | December 31, 2024

FAMILY OFFENSE | INDEPENDENT FACT-FINDING POWER ON APPEAL | MODIFIED

Appellant appealed from a New York County Family Court order finding that he had committed the family offense of third-degree menacing and imposing a stay-away order of protection. The First Department modified by including the additional finding that appellant committed second-degree harassment and otherwise affirmed. The record showed that appellant approached the petitioner near her car and began screaming, threatening her, and preventing her from leaving the car. The First Department thus used its independent fact-finding power to make the finding that he committed an additional family offense, although the underlying order of protection at issue had expired.
Matter of I.E. v J.I. (2024 NY Slip Op 06653)

Matter of E.I. (Eboniqua M.) | January 2, 2025

NEGLECT | HEARING REQUIRED FOR POST-DISPOSITIONAL REMOVAL | REVERSED

Appellant appealed from a Bronx County Family Court order modifying a previous dispositional order from a release of the children to the mother to placement with ACS. The First Department reversed. Family Court's *sua sponte* order deprived the mother of due process when it removed the children without a hearing and then effectively—and inappropriately—imposed a burden on her to show why removal was unwarranted. The order also lacked a sound and substantial basis in the record. Although ACS had sought to extend supervision, its position—supported by the attorney for the children—was that the children should remain with the mother. There was no evidence in the record that the mother used illicit substances or was impaired while caring for the children. The Bronx Defenders (Rakaia Keef-Oates, of counsel) represented the mother.
Matter of E.I. (Eboniqua M.) (2025 NY Slip Op 00022)
Oral Argument (starts at 00:37:04)

APPELLATE DIVISION, THIRD DEPARTMENT

Matter of Kelly N. v Chenango Dept. of Social Servs. | January 2, 2025

CHILD SUPPORT | CUSTODIAL ALIENATION STANDARD | AFFIRMED

Appellant appealed from an order of Chenango County Family Court dismissing her petition to modify a prior child support order. The Third Department affirmed. Appellant claimed the defense of custodial alienation against allegations that she had violated her child support obligation and was in arrears. Family Court held the mother to an unduly harsh legal standard, stating that a parent asserting that defense must show that "like Superman, they tried and attempted to leap tall buildings in a single bound and swim rivers against the tide and do all the things that they could in order to attempt to keep the

relationship going." The Third Department nevertheless affirmed, substituting its independent fact-finding power, and finding that the mother failing to demonstrate custodial alienation.
Matter of Kelly N. v Chenango Dept of Social Servs. (2025 NY Slip Op 00010)

TRIAL COURTS

Matter of Autumn A. (Cherrie A.) | 2024 WL 5265294

NEGLECT | 1051[C] DISMISSAL | FACT-FINDING HEARING NOT REQUIRED| PETITION DISMISSED

The mother filed a motion to dismiss the Article 10 neglect petition against her on the basis that the aid of the court was not required. Kings County Family Court granted the motion and dismissed the petition. All eight of the mother's children remained safely at home with her during the pendency of the case, which arose from allegations of excessive corporal punishment of one of the children. A fact-finding hearing is not required to dismiss a case under Family Court Act 1051[c], which only refers to "the record before the court." Here, the record—including a 10-page sworn affidavit and 12 exhibits attached to support the motion to dismiss—showed that the mother accepted responsibility for her actions and that the ACS case has had a negative impact on the family, warranting dismissal. The court also noted that it would be unlikely to make a neglect finding based on the evidence before it. Vivienne Hewitt represented the mother.
Matter of Autumn A. (Cherrie A.). (2024 NY Slip Op 51769)

Statewide Appellate Support Center
New York State Office of Indigent Legal Services
80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov
(518) 486-6602 | SASC@ils.ny.gov