Indigent Legal Services

Decisions of Interest

NOVEMBER 27, 2024

CRIMINAL

COURT OF APPEALS

People v Castillo | November 21, 2024

JUSTIFICATION CHARGE | DEADLY FORCE | REVERSED & REMITTED

Appellant appealed from a First Department order affirming his conviction for second-degree murder and second-degree CPW. The Court of Appeals reversed and remitted for a new trial on both counts. After a series of confrontations near a barbershop earlier in the day, the decedent returned to the shop and held a razor blade against appellant's face, threatening to cut him from ear to ear. Appellant stepped back and fired six shots, four of which struck decedent's back. The trial court erred by failing to instruct the jury on the defense of justification as to the murder count. Decedent was the initial aggressor, appellant faced an imminent threat of deadly force when the razor blade was held to his face, and appellant, after he stepped back, could have "reasonably believe[d] the assailant still pose[d] a threat to him" due to the rapid sequence of events. Additionally, the trial court's error may have affected the jury's verdict on the possession count. Center for Appellate Litigation (Matthew Bova, of counsel) represented Castillo.

People v Castillo (2024 NY Slip Op 05817)

Oral Argument

People v Robles | November 21, 2024

SUPPRESSION | POST-ARREST STATEMENT | NOT HARMLESS | REVERSED & PLEA VACATED

Appellant appealed from a Fourth Department order affirming his conviction for second-degree CPW following his guilty plea. The Court of Appeals reversed, vacated the plea, and remitted for further proceedings. Although the lower court properly denied appellant's motion to suppress the gun, the court erred in failing to suppress the post-arrest statement. Even though the gun was admissible, there was a reasonable possibility that the court's error in failing to suppress appellant's admission contributed to his decision to plead guilty and thus was not harmless. During the proceedings, appellant sought assurances that he could appeal the suppression determination, and he may have only pleaded guilty "in the face of all the evidence," including his highly incriminating statement. Melissa K. Swartz represented Robles.

People v Robles (2024 NY Slip Op 05819)

Oral Argument

People v Williams | November 21, 2024

CONFRONTATION CLAUSE | *BRUTON* VIOLATION | HARMLESS ERROR | AFFIRMED

Appellant appealed from a Second Department order affirming his conviction for second-degree murder and second-degree CPW. The Court of Appeals affirmed, holding that any potential *Bruton* error caused by the introduction of the co-defendant's statement was harmless because the evidence against appellant was overwhelming, and there was no reasonable possibility that the co-defendant's statement affected the verdict.

People v Williams (2024 NY Slip Op 05818)

Oral Argument

APPELLATE DIVISION, SECOND DEPARTMENT

People v Nathaniel B. (Anonymous) | November 20, 2024

YOUTHFUL OFFENDER | INTEREST OF JUSTICE | REVERSED, VACATED & ADJUDICATED YO

Appellant appealed from an Orange County Court judgment convicting him of third-degree robbery, following his guilty plea, and sentencing him to an enhanced sentence of 2 to 6 years' incarceration after he failed to meet with the probation department and did not appear at an adjournment date. The Second Department reversed, vacated the conviction and sentence, adjudicated appellant a youthful offender, and imposed a sentence of 1 1/3-to-4 years of incarceration. The appeal waiver was invalid, and the issue of imposing an enhanced sentence survives even a valid waiver. The court also noted its broad plenary power to modify an enhanced sentence and to impose youthful offender treatment. Appellant was only 16 years old at the time of the crime. While he had a prior record of juvenile offenses, his updated presentence report recommended YO treatment, he had become gainfully employed and had a stable living situation. Kenyon C. Trachte represented Nathaniel B.

People v Nathaniel B. (2024 NY Slip Op 05805)

People v Donegan | November 20, 2024

OOP | INVALID WAIVER OF APPEAL | AFFIRMED | OOP VACATED & REMANDED FOR RECALCULATION

Appellant appealed from a Kings County Supreme Court judgment convicting him of first-degree attempted assault following his guilty plea. The Second Department affirmed the conviction but vacated the duration portion of the order of protection and remanded for recalculation. Appellant's appeal waiver was invalid because the lower court did not discuss the waiver with appellant until after he had admitted guilt. The written waiver did not cure the deficiency where the court failed to ascertain whether appellant had read or discussed it with counsel. However, the sentence was not excessive. Further, as conceded by the prosecution, the order of protection did not credit appellant for jail time. Preservation of this issue was not required because appellant had no practical ability to object where the court did not announce the duration of the order of protection at either the plea or sentencing proceedings. Appellate Advocates (Martin B. Sawyer, of counsel) represented Donegan.

