CRIMINAL

COURT OF APPEALS

DECISION OF THE WEEK

People v Hinshaw, 9/1/20 – **UNLAWFUL AUTO STOP / REVERSAL**

The defendant appealed from a Fourth Department order affirming a judgment convicting him of 2nd degree CPW and marijuana possession, upon a guilty plea. In an opinion by Judge Wilson, the Court of Appeals reversed, granted suppression, and dismissed the indictment. The question presented was whether a State trooper had reasonable suspicion to stop the defendant's car based solely on a license plate check revealing that the vehicle had been impounded and stating that, "it should not be treated as a stolen vehicle hit—no further action should be taken based solely on the impound response." The majority found that the trooper had no objective basis to believe that the apparent removal of the car from an impound lot was indicative of criminality. Reasonable suspicion may not rest on equivocal behavior susceptible of an innocent interpretation. (Here the car had been lawfully released to the defendant two weeks earlier, after payment of parking tickets.) The COA also emphasized that an officer must have probable cause to stop a vehicle for a traffic infraction; but in concurring, Judge Stein objected that such issue was not properly before the court, since it was not addressed by the parties or the courts below. Judge Garcia dissented. Lucas Mihuta represented the appellant.
http://www.nycourts.gov/reporter/3dseries/2020/2020_04816.htm

SECOND DEPARTMENT

People v Brown, 9/2/20 – **440 / REVERSED / AGAIN**

The defendant appealed from an order of Queens County Supreme Court, which in effect denied his CPL 440.10 motion to vacate a judgment that convicted him of 2nd degree kidnapping and other crimes. The Second Department reversed and remitted. The motion asserted that counsel provided ineffective assistance in failing to inform the defendant that he faced the risk of life imprisonment as a persistent felony offender if he rejected the final plea offer of 4½ to 9 years. Initially, the motion was summarily denied, and the Fourth Department reversed and remitted. Following a hearing, Supreme Court concluded that the defendant did receive IAC, but it did not vacate the judgment of conviction. That violated CPL 440.10 (4), which commands that, upon granting a 440 motion, the court must vacate the judgment. The motion court further contravened the statute in rejecting the re-offered plea agreement and leaving undisturbed the defendant's convictions and sentences. The only permissible remedies were to dismiss the accusatory instrument, order a new trial, or take such other action as was appropriate in the circumstances. The lower court's reliance on *Lafler v Cooper*, 566 US 156 (federal standard for Sixth Amendment violations resulting in rejected plea offers), was misplaced, since NY provides greater protections. Appellate Advocates (Angad Singh, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_04849.htm

State of NY v Ronald S., 9/2/20 – **MHL ART. 10 / REVERSED / AGAIN**
In a proceeding pursuant to Mental Hygiene Law Article 10, the respondent appealed from an order of Nassau County Supreme Court, directing that he be committed to a secure treatment facility. The Second Department reversed. After a nonjury trial, the appellant was found to suffer from a mental abnormality and to require civil confinement. Upon a previous appeal, the Second Department remitted for a *Frye* hearing to determine whether the diagnosis of paraphilia not otherwise specified (nonconsent) had achieved general acceptance in the psychiatric and psychological communities, so as to make the expert testimony regarding such diagnosis admissible. The record failed to support the finding of general acceptance in the relevant communities. Hearing evidence established that the subject diagnosis, as well as a successor diagnosis, were rejected for inclusion in the DSM; and no clear definition or criteria for the diagnoses existed. Since the error was not harmless, a new trial was ordered. Richard Langone represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_04845.htm

People v Dyce, 9/2/20 – **SENTENCE VACATED / PREDICATE NOT EQUIVALENT**
The defendant appealed from a judgment of Kings County Supreme Court, convicting him of attempted 2nd degree assault and sentencing him as a second felony offender. The Second Department modified and remitted for resentencing. The predicate crime was a federal conviction for possession of a firearm with an obliterated serial number. Since such crime did not include the element that the firearm be operable, it was not equivalent to a NY felony and could not be used for the purpose of enhanced sentencing. Appellate Advocates (David Greenberg, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_04853.htm

