Indigent Legal Services

Decisions of Interest

FEBRUARY 12, 2025

CRIMINAL

APPELLATE DIVISION, FIRST DEPARTMENT

People v Serrano | February 4, 2025

CONSTITUTIONAL SPEEDY TRIAL | HEARING ORDERED | HELD IN ABEYANCE

Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree robbery. The First Department held the appeal in abeyance and ordered a hearing on the defense's *Singer* motion to dismiss on constitutional speedy trial grounds. The prosecution's excuse for the delay, that they were waiting on federal prosecutors to explore whether they had jurisdiction over the offense and whether appellant could serve as a cooperator in other investigations, was not supported by evidence that they had diligently communicated with federal authorities. The prosecution also failed to explain the delay in obtaining a new search warrant for appellant's phone. These issues would need to be explored at the hearing. Center for Appellate Litigation (Allison Haupt, of counsel) represented Serrano.

People v Serrano (2025 NY Slip Op 00636)

Oral Argument (starts at 01:25:07)

People v Rochester | February 4, 2025

APPEAL WAIVER INVALID | EXPLANATION OF RIGHT TO APPEAL INADEQUATE | AFFIRMED

Appellant appealed from a New York County Supreme Court judgment convicting him of attempted second-degree burglary (Wiley, J.). The First Department found the appeal waiver inadequate but otherwise affirmed. Supreme Court did not sufficiently distinguish the right to appeal from other rights automatically forfeited by pleading guilty or adequately explain that the waiver was an absolute bar to appellate review. Accordingly, the court reached the defense's *Miranda* claim, but determined that it lacked merit. Legal Aid Society of NYC (Lorraine Maddalo, of counsel) represented Rochester.

People v Rochester (2025 NY Slip Op 00640)

People v Hicks| February 4, 2025

SPEEDY TRIAL | PROSECUTION'S APPEAL | REVERSED

The prosecution appealed from a Bronx County Supreme Court order dismissing the indictment on speedy trial grounds. The First Department reversed, holding that the trial court should not have granted the 30.30 motion. The period during which a necessary police witness was medically unavailable should have been excluded as an exceptional circumstance. The officer's broken ankle was a sufficiently restricting injury given he was unable to work and had not been cleared by a police surgeon. The prosecution was

not required to show that the officer was completely incapacitated or immobilized. An additional period following the defense announcement of its intent to file the speedy trial motion also should have been excluded, irrespective of the prosecution's readiness to proceed on that date. With respect to another contested period, the defense arguments were unpreserved and did not establish that the prosecution's response to the speedy trial motion was so dilatory that additional delay should be charged.
People v Hicks (2025 NY Slip Op 00638)
Oral Argument (starts at 00:35:30)

People v Hamlett | February 6, 2025
EXCESSIVE SENTENCE | SEX OFFENSES | SENTENCES REDUCED
Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree criminal sexual act, first-degree robbery, first-degree burglary, first-degree sexual abuse, second-degree robbery, and first-degree criminal impersonation and sentencing him to an aggregate term of 154 years' imprisonment. The First Department reduced the sentence to an aggregate term of 51 1/3 years and otherwise affirmed. The imposed sentence was "unduly harsh and severe." Office of the Appellate Defender (Samuel Steinbock-Pratt, of counsel) represented Hamlett.
People v Hamlett (2025 NY Slip Op 00727)
Oral Argument (starts at 02:08:00)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Dawson | February 6, 2025
INVALID WAIVER OF APPEAL | POST-SENTENCE COLLOQUY INSUFFICIENT TO CURE DEFECT | AFFIRMED
Appellant appealed from a Rensselaer County Court judgment convicting him of first-degree robbery following a guilty plea. The Third Department found the appeal waiver invalid, because the court's colloquy mischaracterized the rights being waived as an absolute bar to taking a direct appeal and failed to explain that appellate review was available for select issues. The court's post-sentence colloquy explaining that certain issues survived the right to appeal did not retroactively cure the deficiencies in the earlier waiver. However, the sentence was not excessive. Emmalynn S. Blake represented Dawson.
People v Dawson (2025 NY Slip Op 00699)
Oral Argument

