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 Thursday, May 1, 2014 (arguments begin at noon)

No. 102 Capruso v Village of Kings Point (Action No. 1)
State of New York v Village of Kings Point (Action No. 2)

In the late 1920s, the Village of Kings Point acquired 173 acres for the purpose of creating a public park known as Kings Point Park, most of which is densely forested and contains wetlands, hiking and skiing trails, ball fields, picnic areas and playgrounds. In 1936, the Village began leasing the park to the Great Neck Park District. In 1946, the Village and Park District amended the lease to exclude a 5.5-acre parcel of Kings Point Park known as the "Western Corner," which the Village has used for storage of highway materials, dumping of tree stumps, a police pistol range and other non-park purposes. In November 2008, the Village approved a plan to move its Department of Public Works (DPW) facilities to the Western Corner, which would entail construction of a 12,000-square foot building, removal of old growth trees, and regrading and paving a significant portion of the parcel, among other things.

Daniel Capruso and two other residents living near the Western Corner brought Action No. 1 against the Village and its officials in March 2009, contending the Village's current use and future plans for the parcel violate the public trust doctrine, which requires approval by the State Legislature to use public parkland for non-park purposes. The Village moved to dismiss the suit as barred by the six-year statute of limitations. Supreme Court denied the Village's motion and granted the plaintiffs' motion for a preliminary injunction, on condition they post a $400,000 undertaking. In September 2009, with the plaintiffs unable to post the undertaking, the State brought Action No. 2 against the Village, as parens patriae on behalf of its citizens. The State sought a declaration that the entire park, including the Western Corner, is dedicated parkland, and sought an injunction barring the Village from proceeding with its proposed DPW project without legislative approval. Supreme Court denied the Village's motion to dismiss Action No. 2 as time-barred, and granted the State's motion for a preliminary injunction.

The cases were consolidated and the Appellate Division, Second Department affirmed. The challenge to the Village's longstanding use of the parcel for non-park purposes in Action No. 1 is timely because such conduct "is a continuing wrong that the municipality has the ability to control and abate," it said. The challenges to the proposed DPW project in both actions are timely because they were brought within six years of the Village's public announcement of the plan in November 2008.

Supreme Court subsequently granted summary judgement to the plaintiffs in both actions, declaring the Western Corner is dedicated parkland protected by a public trust, permanently enjoining the Village from proceeding with the DPW project, and ordering it to discontinue all non-park uses of the parcel. The Second Department affirmed.

The Village argues both actions are time-barred because they "belatedly challenge Village Board actions taken in 1938 and 1946" to approve leases reserving the "DPW site" for its non-park use. It says the "continuing wrong" doctrine does not apply because it has "openly and notoriously" used the site for non-park purposes since at least 1946 and, in any case, it should not apply to "public acts of a legislative body" as a matter of public policy. The proposed DPW facility is not a new use, triggering a new limitations period, because it is "nothing more than a change in the nature and scope of an ongoing non-park use of the same park land."

For appellants Kings Point et al: John M. Brickman, Great Neck (516) 829-6900
For respondents Capruso et al: Reed W. Super, Manhattan (212) 242-2355
For respondent State: Assistant Solicitor General Bethany A. Davis Noll (212) 416-6184

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To be argued Thursday, May 1, 2014 (arguments begin at noon)

No. 103 People v Joseph Dumay

A police officer in Brooklyn arrested Joseph Dumay in August 2009 after Dumay stood behind his patrol car and struck the trunk with his hand. Dumay was charged with a misdemeanor count of obstructing governmental administration in the second degree, among other things. In the accusatory instrument, the arresting officer said Dumay "slammed the trunk of deponent's radio mounted patrol vehicle with an open hand and prevented said vehicle from moving by standing behind it and preventing deponent from patrolling the neighborhood." In a plea proceeding, defense counsel waived prosecution by information, and Dumay pled guilty to the obstruction charge in exchange for a sentence of 15 days in jail. On appeal, he argued the accusatory instrument was jurisdictionally defective because it did not include any allegation that the police communicated their need for him to move so they could leave and, thus, failed to establish that he intended to prevent them from performing their duties.

The Appellate Term, 2nd, 11th and 13th Judicial Districts, affirmed. It found Dumay validly waived his right to prosecution by information and, therefore, the accusatory instrument need satisfy only the facial sufficiency standard that applies to misdemeanor complaints. "'[A]n accusatory instrument must be given a reasonable, not overly technical reading'...," it said. "When the misdemeanor complaint herein is given such a reading, the 'fair implication' ... of uts averments support, or tend to support, the charge of obstructing governmental administration in the second degree."

Dumay argues the accusatory instrument was facially insufficient because it contained no allegations showing his intent to physically interfere with the police. "There were absolutely no allegations that any police officer communicated in any way to appellant that the officer needed him to move so that they could move their car out of that space and that appellant's location was preventing the officer from doing so. Indeed, there was no allegation that the police spoke to him at all." He says the instrument also failed to allege that he actually interfered with the officer's patrol. The allegations "show merely that appellant was blocking the vehicle in only one direction. They do not show that he was preventing the car from moving in all directions and that the officer driving the police vehicle could not have exited the spot by driving forward or moving around appellant."

