State of New York
Court of Appeals

To be argued Wednesday, May 17, 2023

No. 45 Matter of Owner Operator Independent Drivers Association, Inc. v New York State Department of Transportation

The Owner Operator Independent Drivers Association (OOIDA), which represents owners and drivers of commercial vehicles, and three commercial truckers brought this suit against the State Department of Transportation and other agencies to challenge New York's adoption in 2019 of a rule promulgated by the Federal Motor Carrier Safety Administration (FMCSA) requiring the installation of electronic logging devices (ELDs) on commercial vehicles. ELDs use GPS tracking to record more accurate information about a trucker's driving time and approximate location than the paper logbooks used in the past and, thus, to better enforce safety restrictions on the number of hours truckers may drive without rest. The ELD data must be produced on demand for law enforcement officers conducting roadside safety inspections. OOIDA contends that the ELD-aided inspections authorized by the rule are warrantless searches that violate truck drivers' right to privacy under the New York Constitution.

Supreme Court dismissed the suit, holding that searches authorized by the ELD rule are valid under the exception to the warrant requirement for administrative searches. It said a driver "who steps into a rig equipped with an ELD is on notice of the diminished expectation of privacy that comes with the operation of such a vehicle.... [T]he regulatory scheme is designed to further a goal that has been in existence for decades: to reduce accidents attributable to driver fatigue by limiting the amount of time a commercial driver can spend behind the wheel," not to provide "a pretext for warrantless searches for evidence of criminality."

The Appellate Division, Third Department affirmed, holding that "commercial trucking is a pervasively regulated industry pursuant to which an administrative search may be justified" and that the ELD rule furthers "a vital and compelling interest" in highway safety. "The FMCSA has estimated that 755 fatalities and 19,705 injuries occur each year because of 'drowsy, tired, or fatigued [commercial] drivers'" and it found "that the prior system of documenting hours of service through paper records was inadequate due to the widespread and longstanding problem of falsification of such records...." the court said. "In our view, automatic recording and warrantless inspection of those records offer an eminently reasonable means of combatting this problem." It said, "Both the type of information recorded by the ELD and the scope of a search permitted by the rule are narrow.... The scope of the intrusion is also tailored to a determination of whether there has been compliance with hours of service requirements.... Finally, the rule puts drivers and motor carriers on notice of the prospect of the inspection...."

OOIDA argues that "commercial trucks are not mere business premises.... The ELD Rule allows the government to, without a warrant, search a truck driver's home away from home and location – privacy interests that far exceed the 'minimal' interest found in those commercial premises that are subject to administrative searches. Additionally, the ELD Rule does not provide the procedural protections required of administrative searches that would limit officer discretion as a substitute for a warrant" and "ELD searches are designed to enforce the hours-of-service rules, which carry criminal penalties under New York law," an improper purpose for such searches.

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State of New York
Court of Appeals

To be argued Wednesday, May 17, 2023

No. 46 People ex rel. E.S. v Superintendent, Livingston Correctional Facility

E.S. pled guilty in 2013 to attempted second-degree rape for having intercourse with his 13-year-old girlfriend in Queens, when he was 18. Supreme Court adjudicated him a youthful offender, vacated his conviction and replaced it with a youthful-offender finding. In 2017, when E.S. violated his sentence of probation, the court imposed a term of 13 to 39 months in prison.

E.S. was granted parole in 2018 on the condition that he comply with Executive Law § 259-c(14) of the Sexual Assault Reform Act (SARA), which bars certain sex offenders from "entering into or upon any school grounds" or residing within 1,000 feet of a school. Because he was unable to find a residence that complied with the school grounds restriction, E.S. remained confined at the Livingston Correctional Facility despite the Parole Board's determination that he was ready for release. More than a year beyond his release date, while he was still being held at Livingston, he commenced this proceeding to challenge his continued detention on the ground that, as a youthful offender, he was not subject to SARA.

Supreme Court dismissed his suit, rejecting his argument that, because youthful offenders whose conviction has been set aside are not subject to the Sex Offender Registration Act (SORA), they are likewise not subject to SARA. The court said the application of SARA "does not depend on a person having been 'convicted' of anything; it simply requires that the person be serving a sentence for a relevant offense," such as attempted rape.

