State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Wednesday, October 16, 2013

No. 196 JFK Holding Company LLC v City of New York

In 2002, the Salvation Army began operating a homeless shelter in the Carlton House Hotel in Queens on behalf of the New York City Department of Homeless Services (DHS). The Salvation Army leased the hotel from JFK Holding Company and J.F.K. Acquisition Group (collectively, JFK), and the Salvation Army's obligations under the lease, including rent, were funded through its parallel services agreement with DHS and the City. The lease acknowledged that the Salvation Army entered into it "solely in order to enable Tenant to fulfill its obligations to [DHS] under the Services Agreement," and it limited the Salvation Army's liability for breaches of the lease to the amounts it received from DHS for operation of the shelter. The same paragraph of the lease provided that, if DHS failed to pay amounts it owed under the services agreement, the Salvation Army would "use commercially reasonable efforts to enforce its rights" against DHS. The lease could be terminated if the City terminated the services agreement, provided that the Salvation Army paid JFK a $10 million early termination fee and restored the hotel to its pre-lease condition. Conditions at the shelter deteriorated rapidly and the City closed it in 2005, terminating the services agreement and paying the $10 million termination fee to the Salvation Army, which paid it over to JFK.

JFK brought this breach of contract action against the Salvation Army and the City based largely on their failure to restore the hotel to pre-lease condition. Supreme Court dismissed the suit. Regarding the claims against the Salvation Army, the court said its liability "is specifically limited by the Lease to any amounts paid to it from the City," a limitation that it said applies to the Salvation Army's alleged failure to "use commercially reasonable efforts to enforce its rights" against DHS to obtain funds to restore the hotel.

The Appellate Division, First Department reinstated that claim against the Salvation Army in a 3-2 decision, finding JFK "sufficiently pleaded a cause of action for breach of the lease." It said, "The parties' intent, as reflected in the lease, was to impose on the Salvation Army the obligation to take all commercially reasonable steps, including seeking funds to which it was entitled under the services agreement..., to satisfy its obligation to restore the property to pre-lease condition." Regarding the provision limiting the Salvation Army's liability to amounts paid to it by the City, the court said, "The contractual limitation on liability was obviously predicated upon the Salvation Army's having fulfilled its contractual duty to use commercially reasonable efforts to secure payments from DHS pursuant to the services agreement." There are triable questions of fact as to whether the Salvation Army made such efforts, it said.

The dissenters argued that the plaintiffs "could not recover more for damages than the $10 million termination fee plaintiffs had already received because of the explicit limitation on damages contained in the lease. Moreover, the Salvation Army cannot be held liable for not trying to obtain the cost of restoring the hotel from DHS." The provision requiring it to use commercially reasonable efforts to enforce its rights "does not apply here because the Salvation Army did not have any right to recover posttermination restoration costs from DHS."

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To be argued Wednesday, October 16, 2013

No. 197 Rocky Point Drive-In, L.P. v Town of Brookhaven

In February 2000, the Town of Brookhaven announced it would hold a March hearing to consider rezoning a 17.5-acre parcel, the site of a former drive-in movie theater and golf driving range, from "J Business 2" (J-2) to a more restrictive "Commercial Recreation" (CR) zone. The property owner at that time, Sans Argent, Inc., applied in March 2000 for site plan approval for construction of a 4-acre retail center anchored by a Lowe's home improvement store. Among other developments in this matter, the Town Board voted after the public hearing to rezone the property to CR. Sans Argent protested the rezoning, triggering a super majority requirement (approval of six of the seven Town Board members). The Board voted five to one, with one recusal, to rezone the parcel. It declared the property rezoned to CR and stopped processing the site plan application. Sans Argent challenged the action in Supreme Court, which declared the rezoning resolution null and void. The Board again voted 5-1 to rezone the property, Sans Agent sued, and the court again ruled the rezoning null and void. In June 2002, the Town Board amended the Town Code to allow a simple majority vote in such cases, and in October 2002, it approved the CR rezoning. Meanwhile, the Town designated the Zoning Board of Appeals (ZBA), instead of the Planning Board, as lead agency to review the Lowe's project under the State Environmental Quality Review Act (SEQRA) in April 2000, but did not send it the environmental assessment form until November 2000. The ZBA issued a positive declaration in January 2001 and completed the SEQRA review in October 2002.

Rocky Point Drive-In, L.P., which acquired the property in 2002, brought this action in November 2002 for a judgment declaring that the site plan application must be reviewed under the J-2 zoning that was in effect when it was filed. It argued the "special facts exception" applied because the Town intentionally delayed the processing of the application and SEQRA review.

Supreme Court granted the declaratory judgment to Rocky Point, finding the Town's repeated attempts to rezone the property and its handling of the SEQRA review caused "significant delays" that "prevented the plaintiff from having the opportunity to have its application reviewed in a timely manner." It also said Rocky Point "demonstrated that it was treated differently from other applicants and therefore the special facts exception is applicable."

The Appellate Division, Second Department reversed and declared Rocky Point was not entitled to have its application reviewed under the J-2 zoning rules. It said, "The record does not support the determinations of undue delay and bad faith on the part of the defendants..., or that the defendants selectively enforced the prohibition against commercial centers in J-2 zoning districts, targeting the plaintiff's application with animus...."