People v Donegan (2024 NY Slip Op 05806)

People v Dunn et al | November 20, 2024

PROSECUTION'S APPEAL | INSUFFICIENT GRAND JURY EVIDENCE | DISMISSAL AFFIRMED

The prosecution appealed from a Kings County Supreme Court order granting each respondent's motion to dismiss the count of the indictment for second-degree gang assault under an accessorial liability theory on the ground that the grand jury evidence was legally insufficient. The Second Department affirmed. There was insufficient evidence before the grand jury to establish respondents' respective intents to cause physical injury to the complainant, and there was no evidence that they shared the assailants' intent or were even aware of it. Mark Diamond represented Dunn, Steven A. Feldman represented Frazier, and Craig S. Leeds represented PonceDeLeon.
People v Dunn et al (2024 NY Slip Op 05808)

People v Medina-Lucero | November 20, 2024

EXCESSIVE SENTENCE | MODIFIED

Appellant appealed from a Rockland County Court judgment convicting him of second-degree assault, following his guilty plea, and sentencing him to a determinate term of 2 years' imprisonment and 3 years' PRS. The Second Department reduced the sentence to a split sentence of 6 months' imprisonment and 3 years' probation, finding the sentence "unduly harsh or severe under the circumstances," and otherwise affirmed. James D. Licata (Lois Cappelletti, of counsel) represented Medina-Lucero.
People v Medina-Lucero (2024 NY Slip Op 05809)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Baez | November 21, 2024

CASEWORKER NOTES AS UNDISCLOSED *BRADY* MATERIAL| REVERSED & REMITTED

Appellant appealed from a Sullivan County Supreme Court decision convicting him of second-degree course of sexual conduct against a child and sentencing him to 2 years' imprisonment, followed by 10 years' PRS. The Third Department reversed and remitted for a new trial. Appellant made numerous requests during trial for the notes of the investigating Social Services caseworker, which the judge ultimately ordered disclosed after the prosecution rested. Those notes revealed statements by the complainant's mother indicating that her daughter behaved as if nothing happened. The trial court denied appellant's motion for dismissal but gave an adverse inference charge to the jury as a remedy for what it deemed a *Rosario* violation. The Third Department held that these records constituted *Brady* material. The notes affected the credibility of a principal prosecution witness, they were in the possession of the People via imputation, and they potentially impacted the outcome of the trial because they called the complainant's credibility into question. While an adverse inference charge may have adequately remedied the violation if the notes had been destroyed, here the notes still existed. Angela Kelley represented Baez.
People v Baez (2024 NY Slip Op 05844)

People v Bailey | November 21, 2024

INVALID WAIVER OF APPEAL | CONFLICT BETWEEN ORAL AND WRITTEN WAIVER | AFFIRMED

Appellant appealed from a Washington County Court judgment convicting him of first-degree rape following a plea, as well as a separate judgment summarily denying his CPL § 440.10 motion. The Third Department held that appellant's appeal waiver was invalid, but otherwise affirmed. The court's oral statements on the record implied a total bar to an appeal, while the written waiver outlined seven distinct issues that could still be appealed. Because the court made no inquiry as to whether appellant understood he could still appeal those issues, the written waiver did not cure the court's misleading comments. Bruce Evans Knoll represented Bailey.
People v Bailey (2024 NY Slip Op 05842)
Oral Argument

People v Lunt | November 21, 2024

INVALID WAIVER OF APPEAL | AFFIRMED

Appellant appealed from a Saratoga County Court judgment convicting him of first-degree attempted rape and promoting sexual performance by a child and sentencing him to 10 years' imprisonment and 15 years' PRS. The Third Department held, as the People conceded, that the appeal waiver was invalid. The court nevertheless affirmed the conviction and sentence, including the denial of youthful offender status on the attempted rape charge. John B. Casey represented Lunt.
People v Lunt (2024 NY Slip Op 05847)
Oral Argument