For appellant Dumay: Amy Donner, Manhattan (212) 577-3487
For respondent: Brooklyn Assistant District Attorney Adam M. Koelsch (718) 250-3823

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To be argued Thursday, May 1, 2014 (arguments begin at noon)

No. 104 People v Sharmelle Johnson *(papers sealed)*

In February 2008, the complainant spent a night drinking on the Upper East Side. Due to her intoxication, she did not remember leaving the bar, nor did she have any recollection of a sexual encounter after she left. Walking home several hours later, she realized both her legs were in one pant leg and her purse and cell phone were missing. Later that day, suspecting she had been raped, she went to a hospital for examination. DNA from semen recovered with a rape kit matched Sharmelle Johnson, who also had her cell phone. Johnson ultimately told police that he found her on the sidewalk in front of the bar, helped her up and took her to the lobby of a nearby building, where they had sex.

In exchange for a four-year prison sentence, Johnson pled guilty to second-degree rape pursuant to Penal Law § 130.30(2), which applies when a defendant has sexual intercourse with a "person who is incapable of consent by reason of being ... mentally incapacitated." Under Penal Law § 130.00(6), a person is "mentally incapacitated" if she "is rendered temporarily incapable of appraising or controlling [her] conduct owing to the influence of a narcotic or intoxicating substance administered to [her] without [her] consent...." At his plea allocution, Supreme Court asked, "Is it true, sir, that you knew she was too drunk to really make a decision about whether she did or did not want to have sex?" Johnson answered, "Yes." The court asked, "You could see she was mentally incapacitated apparently from drinking, is that right?" Johnson said, "Yes."

The Appellate Division, First Department affirmed on a 3-2 vote, rejecting Johnson's claim that his plea was involuntary because his allocution negated a key element of the crime -- that the victim is intoxicated "without [her] consent." The court said, "[T]he allocution's failure to address how the victim became intoxicated does not warrant vacatur of the plea. Indeed, 'all of the circumstances surrounding the plea' demonstrated that defendant 'understood the nature of the charges against him'.... Defendant's extensive experience with the criminal justice system, the favorable terms of the plea bargain, the allocution itself and the protracted history of this case -- including defendant's prior plea -- all indicate that defendant entered his plea voluntarily, knowingly and intelligently...."

The dissenters said the allocution negated an essential element of the crime, the victim's lack of consent to intoxication, because the "allocution and all of the pre-plea evidence ... indicates that the victim became intoxicated when she voluntarily consumed alcohol before defendant encountered her...." Supreme Court "indicated its own misunderstanding of the statutory definition of 'mentally incapacitated' when it asked defendant whether he had encountered the victim in an intoxicated state, and ... whether he knew that 'she was too drunk to really make a decision about whether she did or did not want to have sex'.... It is difficult to understand the majority's position that defendant's plea was knowing and voluntary when the court itself did not understand the nature of the charge to which defendant was pleading." They said the court's failure to explain "the critical element of 'mentally incapacitated'" requires vacatur of the plea, "especially under these circumstances where the technical, statutory definition of the crime does not conform with its common-sense meaning."

For appellant Johnson: Lauren Stephens-Davidowitz, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Andrew E. Seewald (212) 335-9000

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To be argued Thursday, May 1, 2014 (arguments begin at noon)

No. 105 People v Roman Baret

Roman Baret argues that his 1996 drug conviction should be vacated under Padilla v Kentucky (559 US 356 [2010]), in which the U. S. Supreme Court held that the right to effective assistance of counsel includes the right to be advised of the deportation consequences of a guilty plea. The primary question is whether Padilla is retroactive under New York law.

Baret, an immigrant from the Dominican Republic, pled guilty in 1996 to criminal sale of a controlled substance in the third degree in Bronx Supreme Court, in exchange for a sentence of two to six years in prison. He absconded before sentencing, but the promised sentence was imposed when he was apprehended in 2004. His direct appeals were exhausted in 2008. In 2010, after the Supreme Court issued Padilla, Baret filed this
CPL 440.10 motion to vacate his conviction, claiming he received ineffective assistance of counsel because his attorney did not inform him prior to his plea that it would subject him to deportation. He has since been ordered deported. Supreme Court denied the motion, saying it would not apply Padilla retroactively.

The Appellate Division, First Department reversed in 2012, holding that Padilla is retroactive. "We conclude that Padilla did not establish a 'new' rule under Teague; rather, it followed from the clearly established principles of the guarantee of effective assistance of counsel under Strickland, and 'merely clarified the law as it applied to the particular facts'...," the court said. "Rather than overrule a clear past precedent, Padilla held that Strickland applies to advice concerning deportation, whether it be incorrect advice or no advice at all...." The court remitted the matter for a hearing to determine "what advice, if any, counsel gave defendant regarding the immigration consequences of his plea," and whether Baret was harmed by it.

After the First Department's decision, the U.S. Supreme Court held in Chaidez v United States (133 S Ct 1103 [2013]) that Padilla is not retroactive under federal law.

The prosecution argues, "Under Chaidez v United States, the Appellate Division's decision applying Padilla v Kentucky to defendant's 1996 conviction is wrong as a matter of law, and must therefore be reversed." Baret asks this Court to rule that Padilla is retroactive in New York.

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