Indigent Legal Services

# Decisions of Interest

JUNE 26, 2024

## CRIMINAL

## COURT OF APPEALS

### *People v Sidbury* | June 18, 2024

PSYCHIATRIC TESTIMONY | IMPROPERLY PRECLUDED | REVERSED

The appellant appealed from a First Department order that reduced his sentence but otherwise affirmed his 2nd degree arson conviction. The Court of Appeals reversed and remitted for a new trial, with three judges dissenting in part. The trial court improperly precluded the appellant's psychiatric defense based on late notice. The court failed to balance the appellant's right to present a defense and call witnesses against any prejudice to the People caused by the delay. Instead, the court improperly substituted the findings of prior competency examinations and its own lay analysis of the appellant's mental health in prematurely imposing the severest sanction. The Office of the Appellate Defender (Stephen R. Strother, of counsel) represented the appellant.

Oral Argument

People v Sidbury (2024 NY Slip Op 03318)

### *People v Thomas* | June 18, 2024

VEHICLE STOP | UNREASONABLY PROLONGED | REVERSED

The appellant appealed from a Third Department order affirming his 3rd degree CPCS conviction. The Court of Appeals reversed and remitted, with one judge dissenting. An off-duty officer saw the appellant driving outside his county of residence in violation of his parole conditions. The officer notified an on-duty officer in the vicinity of the appellant's residence, who waited for him, followed him until he committed a traffic violation, and pulled him over. The appellant admitted the traffic violation and provided a valid driver's license. When the appellant refused to consent to a search his car, the officers held him in custody until his parole officer arrived; a subsequent search uncovered 2,000 glassines of heroin. The lower courts applied the incorrect legal standard of founded suspicion—applicable to the common law right to inquire—in holding that the traffic stop was not unreasonably prolonged. Reasonable suspicion of criminality is required; a seizure justified only by a traffic violation becomes unlawful if prolonged beyond the time reasonably required to issue a ticket. Casey Law LLC (John B. Casey, of counsel) represented the appellant.

Oral Argument

People v Thomas (2024 NY Slip Op 03319)

### ***People v Wright*** | June 18, 2024

*BATSON* | SHOW-UP PROCEDURE | AFFIRMED/DISSENT

The appellant appealed from a Second Department order affirming his 2nd degree robbery and 2nd degree criminal trespass convictions. The Court of Appeals affirmed, with three judges dissenting. The People provided non-pretextual reasons for their peremptory challenges of two Black prospective jurors, regardless of whether white jurors who met the same or similar characteristics were not stricken. Further, the show-up identifications were not unduly suggestive; they were conducted within a few blocks of and immediately after the robbery. Exigency justified the appellant being handcuffed, and an officer's statement, "I think it is the guy," did not render the show-up unduly suggestive. In the dissent's view, the People's reasons for striking one of the jurors were pretextual; they were either irrelevant or also applied to unstricken, non-Black jurors. The show-up identifications were unduly suggestive; neither complainant saw the robber's face and other, less suggestive pretrial identification procedures were available.

Oral Argument

People v Wright (2024 NY Slip Op 03320)

### ***People v King*** | June 18, 2024

PEOPLE'S APPEAL | DISCOVERY | SPEEDY TRIAL | REVERSED

The People appealed from a Fourth Department order reversing the respondent's assault conviction on speedy trial grounds. The Court of Appeals reversed and remitted, with one judge dissenting. The People were not placed in a state of unreadiness when the reformed discovery laws went into effect. There was no basis to apply the new COC requirement as a condition precedent to declaring trial readiness where the People were trial ready before the new law went into effect. In the dissent's view, the People had several months' notice of the reformed discovery statute's effective date and failed to take the necessary steps to comply.

Oral Argument

People v King (2024 NY Slip Op 03322)

### ***People v Corr*** | June 20, 2024

SORA | OUT-OF-STATE REGISTRATION PERIOD | AFFIRMED

The appellants appealed from Second Department orders affirming the denial of their requests to receive credit against the 20-year SORA registration requirement for periods they were registered outside of New York. The Court of Appeals affirmed, with three judges dissenting. The statutory language "initial date of registration" refers to the date when an offender first registers in NY under SORA—not the date of registration in a foreign jurisdiction. In the dissent's view, this language refers to the first time that an offender registers for the underlying offense, without geographic qualification; holding otherwise adopts a strained reading of the statute and leads to absurd and unjust results.