The Appellate Division, Fourth Department reversed on a 3-2 vote. Addressing the text of section 259-c(14), which mandates imposing the school grounds restriction on "a person serving a sentence for an offense defined in [the Penal Law]" when the victim was less than 18, it said "at first blush, it appears that [E.S.] is covered by the statute," but it found that doing so would conflict with the legislature's intent. Under the Penal Law, it said, the school grounds restriction "expressly applies only to those persons convicted of the enumerated offenses. When a sentencing court adjudicates a defendant a youthful offender, however, the conviction is 'deemed vacated and replaced by a youthful offender finding'" under the Criminal Procedure Law, which further provides "that a youthful offender adjudication 'is not a judgment of conviction for a crime or any other offense'.... Thus, by definition, a youthful offender is not a convicted sex offender and does not fall within the category of persons intended to be restricted under SARA." The majority concluded, "Nothing in the legislative history of SARA indicates that the [schools restriction] was intended to be imposed on youthful offenders. Rather, the imposition of the [restriction] on a youthful offender would run contrary to the purpose of youthful offender treatment, which is to avoid 'the stigma and practical consequences which accompany a criminal conviction'...."

The dissenters argued that section 259-c(14) clearly applies to E.S., based on the nature of his offense and age of the victim, and that "applying the literal language of the statute here would not defeat the legislative intent underlying the separate statutory youthful offender scheme.... Youthful offender treatment ... does not exempt a youthful offender from the imposition of a punitive sentence, including a sentence of incarceration.... Here, [E.S.'s] conduct warranted a sentence of incarceration and his release to parole is a continuation of his service of that sentence.... The legislature determined that the school grounds mandatory condition is a statutorily required part of a specified sex offender's service of a sentence in the community, but that provision does not create a permanent stigma that will continue to limit that offender following the completion of the sentence. Thus, applying the plain language of Executive Law § 259-c(14) is not contrary to the legislature's intent to relieve a youthful offender of a public criminal record or to provide that offender an opportunity for a fresh start once a sentence has been completed...."

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State of New York
Court of Appeals

To be argued Wednesday, May 17, 2023

No. 47 People ex rel. Rivera v Superintendent, Woodbourne Correctional Facility

Danny Rivera contends that a provision of the Sexual Assault Reform Act (SARA) that bars him from residing within 1,000 feet of a school, and resulted in his continued imprisonment after he was granted parole when he could not comply, violates the Ex Post Facto Clause of the U.S. Constitution, which prohibits applying new crimes or increased punishment to prior acts.

Rivera was 16 years old in 1986 when he and an accomplice held up four people at gunpoint in New York City, robbed them and Rivera raped one of them. The gunmen then shot all four of them execution style, killing two and wounding two. Rivera pled guilty to second-degree murder and attempted murder and to first-degree rape and was sentenced to 20 years to life in prison. He was granted an open parole release date of May 23, 2019, and at his Sex Offender Registration Act (SORA) hearing he was determined to be a risk level three sexually violent offender, which triggered the school grounds restriction in SARA. The Parole Board made it a condition of parole that Rivera not reside within 1,000 feet of a school and, because he could not find compliant housing in New York City, the State Department of Corrections and Community Supervision (DOCCS) would not release him. In October 2020, 17 months after his parole date, he filed a habeas corpus petition against DOCCS and the prison superintendent seeking immediate release.

Supreme Court granted the petition and ordered Rivera's release without the residency restriction, which it said would violate the Ex Post Facto Clause if applied to him. Rivera was convicted in 1986, "a decade or more prior" to the enactment of SORA in 1996 and SARA's residency restriction in 2005, the court said, "and now the Respondents are refusing to release him from incarceration solely because of their interpretation" of SORA and SARA. It said New York appellate courts have ruled those laws "are not ex post facto" because they found them to be "matters of administration, not matters of punishment or penalty.... [T]his court cannot find any justification for saying that the SORA [and SARA] laws are not punitive when [Rivera is] being held in prison ... solely because of those laws.... I don't see how you can deprive him of liberty based upon some crazy definition that punishment does not include your loss of liberty...."