People v Hendrie | November 21, 2024

ENHANCED SENTENCE BASED ON PRESENTENCE INTERVIEW | MODIFIED

Appellant appealed from a Clinton County Court judgment convicting him of third-degree criminal sale of a controlled substance and first-degree criminal nuisance, after a plea, and sentencing him to 8 years' imprisonment plus 3 years' PRS. The Third Department reduced the incarceratory portion of the sentence to six years. The plea agreement had included a promise of 6 years' imprisonment, but the court enhanced the term to 8 years at sentencing, following a *Hicks* hearing, based on a finding that appellant had been dishonest in his interview with Probation. In the interview, appellant denied that he "directly" sold drugs but admitted that he knew his co-defendant was selling drugs out of his apartment. The Third Department disagreed with the trial court that appellant's statements were inconsistent with his plea. "To the extent that the accounts diverged at all, it was apparent that they did so because the probation officer elicited details that [appellant] was not asked about at the time of his plea," such as the location of the drug sale. Indeed, there was no factual allocution at the plea at all. It was therefore an abuse of discretion for the trial court to enhance the sentence. Adam G. Parisi represented Hendrie.
People v Hendrie (2024 NY Slip Op 05851)
Oral Argument

People v Kane | November 21, 2024

SECOND FELONY OFFENDER | FAILURE TO FILE SFO STATEMENT | REMITTED FOR RESENTENCING

Appellant appealed from a Madison County Supreme Court judgment convicting him of numerous counts, including first-degree sexual abuse, forcible touching, and first-degree

unlawfully dealing with a child and sentencing him, as a second-felony offender, to 20 years' imprisonment and 25 years' PRS. The Third Department vacated the sentence, remitted for resentencing, and otherwise affirmed. The prosecution failed to file a second felony offender statement prior to sentencing. Although this argument was unpreserved, the error rendered the sentence invalid as a matter of law. Rosenberg Law Firm (Jonathan Rosenberg, of counsel) represented Kane.
People v Kane (2024 NY Slip Op 05850)
Oral Argument

People v Lester | November 21, 2024

RESTITUTION | IMPERMISSIBLE DELEGATION OF AUTHORITY | REMITTED

Appellant appealed from a Saratoga County Court judgment convicting him of second degree burglary and sentencing him to 15 years' incarceration and five years of PRS, as well as restitution. The Third Department vacated the restitution order and remitted for a hearing. The appeal waiver was overly broad and thus invalid. Additionally, the record contained no proof to support the amount of restitution ordered—only that the prosecution had submitted a restitution order for the court to sign, which it did. Because the trial court impermissibly delegated to the prosecution its duty to make findings supporting the amount of restitution, that portion of the sentence was invalid.
People v Lester (2024 NY Slip Op 05848)

People v Trapani | November 21, 2024

SCI INVALID | IMPROPER WAIVER OF INDICTMENT | REVERSED

Appellant appealed from a Schenectady County Court judgment convicting him of third-degree burglary and sentencing him to 2-to-4 years' imprisonment. The Third Department reversed and dismissed the underlying SCI. Although appellant purportedly waived indictment and agreed to be prosecuted via SCI, the record did not establish that the waiver was signed in open court in the presence of his attorney, as required. Eric M. Galarneau represented Trapani.
People v Trapani (2024 NY Slip Op 05846)

People v Rupp | November 21, 2024

SCI INVALID | IMPROPER WAIVER OF INDICTMENT | REVERSED

Appellant appealed from a Saratoga County Court judgment convicting him of first-degree criminal contempt and sentencing him, as a second felony offender, to 2-to-4 years' imprisonment. The Third Department reversed and dismissed the underlying SCI. Although appellant purportedly waived indictment and agreed to be prosecuted via SCI, the court erred in accepting his oral waiver of indictment after he informed the court that he had left the waiver form in his cell. Because the record established that the waiver was not signed in open court in the presence of his attorney, as required, the plea was vacated and the SCI dismissed.
People v Rupp (2024 NY Slip Op 05845)

FAMILY

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Mykel B. (Minta M.) | November 20, 2024

ARTICLE 10 DISMISSAL | COCAINE USE ALONE NOT NEGLECT | AFFIRMED

The NYC Administration for Children's Services ("ACS") appealed from a Kings County Family Court order dismissing neglect petitions. The Second Department affirmed. Although the record established that the mother had used cocaine, ACS did not prove repetitive use or that the children had been impaired or were in imminent danger of impairment as a result. That the mother was not enrolled in a drug treatment program was thus insufficient to establish a prima facie case of neglect. Brooklyn Defender Services (Jessica Marcus, of counsel) and Paul, Weiss, Rifkind, Wharton & Garrison LLP (William B. Michael and Wenwa Eva Gao, of counsel) represented the mother.
Matter of Mykel B. (Minta M.) (2024 NY Slip Op 05794)
Oral Argument (starts at 01:22:07)