APPELLATE DIVISION, FOURTH DEPARTMENT

People v Guerrero | February 7, 2025
RAISE THE AGE | REMOVAL TO CRIMINAL COURT | AFFIRMED | DISSENT
Appellant appealed from an Onondaga County Court order convicting him of first-degree robbery and first-degree burglary committed when he was 17 years old. The Fourth Department affirmed. County Court correctly granted the prosecution's motion to prevent removal of his case to Family Court. Under Raise the Age, an Adolescent Offender's case may remain in adult court rather than Family Court if the prosecution proves that

extraordinary circumstances exist, which may include the nature of the crime and the history of the accused. Here, the home invasion robbery involved weapons and injuries to the complainant. And while the Fourth Department acknowledged that no prior juvenile delinquency adjudications may be used in support of an extraordinary circumstances determination, it did find that it was permissible to elicit related facts, including compliance with the services and programs provided as a result of any such determination. A dissenting justice would not have found extraordinary circumstances. The facts related to the prior juvenile delinquency adjudication, including the resulting services, were improperly considered by the trial court, and the nature of the crime alone was insufficient to meet the extraordinary circumstances standard.
People v Guerrero (2024 NY Slip Op 00766)
Oral Argument

TRIAL COURTS

People v Adamo | 2025 WL 351564

EVIDENCE | ADVERSE INFERENCE | PROSECUTION'S FAILURE TO PRODUCE DISCOVERY |ACQUITTAL

Adamo was charged in Ithaca City Court with failure to obey a traffic device after he was hit by a car while traveling through an intersection. City Court acquitted Adamo after drawing adverse inferences against the prosecution for their failure to produce the car's driver, who had told police the light was green when she proceeded, as well as original video footage from a nearby building. The prosecution also failed to disclose BCW footage. The prosecution was obligated to produce discovery at least 15 days before trial on the traffic infraction. Adamo proceeded *pro se*.
People v Adamo (2025 NY Slip Op 25021)

People v Morris | 2025 WL 351550

SUPPRESSION| UNLAWFUL DETENTION | TRAFFIC STOP | DRUGS AND STATEMENTS SUPPRESSED

Morris was charged in Kings County Supreme Court with second-degree CPW, seventh-degree CPCS and related charges. Supreme Court granted a motion to suppress the firearm, cocaine, and Morris's precinct statement. While the police had probable cause to stop the car in which Morris was a passenger after observing him without a seatbelt and with an open container of alcohol, the decision to detain him for the traffic infractions was unlawful. Taking a traffic violator into custody may be warranted due to flight, failure to provide identification, or where the police suspect a driver is intoxicated. None of those conditions were present. Morris complied with police directives. While one officer testified at the suppression hearing that he believed Morris had a weapon based on hand gestures and his "blading" his body to hide his left side, these concerns were not conveyed to the officer who questioned Morris at the scene and ordered him out of the car. Even if these observations had been communicated, they did not provide founded suspicion that Morris was armed. The physical evidence recovered during the search was suppressed, as was the precinct statement as the unattenuated fruit of the illegal detention. Michael Cibella represented Morris.
People v Morris (2025 NY Slip Op 50095(U)

People v Smith | 2025 WL 366773

GRAND JURY | RIGHT TO TESTIFY | PROSECUTION'S FAILURE TO DISCLOSE STATEMENTS | DISMISSED

Smith was charged in New York County Supreme Court with second-degree robbery and fourth-degree grand larceny. Supreme Court granted the defense motion to dismiss based on the prosecution's failure to timely disclose actual recordings of Smith's statements captured on the BWC footage. Instead, the prosecution provided written, annotated copies of the statements. "There is no ambiguity in the statute and few would dispute that viewing the actual tone of the statement is superior to a written transcript for a host of reasons." The delayed disclosure prejudiced Smith by denying him the statutory period to review the statements prior to deciding whether to testify before the grand jury and warranted dismissal. The Legal Aid Society of NYC (Riaan Riad, of counsel) represented Smith.

