Indigent Legal Services

Decisions of Interest

FEBRUARY 26, 2025

CRIMINAL

COURT OF APPEALS

People v Hernandez | February 18, 2025 (Garcia, J.)

PVFO | EXTENSION OF 10-YEAR LOOKBACK | AFFIRMED | DISSENT

Appellant appealed from a First Department order affirming the conviction and the predicate sentencing designation and sentence. The Court of Appeals affirmed. Appellant was properly sentenced as a persistent violent felony offender where the 10-year lookback period set forth in Penal Law § 70.04 occurs between *sentencing* on the prior felony and the *commission* of the present felony, and that period is "extended" by any period of incarceration between *commission* of the prior felony and *commission* of the present felony. Thus, appellant's presentence incarceration time on a prior felony conviction did extend the 10-year period, and appellant's predicate sentencing designation was proper. Appellant's *Erlinger* argument that the recidivist sentencing regime is unconstitutional was not preserved. Judge Rivera, in a dissent joined by Chief Judge Wilson, would have reversed, vacated the persistent violent felony offender sentence, and remanded for resentencing. The dissenters criticized the majority for failing to interpret the statute holistically, ignoring that the tolling period should only be applied to the time within the 10-year period—between the date of sentencing on the prior felony and the date of commission of the current felony. The majority's "interpretation of the enhanced sentencing framework is unfair and raises serious constitutional concerns" where people who cannot afford bail may be punished more severely than those who can.
People v Hernandez (2025 NY Slip Op 00904)
Oral Argument

People v Williams | February 18, 2025 (Memorandum)

LEGAL SUFFICIENCY | INTENT TO COMMIT A CRIME THEREIN | AFFIRMED | DISSENT

Appellant appealed from a First Department order affirming his conviction of third-degree burglary upon a jury verdict and sentencing him to the maximum sentence of 3 1/2 to 7 years' incarceration. The Court of Appeals affirmed, holding that a rational jury could have found that appellant, who was subject to a trespass notice, knowingly and unlawfully entered the CVS with the intent to steal two Red Bulls given his "furtive" behavior caught on store camera footage, his behavior when asked to return the items and leave, and his statements to the police. The availability of innocent explanations for appellant's conduct did not preclude the jury from rationally finding that the prosecution met their burden. Chief Judge Wilson, in a dissent joined by Judge Halligan, would have reversed. Neither the unambiguous store surveillance video nor the witness testimony provided any

evidence of intent to commit a crime inside the CVS, and appellant's alleged confession was confused, lacked corroboration, and at most supported a conviction for petty larceny. The majority's decision supported the prosecutorial overcharge of a petty offense growing out of appellant's substance use disorder, mental health issues, and unhoused status that should have been addressed with treatment instead of an unnecessary and unfair term of incarceration.
People v Williams (2025 NY Slip Op 00901)
Oral Argument

People v Santos | February 20, 2025 (Memorandum)
WAIVER OF SHOCK PROGRAM PARTICIPATION | PUBLIC POLICY | AFFIRMED | DISSENT
Appellant appealed from a First Department order affirming his conviction for third-degree CPCS. The Court of Appeals affirmed. Appellant's waiver agreeing not to apply to participate in DOCCS' shock incarceration program was not an *illegal* component of his sentence, as appellant argued, because it was not a component of the sentence at all. The waiver did not direct DOCCS to impose a specific form of punishment or prohibit DOCCS from calculating his sentence in a particular manner. Chief Judge Wilson, in a dissent joined by Judge Rivera, would have reversed and held that shock program waivers contained in plea agreements are void as against public policy. There is no legitimate reason consistent with public policy to *prevent* someone otherwise suitable from entering a treatment program years after sentencing when, in DOCCS' determination, that person and society would be better served by inclusion in shock.
People v Santos (2025 NY Slip Op 01008)
Oral Argument

