

CRIMINAL

SECOND DEPARTMENT

***People v Greenspan*, 8/5/20 – COURT’S DEAL WITH CO-D / NEW TRIAL**

The defendant appealed from a Suffolk County Court judgment, convicting him of 2nd degree murder. The Second Department reversed and ordered a new trial before a different justice. The defendant contended that County Court violated his right to a fair trial by entering into a plea agreement with the codefendant, who was also charged with 2nd degree murder. In exchange for the codefendant’s guilty plea to attempted 2nd degree robbery, the People promised to recommend a determinate term of two to seven years. The trial court offered probation if the codefendant testified against the defendant. Reaching the unpreserved issue in the interest of justice, the appellate court held that County Court’s agreement with the codefendant constituted reversible error. The trial court abandoned the role of a neutral arbiter and assumed the function of an interested party. Joel Rudin represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04408.htm

***People v Childs*, 8/5/20 – SENTENCE VACATED / PROBATION TERM**

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 2nd degree unlawful surveillance, upon his plea of guilty, and sentencing him to an unspecified term of probation. The Second Department vacated the sentence and remitted. CPL 380.20 states that the court “must pronounce sentence in every case where a conviction is entered.” As part of the negotiated disposition, this defendant was promised a three-year term of probation. However, the sentencing court failed to orally pronounce that component of the sentence. The Legal Aid Society of NYC (Lorca Morello, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04404.htm

***People v Baldwin*, 8/5/20 – SENTENCE VACATED / YO NOT CONSIDERED**

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of attempted 2nd degree murder. The Second Department vacated the sentence and remitted. CPL 720.20 (1) requires a court to make a youthful offender determination in every case where the defendant is eligible, even where he or she did not request such status or agreed to forego it as part of a plea bargain. The defendant was eligible for YO treatment, but the record did not demonstrate that Supreme Court considered the matter. Appellate Advocates (David Greenberg, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04401.htm

***People v Kelly*, 8/5/20 – POST-RELEASE SUPERVISION / VACATED**

The defendant appealed from a judgment of Orange County Court, convicting him of 3rd degree criminal sale of a controlled substance upon his plea of guilty. He was sentenced to seven years’ imprisonment plus five years’ post-release supervision (PRS), as a second felony drug offender previously convicted of a violent felony. The Second Department

vacated the illegal period of PRS, which must be from 1½ to 3 years. Kenyon Trachte represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04409.htm

***People v Taylor*, 8/5/20 – RESENTENCE / REVERSED**

The defendant appealed from a resentence imposed by Richmond County Supreme Court upon his convictions of multiple counts of robbery and attempted robbery. The Second Department reversed the resentence and remitted. The defendant’s sentences were initially imposed in 1995. At the resentencing proceeding 20 years later, the defendant’s request to address the court was denied. That was error. A defendant is entitled to make a statement personally on his own behalf; and before pronouncing sentence, the court was required to ask him whether he wished to make such a statement. *See* CPL 380.50 (1). The statute applied to resentencing, not just initial sentencing. Appellate Advocates (Joshua Levine, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04413.htm

THIRD DEPARTMENT

***People v Harris*, 8/6/20 – SCARS / NOT SERIOUS DISFIGUREMENT**

The defendant appealed from a judgment of Albany County Supreme Court, convicting him of 1st and 2nd degree assault and 3rd degree CPW. The victim’s two facial scars did not constitute a serious physical injury, so as to support the conviction for 1st degree assault. The lacerations to his right cheek and nose, each about 1½" long, were sutured by a plastic surgeon. The record was imprecise as to the extent and appearance of scars. The People did not introduce a photograph depicting the victim’s injuries at the time of trial or any time after the sutures had been removed and the lacerations healed. Further, although the treating physician testified that the victim was expected to have scars and the victim did display scars to the jury, the People failed to make a contemporaneous record of what the jury observed. There was no indication that the small facial lacerations produced jagged, uneven, or “unusually disturbing” scars. Thus, the appellate court could not conclude that the evidence supported a finding of serious disfigurement. The conviction was reduced to attempted 1st degree assault, and the matter was remitted for resentencing. Theresa Suozzi represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04431.htm

