NYS Court of Appeals Criminal-Related Decisions; June 14, 2022

People v. Stroud

This is a 6 to 0 affirmance of the AD. Judge Troutman did not participate. The lower court's determination of reasonable suspicion regarding this vehicle stop is a mixed question of law and fact. There was record support for the lower court's decision.

People v. Huertas

This is a 6 to 1 affirmance of the AD. The lower court did not abuse its discretion in reserving decision on a *Molineux* application regarding prior gun-related convictions until after defendant testified. *People v. Molineux*, 168 NY 264, 294 (1901). Any errors regarding this issue were harmless.

People v. Laboriel

This is a 5 to 2 memorandum, affirming the Second Department. Judge Rivera authored the dissent, joined by Judge Wilson. The majority quickly rejected the defendant's argument that his plea was involuntary because the prosecution unilaterally failed to keep its end of the bargain by illegally keeping the defendant in custody beyond the time permitted under law. The Court found the prosecution and the courts were not at fault for this complaint. Said, the majority: "The many dissenting opinions cited by the dissent provide no support for a different result."

As the **dissent** observes, the defendant and the prosecution agreed upon a definite prison term of 3 years, to be followed by 5 years of post-release supervision ("PRS"). But the state failed to physically release the defendant when he was purportedly "released" to PRS. Instead, he was detained for 9 extra months in a prison, characterized as a "residential treatment facility." Based on his conviction, the defendant was subject to the Sexual Assault Reform Act ("SARA"). *See*, Exec. Law § 259-c(14); Corr. Law § 73(10); PL § 220.00(14) (prohibiting certain sex offenders from residing within 1000 feet of a school). This case presents another example of there being little SARA-compliant housing for indigent sex offenders in the NYC shelter system, a topic the Court of Appeals has taken up a numbers of times in recent years - - most often to the defendants' detriment. *See*, *e.g.*, *Johnson v. Adirondack Corr. Facility*, 36 NY3d 187 (2020); *McCurdy v. Westchester Co. Corr. Facility*, 36 NY3d 251 (2020). Judge Rivera opines "the entire

system of negotiated arrangements cannot survive unless the government adheres to its sentencing promise."

Matter of Nonhuman Rights Project v. Breheny

This is a 5 to 2 decision, totaling 109 pages. The majority opinion was authored by the Chief Judge. Two separate dissents, totaling 92 pages, were authored by Judges Wilson and Rivera. The AD is affirmed. In 2018, Judge Fahey wrote an extensive concurrence to the Court's denial of leave to appeal from a habeas corpus denial in a now infamous chimpanzee habeas corpus decision. *See*, *Matter of Nonhuman Rights Project v. Lavery*, 31 NY3d 1054, 1055-1059 (2018) (Fahey, J, concurring) (thoughtfully recognizing that animals are not "the equivalent of 'things' or 'objects'"). So what, you say? Well, the *Lavera* case involved two chimpanzees. The *Breheny* decision is about "Happy", a 48-year-old female elephant from Thailand who has resided in the Bronx Zoo for most of her life. She is seeking to be transferred from the zoo to a large nature preserve. But the majority concludes only a human may qualify as a "person" under CPLR article 70, which governs habeas petitions.

As Judge Wilson points out in **dissent**, historically, African slaves detained in America, women (who were once the property of their husbands) and children have all been deemed proper habeas corpus litigants. In other words, being considered property under the law and (or) having no legal obligations does not end the analysis. Granting habeas relief to this elephant will not open up the food gates to neighbors filing habeas petitions for the barking dog next door. Here, there was a three-day hearing in Supreme Court, wherein the numerous signs of intelligence and autonomy this elephant (like the chimpanzees in *Lavery*) possesses was established. Finally, like the *Lavery* case, counsel for the petitioner does not seek to have this animal released from its present facility into oncoming traffic. Rather, the litigant seeks a *transfer* from one facility to another. This would be a proper habeas-related remedy.

NYS Court of Appeals Criminal Decisions; June 16, 2022

People v. Serrano

This is a unanimous affirmance of the AD. The trial court properly denied a request for 3rd degree assault as a lesser included offense charge of 1st degree assault. There was no ineffective assistance of counsel. *People v. Benevento*, 91 NY2d 708, 712-715 (1998).

People v. Hill

Judge Singas writes for a unanimous court, reversing the Appellate Term. The misdemeanor complaint should be dismissed, as the seventh degree CPCS accusatory instrument failed to refer to Public Health Law § 3306(g), which lists 10 particular synthetic cannabinoid substances as "schedule I controlled substances." Sufficient notice in charging a defendant implicates due process and double jeopardy issues. The establishment of reasonable cause under CPL 100.40(4)(b) for committing the alleged crime is necessary. The accusatory instrument here, charging a synthetic cannabinoid synthetic marijuana (K2), is dismissed as facially insufficient and jurisdictionally defective.

People v. Galindo

This is a successful People's appeal, with Judge Rivera writing for a unanimous court. The Appellate Term is reversed. CPL 30.30(1)(e), added to the so-called speedy trial statute while the defendant's appeal was pending, was not intended to be retroactively applied. Such an interpretation must only occur when the legislature makes a clear statement in that regard. Accordingly, the defendant should not benefit from the legislative addition of VTL infraction prosecutions as "offenses," jointly charged with another offense, as protected by the time limits of CPL 30.30(1). The decision granting dismissal of the accusatory instrument should be reversed.

NYS Court of Appeals Criminal Decision; July 21, 2022

People v. Hemphill

Following some terrific attorney work, Mr. Hemphill's convictions previously affirmed by the Court of Appeals were reversed by the US Supreme Court. *See*, *Hemphill v. New York*, 142 S. Ct. 681 (2022). This was a fatal street shooting in the Bronx related to a gang dispute. Three eyewitnesses identified a third party (Mr. Morris) as the perpetrator. The admission into evidence at trial of Morris's plea allocution *(despite being unavailable to testify)* deprived Mr. Hemphill of his Confrontation Clause rights under the Sixth Amendment. *See*, *Crawford v. Washington*, 541 US 36, 51-52 (2004). In addition to the plea allocution, the prosecution presented circumstantial evidence that included: (1) the defendant's blue sweater (containing DNA) being viewed by witnesses and then found in his grandmother's nearby apartment, (2) defendant's tattoo matching the description given by eyewitnesses, and (3) the defendant's flight from NY shortly after the crime. Upon remand to the Court of Appeals, the judgment is again affirmed, as the evidence of guilt was over whelming and the constitutional error was harmless beyond a reasonable doubt. *People v. Crimmins*, 36 NY2d 230, 237 (1975).