Indigent Legal Services

Decisions of Interest

JULY 3, 2024

CRIMINAL

FIRST DEPARTMENT

People v Hendricks | June 27, 2024

INVALID WOA | AFFIRMED

The appellant appealed from a New York County Supreme Court judgment convicting her of 3rd degree burglary based on her guilty plea. The First Department affirmed. The appellant's waiver of appeal was invalid. The court failed to explain the nature of the rights being forfeited and asked only whether she was giving up her right to appeal. The appellant's brief assent was insufficient to establish that the waiver was knowing and voluntary. However, the appellant did not preserve the argument that she substantially complied with the plea agreement and her sentencing challenge was rendered moot by the completion of her sentence. The Center for Appellate Litigation (Benjamin Wiener, of counsel) represented the appellant.

People v Hendricks (2024 NY Slip Op 03548)

SECOND DEPARTMENT

People v Deas | June 16, 2024

INVALID WOA | AFFIRMED

The appellant appealed from a Kings County Supreme Court sentence imposed based on his guilty plea. The Second Department affirmed. The appellant's waiver of appeal was invalid. The court failed to confirm that the appellant voluntarily waived his rights or that he had discussed the right to appeal with counsel. The signed written waiver was not a substitute for an on-the-record explanation. Further, the court never confirmed that the appellant understood the contents of the written waiver and only discussed the waiver after the appellant had already admitted guilt. However, the sentence was not excessive. The Legal Aid Society of NYC (Hilary Dowling, of counsel) represented the appellant.

People v Deas (2024 NY Slip Op 03493)

People v Dimas | June 26, 2024

UNAVAILABLE WITNESS | TESTIMONY READ BY DA | AFFIRMED

The appellant appealed from a Westchester County Court judgment convicting him of attempted 2nd degree murder. The Second Department affirmed. The prosecutor did not act as an unsworn witness by reading the unavailable complainant's statement and grand jury testimony and the appellant's grand jury testimony into the record. The better practice

would have been for nonjudicial court personnel to read them into the record to avoid any risk of misperception in the minds of the jury. But the trial court limited any potential prejudice by instructing the jury to consider the prosecutor's reading as it would any other testimonial evidence admitted at trial.
Oral Argument (starts at 23:00)
People v Dimas (2024 NY Slip Op 03494)

THIRD DEPARTMENT

People v Harris | June 27, 2024
SORA | CONSENT ORDER | DISMISSED
The appellant appealed from a Schenectady County Court order adjudicating him a level three sexually violent offender. The Third Department dismissed the appeal. The SORA order was entered upon the appellant's consent. SORA risk level classification proceedings are civil in nature and their determinations are subject to the civil appeals process. Because a consenting party is not aggrieved for civil appeals purposes (*see* CPLR 5511), dismissal was required.
People v Harris (2024 NY Slip Op 03518)

APPELLATE TERM

People v Collado | June 15, 2024
OUTLEY | SEALED RECORDS | MODIFIED
The appellant appealed from a New York County Criminal Court judgment convicting him of endangering the welfare of a child based on his guilty plea and imposing an enhanced sentence. The Appellate Term, First Department reversed. The *Outley* court improperly relied upon sealed records to find that the appellant had violated the terms of his repleader agreement. Because the appellant was entitled to the benefit of that agreement, he must be permitted to withdraw the misdemeanor plea and replead to disorderly conduct.
People v Collado (2024 NY Slip Op 50762[U])

TRIAL COURTS

People v Banchs | 2024 WL 3153847
ACCUSATORY INSTRUMENT | FACIALLY INSUFFICIENT
Mr. Banchs moved to dismiss counts of the criminal complaint charging him with 2nd degree menacing and 4th degree CPW as legally insufficient. Bronx County Criminal Court dismissed the CPW charge only. According to the complaint, Mr. Banchs pulled out a can of mace and pointed it at the complainant during a verbal dispute. These allegations were legally sufficient to charge 2nd degree menacing; there is a reasonable inference that he intended to spray the complainant with mace, putting her in apprehension of injury. But the allegations were not legally sufficient to charge 4th degree CPW; there were no factual allegations that the mace canister was discharged or that it was operable. The Bronx Defenders (Rachna K. Agarwal, of counsel) represented Mr. Banchs.
People v Banchs (2024 NY Slip Op 50775[U])

People v Cajal | 2024 WL 3169936

PARKED CAR | NO FOUNDED SUSPICION | EVIDENCE SUPPRESSED

Ms. Cajal moved to suppress statements and evidence relating to a DWI charge. Kings County Criminal Court granted the motion and dismissed the action. An officer approached Ms. Cajal's car after finding it stopped on a median between a parking lot and sidewalk. Cajal said that she had called a tow truck and was embarrassed. Her eyes were glassy, she seemed dazed, spoke slowly and repetitively. Although the officer noticed no other signs of intoxication, he asked whether she had been drinking and ordered her out of the car. Police were justified in approaching Cajal's unlawfully parked car as a *DeBour* level one request for information. But the inquiry almost immediately transitioned to pointed questions about whether she had been drinking and a directive to exit the car—requiring founded suspicion of criminality, which the police did not have. "There [were] myriad possible reasons for [her] presentation that [did] not implicate criminality." The Kugel Law Firm (Rachel Kugel, of counsel) represented Ms. Cajal.
People v Cajal (2024 NY Slip Op 50779[U])

