

Decisions of Interest

MAY 22, 2024

CRIMINAL

COURT OF APPEALS

People v Nektalov | May 16, 2024

TINTED WINDOWS | CONCLUSORY TESTIMONY | CHARGES DISMISSED

The appellant appealed from an Appellate Term, Second Department order affirming his misdemeanor drug convictions. The Court of Appeals reversed and dismissed the charges. The People failed to prove that police had probable cause to stop the car in which the appellant was a passenger. The arresting officer's testimony that he pulled the car over because it had "excessively tinted windows" was a legal conclusion unsupported by any factual basis. The Legal Aid Society of NYC (Rachel L. Pecker, of counsel) represented the appellant.

[Oral Argument](#)

[People v Nektalov \(2024 NY Slip Op 02725\)](#)

THIRD DEPARTMENT

People v McNealy | May 16, 2024

ADA FORMER LAW CLERK | CONFLICT OF INTEREST | HELD AND REMITTED

The appellant appealed from a Broome County Court judgment convicting him of 1st degree sexual abuse (two counts) and EWC. The Third Department held the appeal and remitted for a special prosecutor to be assigned. At oral argument the ADA arguing the appeal confirmed that she was the trial judge's law clerk during the trial. In post-argument submissions, the ADA acknowledged that she was personally and substantially involved in this matter as a law clerk, raising a conflict of interest. Remittal for appointment of a special prosecutor was required (*see People v Pica-Torres*, 2024 NY Slip Op 02345 [3d Dept 2024]). Kathy Manley represented the appellant.

[Oral Argument](#)

[People v McNealy \(2024 NY Slip Op 02728\)](#)

People v Joseph | May 16, 2024

A-1 FELONY | NO PREDICATE SENTENCING | AFFIRMED

The appellant appealed from an Albany County Supreme Court judgment convicting him of 2nd degree murder based on his guilty plea. The Third Department affirmed the conviction but remitted for entry of an amended uniform sentence and commitment form. The appellant was unlawfully sentenced as a second felony offender. Although the People

handed up a special information and the appellant admitted a predicate felony conviction, 2nd degree murder, as an A-1 felony, is statutorily precluded from predicate sentencing. But the appellant's admission had no effect on sentencing. The plea offer was not conditioned on second felony offender sentencing; the appellant was correctly advised of his maximum exposure; and he received the agreed-upon, lawful sentence.

[People v Joseph \(2024 NY Slip Op 02731\)](#)

People v Rahman | May 16, 2024

REJECTED PLEA | NO DETRIMENTAL RELIANCE | AFFIRMED

The appellant appealed from a Sullivan County Court judgment convicting him of felony DWI based on his guilty plea. The Third Department affirmed. At sentencing, the court deemed the agreed-upon sentence of 1 $\frac{2}{3}$ to 5 years inappropriate based on a victim impact statement. The appellant declined to withdraw his plea and the court sentenced him to 2 $\frac{1}{3}$ to 7 years. The appellant was not entitled to specific performance of the plea agreement. The victim impact statement was new information which provided a sufficient basis for the court's departure from the promised sentence. In any event, an individual is not entitled to specific performance of a plea bargain unless placed in a position of no return by detrimental reliance.

[People v Rahman \(2024 NY Slip Op 02732\)](#)

APPELLATE TERM

People v Luna | May 15, 2024

DISCOVERY | CPL 30.30 | REVERSED AND DISMISSED

The appellant appealed from a Suffolk County District Court judgment convicting him of aggravated DWI and common-law DWI. The Appellate Term, Second Department reversed and dismissed the charges on speedy trial grounds. The People requested IAB reports for a police witness about two months after arraignment, but they had not received the reports when they filed their initial COC/SOR. Although they received the reports weeks later, they failed to provide them to the defense for another 9 months due to an "administerial oversight." The People showed no due diligence; they did not explain why they waited two months to request the records or how they could have—as stated in their COC—disclosed all known discovery materials when they had not yet received the reports. Suffolk County Legal Aid Society (Genevieve M. Cahill, of counsel) represented the appellant.