Oral Argument

People v Corr (2024 NY Slip Op 03379)

## FIRST DEPARTMENT

### ***Matter of State of NY v Anthony R.*** | June 20, 2024

MHL ARTICLE 10 | CIVIL COMMITMENT | REVERSED

The appellant appealed from a Bronx County Supreme Court order revoking his release under SIST conditions and ordering him civilly committed. The First Department reversed. The petitioner failed to demonstrate a persuasive link between the appellant's alleged nonsexual SIST violations and an inability to control his sexual behavior. The petitioner made no showing of any casual link between the appellant's purported substance abuse and sexual compulsion; the appellant's combativeness toward staff, while disquieting, did not approach explicit threats of violence; and his lack of transparency about curfew violations and a late appearance for treatment did not establish that he was incapable of controlling his impulses. Mental Hygiene Legal Services (Naomi M. Weinstein, of counsel) represented the appellant.

Matter of State of NY v Anthony R. (2024 NY Slip Op 03392)

# SECOND DEPARTMENT

### ***People v Kimble*** | June 20, 2024

YOUTHFUL OFFENDER | SENTENCE VACATED AND REMITTED

The appellant appealed from a Queens County Supreme Court judgment convicting him of 1st degree robbery based on his guilty plea. The Second Department vacated the sentence and remitted. Although the appellant was an eligible youth, the court failed to make the required determination on the record of whether to afford him youthful offender treatment. Appellate Advocates (Leila Hull, of counsel) represented the appellant. NOTE: this appeal followed a successful coram nobis petition alleging IAC for failure to file a notice of appeal and inform the client of his appellate rights (*People v Kimble*, 214 AD3d 826 [2d Dept 2023]).

Oral Argument (starts at 20:38)

People v Kimble (2024 NY Slip Op 03441)

### ***People v Brown*** | June 20, 2024

PEOPLE'S APPEAL | DISCOVERY | CPL 30.30 | REVERSED

The People appealed from Queens County Supreme Court orders dismissing indictments charging conspiracy and several drug offenses on speedy trial grounds based on their failure to comply with their discovery obligations. The Second Department reversed. The contested period was excludable under the exceptional circumstances exclusion in light of the voluminous discovery materials and the People's diligent efforts in producing them.

Oral Argument (starts at 22:00)

People v Brown (2024 NY Slip Op 03438)

People v Brown (2024 NY Slip Op 03439)

# THIRD DEPARTMENT

### ***People v Pardee*** | June 20, 2024

SORA | RISK FACTOR 9 | ESSENTIAL ELEMENTS TEST

The appellant appealed from an Albany County Court order adjudicating him a level three sex offender. The Third Department affirmed and expressly held that the essential

elements test should be utilized in determining whether a foreign conviction supports the assessment of any points under risk factor 9. County Court erred in assessing points under risk factor 9 based on the appellant's out-of-state convictions for DWI (Texas) and DWIAD (Washington). The Texas DWI statute criminalizes conduct not covered under the New York offense and the conduct underlying the appellant's conviction fell outside the scope of the New York statute. And the Washington offense took place after the underlying, registrable child molestation offense. However, because the appellant was diagnosed with pedophilic disorder, an override was appropriate, resulting in a presumptive risk level three.
People v Pardee (2024 NY Slip Op 03360)

# FOURTH DEPARTMENT

***People v Krista M.G.*** | June 14, 2024
DVSJA | RESENTENCING DENIED | AFFIRMED
The appellant appealed from a Jefferson County order denying her CPL 440.47 resentencing application after a hearing. The Fourth Department affirmed. Even assuming the appellant proved that she was the victim of substantial abuse at the time of the offense, the hearing evidence did not establish that such abuse was a significant contributing factor to appellant's homicide of her boyfriend. Moreover, on this record, defense counsel at the DVSJA hearing was not ineffective for failing to elicit further testimony from the appellant, where the appellant's written submissions described her domestic abuse history in detail and the record contained no indication of what additional testimony could have offered. Nor did the appellant demonstrate the absence of a legitimate strategic reason for defense counsel's conduct.
People v Krista M.G. (2024 NY Slip Op 03265)