People v Jones | 2024 WL 3213367

CPL 190.75 | REPRESENTATION UNAUTHORIZED | INDICTMENT DISMISSED

Mr. Jones moved to dismiss the indictment charging him with 2nd degree CPW on the grounds that it was obtained in violation of CPL 190.75 (3). Kings County Supreme Court granted the motion. After a grand jury voted to dismiss the 2nd degree CPW charge, the court granted the People's *ex parte* motion for leave to represent to a second grand jury based on new evidence—a DNA report that was received after the grand jury had already voted and its term ended. This was error. The People knew the DNA test results were pending when they decided to move forward with the initial grand jury presentation. There were no speedy trial concerns (Mr. Jones was not in custody), and there was no indication that the DNA report contained information not anticipated by the prosecutor. Brooklyn Defender Services (Eileen McNamara, of counsel) represented Mr. Jones.
People v Jones (2024 NY Slip Op 50788[U])

FEDERAL COURTS

Chambers v Lilly | 2024 WL 2816145

HABEAS CORPUS | IAC AT SENTENCING | NO MITIGATION EVIDENCE

The petitioner sought a writ of habeas corpus seeking relief from an 18-year state sentence imposed based on his 2nd degree murder plea. The District Court of the EDNY granted the writ in part and remanded for resentencing. The petitioner established that he received ineffective assistance of counsel at sentencing in a state court proceeding warranting federal habeas relief, even under AEDPA's highly deferential standards. Trial counsel did virtually no sentencing investigation or advocacy on behalf of a young client facing decades in prison—despite the existence and readily available mitigation evidence. Prejudice to the petitioner was indisputable—the sentencing court later reduced his sentenced after a CPL 440 hearing. The appellant received a longer sentence than he would have with even minimally adequate assistance of counsel. Law Office of Benjamin

Silverman (Benjamin Silverman, of counsel) and The Vitaliano Law Firm, PLLC (Michael Vitaliano, of counsel) represented the petitioner.

FAMILY

FIRST DEPARTMENT

Matter of Malachi B. (Tania H.). | June 27, 2024

FOSTER CARE PLACEMENT | REVIEW POWER | REVERSED

The child appealed from a New York County Family Court order holding that it lacked the authority to review and approve a Qualified Residential Treatment Program placement for a child at every permanency hearing. The First Department reversed, finding that the Family First Act provided Family Court with that authority. Although the issue was moot, it fell under the exception to the mootness doctrine. The Legislature intended Family Court to have ongoing oversight and review power to further the purpose of the legislation: limiting the use of institutional group placements for children. The Legal Aid Society of NYC (Judith Stern, of counsel) represented the child.

Matter of Malachi B. (Tania H.) (2024 NY Slip Op 03534)

SECOND DEPARTMENT

Matter of Bram v Bram | June 26, 2024

CHILD SUPPORT | IMPUTED EARNINGS | REVERSED

The mother appealed from a Suffolk County Family Court order directing her to pay $175.54 per week in child support. The Second Department reversed, remitted for a new calculation, and ordered the mother to pay $87.77 per week in the interim. Family Court erred in imputing income to the mother based on evidence that the father of her three other children, who lived in the household but no longer had a relationship with the mother, financially contributed to household expenses and the support of those children. Steven D. Kommor represented the mother.

Matter of Bram v Bram (2024 NY Slip Op 03478)

THIRD DEPARTMENT

Matter of Jacob L. v Heather L. | June 27, 2024

CUSTODY | CHANGE OF CIRCUMSTANCES | REVERSED

The father appealed a Tompkins County Family Court order which dismissed his custody modification petition and awarded the mother attorneys' fees. The Third Department reversed and remitted for a hearing. The father sought modification based on his discharge from treatment and altered work schedule. Family Court denied the petition based solely on its finding that he had consumed alcohol days before a visit—in violation of its prior order. By doing so, Family Court failed to inquire whether modification was in the child's best interests based on the proffered changed circumstances. The Third Department cautioned against ordering abstinence or a specific treatment plan beyond what is necessary to protect the child, urging the court to instead require compliance with

the father's treatment plan, which may include abstinence. The attorneys' fees award effectively sanctioned the father for seeking modification based on his later consumption of alcohol, despite no violation petition having been filed. Lisa K. Miller represented the father.
Matter of Jacob L. v Heather L. (2024 NY Slip Op 03520)

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