State of New York
Court of Appeals

To be argued Wednesday, January 10, 2024

No. 10 People v Darryl Watts

Darryl Watts, a 52-year-old Bronx resident with a long history of mental illness, assaulted a 66-year-old woman in the middle of a populated street in July 2011. He tackled her to the ground, kicked and punched her, and tried to remove her clothes and rape her. Neighbors intervened and held him until police arrived. Six days after his arrest, a court found him mentally incompetent for trial and, six months later, he was again declared unfit. Watts was found fit to proceed to trial in July 2012 and he was finally arraigned on sexual abuse and assault charges. However, he was declared unfit for trial in April 2013, a finding that was reaffirmed after competency examinations in November 2013, 2014, 2015, and 2016. He was eventually found fit to proceed and pled guilty in February 2017 to first-degree sexual abuse and second-degree assault. Watts was sentenced to six years in prison, most of which he had already served in custody of the Commissioner for Mental Health.

Watts was required to register as a sex offender upon release in 2017 and the Board of Examiners of Sex Offenders prepared a risk assessment instrument that made him a presumptive level two moderate risk offender. At the time of his Sex Offender Registration Act (SORA) hearing, after Watts was released to a psychiatric facility under a civil commitment order, his attorney asked the court to hold a competency hearing before proceeding. Defense counsel said his mental condition had deteriorated and she had "grave concerns" about his ability to understand the nature of the proceedings; and she argued it would violate his right to due process if the SORA hearing were held when he was not competent to participate.

Supreme Court denied the request for a competency hearing based on the Appellate Division, Second Department decision in People v Parris (153 AD3d 68), which held that due process did not require a competency exam before a SORA hearing. Supreme Court said "SORA proceedings are civil in nature" and the statute "is not designed to impose punishment but to prevent future crimes." It said "defendant's due process rights are well preserved" through notice of the proceedings, representation by counsel, and discovery; and observed that there is "an elevated proof requirement by the state of clear and convincing evidence. The court classified Watts a level two offender, denying the defense request for a downward departure to level one.

The Appellate Division, First Department affirmed, citing Parris and saying SORA "does not provide for a competency examination prior to a classification hearing, and due process does not require one.... We also agree with the Second Department that, 'if, and when, the defendant is mentally competent to understand the nature of the SORA proceeding, a de novo SORA risk assessment hearing may be held' with 'the burden ... remain[ing] with the People at the subsequent hearing'...."

Watts argues, "Holding a [SORA] hearing when a registrant is incompetent violates society's basic norms of fundamental fairness and decency," as well as his due process rights. "SORA places profound requirements and burdens on registrants. As a result, SORA registrants have a constitutionally protected liberty interest in not having to register under an erroneous risk level."

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State of New York
Court of Appeals

To be argued Wednesday, January 10, 2024

No. 8 People v Nathaniel Boone
No. 9 People v Albert Cotto

In separate cases, Nathaniel Boone and Albert Cotto were convicted in the Bronx of sex crimes involving children. Boone pled guilty in 2011 to multiple counts of course of sexual conduct against a child and was sentenced to 12 years in prison. Cotto pled guilty in 2006 to first-degree sexual abuse and was sentenced to 10 years. Under the Sex Offender Registration Act (SORA), both men were required to register as offenders upon release.

SORA requires a court to determine a sex offender's risk level 30 days "prior to discharge, parole or release" (Correction Law § 168-n[2]); and requires an offender to register at least ten days "prior to discharge, parole, release to post-release supervision or release from any state or local correctional facility, hospital or institution where he or she was confined or committed" (Correction Law § 168-f[1][a]). However, as they neared the end of their prison terms, both men faced the possibility of further civil confinement at an Office of Mental Hygiene (OMH) facility under Mental Hygiene Law (MHL) article 10. The Department of Corrections and Community Supervision (DOCCS) filed a civil commitment petition against Boone to determine whether he should be confined under article 10; and it released him to the custody of OMH at the St. Lawrence Psychiatric Hospital in 2019. DOCCS notified Cotto that it had referred his case to a "Case Review Team" to evaluate whether an article 10 civil commitment proceeding should be brought against him.

Boone and Cotto each asked Supreme Court to adjourn the SORA hearings that would determine their risk level classifications, arguing that SORA required the courts to adjudicate their risk level 30 days prior to their release into the community, not prior to their transfer from prison to a secure psychiatric facility. Supreme Court denied their requests for adjournment and designated them risk level three offenders.

The Appellate Division, First Department affirmed in both cases. In Boone, it said, "The court providently exercised its discretion in declining to grant an indefinite adjournment of defendant's sex offender classification hearing based on the pendency of an article 10 civil commitment proceeding." In Cotto, it said, "The timing of the adjudication was consistent with Correction Law § 168-n and the requirements of due process."

Boone and Cotto argue that they were entitled to the adjournments because SORA confers jurisdiction on a court to make a risk level determination at the time of an offender's release into the community and, with article 10 civil commitment proceedings against them, their release was clearly not imminent. They say that holding their SORA hearings "prematurely" violated their due process rights, as well as the language and purpose of SORA.

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State of New York
Court of Appeals

To be argued Wednesday, January 10, 2024

No. 6 Petroleos de Venezuela S.A. v MUFG Union Bank, N.A.

