Indigent Legal Services

Decisions of Interest

AUGUST 21, 2024

CRIMINAL

SECOND DEPARTMENT

People v Shaw | August 14, 2024

HARSH AND EXCESSIVE | SENTENCE REDUCED

The appellant appealed from a Queens County Supreme Court judgment convicting him of 1st degree manslaughter and sentencing him to 20 years of incarceration plus 5 years of PRS. The Second Department reduced the sentence to 10 years and otherwise affirmed. The appellant stabbed the decedent during a bar fight. The decedent was the initial aggressor; he knocked the appellant to the floor, threw a barstool at him, and kicked him. At some point during their altercation, the appellant stabbed the decedent twice, causing an evisceration and puncturing his liver. The decedent—who had taken blood thinners and cocaine—died of blood loss at the hospital. The appellant's challenge to the legal sufficiency of the evidence disproving his justification defense was unpreserved; in any event, the evidence was legally sufficient. Further, the verdict was not against the weight of the evidence—intent to cause ~~a~~ serious physical injury may be inferred from the medical evidence regarding the nature and severity of the stab wounds. However, the 20-year sentence was harsh and excessive. Mischel & Horn, P.C. (Richard E. Mischel, of counsel) represented the appellant.

Oral Argument (starts at 9:30)

People v Shaw (2024 Slip Op 04214)

THIRD DEPARTMENT

People v McNealy | August 15, 2024

DUPLICITOUS COUNT | MODIFIED

The appellant appealed from a Broome County Court judgment convicting him of 1st degree sexual abuse (two counts) and endangering the welfare of a child. The Third Department vacated and dismissed one count of sexual abuse with leave to re-present. The second count of sexual abuse, which was premised upon a single, discrete act, was rendered duplicitous by the complainant's trial testimony. It alleged that the appellant made sexual contact with the complainant "while he was not wearing a shirt." At trial, the complainant testified that "sometimes" the appellant was shirtless and, on cross-examination, she stated that he was shirtless at least twice. Kathly Manley represented the appellant.

Oral Argument
People v McNealy (2024 Slip Op 04230)

TRIAL COURTS

People v J.R. | 2024 WL 3765336

ADOLESCENT OFFENDER | MOTION TO PREVENT REMOVAL | DENIED

The People sought to prevent removal from the Youth Part to Family Court. Orange County Court denied the motion. J.R. was charged as an adolescent offender with 2nd degree CPW (two counts), 4th degree CPSP, and criminal possession of a fireman (two counts). The complaint alleged that a group of four adolescent offenders threatened an individual, three of them displaying guns. The People argued against removal based on J.R. having acted in concert with the other members of the group. Accomplice liability principals were not applicable here; J.R. was not alleged to have displayed a weapon and the People failed to establish that he knew that his co-defendants had guns. Christopher Kleister represented J.R.
People v J.R. (2024 NY Slip Op 24218)

People v Bienaime | 2024 WL 3748865

DISCOVERY | NO DUE DILIGENCE | CHARGES DISMISSED

Bienaime moved for an order deeming the People's COC invalid and dismissing the accusatory instrument on CPL 30.30 grounds. The Kings County Criminal Court granted the motion. The People failed to disclose police disciplinary records and body camera audit trails for all officers involved in his arrest. Impeachment material used to test the credibility of trial witnesses should always be deemed relevant. The People failed to detail any steps taken to obtain the underlying *Giglio* material or audit trails, probably because they certified the case after hours on the 90th day of speedy trial time. The Legal Aid Society of NYC (Christopher Razadouski, of counsel) represented Bienaime.
People v Bienaime (2024 NY Slip Op 51035[U])

People v Herrera | 2024 WL 3819884

REFUSAL HEARING | FAILED ATTEMPTS | SUPPRESSION GRANTED

Herrera moved to suppress evidence of his refusal to submit to a chemical test after a hearing. Queens County Criminal Court granted the motion. The arresting officer issued refusal warnings to Herrera through a Spanish language video, in light of his limited English language proficiency. Herrera seemed to understand the warnings and consented to taking the breathalyzer test. After repeated attempts, the machine did not register a result. The officer attempted to explain the correct manner to blow into the breathalyzer but, after another failed attempt, the officer deemed it a refusal. Unlike the refusal warnings, the officer's instructions were in English. Rather than providing these instructions in Spanish, the officer erred in simply concluding that Herrera's behavior was a refusal, rather than a lack of understanding. Queens Defenders (Madison Carvello and David Byrne, of counsel) represented Herrera.
People v Herrera (2024 NY Slip Op 51050[U])

People v Benincasa | 2024 WL 3748562

COC/SOR | IMPROPER SERVICE | 30.30 MOTION DENIED

Benincasa moved to dismiss the accusatory instrument on 30.30 grounds. Kings County Criminal Court denied the motion. The People served defense counsel with a COC and SOR by electronic means. The People had a standing agreement with the institutional providers to accept electronic service, but that did not extend to private counsel. Because the email service was improper, it did not stop the People's 30.30 clock from running. However, in light of Benincasa's subsequent failure to appear and request for a motion schedule, the speedy trial time had not expired. Samuel A. Bernstein represented Benincasa.

People v Benincasa (2024 NY Slip Op 51033[U])

FAMILY

SECOND DEPARTMENT

Matter of Brycyn W. (Alexis W.) | August 14, 2024

1027 HEARING | APPEAL NOT MOOT | AFFIRMED

The mother appealed from a Westchester County Family Court order finding the child to be at imminent risk of harm and temporarily removing him from her care after a 1027 hearing. The Second Department found that, although the child had since been returned to the mother, the appeal was not moot because the removal created a permanent and significant stigma. The court otherwise affirmed Family Court's order. Legal Services of the Hudson Valley (Joanne N. Sirotkin, Lauren Norberto, and Proskauer Rose LLP, New York, NY [Michelle K. Moriarty and William C. Silverman], of counsel) represented the mother.

NOTE: ILS's Statewide Appellate Support Center (SASC) participated in a moot argument for this case. The SASC is available to conduct or assist with moot arguments upon request.

Oral Argument (starts at 5:20)

Matter of Brycyn W. (Alexis W.) (2024 NY Slip Op 04207)

Matter of Paez v Bambauer | August 14, 2024

MOTION TO VACATE DEFAULT | REVERSED AND REMITTED

The mother appealed from a Rockland County Family Court order denying her motion to vacate orders, issued upon her default, granting the father's custody petition and dismissing her family offense petition against him. The Second Department reversed, granted the mother's motion to vacate her default, and remitted for a hearing on the petitions. In doing so, the appellate court noted the policy generally favoring resolution of child custody proceedings on the merits. Ilene K. Graff represented the mother.

Matter of Paez v Bambauer (2024 NY Slip Op 04205)

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