APPELLATE DIVISION, THIRD DEPARTMENT

Matter of Kala Y. v Quinn Z. | November 21, 2024

MOTION TO DISQUALIFY COUNSEL | ADVOCATE-WITNESS RULE | MODIFIED

The father appealed from a Saratoga County Family Court order granting the mother's motion to disqualify the father's attorney pursuant to the advocate-witness rule and denying the father's cross-motion for sanctions and counsel fees. The Third Department modified in part, finding that Family Court should have denied the motion to disqualify the father's attorney. The advocate-witness rule provides that a lawyer shall not act as an advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact. The mother failed to demonstrate that the attorney's testimony—regarding the mother's alleged violation of the parties' agreement by transferring the child's services to another county—was necessary to the case. Although Family Court did not address the prejudice prong, the Third Department held that the mother made no showing that the testimony would be prejudicial to the father. Melody A. Mackenzie represented the father.
Matter of Kala Y. v Quinn Z. (2024 NY Slip Op 05861)
Oral Argument

Matter of Leslie QQ. v Daniel RR. | November 21, 2024

PARENTING TIME | IMPROPER DELEGATION OF AUTHORITY | REVERSED AND REMITTED

The father appealed from a Columbia County Family Court order granting the mother custody of the child, allowing her to relocate to Mississippi, and finding the father to have committed a family offense. Family Court erred in improperly delegating its authority to the mother to determine the father's parenting time with the child. The Third Department reversed in part and remitted to Family Court to determine a supervised in-person parenting time schedule for the father. Paul J. Connolly represented the father.

Matter of Leslie QQ. v Daniel RR. (2024 NY Slip Op 05857)

Matter of Gabriella X. (Erick Y.) | November 21, 2024

SEXUAL ABUSE | INSUFFICENT CORROBORATION | REVERSED AND DISMISSED

The father appealed from an Ulster County Family Court order finding the father to have abused and neglected the children. The Third Department reversed and dismissed the petition. The Family Court erred in denying the father's prima facie motion to dismiss based on insufficient evidence corroborating the child's out-of-court statements disclosing sexual abuse. There was no medical evidence of any sort, nor did the mother or anyone else point to any change in the oldest child's behavior or indications of inappropriate sexual knowledge. Nor was there expert testimony to validate the oldest child's account of sexual abuse, or to explain the nine-year gap between the cessation of the alleged sexual contact and the disclosure. The child did not testify at the hearing, and there was no cross-corroboration from the younger two siblings. Mack & Associates, PLLC (Barrett D. Mack, of counsel) represented the father.

Matter of Gabriella X. (Erick Y.) (2024 NY Slip Op 05856)

Oral Argument

Matter of Savannah F. | November 21, 2024

JUVENILE DELINQUENCY| DISMISSAL WITH PREJUDICE | MODIFIED

The presentment agency appealed from a Warren County Family Court order finding a delinquency petition facially insufficient and dismissing it with prejudice. The Third Department affirmed the dismissal but modified to a dismissal without prejudice. When a petition is dismissed for a jurisdictional defect, the presentment agency's proper recourse is to refile after curing the defect. Here, the original petition was based solely on hearsay allegations, which could have been remedied by seeking additional information from the arresting deputy.

Matter of Savannah F. (2024 NY Slip Op 05860)

TRIAL COURTS

L.M. v M.M. | October 25, 2024

CUSTODY | NO CHANGE OF CIRCUMSTANCES | PETITIONS DISMISSED

New York County Supreme Court dismissed petitions by the Attorney for the Child and the mother seeking to modify a custody order entered three months prior, based primarily on the changed desires of the child. The court found that there was no change of circumstances justifying a modification, and the child's vague claims of emotional abuse were insufficient to meet that standard. The court also characterized the modification petition as an end-run around an appeal, which the AFC acknowledged would be unsuccessful. Finally, the court directed that any further custody proceedings must be filed in Connecticut, where the custodial parent and child now live.

L.M. v M.M. (2024 NY Slip Op 51559(U))

Matter of Anonymous | November 4, 2024

ORDER OF PARENTAGE | SURROGACY AGREEMENT | PETITION GRANTED

Petitioners, both New York residents, sought an order of parentage after conceiving and bearing a child in 2018 via a surrogate based in Canada. New York County Supreme Court granted the petition. Although the Parent Security Act provides that the court's jurisdiction to issue such an order lapses 180 days after birth, the court held that this section contravenes the UCCJEA. The court found that public policy therefore warrants disregarding this limitation (as Merril Sobie's Commentary to the Parent Security Act suggests), finding that the surrogacy agreement signed by the parties substantially complies with the Act, although it predates its passage. The court further held that "the child's best interests are served by conforming the legal status of the petitioners and the child with reality: both petitioners are the child's parents."

Matter of Anonymous (2024 NY Slip Op 24290)

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