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, May 6, 2015

No. 88 People v William Middlebrooks *(papers sealed)*
No. 89 People v Fabrice Lowe *(papers sealed)*

The defendants in these separate appeals, who were 18 years old when the crimes were committed, argue that their sentencing courts erred in failing to consider whether they should be granted youthful offender status under CPL 720.10 and 720.20. Both cite People v Rudolph (21 NY3d 497 [2013]), which held that, "where a defendant is eligible to be treated as a youthful offender, the sentencing court 'must' determine whether he or she is to be so treated[,] ... even where defendant has failed to ask to be treated as a youthful offender, or has purported to waive his or her right to make such a request." The question is whether the defendants were "eligible" for YO status.

William Middlebrooks was charged with carrying out four gunpoint robberies with accomplices in and around Buffalo in 2010. He pled guilty to three counts of first-degree robbery and one of second-degree robbery in Erie County Court, and was sentenced to 15 years in prison. He did not raise the issue of YO status at his plea or sentencing.

Fabrice Lowe was arrested with three other men during a traffic stop in Syracuse in 2010, after police officers found a loaded .22 caliber handgun under the driver's seat. Lowe had been sitting in the back seat behind the driver. He was convicted by a jury of criminal possession of a weapon in the second degree and sentenced to 10 years in prison, which the Appellate Division reduced to a 5-year term. Onondaga County Court summarily denied his request for youthful offender consideration.

The Appellate Division, Fourth Department affirmed in both cases. Since Middlebrooks and Lowe were each convicted of an "armed felony," CPL 720.10(2) would make them ineligible for YO status unless the sentencing court, under CPL 720.10(3), found there were "mitigating circumstances that bear directly upon the manner in which the crime was committed" or found the defendant was not the sole perpetrator and his "participation was relatively minor." In Middlebrooks, the Appellate Division said he "offered no evidence of mitigating circumstances..., nor did he specify any facts indicating that his participation in those crimes was 'relatively minor'.... Because defendant was not eligible for youthful offender treatment, the court did not err in failing to make a youthful offender determination...."

Middlebrooks and Lowe argue that, under Rudolph, the courts should have considered the mitigating circumstances and minor participation factors in CPL 720.10(3) to determine whether they were eligible for youthful offender status despite their armed felony convictions. Middlebrooks says, "Unless this Court authorizes a limited extension of Rudolph to require sentencing courts to consider the factors in CPL 720.10(3) in every case involving a young offender, the full benefits conferred by the youthful offender statute cannot be effectuated."

For appellant Middlebrooks: Barbara J. Davies, Buffalo (716) 853-9555
For respondent: Erie County Assistant District Attorney David A. Heraty (716) 858-2424
For appellant Lowe: Philip Rothschild, Syracuse (315) 422-8191 ext. 0179
For respondent: Onondaga County Ch. Asst. District Attorney James P. Maxwell (315) 435-2470

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No. 90 El-Dehdan v El-Dehdan, a/k/a Sam Reed *(papers sealed)*

In this divorce action, Supreme Court's referee issued a determination on equitable distribution in December 2009, which awarded two parcels of real property to Jacqueline El-Dehdan (El-Dehdan), one in Brooklyn and one in Queens. El-Dehdan later learned her former husband, Salim El-Dehdan, also known as Sam Reed (Reed), had already disposed of both properties. Reed sold the Brooklyn parcel for $950,000 in March 2009. He transferred the Queens parcel to a third party in April 2009, apparently without consideration. In January 2010, Supreme Court issued an order directing Reed to "deposit immediately" with El-Dehdan's attorney the net proceeds of the March 2009 transfer (about $776,046). When Reed did not comply, El-Dehdan moved to hold him in civil and criminal contempt. In opposition, Reed submitted an affidavit stating that he no longer possessed the proceeds of the March 2009 transfer. At the contempt hearing before the referee, Reed conceded that he received the January 2010 order and that he did not deposit any money with El-Dehdan's attorney pursuant to it. Reed invoked his constitutional privilege against self-incrimination in response to all questions about the proceeds of the March 2009 transfer and about whether he had an account at the bank to which the proceeds were wired. The referee found Reed had dissipated marital assets, but said El-Dehdan failed to meet her burden to establish either civil or criminal contempt.

