State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

Week of May 30 thru June 1, 2017

State of New York Court of Appeals

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To be argued Tuesday, May 30, 2017

No. 75 **Aristy-Farer v State of New York**
New Yorkers for Students' Educational Rights ("NYSER") v State of New York

The plaintiffs -- parents of public school students in New York City and New Yorkers for Students' Educational Rights (NYSER), whose members include parents and school districts from around the state, the New York State PTA and other advocates -- brought these actions against the State, the Governor and education officials, arguing the State has chronically underfunded public schools and failed to provide students with the "sound basic education" mandated by the Education Article of the State Constitution. They say the State has failed to comply with this Court's three prior rulings on constitutionally required financial aid for education in Campaign for Fiscal Equity v State of New York -- CFE I (86 NY2d 307) in 1995; CFE II (100 NY2d 893) in 2003; and CFE III (8 NY3d 14) in 2006.

After CFE III was decided, the State adopted a new school funding formula, Foundation Aid, in the Budget and Reform Act of 2007, which was meant to increase State aid for school operations statewide by $5.49 billion over four years. The Foundation Aid was fully distributed to school districts in the first two years, 2007-2008 and 2008-2009, but in the wake of the 2008 recession the State eliminated the planned increase for 2009-2010. The State then reduced the amount of Foundation Aid for 2010-2011by adopting the "gap elimination adjustment," which resulted in cumulative reductions of about $4 billion through 2013-2014. In the 2011-2012 budget, the State limited increases in education aid to no more than the increase in statewide personal income reported for the preceding year. And in the 2012-2013 budget, the State imposed a tax cap requiring a supermajority of school district voters to approve a property tax increase of more than 2 percent. The plaintiffs say that, since the 2008 recession, "the State has abandoned its constitutional reform efforts and has further cut and frozen State aid without responding to actual student needs" in violation of the Education Article.

Supreme Court denied motions to dismiss the suits and the Appellate Division, First Department largely affirmed, finding the plaintiffs stated a claim that the State failed to meet its obligations under the Education Article and CFE III. It said the "core holding" of CFE III "was an unambiguous declaration that the State Constitution required education spending to be at least $1.93 billion higher for the City of New York (and, by extension, at least $2.45 billion statewide).... NYSER plausibly alleges that the net effect of changes in educational funding has been to drop total state education aid below the CFE floor." It said an Education Article claim need not allege educational deficiencies in "each and every district in the state. The state educational funding system is an interconnected web" and "actionable deficits identified in one district will require modification of the formula, necessarily affecting calculation of funding for all districts.... [I]t is enough that the plaintiffs have adequately alleged systemic deficiencies in at least one or two districts -- New York City and Syracuse."

The State contends the plaintiffs' claims relating to all school districts other than New York City and Syracuse must be dismissed due to their failure to make specific allegations of educational deficiencies in those districts. It says, "As this Court has repeatedly held, district-specific allegations of serious educational deficiencies are a core, indispensable element of an Education Article claim." It also argues the plaintiffs failed to state a claim based on the State's failure to maintain funding levels provided in the Foundation Aid formulas or those endorsed in CFE III. "The statutory funding formulas were designed to surpass constitutional requirements, not to establish a constitutional minimum for any district, much less for every district. And CFE III determined only that a particular funding calculation was reasonably designed to remedy specific educational deficiencies in New York City alone; it thus did not establish a strict constitutional minimum even in New York City, much less any other district."

For appellants State et al: Senior Assistant Solicitor General Andrew W. Amend (212) 416-8020
For respondents NYSER & Aristy-Farer et al: Michael A. Rebell, Manhattan (646) 745-8288

State of New York Court of Appeals

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To be argued Tuesday, May 30, 2017

No. 76 People v Darrell Spencer

Darrell Spencer was charged with murder for fatally stabbing Jamia Hazel in his Bronx apartment in September 2009. Spencer's girlfriend Erena Willis directed police officers to where Hazel's body lay in an alley and, after she admitted helping him remove it, they went to his apartment and arrested him when he answered the door. Spencer admitted inviting Hazel to his apartment, but initially denied killing her. The next day, he told detectives that Hazel attacked him with a knife while they were both high on marijuana and he stabbed her in self-defense. Willis testified against him at trial. Spencer also testified, saying Willis killed Hazel out of jealousy. Supreme Court denied his motion to suppress his prior statements, crediting police testimony that he had voluntarily stepped into the hallway when he was arrested, and denied his request to instruct the jury on intoxication.