# APPELLATE TERM

***People v Zeigler*** | June 21, 2024
DISCOVERY | SPEEDY TRIAL | HELD AND REMITTED
The appellant appealed from a New York County Criminal Court judgment convicting him of DWI. The Appellate Term, First Department held the appeal and remitted. The trial court improperly concluded that the COC was valid based on the appellant's failure to demonstrate actual prejudice resulting from the People's noncompliance with their discovery obligations. The correct inquiry is not whether the accused suffered prejudice, but whether the People exercised due diligence and made reasonable inquiries to ascertain the existence of discoverable information and materials.
People v Zeigler (2024 NY Slip Op 50754[U])

# TRIAL COURTS

***People v White*** | 2024 WL 3078306
CPL 440.10 | WITHHELD *BRADY/GIGLIO* | NEW TRIAL GRANTED

Mr. White moved to vacate his 2nd degree murder conviction. Bronx County Supreme Court granted the motion and ordered a new trial. The People impermissibly withheld Civilian Complaint Review Board (CCRB) complaints and civil litigation materials alleging that their key police witness had engaged in misconduct by, among other things, exacting and fabricating false confessions in other murder investigations. The People's case for intentional murder rested almost entirely on the jury's acceptance of the officer's testimony. The People's failure to disclose these impeachment materials "was a dereliction of their duties as truth seekers and administrators of justice." Their "overzealous desire" to convict denied Mr. Smith a fair trial. The Center for Appellate Litigation (Alexandra Mitter and Marika Meis, of counsel) represented Mr. White.
People v White (2024 NY Slip Op 24176)

***People v Ruiz*** | 2024 WL 3059670
*MOSLEY* | NON-EYEWITNESS ID | PRECLUDED
Mr. Ruiz sought to preclude an NYPD officer, a non-eyewitness to the crime, from giving trial testimony identifying him as the person depicted in a surveillance video. After a *Mosley* (2024 NY Slip Op 02125 [2024]) hearing, Kings County Supreme Court precluded the officer's identification testimony. The officer was sufficiently familiar with Mr. Ruiz such that his testimony could be considered reliable; they had known each other for about eight years and had about 10 face-to-face interactions, some lasting up to 30 minutes. But the jury did not require assistance in making its independent assessment; Mr. Ruiz's appearance had not changed, and the individual's face was clearly depicted in the video.
People v Ruiz (2024 NY Slip Op 24174)

# FAMILY

## FIRST DEPARTMENT

***Kartik C. v Sruti R.*** | June 18, 2024
CUSTODY | DECISION-MAKING AUTHORITY | MODIFIED
The mother appealed from a New York County Supreme Court order granting the father final decision-making authority over the child's education and requiring him to turn over the child's passport two days prior to any international travel by the mother. The First Department modified by giving the mother final decision-making authority over the child's education and directing that the father turn over the child's passport within 48 hours of receiving notice of the mother's international travel plans. The mother's objections to the child attending a gifted and talented program at a school close to the father's home were valid, considering the substantial travel time involved. Requiring that the father provide the child's passport two days before the travel itself would not give the mother enough time to seek a remedy for any failure to comply. Jill M. Zuccardy represented the mother.
Kartik C. v Sruti R. (2024 NY Slip Op 03331)

## SECOND DEPARTMENT

## ***Matter of Dandu v Jatamoni*** | June 20, 2024

FAMILY OFFENSE | ORDER OF PROTECTION | REVERSED

The mother appealed from a Kings County Family Court order issuing a six-month suspended judgment. The Second Department reversed and remanded for the issuance of a five-year order of protection. Family Court abused its discretion by issuing a suspended judgment after finding that the father had committed "severe acts of violence" against the mother. Aggravating circumstances warranted issuance of a five-year order of protection. Simpson Thacher & Bartlett LLP (Alison M. Sher, Martin S. Bell, and Susan M. Cordaro, of counsel) represented the mother.

Oral Argument (starts at 39:15)

Matter of Dandu v Jatamoni (2024 NY Slip Op 03424)



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