Indigent Legal Services

Decisions of Interest

MARCH 5, 2025

CRIMINAL

APPELLATE DIVISION, FIRST DEPARTMENT

People v McClaughlin | February 25, 2025

SUPPRESSION | STATEMENTS | RIGHT TO COUNSEL | HARMLESS ERROR | AFFIRMED

Appellant appealed from a Bronx County Supreme Court judgment convicting him of second-degree assault. The First Department affirmed but found that appellant's statement to the prosecutor should have been suppressed because he unequivocally invoked his right to counsel before making it. But the error was harmless beyond a reasonable doubt as evidence of guilt was overwhelming, including DNA evidence and additional statements. There was no reasonable possibility that the error contributed to appellant's decision to plead guilty.

People v McClaughlin (2025 NY Slip Op 01066)

Oral Argument (starts at 00:41:41)

People v Trulove | February 27, 2025

SEARCH WARRANT SUFFICIENCY | APPEAL WAIVER INVALID | HELD IN ABEYANCE & REMITTED FOR HEARING

Appellant appealed from a Bronx County Supreme Court judgment (Fabrizio, J.), convicting him of attempted second-degree CPW. The First Department held the appeal in abeyance and remanded for a hearing to determine whether the search warrant was sufficiently particularized and whether there was no reasonable possibility that the wrong premises would be searched. The police officer who applied for the warrant had no personal knowledge of the premises and relied on a confidential informant who described the address as having a single bedroom on the first floor with an unmarked tan door. The defense challenged the particularity of the warrant based on a defense investigator discovering that the building had two apartments on the first floor, both with white, not tan, doors and only one unmarked. The police had searched the bedroom with a door marked "1," where they recovered a gun, magazine, and ammunition. After Supreme Court denied suppression, appellant pleaded guilty. The appeal waiver was invalid. Supreme Court suggested that the right to appeal was automatically forfeited by guilty plea, did not advise of the rights that could not be waived, and did not assure that appellant understood the written waiver. Courts must address plea waivers "carefully and with clarity," not in a "perfunctory manner." A hearing was ordered into whether the warrant was sufficiently particularized or invalid because it contained a misdescription of the premises. Additionally, there was a question of whether there was no possibility that

the wrong premises would be searched given that the affirming police officer had no personal knowledge of the premises described in the warrant. The Legal Aid Society of NYC (Katheryne Martone, of counsel) represented Trulove.
People v Trulove (2025 NY Slip Op 01178)
Oral Argument (starts at 00:22:00)

People v Ortiz | February 27, 2025
ROBBERY | EXCESSIVE SENTENCE | MODIFIED
Appellant appealed from a New York County Supreme Court judgment convicting him of third-degree robbery and sentencing him to 2 ½ to 5 years in prison. The First Department reduced the sentence to 2 to 4 years in the interest of justice. Center for Appellate Litigation (David Klem, of counsel) represented Ortiz.
People v Ortiz (2025 NY Slip Op 01179)
Oral Argument (starts at 00:36:17)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Montgomery | February 26, 2025
IAC | CONFIDENTIAL COMMUNICATIONS | ADVERSE POSITION |REVERSED
Appellant appealed from a Queens County Supreme Court judgment convicting him of third-degree robbery, third-degree assault, and fifth-degree CPSP, following a nonjury trial. The Second Department reversed and remitted for a new trial. Appellant received ineffective assistance of counsel, and his right to counsel was adversely affected, where his attorneys discussed confidential communications on the record and took an adverse position to him. In support of their CPL article 730 application and to persuade appellant to accept a favorable plea offer, they made detailed statements on the record emphasizing the strength of the evidence against their client and described a "guilty verdict" following a mock trial conducted in their office. While counsels were obligated to advise appellant regarding the plea offer, appellant retained the authority to accept or reject it. Appellate Advocates (Steven C. Kuza, of counsel) represented Montgomery.
People v Montgomery (2025 NY Slip Op 01111)
Oral Argument (starts at 00:08:34)

