Indigent Legal Services

Decisions of Interest

MAY 29, 2024

CRIMINAL

COURT OF APPEALS

People v Estwick | May 21, 2024

BATSON | COURT'S SPECULATION | REVERSED

The appellant appealed from a Second Department order affirming his 1st and 2nd degree robbery convictions. The Court of Appeals reversed and remitted for a new trial. The prosecution did not provide any explanation, much less a race-neutral one, for its peremptory strike of a Black prospective juror. Instead, after the appellant established a prima facie case of discrimination, the court stepped in and speculated that the prosecutor had gotten a "bad vibe" from the prospective juror about whether her prior jury service had resulted in an acquittal. "This serious departure from the *Batson* framework was an error of the highest order." Appellate Advocates (Martin Sawyer, of counsel) represented the appellant.

Oral Argument

People v Estwick (2024 NY Slip Op 02768)

People v Brown | May 21, 2024

UNLAWFUL STOP | NOT COMMUNITY CARETAKING | REVERSED AND DISMISSED

The appellant appealed from an Appellate Term, First Department order affirming his disorderly conduct conviction. The Court of Appeals reversed and dismissed the charges. An officer testified that he stopped the appellant's car after seeing the passenger side door quickly open and close because he thought someone might need help. Police may stop a car under the community caretaking doctrine when: (1) there are specific, objective facts that would lead a reasonable officer to conclude that an occupant needs assistance; and (2) the intrusion is narrowly tailored to address the perceived need. A car door opening and closing once would not lead a reasonable officer to believe that an occupant needed help. The Legal Aid Society of NYC (Harold V. Ferguson, Jr., of counsel) represented the appellant.

Oral Argument

People v Brown (2024 NY Slip Op 02765)

People v Lively | May 21, 2024

HUNTLEY | PAROLEE SEARCH AND SEIZURE | REVERSED AND DISMISSED

The appellant appealed from a Fourth Department order that affirmed his 3rd degree CPCS conviction. The Court of Appeals reversed and dismissed the indictment. Parole

officers went to the appellant's residence to search for a parole absconder. An officer searched the appellant's person and found an earbud case containing heroin in his pocket. The search was not substantially related to the parole officer's duties. There was no evidence that the appellant was harboring an absconder or that circumstances developed during the visit which rendered the search substantially related to the parole officer's duties. Nor was there reason to continue the brief pat-down search of the exterior of the appellant's person by searching his pocket and looking inside the earbud case. Karen G. Leslie represented the appellant.
Oral Argument
People v Lively (2024 NY Slip Op 02767)

People v Spirito | May 21, 2024
HUNTLEY | PAROLEE SEARCH AND SEIZURE | AFFIRMED
The appellant appealed from a Third Department order that affirmed his conviction for 3rd degree CPW (two counts). The Court of Appeals affirmed. The appellant's suppression motion was properly denied. The appellant, who had been given the most severe mental health designation by DOCCS, agreed as a condition of parole not to possess a firearm without permission. Shortly after his release, the appellant's mother reported to parole that she saw a photo of the appellant with a firearm and she gave them permission to search their shared residence. A search uncovered an AR-15 style rifle, two extended magazines, and extra gun parts. The search of the appellant's residence was rationally and reasonably related to the parole officer's duty. The *Aguilar-Spinelli* test for evaluating whether a tip provided probable cause for a search or seizure did not apply.
Oral Argument
People v Spirito (2024 NY Slip Op 02766)

People v Watkins | May 23, 2024
NO CROSS-RACIAL ID CHARGE | PRE-*BOONE* | NOT IAC | AFFIRMED
The appellant appealed from a First Department order affirming his conviction for 1st degree assault, 2nd degree assault, and 3rd degree CPW. The Court of Appeals affirmed, with two judges dissenting. Trial counsel did not request the cross-racial portion of the "One Witness" identification charge even though the complainant's cross-racial identification was the only identification evidence presented at trial. This pre-*Boone* error did not give rise to a single-error ineffective assistance of counsel claim (*People v Boone*, 30 NY3d 521 [2017]). At the time of trial, a defendant was not entitled to a cross-racial identification instruction upon request; the charge was discretionary and the legal argument supporting it did not have "clear prospects" and was not "so compelling that a failure to make it amounted to ineffective assistance of counsel." NOTE: The Court left open whether this would constitute a single-error IAC claim post-*Boone*. Also note Judge Wilson's concurrence, which provides an in-depth discussion of the challenges of our indigent defense and parental representation systems, the efforts of ILS, and the need for increased funding.
Oral Argument
People v Watkins (2024 NY Slip Op 02842)

People v Lucas | May 23, 2024

FAILURE TO IMPEACH | NO CROSS-RACIAL ID CHARGE | NOT IAC | AFFIRMED

The appellant appealed from a Second Department order affirming his 1st degree robbery conviction. The Court of Appeals affirmed. Viewing the record as a whole, the appellant received meaningful representation. There may have been strategic reasons for trial counsel's failure to impeach a detective with his inconsistent suppression hearing testimony. Counsel may have wanted to avoid calling the credibility of a sympathetic witness into question or reinforcing that the complainant identified the appellant as the gunman in a lineup. Further, trial counsel's failure to request a pre-*Boone* cross-racial identification charge did not alone constitute ineffective assistance of counsel.