[People v Luna \(2024 NY Slip Op 24146\)](#)

TRIAL COURTS

People v Logvinsky | 2024 WL 2037434

DOUBLE PREDICATE RULE | QUALIFYING OFFENSES ONLY

Logvinsky moved for an order releasing him on his own recognizance. Monroe County Court granted the motion. Greece Town Court remanded Logvinsky without bail on a 3rd degree criminal mischief charge—a non-qualifying offense—because he had two or more prior felony convictions. County Court held that, under bail reform and the public policy of

judicial economy and the interest of justice, the double predicate rule must be interpreted to apply only to qualifying offenses (see *People ex rel. Bradley v Baxter*, 79 Misc3d 988 [Sup Ct, Monroe County 2023]). Accordingly, lower courts have the jurisdiction, authority, and discretion to release an individual on his own recognizance or bail when arraigned on non-qualifying offenses, regardless of his criminal history. David Stern represented Logvinsky.

[People v Logvinsky \(2024 NY Slip Op 24137\)](#)

***People v Caba* | 2024 WL 2121117**

FACIAL INSUFFICIENCY | SPEEDY TRIAL | CHARGES DISMISSED

Caba moved to dismiss a misdemeanor information charging him with violating Agriculture and Markets Law § 353 (two counts) for facial insufficiency and on speedy trial grounds. New York County Criminal Court granted the motion. The information alleged that Caba admitted to leaving his dog alone on the rooftop of his apartment and that four days later a veterinarian examined the dog and determined that it had recently sustained fractured femurs as the result of blunt force trauma. No facts supported a nexus between the dog's injuries and any criminal conduct by Caba; there was nothing to indicate that Caba was aware of the injuries let alone caused them or that he had exclusive access to the dog. The Legal Aid Society of NYC (Michel Djandji, of counsel) represented Caba.

[People v Caba \(2024 NY Slip Op 50552\[U\]\)](#)

FAMILY

SECOND DEPARTMENT

***Matter of Jefferson C.-A. (Carlos T.-F.)* | May 15, 2024**

NEGLECT | REVERSED AND DISMISSED

The father appealed from a Suffolk County Family Court order finding that he neglected the subject children. The Second Department reversed, denied the petition, and dismissed the proceedings. Despite evidence that the father intended to sell narcotics from the family's home, there was no evidence that his intended action harmed or impaired the children or that such harm was imminent. Thomas R. Villecco represented the father.

[Matter of Matter of Jefferson C.-A. \(Carlos T.-F.\) \(2024 NY Slip Op 02701\)](#)

***Matter of Mahoney v Hughes* | May 15, 2024**

CUSTODY MODIFICATION | EDUCATIONAL DECISIONS | NO RECORD SUPPORT

The mother appealed from a Nassau County Family Court order which partially granted the father's modification petition. The Second Department deleted a provision granting the father final decision-making authority for the child's educational needs and otherwise affirmed. Both parents were substantially in agreement about educational decisions and were receptive to the teacher's recommendations. There was no indication that the mother had failed to make appropriate decisions about the child's education. Friedman & Friedman, PLLC (Crystal S. Pannell, of counsel) represented the mother.

[Matter of Mahoney v Hughes \(2024 NY Slip Op 02707\)](#)

Matter of Sampson R. (Christopher R.) | May 15, 2024

FAMILY COURT ACT § 1028 | REVERSED

Non-party foster parents (the child's biological aunt and her partner) appealed from a Suffolk County Family Court order dismissing their motion for a Family Court Act §1028 hearing seeking return of the child to their care. The Second Department reversed and remitted for further proceedings. The foster parents were the functional equivalent of parents for an extended part of the child's life. Thus, they were persons legally responsible for his care and entitled to a §1028 hearing. The Virdone Law Firm, P.C (Dennis G. Corr, of counsel) represented the non-party foster parents.

[Oral Argument \(starts at 35:38\)](#)

[Matter of Samson R. \(Christopher R.\) \(2024 NY Slip Op 02710\)](#)

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