People v Meraluna | February 26, 2025
PROSECUTION'S APPEAL | SUPPRESSION | NO REASONABLE SUSPICION | AFFIRMED
The prosecution appealed from a Queens County Supreme Court order granting the defense's motion to suppress physical evidence after a hearing. The Second Department affirmed. The radio transmission described two males entering the rear of the residence but did not describe a vehicle or another person present. Under the circumstances, the officers' general knowledge of burglaries in the area and their observation of respondent parked near the residence and then driving away upon their arrival were insufficient to establish reasonable suspicion that the occupant of the car was involved in a crime. Garnett H. Sullivan represented Meraluna.
People v Meraluna (2025 NY Slip Op 01109)
Oral Argument (starts at 00:08:50)

People v McLeod | February 26, 2025

SUPPRESSION | TRAFFIC STOP | NO PROBABLE CAUSE TO SEARCH PERSON | REVERSED

Appellant appealed from a Queens County Supreme Court judgment convicting him of second-degree attempted CPW, following his guilty plea. The Second Department reversed, vacated the plea, and granted suppression of the firearm. The prosecution's evidence was insufficient to establish probable cause for the search of appellant's person. The officer testified that during the traffic stop, he ordered appellant out of the car after smelling marihuana emanating from the vehicle. The officer recovered a firearm from appellant's pants. Pursuant to the law as it existed in 2020, the officer must have been "qualified by training and experience to recognize" the "odor of marihuana emanating from a vehicle," and there was no such testimony given at the hearing. Appellate Advocates (Alice R. B. Cullina, of counsel) represented McLeod.

People v McLeod (2025 NY Slip Op 01108)

Oral Argument (starts at 00:14:51)

People v Williams | February 26, 2025

OOP | INVALID APPEAL WAIVER | AFFIRMED | OOP MODIFIED

Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree attempted assault following his guilty plea. The Second Department affirmed the conviction but modified the order of protection by reducing its duration. As conceded by the prosecution, the order of protection exceeded the maximum time limit pursuant to CPL § 530.13[4][A]. Preservation was not required because appellant had no practical ability to register a timely objection given the court's failure to announce the duration of the order of protection at the combined plea and sentencing proceeding. Further, appellant's appeal waiver was invalid because the lower court did not discuss the waiver with appellant until after he had admitted guilt, thereby failing to establish that appellant received a "material benefit" from the appeal waiver. However, the sentence was not excessive. Appellate Advocates (Mark W. Vorkink, of counsel) represented Williams.

People v Williams (2025 NY Slip Op 01120)

People v Persaud | February 26, 2025

EXCESSIVE SENTENCE | MODIFIED

Appellant appealed from a Queens County Supreme Court judgment convicting him after a jury trial of second-degree kidnapping and second-degree strangulation, among other counts, and sentencing him to an aggregate term of 15 years' imprisonment followed by 5 years' PRS. The Second Department modified, in the interest of justice, by reducing the sentence to an aggregate prison term of 10 years' imprisonment followed by 5 years' PRS, and otherwise affirmed. Although appellant's argument that the sentence improperly penalized him for exercising his right to a jury trial was unpreserved, the Second Department reviewed the record and found it failed to support appellant's contention—however, the sentence imposed was excessive. Drummond & Squillace, PLLC (Stephen L. Drummond and JoAnn Squillace, of counsel) represented Persaud.

People v Persaud (2025 NY Slip Op 01112)

Oral Argument (starts at 00:22:30)

People v Rubio | February 26, 2025
People v Tlatelpo | February 26, 2025
SURCHARGES AND FEES | MODIFIED AND VACATED FEES

Appellants appealed from separate Queens County Supreme Court judgments—convicting Rubio of fourth-degree CPW following her guilty plea and convicting Tlatelpo of second-degree attempted robbery following his guilty plea. 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. The Legal Aid Society of NYC represented Rubio and Tlatelpo (Naila S. Siddiqui and Harold V. Ferguson, Jr., of counsel, respectively).