People v Fredericks | February 20, 2025 (Troutman, J.)
REQUEST FOR NEW COUNSEL | MINIMAL INQUIRY | AFFIRMED | DISSENT
Appellant appealed from a First Department order affirming his conviction for second-degree murder, second-degree attempted murder, and second-degree CPW. The Court of Appeals affirmed. Appellant's complaints about his assigned counsel were not sufficiently specific or serious to trigger the court's duty to engage in a minimal inquiry about the nature of the disagreement. During pretrial proceedings, appellant wrote a letter to the court requesting a new attorney, alleging that appointed counsel disregarded his request for a legal visit, even by video; hung up on him and disrespected his wife; argued an issue for the prosecutor; wanted appellant to plead guilty despite his innocence claims; and was delaying the proceedings because he knew appellant wanted to replace him. While the majority found no judicial inquiry was required, the Court also determined that the inquiry here was sufficient: the court gave counsel a chance to review appellant's letter and decide whether to adopt it. Moreover, counsel did not create an actual conflict when he opposed the request and told the court that he and his investigator reviewed the evidence with appellant several times and that appellant wanted to "shoot the messenger" because he did not like the message. Judge Rivera, in a dissent joined by Chief Judge Wilson and Judge Halligan, would have vacated appellant's conviction and ordered a new trial, finding that appellant's factual allegations were sufficient to trigger the court's duty

to make a minimal inquiry into appellant's "seemingly serious request." The short exchange in which the court engaged here was not adequate for the court to discern whether appellant's complaints were meritorious. The dissenters expressed that "[o]ur precedent establishes a standard meant to safeguard a defendant's right to counsel, not to excuse ineffectiveness or normalize a broken attorney-client relationship."
People v Fredericks (2025 NY Slip Op 01011)
Oral Argument

APPELLATE DIVISION, FIRST DEPARTMENT

People v Cummings | February 18, 2025
YOUTHFUL OFFENDER | RESENTENCING ORDERED | REMANDED
Appellant appealed from New York County Supreme Court judgments convicting him of second-degree CPW, third-degree CPCS, attempted second-degree murder, and first-degree assault and from an order denying his CPL § 440.20 motion to vacate his sentence as illegal. The First Department reversed the denial of the motion to vacate and remanded for resentencing. While appellant committed crimes that were presumptively ineligible for YO adjudication, the sentencing court had an obligation to make a threshold determination at the time of the plea as to whether to exercise its discretion to deem him an eligible youth. Assuming that the court deemed appellant eligible, the court then had to again exercise its discretion to determine whether to afford appellant YO status. While the court made it clear during the plea proceedings that it did not believe appellant was eligible for YO treatment, it did not make the explicit determination on the record at sentencing. Center for Appellate Litigation (Sarah Siegel, of counsel) represented Cummings.
People v Cummings (2025 NY Slip Op 00921)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Davis | February 19, 2025
PREDICATE SENTENCING | PRIOR FEDERAL CONVICTION | VACATED AND REMITTED FOR RESENTENCING
Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree assault, following his guilty plea, and imposing sentence upon his adjudication as a second felony offender. The Second Department vacated appellant's sentence and remitted for resentencing. As conceded by the prosecution, appellant was improperly sentenced as a second felony offender because his prior federal conviction did not require as one of its elements that the firearm be operable, and thus, did not constitute a felony in New York for the purpose of enhanced sentencing. Appellate Advocates (Robert C. Langdon, of counsel) represented Davis.
People v Davis (2025 NY Slip Op 00977)

People v Rivera | February 19, 2025
YOUTHFUL OFFENDER | MITIGATING CIRCUMSTANCES | MODIFIED AND REMITTED

Appellant appealed from a Westchester County Court judgment convicting him of first-degree manslaughter, following his guilty plea. The Second Department modified, vacated his sentence, and remitted for resentencing after a YO determination. Appellant, who was 16 years old at the time of the offense and had no prior criminal convictions, met the threshold eligibility requirements . Where appellant was not convicted of an armed felony, the court erred in determining that appellant was ineligible for YO status pursuant to CPL 720.10(3) based on the perceived absence of mitigating circumstances bearing directly upon the way the crime was committed—a consideration in determining whether a presumptively *ineligible* youth may qualify for an eligibility exception. Abissi Law PLLC (Heather M. Abissi, of counsel) represented Rivera.
People v Rivera (2025 NY Slip Op 00990)