In 2016, Petroleos de Venezuela S.A. (PDVSA), Venezuela's state-owned oil company, offered a bond swap in which its noteholders could exchange unsecured notes due in 2017 for new notes due in 2020 and secured by a 50.1 percent controlling interest in CITGO Holding, Inc., a PDVSA subsidiary. The governing documents for the transaction contained a choice-of-law provision specifying that they were to be governed by New York law. Venezuelan President Nicolas Maduro controlled PDVSA's Board of Directors; but the country's National Assembly asserted its constitutional authority to approve "national public interest contracts" and, in 2016, it passed two resolutions rejecting the plan to pledge control of CITGO. Despite this, PDVSA executed the bond swap and issued the CITGO-secured debt. Maduro was re-elected in a tainted election in 2018. After the United States instead recognized National Assembly President Juan Guaido as Venezuela's interim President in 2019, Guaido appointed a rival Board of Directors for PDVSA, but it had no control over the company inside Venezuela.

When PDVSA defaulted on the 2020 notes in late 2019, Guaido's Board brought this action in federal court in New York against MUFG Union Bank, as trustee for the creditors, and collateral agent GLAS Americas LLC, seeking a declaration that the notes and governing documents were invalid because the National Assembly never approved the bond swap. The plaintiff-Board argued that, under the act-of-state doctrine, the National Assembly's resolutions addressing the bond swap were sovereign acts that rendered the transaction void under Venezuelan law. They further argued that Venezuelan law governed the case based on New York Uniform Commercial Code § 8-110(a)(1), which provides that "the validity of a security" is governed by the "local law of the issuer's jurisdiction." The defendant-creditors counterclaimed for a declaration that the notes and governing documents were enforceable and for breach of contract, among other claims.

U.S. District Court granted the creditors' motion for summary judgment, ruling that the 2020 notes and governing documents were valid, that a default had occurred, and awarding them $1.9 billion in unpaid principal and interest. It held the act-of-state doctrine did not apply because the National Assembly's resolutions did not expressly void the bond swap and the Assembly's decision to withhold its approval for the swap was a decision not to act rather than an official state action. It further held that New York Law governed the dispute, rejecting the argument that section 8-110(a)(1) required application of Venezuelan law.

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve key issues in the case by answering three certified questions: "1. Given [PDVSA's] argument that the Governing Documents are invalid and unenforceable for lack of approval by the National Assembly, does New York Uniform Commercial Code § 8-110(a)(1) require that the validity of the Governing Documents be determined under the Law of Venezuela, 'the local law of the issuer's jurisdiction'? 2. Does any principle of New York common law require that a New York court apply Venezuelan substantive law rather than New York substantive law in determining the validity of the Governing Documents? 3. Are the Governing Documents valid under New York law, notwithstanding [PDVSA's] arguments regarding Venezuelan law?"

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State of New York
Court of Appeals

To be argued Wednesday, January 10, 2024

No. 7 Consolidated Restaurant Operations, Inc. v Westport Insurance Corporation

Consolidated Restaurant Operations, Inc. (CRO), which owns and operates dozens of restaurants across the United States and abroad, purchased an "all-risk" commercial property insurance policy from Westport Insurance in July 2019, months before the World Health Organization declared COVID-19 a global pandemic. The policy set a $50 million per-occurrence limit and insured against "all risks of direct physical loss or damage to insured property." It also insured against business interruption losses "directly resulting from direct physical loss or damage" to insured property. After the pandemic declaration, CRO was forced to shut down or sharply curtail its restaurant operations to comply with government restrictions on nonessential businesses, and it filed a claim with Westport for tens of millions of dollars in lost revenue. Westport disclaimed coverage on the ground that the "actual or threatened presence" of the COVID-19 virus "does not constitute physical loss or damage to the property." COR brought this breach of contract action against its insurer, and Westport moved to dismiss for failure to state a cause of action.

Supreme Court granted Westport's motion to dismiss and declared that CRO's alleged losses "are not covered by the insurance policy" because there were no allegations of "direct physical loss or damage" to CRO's property.

The Appellate Division, First Department affirmed, rejecting CRO's argument that the policy term "physical" damage is ambiguous. Citing state and federal precedents, it said "in order for there to be 'direct' 'physical' damage or loss to property, there must be 'some physical problem with the covered property,' not just the mere loss of use.... The property must be changed, damaged or affected in some tangible way, making it different from what it was before the claimed event occurred." The court said CRO "fails to identify any physical change, transformation or difference in any of its property. While it vaguely refers to 'fomites' in the surfaces of its restaurants, and states the virus infiltrated the premises, it fails to identify ... a single item that it had to replace, anything that changed, or that was actually damaged at any of its properties. Nothing stopped working."

CRO argues its complaint should not have been dismissed because it "alleged in detail that it suffered 'direct physical loss or damage' under" the Westport policy when the COVID-19 virus "permeated and attached to its insured restaurants, thereby tangibly altering the air and surfaces therein, and severely impairing their functionality." It says it "reasonably expected that its losses would be covered" by the policy because its all-risks coverage was broad and "unlike many policyholders, CRO purchased a policy without a standard exclusion for losses caused by a virus." CRO says the First Department "improperly narrowed the scope of coverage by adding the words 'tangible' and 'demonstrable' to the Policy" and requiring "tangible, demonstrable 'damage'" to trigger coverage.

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