

COVID-19

***People ex rel. Ferro v Brann*, 5/13/20 – HABEAS CORPUS / DENIAL AFFIRMED**

The petitioner appealed from a judgment of Queens County Supreme Court, which denied his habeas corpus petition. The **Second Department** affirmed. While serving a sentence of imprisonment, the petitioner contracted Covid-19. Thereafter, he commenced the instant proceeding seeking release. The petitioner failed to demonstrate that his imprisonment was illegal. *See* CPLR 7002 (a), 7010 (a); *People ex rel. DeLia v Munsey*, 26 NY3d 124. The record did not establish that prison officials were deliberately indifferent to his medical needs or that he was entitled to immediate release as a remedy for any failure to address his medical needs. *See Farmer v Brennan*, 511 US 825; *People ex rel. Sandson v Duncan*, 306 AD2d 716.

http://nycourts.gov/reporter/3dseries/2020/2020_02803.htm

***Matter of S.V. v A.J.*, decided 5/7/20, posted 5/12/20 –**

COVID-19 / NOT REASON TO END VISITS

In **Bronx County Family Court**, the father moved to enforce a temporary order calling for his visitation with the parties' two young children, to determine make-up visitation, and for other related relief. The motion—filed pursuant to the special procedures in place during the pandemic—was largely granted. The dispute arose when the mother did not produce the children for weekend visitation starting March 27, 2020 and agreed only to daily video visits. She opposed in-person visits during the pandemic. The AFC did not oppose such visits, as long as safety measures were followed. The father urged that Covid-19 did not eliminate his right to have a meaningful relationship with the children. Family Court observed that alternate weekend visits had been beneficial for the children. An investigation found no safety concerns with the father's home. He had proposed reasonable measures, such as avoiding public transportation and not taking the children out during visits; and he had followed social-distancing measures and had not tested positive. The mother's generalized fear of the coronavirus was an insufficient basis to severely limit the father's parental access. We must ensure stability and comfort for children. There is a presumption that continued time with both parents is best for children. More than ever in times of crisis, children need regular contact with both parents. Family relationships cannot be placed on hold indefinitely without serious risk of harm to children.

http://nycourts.gov/reporter/3dseries/2020/2020_20103.htm

CRIMINAL

FIRST DEPARTMENT

***People v George*, 5/14/20 – CPL 440.10 / IAC / HEARING**

The defendant appealed from an order of NY County Supreme Court, which summarily denied his CPL 440.10 motion to vacate a judgment of conviction of the crimes of 3rd degree criminal sale of a controlled substance (two counts) and 4th degree conspiracy. He was sentenced to one year in jail and one year of post-release supervision. The First Department reversed. The defendant's guilty plea subjected him to mandatory deportation. His motion charged that defense counsel was ineffective in failing to make any effort to negotiate a plea with less severe potential immigration consequences. Plea counsel did not consider immigration impact, according to a supporting affidavit. Where the alleged IAC was the failure to negotiate an immigration-friendly plea, the defendant must show a reasonable probability that the People would have made such an offer. Here, instead of pleading to the criminal sale counts, the defendant could have offered to plead guilty to two counts of 5th degree criminal possession and have received the same sentence. The sentence imposed here suggested that the People might well have agreed to a different, immigration-favorable disposition. There was no evidence that the prosecution sought drug sales convictions to secure a harsher immigration outcome. Moreover, the defendant might have agreed to a longer sentence. He had come to this country to avoid physical abuse in the Dominican Republic, and he had no place to live there. Ten letters of support from family and friends demonstrated his attachment to the local community. In sum, when the motion court advised the defendant that his guilty plea would subject him to deportation and he agreed to plead guilty, he did not know that there might be a way to achieve a disposition that would avoid deportation. Thus, the motion court abused its discretion in denying the 440 motion without a hearing. The Center for Appellate Litigation (Chloe Serinsky, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_02852.htm

THIRD DEPARTMENT

***Matter of Staropoli v Botsford*, 5/14/20 – COMPAS / CORRECTION**

The petitioner appealed from an order of Columbia County Supreme Court, which granted a motion to dismiss his Article 78 petition. He sought to compel DOCCS to modify information contained in the Crime and Sentence Information form and his COMPAS Risk and Needs Assessment Instrument. The Third Department modified. The CSI form inaccurately indicated that the petitioner was convicted of a crime involving deviate behavior. Further, the COMPAS instrument incorrectly indicated that he committed a sex offense with force. Inclusion of such references could be misleading and prejudicial to the petitioner's status in the future. Thus, he had stated a potentially valid cause of action, and remittal was required. The Legal Aid Society of NYC (Elizabeth Felber, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_02840.htm