People v Sobers | February 19, 2025
IMPROPER PROBATION CONDITION | DEPENDENT SUPPORT | MODIFIED
Appellant appealed from a Kings County Supreme Court judgment convicting him of criminal possession of a firearm, following his guilty plea, and imposing a probationary sentence. The Second Department modified by deleting the probation condition requiring appellant to support dependents and meet other family responsibilities. This condition was improperly imposed because it was not individually tailored to the offense, and thus was not reasonably related to appellant's rehabilitation or necessary to ensure that he would lead a law-abiding life. Appellant's claim did not require preservation, and it survived the valid appeal waiver. Appellate Advocates (Sam Feldman, of counsel) represented Sobers.
People v Sobers (2025 NY Slip Op 00992)
Oral Argument (starts at 00:23:52)

People v Gonzales | February 19, 2025
People v Jose H. | February 19, 2025
SURCHARGES AND FEES | MODIFIED AND VACATED FEES
Appellants appealed from separate judgments—Gonzales from a Queens County Supreme Court judgment convicting him of third-degree CSCS following his guilty plea and Jose H. from a Kings County Supreme Court judgment adjudicating him a youthful offender upon his guilty plea to third-degree robbery. The Second Department vacated, on consent of the prosecution, the imposition of the mandatory surcharges and fees in the interest of justice, but otherwise affirmed in each case. CPL § 420.35(2-a) permits the waiver of surcharges and fees for individuals under the age of 21 years old at the time of the offense, and the statute applies retroactively to cases that were pending on direct appeal on the effective date of the legislation. Appellate Advocates (Anders Nelson, of counsel) represented Gonzales and Jose H.
People v Gonzales (2025 NY Slip Op 00982)
People v Jose H. (2025 NY Slip Op 00983)

People v Telesco | February 19, 2025
DEFICIENT ANDERS BRIEF | NEW COUNSEL ASSIGNED
Appellant appealed from an Orange County Court judgment convicting him of second-degree CPW, following his guilty plea. Assigned counsel filed an *Anders* brief to withdraw.

The Second Department found counsel's brief deficient, granted leave to withdraw, and assigned new counsel. Although the brief identified several appealable issues, the analysis lacked supporting legal authority and did not highlight facts in the record that might arguably support the appeal. Further, counsel acted as "a mere advisor to the court, opining on the merits of the appeal."
People v Telesco (2025 NY Slip Op 00994)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Craddock | February 20, 2025
PROSECUTION APPEAL | INVENTORY SEARCH | REVERSED | DISSENT
The prosecution appealed from an Ulster County Court order granting the defense's motion to suppress evidence. The Third Department reversed. Following a traffic stop and towing of the car because none of the occupants had a valid driver's license, police conducted an inventory search. County Court suppressed the evidence found afterward, concluding that police failed to follow proper procedure by not memorializing all items seized from the car or completing the required paperwork until hours or days later. The Third Department disputed County Court's characterization of the facts and found the officer's actions to be "minor deviations from procedure," insufficient to warrant suppression. A two-judge dissent would have upheld suppression and deferred to County Court's findings of fact.
People v Craddock (2025 NY Slip Op 01016)
Oral Argument

People v Swartz | February 20, 2025
FAIR TRIAL VIOLATIONS | NOT HARMLESS | REVERSED
Appellant appealed from an Albany County Supreme Court judgment convicting him of two counts of predatory sexual assault against a child and sentencing him to consecutive terms of 20 years-life. The Third Department reversed and ordered a new trial. Appellant was deprived of his right to a fair trial when two witnesses—a psychologist and a police investigator—opined that one of the complainants was telling the truth. Additionally, the trial court precluded the defense from impeaching that complainant using a statement she had given in an unrelated Family Court matter. Because of the central nature of the witness's credibility to the verdict, these errors were not harmless. Albany County Office of the Alternate Public Defender (Steven M. Sharp, of counsel) represented Swartz.
People v Swartz (2025 NY Slip Op 01015)
Oral Argument