People v Goodman, 9/2/20 – **SENTENCE MODIFIED / CONCURRENT TERMS**
The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 2nd degree assault and attempted 2nd degree CPW and sentencing him to consecutive determinate terms of six years, followed by PRS. The Second Department found that the terms must run concurrently, because at the plea allocution, no facts established that the defendant attempted to possess a loaded firearm before forming the intent to cause a crime with the weapon. *See* Penal Law § 70.25 (2). Appellate Advocates (Paul Skip Laisure, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_04857.htm

People v Upson, 9/2/20 – **SOCIAL MEDIA / EVIDENTIARY ERROR**
The defendant appealed from a Kings County Supreme Court judgment, convicting him of 2nd degree murder and another crime. The Second Department affirmed, but disagreed with the trial court's admission into evidence of certain content from various social media accounts. The People failed to present sufficient evidence that the subject accounts belonged to the defendant, that the photographs were accurate and authentic, or that the statements on one of the accounts were made by the defendant. *See People v Price, 29 NY3d 472*. The admission of such evidence was harmless.
http://nycourts.gov/reporter/3dseries/2020/2020_04876.htm

People v Corley, 9/2/20 – ***ANDERS* BRIEF / NEW COUNSEL**
The defendant appealed from an Orange County Court judgment, convicting him of 1st degree manslaughter and 2nd degree CPW, upon his plea of guilty. Assigned counsel filed an *Anders* brief, and the Second Department appointed new counsel. The brief submitted was deficient in that it failed to: provide the relevant colloquy/facts concerning the purported waiver of his right to appeal; evaluate whether the plea was advantageous in light of the potential availability of a justification defense; analyze whether the defendant had a non-frivolous claim that the sentence was excessive; and address whether he was deprived of the effective assistance of trial counsel.
http://nycourts.gov/reporter/3dseries/2020/2020_04851.htm

SECOND CIRCUIT

Rodriguez v Gusman, 8/31/20 – **DELIBERATE INDIFFERENCE / REINSTATED**
The petitioner appealed from a District Court–NDNY order, which administratively closed his civil rights suit after he was deported to the Dominican Republic. That was error. The Second Circuit vacated and remanded. Given the fundamental principle that, where there is a legal right there is a legal remedy, administrative closure of a case should be a last resort. A strict standard must apply: that all other alternatives were virtually impossible or that continuing the litigation would significantly interfere with court operations or unreasonably burden the adversary. In the initial complaint, the petitioner alleged that the failure of officials at the Eastern Correctional Facility to respond to his medical complaints led to his stroke and that such deliberate indifference violated the Eighth Amendment. After pro bono counsel (Paul, Weiss, Rifkind) was appointed, an amended complaint added a First Amendment claim—without justification, the petitioner had been transferred to a remote prison and subjected to new constraints on legal calls. Administrative closure should not insulate officials from liability for violating the civil rights of prisoners or immigrants subject to removal. In the instant case, such drastic action was unnecessary, given vigorous representation by pro bono counsel; the availability of video depositions and trial testimony; and the potential to medically examine the petitioner via telemedicine or by a physician in the Dominican Republic.
https://www.ca2.uscourts.gov/decisions/isysquery/9cb09317-d30b-4c3f-97b2-c913e67e7650/2/doc/19-2213_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/9cb09317-d30b-4c3f-97b2-c913e67e7650/2/hilite/

FAMILY

SECOND DEPARTMENT

Matter of Khadijah S. (Calondra A.), 9/2/20 – **DERIVATIVE NEGLECT / AFFIRMED**
The mother appealed from an Article 10 order of disposition of Kings County Family Court. The challenged order found that the mother derivatively neglected the subject children, who were placed with their adult sister until completion of the next permanency hearing. The appeal from so much of the order as directed placement was dismissed as academic, because the period of placement had expired. However, the appeal from the part of the order that brought up for review the fact-finding adjudication regarding derivative neglect was reviewable. Such ruling constituted a permanent and significant stigma, which could indirectly impact the mother's status in future proceedings. On the merits, overwhelming evidence demonstrated that the mother failed to protect two daughters from sexual abuse by their stepfather, thus demonstrating a fundamental defect in her understanding of the duties of parenthood.
http://nycourts.gov/reporter/3dseries/2020/2020_04842.htm