People v Smith (2025 NY Slip Op 50105(U))

People v Cruz | 2025 WL 380313

MIRANDA | PEDIGREE EXCEPTION INAPPLICABLE | NO ATTENUATION | STATEMENTS SUPRESSED

Cruz was charged in Bronx County Supreme Court with second-degree murder, attempted second-degree murder, and related counts. Supreme Court granted Cruz's motion to suppress his precinct statements. Questioning prior to *Miranda* warnings went beyond pedigree questions since the inquiries about Cruz's place of work and work hours were likely to elicit an incriminating response. Cruz's subsequent videotaped statements were not attenuated from the tainted statements since the interrogation was a continuous chain of events. The interrogation was conducted in the same room by the same detectives. Additionally, portions of the video were subject to suppression based on Cruz's repeatedly stating "I don't want to talk about it," which unequivocally invoked his right to remain silent. Bronx Defenders (Annette Lee, of counsel) represented Cruz.

People v Cruz (2025 NY Slip Op 25025)

People v Bradford B. | 2025 WL 380605

FACIAL INSUFFICIENCY | INADEQUATE EVIDENCE OF INTENT | DISMISSED

Bradford B. was charged in New York County Criminal Court with third and fourth-degree stalking and second-degree menacing. Supreme Court granted the defense motion to dismiss the third-degree stalking and menacing counts. The information alleged that on several occasions Bradford B. sent packages and Instagram messages to the celebrity complainant. It was further alleged that on several occasions he approached the complainant and his children in person to ask if he had received the packages. On one occasion, Bradford B. stated that "this ends today." These facts did not make out the intent element of menacing, as they were insufficient to demonstrate an intent to place the complainant in fear of physical injury or death. Nor were the facts sufficient to establish the intent to harass, annoy, or alarm necessary to sustain the third-degree stalking charge. The allegations were sufficient to support the fourth-degree stalking charge since that charge focuses on a course of conduct, not intent. Adam Silverstein represented Bradford B.

People v Bradford B. (2025 NY Slip Op 50114(U))

CIVIL

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Meyer v Nassau County Police Dept. | February 5, 2025

ARTICLE 78 | FOIL OF POLICE RECORDS | EXHAUSTION | REVERSED & REMITTED

Petitioner appealed from a judgment of Nassau County Supreme Court denying and dismissing an Article 78 proceeding against the Nassau County Police Department (NCPD) compelling disclosure of records pursuant to FOIL and for an award of attorney's fees and litigation costs. The Second Department reversed, reinstated the petition, and remitted for a determination on the merits. Supreme Court improperly denied the petition on the basis that petitioner had failed to exhaust his administrative remedies. Where the NCPD's time to respond to petitioner's appeal had expired and its response was a letter via email constituting its final determination, the court should have determined that petitioner exhausted his administrative remedies. Aron Law, PLLC (Joseph H. Aron, of counsel) represented Meyer.

Matter of Meyer v Nassau County Police Dept. (2025 NY Slip Op 00660)

Oral Argument (starts at 01:01:15)

FAMILY

APPELLATE DIVISION, FIRST DEPARTMENT

Matter of M.V. | February 4, 2025

TERMINATION OF PARENTAL RIGHTS | POST-HEARING INFORMATION | MODIFIED

The parent appealed from a Bronx County Family Court order terminating her parental rights on the ground of permanent neglect and freeing the child for adoption. The First Department vacated the order freeing the child for adoption, remanded for a new dispositional hearing, and otherwise affirmed. Although the record supported the court's determination, the First Department considered changed circumstances after the hearing—namely, that the child, now 15 years old, no longer resides in the same foster home and does not consent to being adopted—and determined that a new best interests hearing was required.

Matter of M.V. (2025 NY Slip Op 00642)

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Sapphire W. | February 5, 2025

ARTICLE 10 | SUPERVISION OF NONRESPONDENT PARENT | REVERSED

The mother, a nonrespondent custodial parent to the subject child, appealed from a Kings County Family Court order issued during the pendency of an Article 10 neglect proceeding against the father, placing the mother under ACS supervision and directing her to cooperate with ACS, despite the child never having been removed from the mother's home and the father residing elsewhere. The Second Department reversed.