***People v Price*, 8/6/20 – CONCURRENCE / TRAFFIC STOP / RACIAL BIAS**

The defendant’s appeal from a judgment of Chemung County, convicting him upon his plea of guilty of 2nd degree CPW, brought up for review an order denying suppression. The Third Department affirmed, but two concurring justices wondered if racial bias animated police conduct. The justices’ first concern was that the arresting officer did not make a routine traffic stop and provided no plausible explanation for that failure. Events then escalated, culminating in police detaining the defendant on the roof of his vehicle. This raised the concurring justices’ second concern—why the officers involved reacted as they did in the context of a simple traffic infraction with no heightened safety concern. The defendant asserted that police were motivated primarily by race. “One unfortunate conclusion” that could reasonably be drawn from the record was that “undertones of racial

bias” could explain the arresting officer’s failure to make a routine traffic stop, the concurring justices observed. They declared that “bias, racial or otherwise, will not be allowed to legitimize the unconstitutional intrusion upon any citizen’s freedom of movement.”

http://nycourts.gov/reporter/3dseries/2020/2020_04430.htm

SECOND CIRCUIT

***USA v Huberfeld*, 8/4/20 – SENTENCE / VACATED**

The defendant appealed from a judgment of District Court–SDNY, convicting him after a guilty plea of conspiracy to commit wire fraud. The Second Circuit held that the District Court erred by applying the Sentencing Guidelines for commercial bribery based on an offense that was dropped in exchange for the guilty plea. Vacatur and remand for resentencing were warranted because, had the correct Guideline been used, the lower court might not have imposed the same term. The sentencing court said that the improper Guideline range considered made no difference, but the record indicated otherwise. The Sentencing Guidelines were not a body of casual advice, and a miscalculated range could have a powerful “anchoring effect” on the sentencing court as to appropriate punishment. Further, the court below did not state its justifications with enough specificity to allow for affirmance of the challenged sentence. District Court also erred in ordering \$19 million in restitution to be paid to an organization that was not a victim of the convicted conduct. The losses suffered by the entity could not have been caused by the subject conduct; its investments predated the subject wire fraud. The defendant sought reassignment of the case to a different judge, but this was not the rare case where the District Court judge might not follow Second Circuit directions.

https://www.ca2.uscourts.gov/decisions/isysquery/ac024983-d2dd-4a65-81f6-58aae9018e3/3/doc/19-436_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/ac024983-d2dd-4a65-81f6-58aae9018e3/3/hilite/

FAMILY

FIRST DEPARTMENT

***Matter of Annette M.-L. v William L.*, 8/6/20 –**

CUSTODY MOD / REVERSAL AND GRANT

The mother appealed from a Bronx County Family Court order, which denied her petition to modify custody. The First Department reversed, reinstated and granted the petition, and awarded sole legal and physical custody to the mother. The facts found by the trial court demonstrated three changes in circumstances, any one of which would provide a basis for modifying the custody order: (1) the relocation of the mother and the child from Florida to NY, with the father’s acquiescence, which rendered his visitation schedule impractical; (2) the father’s decreased involvement in the child’s life; and (3) the deterioration in the parents’ relationship. The record demonstrated that the child was doing well in her

mother's care. Further, the mother's consistent employment in NY, as a surgical technician at the same oral surgery practice since 2014, indicated greater stability and economic improvement in the child's life. Given the father's failure to testify and present evidence, further proceedings were needed to fashion an appropriate visitation schedule. Karen Steinberg represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_04441.htm

RAISE THE AGE

People v C. S. –

EXTRAORDINARY CIRCUMSTANCES / NO REMOVAL

The AO was charged with 2nd degree assault in connection with an incident at a juvenile detention center, where he was in custody on an unrelated criminal charge. In Onondaga County, the People contended that extraordinary circumstances were present, so the case should not be removed from the Youth Part to Family Court. The court rejected the People's assertion that a charge for intentional murder, faced by the AO in a separate case, was a relevant factor in determining if extraordinary circumstances existed. Since the AO had not been convicted of that crime and was presumed not guilty, the court declined to place any undue significance to the other pending charge in making its removal decision. However, the motion to prevent removal was granted, based on the nature of the instant assault. The defendant was accused of acting in concert with another youth to assault the victim, who was also being detained and housed at the detention center. In a planned, brutal attack, the AO kicked and stomped the victim all over his body, including in the head and torso. The victim apparently suffered no long-lasting effects. However, the AO's actions displayed a lack of moral conscience and a mean-spiritedness seldom seen by the court. The AO was out of control and unable to stop his behavior.

http://nycourts.gov/reporter/3dseries/2020/2020_50889.htm

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