On the fourth day of jury deliberations, after the alternate jurors had been discharged, the foreperson asked the court to excuse her and explained, "I'm not sure that I'm able to separate my emotions from the case...." The court said that "you have to do that. You have to separate your emotions.... [The case] has to be decided on the evidence and the law as you find it to be. And I know it's difficult to be a juror but ... we've all put [in] a lot of time, a lot of effort, and there's no way that we can go forward without you." The juror said, "I thought I would be able to but it is my duty to let you know that I haven't been able to.... So is it just that I make a decision based on my emotions just to get it out of the way?" The court replied, "No, no I wouldn't ask you to make a decision based on your emotions," urged her to "put aside, to the extent that you can, your emotion and make a decision" as to "whether or not the People have proven Mr. Spencer's guilt beyond a reasonable doubt." Defense counsel moved for a mistrial after the juror left the room, saying she was grossly unqualified. The court denied the motion. Spencer was acquitted of murder, but convicted of first-degree manslaughter and sentenced to 25 years in prison.

The Appellate Division, First Department affirmed on a 3-1 vote, saying "[T]he trial court's interactions with the juror..., consisting of some 10 transcribed pages, shows that the court patiently listened to the juror and tactfully asked her probing questions to determine whether, for some reason, she could not be impartial.... The juror never expressed an inability to deliberate fairly and render an impartial verdict.... After the court listened to her concerns, and reassured her that she could do the job that she had taken an oath to do, the juror told the court that she could and would decide the facts and follow the court's instructions to reach a verdict...."

The dissenter said, "Because the trial court failed to conduct a tactful and probing inquiry to ascertain whether a juror was capable of rendering an impartial verdict and because the court, in further instructing the jury, failed to emphasize the need to arrive at a verdict without requiring any single juror to surrender her conscientious belief, the record does not afford an adequate basis for this Court to conclude that the verdict was not the result of coercion, and a new trial is required." He said the trial court's "predominant concern was not determining whether the juror was 'grossly unqualified' but was to avoid declaring a mistrial at all costs."

For appellant Spencer: Susan H. Salomon, Manhattan (212) 577-2523 ext. 518
For respondent: Bronx Assistant District Attorney Eric C. Washer (718) 838-7246

State of New York Court of Appeals

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To be argued Tuesday, May 30, 2017

No. 77 Myers v Schneiderman

The plaintiffs -- physicians, terminally ill patients, and End of Life Choices New York, an advocacy group -- brought this action against Attorney General Eric Schneiderman seeking a declaration that New York's "assisted suicide" statutes, Penal Law § 120.30 and § 125.15(3), do not apply to physicians who provide "aid-in-dying" care to terminally ill, mentally competent adults who choose to end their lives. Section 120.30 provides that a person is guilty of "promoting a suicide attempt," a class E felony, "when he intentionally causes or aids another person to attempt suicide." Section 125.15(3) provides that a person is guilty of second-degree manslaughter, a class C felony, when "[h]e intentionally causes or aids another person to commit suicide." Alternatively, if the statutes apply to aid-in-dying provided by physicians, the plaintiffs sought a declaration that enforcement of the statutes would violate the Due Process and Equal Protection Clauses of the New York State Constitution. They say, "The patients seek to exercise control and avoid loss of dignity and unbearable suffering in the final stages of dying by having the option to obtain from their physicians a prescription for medication they could ingest to achieve a peaceful death -- a practice know as aid-in-dying."

Supreme Court dismissed the suit and the Appellate Division, First Department affirmed, declaring that Penal Law §§ 120.30 and 125.15 "provide a valid statutory basis to prosecute licensed physicians, who provide aid-in-dying," and that such enforcement does not violate the State Constitution. Based on the "straightforward meaning" of the word "suicide" in the statutes, the act of "taking one's own life voluntarily," the statutes apply to aid-in-dying, it said. "Whatever label one puts on the act that plaintiffs are asking us to permit, it unquestionably fits that literal description, since there is a direct causative link between the medication proposed to be administered by plaintiff physicians and their patients' demise." Regarding the constitutional claims, the court relied on the U.S. Supreme Court's 1997 rulings in Vacco v Quill (521 US 793) and Washington v Glucksberg (521 US 702) that enforcing such statutes against physicians who prescribe lethal medication for terminally ill patients does not violate federal equal protection or due process rights. While New York recognizes "a patient's right to refuse medical treatment," the Appellate Division said, that does not apply to "the affirmative act of taking one's own life."

The plaintiffs argue the Appellate Division erred in applying "a dictionary definition of 'suicide'" and "a 'literal' approach to the Statute that would make criminal many other end-of-life treatments that are lawful and practiced routinely in New York." They say "aid-in-dying is distinct from suicide" because "it is a medically and ethically appropriate treatment option for patients facing unbearable suffering in the final stages of the dying process" and because "the death of a person who chooses aid-in-dying is caused by the patient's underlying terminal illness." "New York has long recognized a broad fundamental right to self-determination with respect to one's body and to control the course of one's medical treatment," a right that "encompasses a patient's right to choose aid-in-dying" or "other end-of-life options," they say. In the 20 years since Vacco was decided, "the Supreme Court has recognized that evolving societal views influence the content of fundamental rights."

