

CRIMINAL

FIRST DEPARTMENT

***People v Bean*, 1/26/21 – SORA / PRIOR FOREIGN OFFENSE**

The defendant appealed from an order of Bronx County Supreme Court, which adjudicated him a level-three sexually violent predicate sex offender. The First Department affirmed. The SORA court correctly assessed 30 points for a prior sex offense based on a California conviction. The CA felony could be committed by consensual sex with a person under age 18, whereas in NY, a person age 17 was capable of consent. However, the People showed that the conduct at issue involved oral sexual contact by forcible compulsion, which constitutes a felony sex offense in NY.

http://nycourts.gov/reporter/3dseries/2021/2021_00396.htm

SECOND DEPARTMENT

***People v Santjer*, 1/27/21 – SUPPRESSION / CUSTODIAL INTERROGATION**

The defendant appealed from a Suffolk County Court judgment, convicting him of leaving the scene of an incident without reporting and another crime. The Second Department affirmed. The appeal brought up for review the denial of suppression. The appellate court rejected the defendant's argument that he was subjected to a custodial interrogation prior to being *Mirandized* and that pre-*Miranda* questioning invalidated the later waiver of *Miranda* rights. A pickup truck struck a pedestrian. Days later a detective went to the defendant's home and said that he was investigating the accident and that the defendant's truck matched a description of the subject vehicle. The defendant let the detective inspect his truck and answered questions about his whereabouts on the evening of the accident. After the inspection revealed that a headlight assembly was missing, the defendant said that he went out on the night in question and returned home via the accident road. Inside the house, he was *Mirandized*. The pre-*Miranda* questions were investigatory, not designed to elicit an incriminating response, and the interview did not occur in a coercive environment. A reasonable person would not have believed he was in custody.

<http://www.nycourts.gov/courts/AD2/Handdowns/2021/Decisions/D65184.pdf>

THIRD DEPARTMENT

***People v Lumpkin*, 1/28/21 – ANDERS BRIEF / NEW COUNSEL**

The defendant appealed from a judgment of St. Lawrence County Court, convicting him of 5th degree criminal possession of a controlled substance. Assigned appellate counsel submitted an *Anders* brief. The Third Department assigned new counsel, based on an issue of arguable merit, pertaining to inconsistent references, during the plea colloquy, to the length of the prison term.

http://nycourts.gov/reporter/3dseries/2021/2021_00460.htm

FAMILY

SECOND DEPARTMENT

***M/O Goldstein v Goldstein*, 1/27/21 – DEFAULT / VACATUR DENIED**

The father appealed from Kings County Family Court orders which brought up for review the denial of his motion to vacate his defaults in family offense and custody hearings. The Second Department affirmed. Although there was a liberal policy in vacating defaults in Family Court matters, the movant had to make the requisite showing. The father failed to offer a reasonable excuse as to the family offense; and he had a pattern of missing court sessions and causing numerous delays. Even if he had a good excuse as to the custody proceeding, he lacked a meritorious defense. The father was subject to a criminal court order of protection in favor of the children and had only limited, supervised visitation. The court held a full hearing regarding parental access; and the father waited many months before moving to vacate his default.

<http://www.nycourts.gov/courts/AD2/Handdowns/2021/Decisions/D65241.pdf>

***M/O Marino v Sanfilippo*, 1/27/21 – NO CUSTODY / VOICE IN DECISIONS**

The mother appealed from custody orders issued by Queens County Family Court. The Second Department modified. The orders awarded custody of Frank G. to the paternal grandmother and of Kelsey C. to the father. Both orders granted the mother parental access. The petitioners had sought custody following a finding of neglect against the mother. The paternal grandmother established standing by showing extraordinary circumstances, and adduced proof that custody to her was in the child's best interests. The determination that the mother would have parental access to Kelsey C. four hours every other week was sound. However, Family Court should have directed that, prior to exercising their final decision-making authority, the father and grandmother consulted with the mother regarding the children's health, medical care, education, religion, and general welfare. Since the recommendations of the forensic evaluator were not contrary to the record evidence, they were properly considered. Christian Myrill represented the mother.

<http://www.nycourts.gov/courts/AD2/Handdowns/2021/Decisions/D65523.pdf>

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