

Decisions of Interest

JUNE 5, 2024

CRIMINAL

SECOND DEPARTMENT

People v Desdunes | May 29, 2024

POST-PLEA ARREST | SEALED RECORDS | IMPROPERLY CONSIDERED

The appellant appealed from a Kings County Supreme Court judgment convicting him of criminal possession of a firearm and 4th degree CPW. The Second Department vacated the criminal possession of a firearm conviction and remitted. The appellant pleaded guilty based on an agreement that, if he successfully completed one year of interim probation, the criminal possession of a firearm charge would be dismissed and he would receive a conditional discharge on the CPW conviction. The appellant was re-arrested, but those proceedings were dismissed on speedy trial grounds. The trial court erroneously relied on the sealed records from his post-plea arrests to determine that he violated interim probation. When a criminal action is terminated in favor of the accused, the sealed record is not available for consideration at sentencing. Appellate Advocates (Sam Feldman, of counsel) represented the appellant.

[People v Desdunes \(2024 NY Slip Op 02932\)](#)

People v Martinez | May 29, 2024

INSUFFICIENT ALLOCUTION | PLEA VACATED

The appellant appealed from an Orange County Court judgment convicting him of attempted 2nd degree burglary based on his guilty plea. The Second Department reversed, vacated the plea, and remitted. The appellant stated that he did not enter the home knowingly and had no intent of committing a crime. These statements negated essential elements of the offense and created significant doubt about his guilt. The court did not inquire further, calling into question the voluntariness of the plea. Samuel S. Coe represented the appellant.

[Oral Argument \(starts at 8:48\)](#)

[People v Martinez \(2024 NY Slip Op 02938\)](#)

People v Acevedo | May 29, 2024

PERSISTENT FELONY OFFENDER | INSUFFICIENT RECORD | REMITTED

The appellant appealed from a Kings County Supreme Court resentence on his conviction for leaving the scene of an incident without reporting (two counts). The Second Department reversed and remitted. The court failed to comply with the required procedure for sentencing the appellant as a persistent felony offender. The court did not set forth the

reasons for its belief that the appellant's history and character and the nature and circumstances of his conduct indicated that extended incarceration and lifetime supervision would best serve the public interest. Edelstein & Grossman (Jonathan I. Edelstein, of counsel) represented the appellant.

[People v Acevedo \(2024 NY Slip Op 02927\)](#)

TRIAL COURTS

People v Rolando P. | 2024 WL 2713678

FORCIBLE TOUCHING | FACIALLY SUFFICIENT

Rolando P. moved to dismiss the accusatory instrument charging him with forcible touching (two counts) and 3rd degree sexual abuse as facially insufficient. New York County Criminal Court denied the motion. An officer alleged in the complaint that he saw Rolando P. follow a woman onto a train, press his body against hers, wrap his arm around her waist, and grab her buttocks; the two had no prior interactions before boarding the train; the woman turned to look behind her in response to his actions; and there was enough room on the train that he did not need to be pressed against her. The court felt constrained by the Appellate Term, First Department's decision in *People v King* (73 Misc3d 143 [2021]) to find these allegations legally sufficient. However, the court noted its concern that *King* outlined an expansive concept of non-consent, seemingly stratified along traditional gender lines, where the would-be complainant is never even consulted.

[People v Rolando P. \(2024 NY Slip Op 24157\)](#)

FAMILY

FIRST DEPARTMENT

Matter of G. B. (Gary B.) | May 28, 2024

NEGLECT | ALCOHOL ABUSE | MODIFIED

The father appealed from a Bronx County Family Court order finding that he neglected the subject children. The First Department vacated the neglect finding based on the father's alcohol abuse and otherwise affirmed. There was insufficient evidence that the father "lost self-control during repeated bouts of excessive drinking" to trigger the presumption of neglect under Family Court Act § 1046 (a) (iii). Steven N. Feinman represented the father.

[Matter of G.B. \(Gary B.\) \(2024 NY Slip Op 02884\)](#)

SECOND DEPARTMENT

Matter of Fiore v Gima | May 29, 2024

FAMILY OFFENSE | MODIFIED

The father appealed from a Suffolk County Family Court order that granted the mother's modification and family offense petitions. The Second Department modified by denying the family offense petition and otherwise affirmed. The family offense of attempted 3rd

degree assault is not a legal impossibility to the extent it is premised on Penal Law § 120.00 (1). But here, there was insufficient evidence that the father committed acts constituting that offense.

[Oral Argument \(starts at 40:18\)](#)

[Matter of Fiore v Gima \(2024 NY Slip Op 02913\)](#)

The ILS Decisions of Interest summaries are for informational purposes only and are not intended to provide legal advice to any individual or entity. While every effort has been made to ensure their accuracy, the summaries are provided on an “as is” basis with no express or implied guarantees of completeness, accuracy, or timeliness.



Statewide Appellate Support Center

New York State Office of Indigent Legal Services

80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

(518) 486-6602 | SASC@ils.ny.gov