Oral Argument

People v Lucas (2024 NY Slip Op 02843)

FIRST DEPARTMENT

People v Ivezic | May 21, 2024

RIGHT TO SELF-REPRESENTATION | VOLUNTARY WAIVER | REVERSED AND REMITTED

The appellant appealed from a New York County Supreme Court judgment convicting him of 1st degree gang assault and 1st degree assault. The First Department reversed and remitted for a new trial. The appellant was deprived of his constitutional right to self-representation when the trial court denied his motion to proceed pro se despite his knowing and voluntary waiver of his right to counsel. The appellant's unfamiliarity with the law was not a proper basis for denying his motion and there was no indication that his motion was calculated to undermine or delay the progress of trial. The Center for Appellate Litigation (Ben A. Schatz, of counsel) represented the appellant.

Oral Argument (starts at 8:15)

People v Ivezic (2024 NY Slip Op 02785)

People v Rivas-Grullon | May 23, 2024

HARSH AND EXCESSIVE | SENTENCE REDUCED | AFFIRMED

The appellant appealed from a New York County Supreme Court judgment convicting him of 1st degree robbery based on his guilty plea and imposing an enhanced sentence of 18 years. The First Department reduced the sentence to 10 years with 5 years of PRS—the originally promised sentence—and otherwise affirmed. It was within the trial court's discretion to impose an enhanced sentence based on the appellant's failure to cooperate with probation and appear for court, but the sentence was excessive given the appellant's intellectual and mental deficiencies. Larry Sheehan and Lisa Pelosi represented the appellant.

People v Rivas-Grullon (2024 NY Slip Op 02877)

THIRD DEPARTMENT

People v Pinales-Harris | May 23, 2024

CPL 440.10 | *PADILLA* | REVERSED AND REMITTED

The appellant appealed from a Clinton County Court order that summarily denied his CPL 440.10 motion. The Third Department reversed and remitted for a hearing on whether trial counsel's failure to apprise him that pleading guilty to 3rd degree CPCS would result in mandatory deportation constituted ineffective assistance of counsel. Trial counsel misadvised that the appellant could be deported if his conviction resulted in an extensive term of incarceration, but not if he received probation. The papers raised questions of fact about whether the appellant would have pleaded guilty had he received accurate information: he had resided in the U.S. for over 20 years and financially supported the mother of his child and her children. Timothy S. Brennan represented the appellant.
People v Pinales-Harris (2024 NY Slip Op 02844)

APPELLATE TERM

People v Lopez | May 21, 2024

AGGRAVATED AUO | INSUFFICIENT EVIDENCE | REVERSED AND DISMISSED

The appellant appealed from a New York County Criminal Court judgment convicting him of aggravated AUO and unlicensed driving. The Appellate Term, First Department vacated the AUO conviction, dismissed that count, and otherwise affirmed. There was no evidence that the appellant knew or had reason to know that his license had been suspended—a required element of the aggravated AUO charge, but not the unlicensed driving charge.
People v Lopez (2024 NY Slip Op 24152)

TRIAL COURTS

People v K.S. | 2024 WL 2281563

CPL 722 | UNCONSITUTIONAL AS APPLIED | DA CONSENT NOT REQUIRED

K.S. challenged CPL 722 as unconstitutional under the Equal Protection Clause as applied to him. Richmond County Supreme Court granted the motion and struck a portion of CPL 722.22 (1) (b) requiring DA consent to transfer the case to Family Court. K.S. was charged as a juvenile offender (JO) with 2nd degree CPW for possessing a gun within 1,000 feet of a school. Although adolescent offender (AO) and JO cases involving violent felonies both commence in the Youth Part, the burden to retain the AO cases in the adult court rests with the DA's office, whereas the DA's consent is required to remove JO cases to Family Court. There is no "conceivable State interest nor any legitimate purpose" for the younger JOs to be afforded less process and face greater constraints in seeking removal to Family Court than the older AOs facing the same charge. Scott Schwartz represented K.S.
People v K.S. (2024 NY Slip Op 24150)

People v D.W. | 2024 WL 2265949

SORA | DOWNWARD MODIFICATION | GRANTED

D.W. sought a downward modification of his level two SORA designation. Richmond County Criminal Court granted the petition and reduced his designation to level one. D.W. pleaded guilty to criminal misconduct when he was 19 years old. After serving a 6-month sentence, he was held in ICE custody for the next five years. In the ten years since his release, he has led a law-abiding life in the community without supervision, was SORA compliant, maintained employment, rebuilt family connections, maintained a long-term relationship with his partner and daughter, and accepted full responsibility for his actions—all of which presented a compelling change in circumstances indicative of a diminished risk of repeat offense and threat to public safety. The Legal Aid Society of NYC (Rachel Pecker, of counsel) represented D.W.

People v D.W. (2024 NY Slip Op 50594[U])

FAMILY

SECOND DEPARTMENT

Matter of Teofilo R.F. v Tanairi R.F. | May 22, 2024

CUSTODY AND GUARDIANSHIP | NO EXTRAORDINARY CIRCUMSTANCES | REVERSED

The mother appealed from a Kings County Family Court order granting guardianship of one child and custody of another to the maternal grandmother and uncle. The Second Department reversed and granted both petitions. The maternal grandmother and uncle failed to prove extraordinary circumstances. The mother only intended for the grandmother to care for the children during a one-month period of incarceration, and thus did not relinquish care for an extended period. Although the custody hearing was lengthy (seven years), this did not meet the standard because the mother was seeking return of the children. Further, the mother's purported mental health issues did not constitute extraordinary circumstances because she was in appropriate treatment. Anna Stern represented the mother.

Matter of Teofilo R.F. v Tanairi R.F. (2024 NY Slip Op 02814)

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