FAMILY

SECOND DEPARTMENT

***Matter of Linares-Mendez v Cazanga-Payes*, 5/13/20 – SIJS / REVERSAL**

The mother appealed from an order of Dutchess County Family Court, which summarily dismissed her Article 6 petition. The Second Department reversed, reinstated the petition, and remitted. The mother sought sole custody of the subject child for the purpose of obtaining an order making specific findings so as to enable the child to petition for special immigrant juvenile status (SIJS). The petition alleged that the named respondent was the child's father. Family Court should not have summarily dismissed the petition based on the mother's failure to establish his paternity. A natural parent may seek legal custody of her own child. The fact that the respondent's paternity had not been established did not preclude the mother's petition. Insofar as the pleading contained allegations that were inconsistent with those in a prior custody petition, the court should have afforded her an opportunity to explain.

http://nycourts.gov/reporter/3dseries/2020/2020_02790.htm

***Matter of Eternity S. (Vanessa P.)*, 5/13/20 – NEGLECT / MODIFIED**

The parents appealed from neglect orders issued by Queens County Family Court. The father Lamonte S. and mother Vanessa P. were the parents of Eternity S., Omari S., and Omere S. The father was also the parent of Lamonte S., who resided with his mother Victoria L. The parents were arrested for attacking Victoria outside their home while all four subject children were inside. At the time, Victoria had come to the home of the father and Vanessa to pick up Lamonte S. The neglect findings based on the incident were not supported by a preponderance of the evidence. There was no proof that the children witnessed the altercation. A police officer testified that, when he entered the home, the two older children were not emotional and did not seem to understand what was going on. There was insufficient evidence to reflect that the children were placed in imminent danger of impairment. Carol Kahn and Heath Goldstein represented the mother and father, respectively.

http://nycourts.gov/reporter/3dseries/2020/2020_02798.htm

THIRD DEPARTMENT

***Matter of Arra L. (Christine L.)*, 5/14/20 – NEGLECT / DUE PROCESS**

The mother appealed from an order of Tioga County Family Court, which denied her motion to vacate a prior order. The Third Department reversed. The mother had four children, whom the petitioner alleged she had neglected. She attended several court conferences without the benefit of counsel and then was absent for one conference. After Family Court declared her in default and issued an order finding neglect, the mother moved to vacate the order. The appellate court found, as a threshold matter, that the subsequent dispositional order on consent did not moot the interlocutory appeal. A parent has a right to be present at every stage of an Article 10 proceeding as a matter of due process. But the right is not absolute. Family Ct Act § 1042 provides that a hearing may proceed in a

parent's absence, if the subject child is represented by counsel. The absent parent may thereafter move to vacate the resulting order and schedule a rehearing. Ordinarily, the movant would be required to demonstrate a meritorious defense. But such showing is not required where, as here, the default resulted from a deprivation of due process rights. The mother did not receive notice that a fact-finding hearing might be conducted. Moreover, Family Court erred in accepting the allegations in the petition as proven, based on the purported default. Lisa Miller represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_02829.htm

***Matter of Neilene P. v Lynne Q.*, 5/14/20 – GRANDMOTHER / VISITATION**

The mother appealed from an order of Saratoga County Family Court, which granted the application of the maternal grandmother for visitation with the two subject children. The Third Department affirmed. The mother had allowed the grandmother to be involved in the children's lives until sometime after the parties separated, when the grandmother made a hotline call about the mother. The mother then cut off all grandmother-grandchild contact. The father allowed contact to continue for another year, until the mother filed a petition against him. Under Domestic Relations Law § 72, an essential element of the standing inquiry was the extent of the grandparent-grandchild relationship. The credible proof demonstrated a close relationship, so the grandmother had standing. As to best interests, the mother did not offer any compelling explanation for her intense animosity toward the grandmother or any valid reason to deny visitation.

http://nycourts.gov/reporter/3dseries/2020/2020_02828.htm

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