Rocky Point argues the Appellate Division applied the wrong standard by requiring it "to prove that the defendant's delays and roadblocks were motivated by malice or bad faith.... special facts relief is available whether the governmental delays were the product of bad faith or malice, or were merely negligent." In any event, it says the evidence proves the Town's delays and selective enforcement "were willful and deliberate, thus clearly satisfying even the Appellate Division's incorrect test."

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To be argued Wednesday, October 16, 2013

No. 198 People v Julio Velez

In December 2004, Julio Velez was sentenced to 20 years to life in prison for two burglaries committed in Yonkers in November 2003. Eleven days after the sentencing, the Yonker's Police Department matched his fingerprint to a latent print that had been found at the scene of a prior burglary in October 2003. The Westchester County District Attorney's Office initially chose not to charge Velez with that crime, but prosecutors reversed course in February 2007 after learning the Appellate Division, Second Department had granted him a new suppression hearing in his appeal stemming from the November 2003 burglaries. Fearing that Velez's life sentence was in jeopardy, prosecutors reopened his case and, in May 2007, indicted him for the October 2003 burglary. Velez moved to dismiss the indictment due to prosecutorial delay.

County Court denied the motion based largely on a prosecutor's testimony that her office initially chose not to indict Velez in order to conserve prosecutorial, judicial and police resources, and to avoid inconvenience to civilian witnesses, since he was already serving a life sentence. The court attributed the first 14 months of delay to the Police Department's inability to process the latent print, a period in which it was attempting to replace its retired fingerprint analyst. As for the remaining 29 months of delay, it said, "The People have put forth several logical reasons why they chose not to seek an indictment after the defendant received a life sentence on another case. These reasons amount to a good faith exercise of prosecutorial discretion. Once prosecutors felt the defendant's life sentence was in jeopardy, they promptly sought and obtained the instant indictment." After a jury trial, Velez was convicted of second-degree burglary and lesser crimes and was sentenced to a concurrent term of 21 years to life.

The Appellate Division, Second Department affirmed. "County Court properly denied the defendant's motion to dismiss the indictment because of a delay between the burglary and his indictment," it said. "The prosecution established good cause for the delay and, therefore, the defendant's right to due process was not violated.... In any event, the delay did not prejudice the defendant."

Velez argues that "excessive and inexcusable pre-arrest and pre-indictment delays deprived [him] of due process and violated the public's right to timely prosecution." He says, "[W]hether or not [he] was or was not serving a prison sentence in another matter is irrelevant to his due process and speedy trial rights to timely arrest and timely indictment in the case on appeal. Unless the prosecutor had a reasonable excuse..., her intentional decision not to arrest and indict him for ... 3½ years constituted unreasonable delay."

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To be argued Wednesday, October 16, 2013

No. 199 People v Thomas Brown
No. 200 People v Joseph Harris
No. 201 People v Darnell Carter

A shared issue here is whether consecutive sentences may be imposed for murder and criminal possession of a weapon when the possession charge does not require proof of intent to use the weapon unlawfully against another. These three defendants, convicted of simple possession of a loaded gun outside their home or place of business and of using that gun to shoot the victim, argue their sentences must be concurrent because the offenses were committed through a single act.

Thomas Brown was found guilty of fatally shooting Jarvis Bradford after a verbal altercation outside of a Manhattan nightclub in June 2005. He was sentenced to consecutive terms of 25 years to life for second-degree murder and 3 years for third-degree weapon possession, for an aggregate term of 28 years to life. Joseph Harris was found guilty of wounding Leonard Lewis in a Manhattan shooting in September 2008. He was sentenced to consecutive terms of 25 years to life for second-degree attempted murder and 20 years to life for second-degree weapon possession, for an aggregate term of 45 years to life. Darnell Carter was found guilty of shooting Robert Biggs to death during a robbery in Niagara Falls in March 2009. He was sentenced to consecutive terms of 25 years to life for second-degree murder and 15 years for second-degree weapon possession, for an aggregate term of 40 years to life.

The Appellate Division affirmed -- the First Department in Brown and Harris, the Fourth Department in Carter -- holding that consecutive sentences were permissible. In Harris, the First Department said the weapon charge "has no intent element; accordingly, the issue of whether consecutive sentences require separate unlawful intents ... is not implicated here. The evidence clearly established that defendant was carrying the weapon at the time he encountered and shot the victim. Accordingly, the act of possession was complete before the shooting ... and consecutive sentences were authorized by Penal Law § 70.25(2)."

The defendants argue that concurrent sentences are required because their possession of a gun and shooting of the victim were simultaneous and part of the same transaction. They also raise a policy issue based on People v Wright (19 NY3d 359), which addressed a weapon possession statute requiring proof of "intent to use the [weapon] unlawfully against another," and held that consecutive sentences for possession and murder was not authorized unless "defendant's possession was marked by an unlawful intent separate and distinct from his intent to shoot the victims." Defendants say there is no sound reason to punish simple possession more harshly than possession with unlawful intent.

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For respondent: Manhattan Assistant District Attorney Ellen Stanfield Friedman (212) 335-9000
For appellant Carter: Mary-Jean Bowman, Lockport (716) 439-7071
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