Supreme Court rejected the referee's report and held Reed in civil, but not criminal contempt. It found he was aware of, and disobeyed the January 2010 order to turn over the proceeds of the Brooklyn sale. A party may claim the Fifth Amendment privilege in a civil proceeding, the court said, "but the 'privilege does not relieve the party of the usual evidentiary burden attendant upon a civil proceeding; nor does it afford any protection against the consequences of failing to submit competent evidence.'"

The Appellate Division, Second Department affirmed, ruling El-Dehdan was not required to prove that Reed willfully disobeyed the court order. While criminal contempt requires proof of "willful" misconduct, it held that willfulness is not an element of civil contempt. El-Dehdan "met her burden of establishing ... that the defendant was fully aware of the January 2010 order, which was a lawful and unequivocal mandate of the court, and that he disobeyed that mandate...," and the burden then "shifted to [Reed] to offer competent, credible evidence of his inability to pay...." Instead, Reed invoked his Fifth Amendment right and refused to answer questions about the sale proceeds, it said, and Supreme Court was permitted to draw an adverse inference from his refusal. "'[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them'...."

Reed argues that "the difference between civil and criminal contempt is not the existence of willfulness, but the level of willfulness required.... Without a willfulness element [for civil contempt], defendants like Mr. Reed could be thrown in jail for simply failing to pay court-ordered debts." He says federal and state constitutional protections against self-incrimination "do not permit a negative inference from a defendant's invocation of his Fifth Amendment rights where both civil and criminal penalties are being sought in the same proceeding," a situation that forced him to choose to "protect against civil liability, and testify as to his lack of funds; or protect against criminal liability, and assert his privileges under the Fifth Amendment."

For appellant Salim El-Dehdan (Reed): Donna Aldea, Garden City (516) 745-1500
For respondent Jacqueline El-Dehdan: Karina E. Alomar, Ridgewood (718) 456-1845

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No. 91 People v Jose Inoa

Jose Inoa was charged with murder for hire, conspiracy and other crimes for allegedly shooting Edward Contreras to death and wounding an associate in a Washington Heights grocery store in January 2005. Police investigators said Oman Gutierrez had been the leader of a marijuana distribution ring in the neighborhood until he was imprisoned in 1999 and Contreras took control of the territory. When Gutierrez was released from prison in December 2004, investigators said he conspired with former members of his drug operation to regain control of the territory and recruited Inoa to kill Contreras.

At trial, the prosecution relied heavily on recorded telephone conversations involving Inoa, Gutierrez and other alleged conspirators. Many of the conversations were coded and oblique and Eldia Duran, a participant in the conspiracy who became a cooperating witness for the prosecution, explained them for the jury. Supreme Court also allowed the prosecution to call Detective Rolando Rivera as "an expert in decoding phone conversations" to explain the recordings. Defense counsel repeatedly objected and moved for a mistrial, saying, "Detective Rivera was qualified as an expert in coding without having to articulate a methodology.... [H]e's not only being given the [imprimatur] of an expert but, ultimately, all he's doing is summing the People's case. He's simply a glorified fact witness." Inoa was convicted of murder in the first and second degrees, attempted murder, conspiracy in the second degree, and other charges. He was sentenced to an aggregate prison term of 73⅓ years to life.

The Appellate Division, First Department affirmed, saying the trial court "properly exercised its discretion in permitting a detective to testify as an expert with regard to coded or unexplained language" in the recorded calls, "and the detective did not go beyond the proper bounds of expert testimony.... The expert's opinion was based on 'facts in evidence or on those personally known and testified to by the expert'..., and he properly relied on information 'of a kind accepted in the profession as reliable' or provided by 'a witness subject to full cross-examination'...."