People v Rubio (2025 NY Slip Op 01117)

People v Tlatelpo (2025 NY Slip Op 01118)

People v Philpot | February 26, 2025
DEFICIENT *ANDERS* BRIEF | NEW COUNSEL ASSIGNED

Appellant appealed from an Orange County Court judgment convicting him of first-degree attempted assault, 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. The brief lacked supporting legal authority and failed to adequately analyze potential appellate issues, including whether the court erred in denying appellant's motion to withdraw his guilty plea, appellant's competency, the validity of the appeal waiver, and whether there was any potential IAC claim. Further, counsel's contention that appellant voluntarily entered his guilty plea was merely conclusory.

People v Philpot (2025 NY Slip Op 01113)

APPELLATE TERM, SECOND DEPARTMENT

People v William | January 17, 2025
ACCUSATORY INSTRUMENT | TOP COUNTS FACIALLY INSUFFICIENT | PLEA-DOWN TO VIOLATION | REVERSED AND DISMISSED

Appellant appealed from a Kings County Criminal Court judgment convicting him of disorderly conduct. The Appellate Term, Second Department, 11th & 13th Judicial Districts, reversed and dismissed the accusatory instrument. Appellant was initially charged with petit larceny and fifth-degree criminal possession of stolen property. Where, as here, all the counts charged in the accusatory instrument are of higher grade than the uncharged violation to which appellant pled guilty, appellant must establish that both counts charged in the instrument were insufficient to successfully challenge the sufficiency of the instrument. Here, both counts were facially insufficient where the instrument only alleged that a security guard observed appellant, who was in a supermarket, place 45 items into a shopping cart. There were no allegations that appellant exercised dominion and control over the food items by, for instance, walking past or attempting to walk past the exit of the supermarket or a final point of sale with the items. Appellate Advocates (Elijah Giuliano and Russ Altman-Marino, of counsel) represented William.

People v William (2025 NY Slip Op 50166(U))

People v Patino | January 17, 2025

ACCUSATORY INSTRUMENT | COUNT PLEAD TO FACIALLY INSUFFICIENT | MODIFIED

Appellant appealed from a Queens County Criminal Court judgment convicting him of aggravated driving while intoxicated, operating a motor vehicle without valid insurance, operating a motor vehicle without a light illuminating the rear license plate, operating an unregistered motor vehicle, and operating a motor vehicle without properly displayed license plates. The Appellate Term, Second Department, 11th & 13th Judicial Districts, vacated appellant's conviction for operating an unregistered motor vehicle, dismissed that count from the accusatory instrument, and as modified, affirmed. Where, as here, appellant pleads guilty to one or more of the counts actually charged in a multi-count accusatory instrument, and, on appeal, raises a jurisdictional challenge, they need not challenge the facial sufficiency of all of the counts contained in the accusatory instrument at the time they entered the guilty plea; rather, they need only challenge the facial sufficiency of the actual count or counts to which they pled guilty. Because there were no facts alleged in the accusatory instrument pertaining to the vehicle's registration, appellant's conviction for operating an unregistered motor vehicle must be vacated. Appellate Advocates (Rebekah J. Pazmino, of counsel) represented Patino.
People v Patino (2025 NY Slip Op 50168(U))