Addressing an issue of first impression in New York, the Second Department held that Family Court did not have the authority to order a nonrespondent parent to submit to the jurisdiction of the court and cooperate with a child protective agency if the child was not removed from the home. Family Court's authority pursuant to FCA § 1017 and § 1027(d) is only triggered if the agency has removed the child from the home. Further, the AFC's objection to ACS's proposed directives preserved the mother's argument for appellate review. Given the significant issues presented by this case which would likely recur and evade appellate review, the exception to the mootness doctrine applied. Family Justice Law Center (David Shalleck-Klein, of counsel) represented the mother.
Matter of Sapphire W. (2025 NY Slip Op 00662)
Oral Argument (starts at 00:13:30)

Matter of Riera v Ayabaca | February 5, 2025

CUSTODY AND FAMILY OFFENSE | DEFAULT CUSTODY ORDER LACKING BASIS IN RECORD | MODIFIED

The father appealed from a Westchester County Family Court order dismissing his petition to vacate an order awarding sole legal and physical custody of the child to the mother, with a two-year stay away OOP against the father, issued without a hearing in his absence. The Second Department modified the order by granting his motion and remitting for a new determination of the parties' custody petitions, and otherwise affirmed. Whether made upon the default of a party or not, a custody determination must always have a sound and substantial basis in the record. Family Court erred by making a custody determination without a hearing and without making any specific findings of fact regarding the best interests of the child. However, the OOP was upheld. Aron Law, PLLC (Joseph H. Aaron, of counsel) represented the father.
Matter of Riera v Ayabaca (2025 NY Slip Op 00661)
Oral Argument (starts at 00:15:02)

APPELLATE DIVISION, FOURTH DEPARTMENT

Matter of Abdoch v Abdoch | February 7, 2025

CUSTODY | ATTORNEY FOR THE CHILD APPEAL | DISMISSED

The Attorney for the Child appealed from a Monroe County Family Court order granting the parties joint custody of the children with designated "zones of influence" for decision-making purposes. The Fourth Department dismissed the appeal. The court declined to depart from its precedent holding that children in a custody matter do not have full party status and may not pursue an appeal when neither "aggrieved yet nonappellant" parent has done so.
Matter of Abdoch v Abdoch (2025 NY Slip Op 00746)
Oral Argument

Matter of Pilkenton v Scipione | February 7, 2025

CUSTODY | ATTORNEY FOR THE CHILD APPEAL | AFFIRMED

The Attorney for the Child (AFC) appealed from a Monroe County Family Court order dismissing the father's custody modification petition. The Fourth Department affirmed. In contrast to *Matter of Abdoch v Abdoch*, the court reached the merits of the appeal, "assuming, arguendo, that the AFC has the authority to pursue an appeal on behalf of the

child under the circumstances of this case." The mother, who was a respondent on the appeal, participated *pro se*, but the father did not appear to have done so.
Matter of Pilkenton v Scipione (2025 NY Slip Op 00768)
Oral Argument

Matter of W.S. v G.S. | 2025 WL 383371
FAMILY OFFENSE | QUALIFIED PRIVILEGE FOR MHL PETITION | DISMISSED
In this family offense proceeding, petitioner alleged that respondent committed acts constituting harassment. Those acts consisted of statements about petitioner made in support of a Mental Hygiene Law (MHL) petition. Kings County Family Court dismissed the family offense petition with prejudice, holding that the statements in support of the MHL petition were subject to a qualified privilege and had a "legitimate purpose," placing them outside the bounds of harassment. Although the MHL petition ultimately lacked merit—the court found that it was based upon stale evidence and motivated by a family dispute—the respondent on the family offense matter credibly testified about the fear of petitioner that prompted the MHL petition. Petitioner thus failed to prove harassment, and Family Court dismissed the family offense petition with prejudice. Marc Merolesi represented respondent G.S.
Matter of W.S. v G.S. (2025 NY Slip Op 25024)

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