Inoa argues, "Detective Rivera's 'expert' testimony extended far beyond the scope of his area of expertise, often relied on hearsay sources, bolstered the key testimony of witness Duran, and served to make him a virtual 'summary' witness of the People's entire case, thoroughly usurping the jury's role." Under the First Department's ruling, he says, "Once a police investigator has been dubbed an 'expert,' he or she will no longer be constrained by the normal rules of evidence, particularly those against bolstering and hearsay."

For appellant Inoa: John R. Lewis, Sleepy Hollow (914) 332-8629
For respondent: Manhattan Assistant District Attorney Christopher P. Marinelli (212) 335-9000

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No. 92 Brown & Brown, Inc. v Johnson

Theresa A. Johnson was hired by Brown & Brown of New York, Inc. (BBNY), an insurance broker, in December 2006 to provide actuarial analysis as its vice president of underwriting. She had been director of actuarial services for Blue Cross/Blue Shield in Buffalo. On her first day of work at BBNY, Johnson signed a number of documents including an Employment Agreement, which contained three covenants: a non-solicitation clause prohibiting her from soliciting or serving any BBNY client for two years after termination of her employment; a clause prohibiting her from disclosing confidential information; and a clause prohibiting her from inducing other workers to leave BBNY's employment. The agreement provided that it was to be governed by Florida law, which favors enforcement of restrictive covenants. BBNY terminated Johnson's employment in February 2011, and she was soon hired by Lawley Benefits Group, LLC. Six months later, BBNY and its corporate parent, Florida-based Brown & Brown, Inc. (BBI), brought this action against Johnson and Lawley, including a breach of contract claim against Johnson for allegedly violating the non-solicitation agreement, among other things. The defendants moved for summary judgment dismissing the suit.

Supreme Court found the Florida choice-of-law provision was unenforceable because the employment agreement bore no reasonable relationship to Florida. The court granted the defense motion to dismiss the breach of contract claim against Johnson, "except to the extent that Plaintiffs can establish that [she] violated the non-solicitation provision ... through trading on or using client relationships she initially developed while working for" BBNY.

The Appellate Division, Fourth Department modified by dismissing the entire claim for breach of the non-solicitation clause. It said the Florida choice-of-law provision "is unenforceable because it is 'truly obnoxious' to New York public policy," in part because Florida law prohibits courts from considering the hardship a restrictive covenant imposes on an employee, while "under New York law, a restrictive covenant that imposes an undue hardship ... is invalid and unenforceable for that reason...." It found the non-solicitation clause was overbroad and rejected the plaintiffs' request that it be partially enforced to the extent they could show that Johnson solicited clients she met while working at BBNY. "[P]artial enforcement may be justified 'if the employer demonstrates an absence of overreaching [or] coercive use of dominant bargaining power...,'" it said, citing BDO Seidman v Hirshberg (93 NY2d 382). "Here, it is undisputed that Johnson was not presented with the Agreement until her first day of work with plaintiffs, after [she] already had left her previous employer. Plaintiffs have made no showing that, in exchange for signing the Agreement, Johnson received any benefit from plaintiffs beyond her continued employment...."

BBNY and BBI argue that, under Florida or New York law, the non-solicitation clause should be partially enforced to limit its application to clients Johnson worked with while employed by BBNY. They say Florida law should govern that determination, since the provisions of Florida law "which the Fourth Department characterized as 'truly obnoxious' to New York policy are unrelated to the issue of partial enforcement...;" but even under New York law, "courts routinely grant partial enforcement of non-solicitation covenants ... where, as here, the employer seeks no more than to protect a legitimate business interest."

For appellants Brown & Brown et al: Alun W. Griffiths, Manhattan (212) 818-9200
For respondents Johnson et al: Preston L. Zarlock, Buffalo (716) 847-8400