People v Egan | January 30, 2025

MOLINEUX | IDENTITY EXCEPTION | REVERSED AND NEW TRIAL ORDERED

Appellant appealed from a Suffolk County District Court judgment convicting him of second-degree criminal contempt. The Appellate Term, Second Department, 9th & 10th Judicial Districts, reversed and remitted for a new trial. The trial court erred in allowing the prosecution to introduce evidence of one uncharged crime/prior bad act by appellant. Under the "identity" or "modus operandi" exception to the *Molineux* rule, evidence of an uncharged crime that has distinctive characteristics in common with the crime for which the defendant is on trial may be admissible unless the defendant's identity as the person who committed the act in question is conclusively established by other evidence. Here, the evidence should not have been allowed at trial because appellant's identity was not at issue and the prior bad act described at trial was not similar to the crime with which appellant was charged. Suffolk County Legal Aid Society (Amanda E. Schaefer, of counsel) represented Egan.
People v Egan (2025 NY Slip Op 50180(U))

People v Rivera | February 13, 2025

ACCUSATORY INSTRUMENT | FACIALLY INSUFFICIENT | REVERSED AND DISMISSED

Appellant appealed from a Suffolk County District Court judgment convicting her of driving while ability impaired. The Appellate Term, Second Department, 9th & 10th Judicial Districts, reversed and granted appellant's motion to dismiss the accusatory instrument as facially insufficient. The factual allegations contained in the information did not provide reasonable cause to believe that appellant was impaired by the use of any substances

set forth in Public Health Law § 3306, because they failed to allege a specific drug. Even reading the factual allegations together with the count charging appellant with seventh-degree CPCS, which purported to identify the prohibited impairing drug as alprazolam, the instrument is insufficient because the arresting officer did not provide any information regarding the basis for his conclusion that appellant's pills were alprazolam. Suffolk County Legal Aid Society (April J. Winecke, of counsel) represented Rivera.
People v Rivera (2025 NY Slip Op 50187(U))

FAMILY

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Jurenny M.-J. (Kelley M.). | February 26, 2025

AGENCY APPEAL OF 1028 HEARING | OOP VIOLATION | REVERSED

The agency appealed from a Putnam County Family Court order, issued after a § 1028 hearing, returning the subject child to the parent. The Second Department reversed. The Family Court's determination lacked a sound and substantial basis in the record, since returning the children to the parent's custody presented an imminent risk to the children. The record showed that the parent was emotionally unstable and failed to: address or acknowledge the circumstances that led to her children's removal, prevent the other parent from having contact with the children despite the existence of an order of protection, or engage in mental health counseling and other preventative services. Risks to the children could not be mitigated with reasonable efforts given the parent's failure to comply with any orders.
Matter of Jurenny M.-J. (Kelley M.) (2025 NY Slip Op 01095)

Matter of Liana A. (Joseph A.) | February 26, 2025

DEFICIENT *ANDERS* BRIEF | NEGLECT | NEW COUNSEL ASSIGNED

Appellant appealed from a Suffolk County Family Court order finding that appellant had neglected the subject children and releasing them into the nonrespondent parent's custody. Appellant's assigned counsel filed an *Anders* brief seeking to be relieved. The Second Department found counsel's *Anders* brief deficient, granted the motion to withdraw, and assigned new counsel. The brief failed to "evaluat[e] whether there were any nonfrivolous issues to raise on appeal." Further, counsel "acted as 'a mere advisor to the court,' opining on the merits of the appeals."
Matter of Liana A. (Joseph A.) (2025 NY Slip Op 01089)

APPELLATE DIVISION, THIRD DEPARTMENT

Matter of Dusten T. v Trisha U. | February 27, 2025

PARENTING TIME | MODIFIED

Appellant parent appealed from a Cortland County Family Court order granting custody to respondent parent and ordering a parenting time schedule that included Wednesday evenings after school. The Third Department modified by eliminating the Wednesday

evening time but adding an additional two weeks of parenting time in the summer, which appellant parent requested. Appellant relocated 2 ½ hours away from respondent parent and child and did not have a vehicle of her own to make the trip. The Appellate Division used its inherent fact-finding power to find the weekday parenting time schedule was thus "not workable" but added additional time to appellant during the child's summer break from school. Lisa K. Miller represented the mother.
Matter of Dusten T. v Trisha U. (2025 NY Slip Op 01144)

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