People v Vanderhorst | February 20, 2025
YOUTHFUL OFFENDER | CORAM NOBIS | MODIFIED AND REMITTED
Appellant appealed from an Albany County Supreme Court judgment convicting him, after a jury trial, of first-degree manslaughter and sentencing him to 25 years to life. The Third Department modified by vacating the sentence and remitting for the trial court to determine whether appellant, who was 16 years old at the time of the crime, was entitled to youthful offender status. While appellant had not argued in his initial appeal that the trial court had failed to make a youthful offender determination, the Third Department

subsequently granted a writ of error coram nobis alleging ineffective assistance of appellate counsel on that basis and vacated the conviction. The prosecution conceded that the trial court failed to make the required youthful offender determination but urged the appellate court to exercise its power to make it in the first instance. The court declined to do so given the absence of any consideration of YO status by the sentencing court. Matthew C. Hug represented Vanderhorst.
People v Vanderhorst (2025 NY Slip Op 01012)

APPELLATE TERM, FIRST DEPARTMENT

People v Lewis | January 22, 2025
CROSS EXAMINATION ON OFFICERS' PRIOR MISCONDUCT | REVERSED AND NEW TRIAL ORDERED
Appellant appealed from a New York City Criminal Court judgment convicting him of two counts of forcible touching and third-degree sexual abuse. The Appellate Term, First Department reversed and ordered a new trial. As conceded by the prosecution, the trial court erred in precluding cross-examination into allegations of the testifying police officers' prior misconduct made in two pending civil lawsuits, without considering the factors set forth in *Smith* (27 NY3d 652 [2016]). The error was not harmless, as was also conceded by the prosecution.
People v Lewis (2025 NY Slip Op 50045 [U])

APPELLATE TERM, SECOND DEPARTMENT

People v Camacho | December 5, 2024
CONSECUTIVE SENTENCE IMPROPER | MODIFIED AND AFFIRMED
Appellant appealed from a Justice Court of the Town of Greenburgh judgment convicting him of two counts of third-degree assault and imposing consecutive sentences. The Appellate Term, Second Department, 9th & 10th Judicial Districts, modified by running the two sentences concurrently and as modified, affirmed. Appellant's convictions were based upon only one altercation and therefore, PL § 70.25 (3) precluded the court from imposing consecutive definite sentences that exceeded one year. Scott M. Bishop represented Camacho.
People v Camacho (2025 NY Slip Op 51806 [U])

People v Lehman | January 2, 2025
SPEEDY TRIAL | COC/SOR ILLUSORY | DISMISSED
Appellant appealed from a Suffolk County District Court judgment convicting her of third-degree assault. The Appellate Term, Second Department, 9th & 10th Judicial Districts, reversed, vacated the order denying appellant's motion to dismiss on speedy trial grounds, granted the motion, and dismissed the accusatory instrument. On the Monday prior to the start of trial, defense counsel told the District Court that the prosecution had belatedly provided him with IAB reports for the arresting officer the previous Friday. Counsel objected to the late submission and orally moved to strike the COC and dismiss the accusatory instrument on statutory speedy trial grounds. The Appellate Term rejected

the prosecution's argument that appellant forfeited the issue by pleading guilty. CPL § 30.30 (6) states that an order finally denying a motion to dismiss pursuant to CPL § 30.30 (1) is reviewable on appeal even when appellant's conviction is based on a guilty plea. The prosecution otherwise failed to show that they exercised due diligence and made reasonable inquiries to obtain the arresting officer's IAB reports prior to filing their initial COC. Accordingly, the COC was invalid and the SOR illusory, and appellant's motion to dismiss should have been granted. Suffolk County Legal Aid Society (Amanda E. Schaefer, of counsel) represented Lehman.
People v Lehman (2025 NY Slip Op 50044(U))