The Appellate Division, Third Department reversed. Because Rivera was released while his appeal was pending, the court converted the proceeding to a declarative judgment action and declared that SARA does not violate the Ex Post Facto Clause. It said the "prohibition on ex post facto laws applies only to penal statutes" and the legislative history for SARA "supports a conclusion that it was" a civil regulatory scheme "enacted with the goal of protecting children and not to further punish sex offenders for their prior bad acts." It further found that SARA is not so punitive in effect that it should be treated as a penal law. "[W]e acknowledge that SARA's residency restriction 'constitute[s] affirmative restraint[], bear[s] some resemblance to historical criminal punishment, and serve[s] the goal of deterrence'...," it said. "However..., we must recognize that incarcerated individuals 'have no federal or state constitutional rights to be released to parole supervision before serving a full sentence ... [and] special conditions may be imposed upon a parolee's right to release,'" including conditions restricting residency.

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State of New York
Court of Appeals

To be argued Wednesday, May 17, 2023

No. 52 The Moore Charitable Foundation v PJT Partners, Inc.

The Moore Charitable Foundation and its investment vehicle, Kendall JMAC, LLC, were defrauded of $25 million through a fake investment that was part of a Ponzi scheme operated by Andrew W.W. Caspersen. The Foundation and JMAC are suing his employers to recover their money. Caspersen was hired in 2013 as a managing director of Park Hill Group, LLC, a division of the investment bank PJT Partners, and in 2014 he arranged a deal for PJT that would generate a fee of $8.1 million from Irving Place Capital. The Foundation alleged that Caspersen sent a forged invoice to Irving Place instructing it to deposit the fee into an account he controlled, and when PJT asked him about the missing fee, he falsely told it the deal had not fully closed and the fee would be paid when it did. Caspersen used the stolen $8.1 million for high-risk investments on his own account and quickly lost it all. In 2015, he convinced the Foundation to invest $25 million in a security with a risk-free return of 15%, which did not exist. He sent the Foundation, which had no prior connection to PJT or Park Hill, a letter on Park Hill letterhead instructing it to deposit the funds into an account he created and controlled. Caspersen then wired $8.9 million of that to PJT to cover for his prior theft of the Irving Place fee and other missing fees. He wired the rest to his personal brokerage account and promptly lost it all on high-risk investments, while drinking heavily every day, according to the plaintiffs. In 2016, when he approached the Foundation about a similar $20 million investment, it looked more closely into the details and his scheme unraveled. Caspersen was arrested within weeks, pled guilty to securities fraud and mail fraud, and was sentenced to four years in prison. He was also ordered to pay $37.2 million in restitution to his victims. The plaintiffs have received none of it, but PJT returned $8.6 million to the Foundation, the amount PJT's insurer covered. The Foundation and JMAC filed this action in 2017, arguing that PJT and Park Hill were liable for their losses based on the defendants' negligent supervision of Caspersen, among other claims.

Supreme Court dismissed the claim for negligent supervision and all but one other claim, rejecting the plaintiffs' argument that Caspersen's excessive high-risk trading from his office, his diversion of the Irving Place fee, and his heavy drinking at work should have put the defendants on notice of his propensity for fraud. It said, "Plaintiffs do not ... allege defendants were aware of this conduct before Caspersen sold plaintiffs the fake investment. Engagement in high-risk behaviors such as personal trading and excessive use of alcohol is not necessarily causally connected to fraudulent conduct." It declined to consider the defendants' argument that they owed the plaintiffs no duty of care because they were not clients of the defendants.

The Appellate Division, First Department modified by dismissing the suit entirely. "The complaint fails to state a cause of action for negligent supervision, because it does not allege that defendants were aware of the facts that plaintiff contends would have put them on notice of the employee's criminal propensity...," it said. "Further, the complaint also fails to allege that plaintiffs were ever customers of defendants, which is fatal to a claim of negligent supervision."

The Foundation and JMAC argue that "there is no principled basis for drawing the line to include current and former customers within an employer's duty of non-negligent supervision, while excluding prospective customers who just happen not yet to have completed a transaction with the employer. All the relevant factors – the reasonable expectations of parties and society, and considerations of fairness and sound public policy – support treating prospective customers the same as current or former customers," and it "would be in line with caselaw both within and outside of New York." They also say they alleged "more than enough facts" to show that PJT knew or should have known of Caspersen's propensity for fraud.

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