

## CRIMINAL

### THIRD DEPARTMENT

***People v Lawrence*, 1/2/20 – INDICTMENT / JURISDICTIONAL DEFECT**

The defendant appealed from a 2003 judgment of Chemung County Court, convicting him upon his plea of guilty of attempted 1<sup>st</sup> degree promoting prison contraband. In a prior appeal decided in 2005, the Third Department granted appellate counsel's request to be relieved of the assignment and affirmed the conviction (14 AD3d 885). Thereafter, the Court of Appeals held that, absent aggravating circumstances, a small amount of marihuana did not constitute dangerous contraband, as necessary to support a charge of 1<sup>st</sup> degree promoting prison contraband. *See People v Finley*, 10 NY3d 647 (2008). In 2018, the defendant filed a pro se motion for a writ of error coram nobis, contending that the indictment was jurisdictionally defective and appellate counsel was ineffective in not making that argument. The Third Department granted the motion, reinstated the appeal, and assigned new appellate counsel. In this appeal, the appellate court reversed the judgment of conviction and dismissed the indictment. The defendant possessed less than 25 grams of marihuana and the People conceded the jurisdictional defect. Philip Gromet represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00004.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00004.htm)

## FAMILY

### FIRST DEPARTMENT

***Elizabeth L. v Kevin O.*, 1/2/20 – WILLFUL VIOLATION / DEFAULT ORDER**

The father appealed from an order of NY County Family Court, which found that he willfully violated a child support order, sentenced him to incarceration for six months (served on weekends), ordered a purge amount of \$10,000, and set arrears at more than \$55,000. The First Department modified. The appeal from the order of commitment was dismissed as academic, since the period of incarceration had expired. Further, the appeal from the willful violation finding was dismissed, since the finding was made upon default, and the father did not move before the Support Magistrate to vacate the default. *See Family Ct Act 439 (e); CPLR 5015 (a) (1)*. In any event, Family Court properly confirmed the Magistrate's finding of willful violation. The father's failure to pay constituted prima facie evidence. The burden shifted to him to present competent, credible evidence of inability to pay, but he failed to appear and present evidence. However, in calculating the amount of arrears owed, the lower court erred in failing to credit the father for the approximately \$5,000 in payments he made.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00037.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00037.htm)

## THIRD DEPARTMENT

### ***Dakota G. v Chanda H.*, 1/2/20 – SAMARITAN NEIGHBOR / NO STANDING**

This appeal concerns a custody order issued by Chemung County Family Court. The Third Department affirmed. In early 2016, when the father’s paternity had not been established, the mother and her newborn infant moved into the home of a neighbor the mother barely knew. Thereafter, the mother was frequently absent for extended periods. The neighbor became the de facto primary caregiver; and several months later, a default order granted custody to her. Thereafter, the father’s paternity was established, and a paternal aunt sought custody. The challenged 2018 order granted custody to the aunt and directed that any contact between the child and the neighbor would be “as the parties may agree, the court having no authority to direct otherwise.” On appeal, the neighbor did not contest custody in the aunt, but argued that Family Court should have affirmatively granted her visitation rights. The appellate court held that the neighbor lacked standing to seek such relief (*see* Family Ct Act §§ 651 [b], 1081; Domestic Relations Law §§ 71, 72) and that the visitation provision was proper.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00010.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00010.htm)

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