TRIAL COURTS

People v Meadows | 2025 WL 556175
SPEEDY TRIAL | COC/SOR ILLUSORY | DUE DILLIGENCE | DISMISSED
Meadows moved to dismiss on speedy trial grounds. Queens County Criminal Court granted the motion. The prosecution disregarded all the discovery statute's deadlines and opted instead to begin sharing material at 5:29 p.m. on the last day of the readiness deadline for the entire case. Then, at 5:54 p.m. on that last day, the prosecution declared the case trial ready. The prosecution's COC was invalid and their statement of readiness illusory because they failed to disclose police activity logs for all the officers involved in the case, the standard "ICAD" printout for four of the five 911 calls, the audio or metadata for the fifth 911 call, or the photographs that the police body-worn camera shows police taking of the complainant's alleged injuries. The prosecutor also incorrectly stated that audit logs were not part of their automatic discovery responsibility, despite there being decisions from at least eight courts, including one involving the same prosecutor's office, holding these items fell under CPL § 245.20. Moreover, when advised by the defense that certain files were missing, the prosecution took over two months to send the files. None of these acts were consistent with "the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement." Queens Defenders (Benjamin L. Drachman) represented Meadows.
People v Meadows (2025 NY Slip Op 50208 (U))

CIVIL

COURT OF APPEALS

Matter of NYP Holdings, Inc. v New York City Police Dept. | February 20, 2025 (Halligan, J.)
FOIL | RETROACTIVE EFFECT OF CIVIL RIGHTS LAW § 50-A | AFFIRMED
Intervenor-Appellant police union appealed from a First Department order affirming a judgment of New York County Supreme Court granting petitioners' (NYP Holdings, Inc. and *New York Post* reporter) Article 78 petition seeking to compel the respondents

(NYPD) to disclose law enforcement disciplinary records under FOIL. The Court of Appeals affirmed. Law enforcement disciplinary records created while Civil Rights Law § 50-a was in effect may be disclosed in response to FOIL requests submitted after the statutory exemption was repealed. The repeal of Civil Rights Law § 50-a removed an exception to the general rule requiring disclosure of government records under FOIL. The drafting history, purpose, and remedial nature of the repeal legislation—to regain public trust in law enforcement accountability following the killing of George Floyd by a Minnesota police officer—demonstrates that the Legislature intended the statutory repeal to have retroactive effect. Jeremy H. Chase represented NYP Holdings, Inc.
Matter of NYP Holdings, Inc. v New York City Police Dept. (2025 NY Slip Op 01009)
Oral Argument

In the Matter of New York Civil Liberties Union v City of Rochester et al. | February 20, 2025 (Cannataro, J.)
FOIL | PUBLIC OFFICERS LAW § 87 | LAW ENFORCEMENT DISCIPLINARY RECORDS | AFFIRMED
Respondents the City of Rochester and the Rochester Police Department appealed from a Fourth Department order modifying a Supreme Court order determining that respondents were entitled to withhold all police records relating to complaints that were not deemed substantiated, pursuant to the personal privacy exemption contained in Public Officers Law § 87 (2) (b). The Court of Appeals affirmed. The Appellate Division correctly concluded that there is no categorical blanket personal privacy exemption for records relating to complaints against law enforcement officers that are not deemed substantiated. The purpose of the 2020 FOIL amendments, which specifically addressed disclosure of law enforcement disciplinary records, was to bring greater transparency to the law enforcement disciplinary process, including how complaints of officer misconduct are handled. The legislature's definition of "[l]aw enforcement disciplinary records" did not impose any limitation based on the outcome or disposition of the proceeding, and the amendment regarding redaction of sensitive personal information made no mention of allegations or complaints that are unsubstantiated. Similarly, these complaints were not added to the nonexclusive list of examples in Public Officers Law § 89(2)(b) of disclosures that may constitute "[a]n unwarranted invasion of personal privacy." Rather than withhold all such records, Public Officers Law § 87 (2) requires an agency to evaluate each record individually and determine whether "a particularized and specific justification" exists for *denying* access where disclosing all or part of the record would constitute an unwarranted invasion of privacy. If redactions would prevent such an invasion and can be made without unreasonable difficulty, the agency must disclose the record with those necessary redactions. Robert Hodgson represented the New York Civil Liberties Union.
In the Matter of New York Civil Liberties Union v City of Rochester et al. (2025 NY Slip Op 01010)
Oral Argument

Weisbrod-Moore v Cayuga County | February 18, 2025 (Troutman, J.)
CHILD VICTIMS ACT | DUTY TO PROTECT CHILDREN IN FOSTER CARE | REVERSED

Appellant appealed from an Appellate Division, Fourth Department decision dismissing her Child Victims Act lawsuit against Cayuga County for abuse she suffered as a child in foster care. The Court of Appeals reversed the Appellate Division and reinstated her claim. Municipalities owe a duty of reasonable care to the children in their foster homes, because the municipalities have assumed legal custody of those children. The special duty rule, requiring a plaintiff suing a municipality to show that it owed an elevated special duty of care to those it is alleged to have harmed via negligence, does not apply to foster children. In a dissent joined by Judge Garcia, Judge Singas lamented the "staggering expansion of municipal liability" and would have applied the special duty rule.
Weisbrod-Moore v Cayuga County (2025 NY Slip Op 00903)
Oral Argument

FAMILY

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Panizo v Douglas | February 19, 2025

CUSTODY MODIFICATION | DUE PROCESS RIGHT TO BE HEARD | REVERSED & REMITTED

Father appealed from an Orange County Family Court order awarding the mother sole legal and physical custody of the parties' child with parental access to the father. The Second Department reversed and remitted for a new hearing on the merits. The Family Court improvidently exercised its discretion by denying the father's adjournment request and proceeding with a custody modification hearing in his absence. Doing so entirely deprived him of his right to testify on his own behalf and to be afforded a full and fair evidentiary hearing involving his fundamental rights. Bonnie C. Brennan represented the father.
Matter of Panizo v Douglas (2025 NY Slip Op 00966)

Matter of Nunez v Spellen | February 19, 2025

FAMILY OFFENSE | AGGRAVATING CIRCUMSTANCES | MODIFIED FINDINGS OF FACT & OOP

Both parties appealed from a Queens County Family Court order directing respondent-appellant to comply with a two-year order of protection after finding that he had committed various family offenses against appellant-respondent, but also finding that there were no aggravating circumstances permitting the order of protection to be issued for a period of five years. The Second Department modified the order of fact-finding and disposition to include a finding of aggravating circumstances warranting an order of protection "not in excess of five years" and modified the order of protection to change the latter's duration from two to five years. The Family Court should have found aggravating circumstances existed as the evidence demonstrated that appellant-respondent sustained physical injuries because of the family offenses committed against her, and that several of the offenses were committed in the presence of the parties' children. Schulte Roth & Zabel, LLP (Taleah E. Jennings, Frances D. Rodriguez, and Priyadarshini Das, of counsel) for appellant-respondent.
Matter of Nunez v Spellen (2025 NY Slip Op 00965)
Oral Argument (starts at 00:07:05)

APPELLATE DIVISION, THIRD DEPARTMENT

Matter of Andersen v Bosworth | February 20, 2025

CHILD SUPPORT | FAILURE TO SERVE OBJECTIONS | REVERSED

Father appealed from a Warren County Family Court order denying his objections to a Support Magistrate's modification of a prior child support order. The Third Department reversed. In an earlier proceeding regarding the support order, the mother filed objections to another order issued by the Support Magistrate. While those objections were granted by the Family Court judge, who found the Support Magistrate had erred, the mother failed to serve those objections upon the father and his counsel before they were granted. The Third Department found that the failure to serve severely prejudiced the father and his counsel, requiring reversal. Cases holding that the failure to serve counsel was deemed a mere "irregularity" involved cases where counsel had nevertheless obtained a copy of the objections and there was no prejudice. Martin J. McGuinness represented the father.
Matter of Andersen v Bosworth (2025 NY Slip Op 01029)

Matter of Konner N. (Justin O.) | February 20, 2025

TERMINATION OF PARENTAL RIGHTS | DISPOSITIONAL HEARING REQUIRED | REMITTED

Father appealed from a Chemung County Family Court order finding that he permanently neglected the subject child and terminating his parental rights. The Third Department remitted to Family Court for a dispositional hearing, and otherwise affirmed. Family Court Act § 625(a) provides that the court must hold a dispositional hearing after making a finding of permanent neglect, unless all parties waive that hearing. No hearing took place, but there was no indication in the record that the parties waived it, requiring remittal. Michelle I. Rosien represented the father.
Matter of Konner N. (Justin O.) (2025 NY Slip Op 01017)

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