For appellant plaintiffs: Edwin G. Schallert, Manhattan (212) 909-6000
For respondent Scheiderman: Deputy Solicitor General Anisha S. Dasgupta (212) 416-8019

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To be argued Wednesday, May 31, 2017

No. 78 **Matter of Estate of Hennel**

Decedent owned a four-unit rental house in Schenectady, New York and lived in one of the units. In 2006, after decedent tired of maintaining the property and dealing with tenants, petitioners, his grandsons, agreed to assume those responsibilities. Decedent and petitioners met with the long-time family attorney and decedent executed a deed to the property that reserved to him a life estate and granted the remainder interest to petitioners. Decedent assured petitioners that they would not be burdened by the mortgage when they fully possessed the property, and decedent contemporaneously executed a will directing that the mortgage on the property be paid from the assets of his estate upon his death. Petitioners maintained the property, including collecting the rents and paying the mortgage out of the rents collected. Decedent executed a will in 2008 that revoked the prior will and made no provision for discharging the mortgage. Decedent died in 2010.

Decedent's widow and executor of his estate admitted the 2008 will to probate. Petitioners filed a notice of claim, asserting that they had entered into a valid agreement with decedent and it was understood that they would maintain and care for the property during decedent's lifetime in exchange for receiving the property free and clear of the mortgage upon his death.

Surrogate's Court, Schenectady County, granted summary judgment to petitioners and ordered the estate to pay the outstanding mortgage balance from the assets of the estate. The Appellate Division, Third Department, with two Justices dissenting, affirmed. The court noted the settled principle that wills are ambulatory in nature and the testator is generally free to alter or revoke its provisions prior to death, but acknowledged that a testator may validly surrender such right, so long as there is "a showing of clear and unambiguous evidence of the intent to do so." Thus, petitioners had to demonstrate that decedent's promise was made and understood "as the assumption of a binding obligation in consideration of a promise given by petitioners in return, or of performance by petitioners of a stipulated act." The majority held that, based on the testimony of the family attorney, petitioners paying the mortgage out of the rents they collected, and the numerous documents that were simultaneously created to effectuate the agreement, petitioners demonstrated that decedent acknowledged a legal obligation to satisfy the mortgage out of estate assets in return for management services performed by petitioners during his lifetime. Further noting that promissory estoppel is generally unavailable to bar a statute of frauds defense, the court held that an application of the statute of frauds would produce an unconscionable result in this case, and that the executor was properly estopped from invoking such a defense.

On appeal to this Court, the executor argues that (1) wills are ambulatory and promises not to alter or revoke a will are required to be in writing pursuant to EPTL 13-2.1; (2) the doctrine of promissory estoppel requires reasonable and foreseeable reliance by the party to whom the promise is made – and there is no valid reliance by petitioners in this case; and (3) reliance upon promissory estoppel by the promisee so as to avoid the application of the statute of frauds requires a showing of unconscionability – and petitioners suffered no unconscionable detriment.

For appellant Hazel Hennel &c.: Peter V. Coffey, Schenectady (518) 370-4645
For respondents Gregory Hennel et al.: Robert L. Adams, Troy (518) 272-6565

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To be argued Wednesday, May 31, 2017

No. 80 **People v David Lofton (Papers Sealed)**

Defendant was convicted by a jury of first degree criminal sex act and second degree burglary, for unlawfully entering a residence through a window at 3 a.m. in Rochester, New York and committing a criminal sex act upon its occupant. Defendant was 15 years old at the time of the crime and 16 years old when sentenced. At sentencing, in response to a recommendation in the Pre-Sentence Investigation Report and defense counsel's request that defendant be adjudicated a youthful offender, the trial court commented "[t]hat [youthful offender treatment] is certainly outside the realm of this court's consideration following trial." In affirming his conviction, the Appellate Division, Fourth Department found that the trial court's statement constituted a determination on the record that defendant was not an eligible youth for youthful offender treatment. Defendant however argues that this pronouncement does not satisfy the requirement "to determine on the record if he was an eligible youth due to the existence of one or more of the factors set forth in CPL 720.10 (3)."

For appellant Lofton: Brian Shiffrin, Rochester (585) 423-8290
For respondent: Monroe County Assistant District Attorney Scott Myles (585) 753-4541

State of New York Court of Appeals

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To be argued Wednesday, May 31, 2017

No. 81 **People v Kevin Minemier**

Defendant was convicted, upon a guilty plea, of one count of attempted murder in the second degree, two counts of assault in the first degree and one count of assault in the second degree. While walking through a local supermarket, defendant took a cheese knife from a display rack and repeatedly stabbed a woman in the face, head and eye, causing wounds that required more than 100 stitches to close. Defendant also stabbed a man who tried to stop the attack. Defendant was 18 years old and had no prior convictions.

On appeal, the Appellate Division, Fourth Department, initially concluded that County Court failed to determine whether defendant should be adjudicated a youthful offender and it sent the case back to County Court "'to make and state for the record a determination whether defendant should be granted youthful offender status.'" The Appellate Division also noted that County Court reviewed written statements that were not disclosed to defendant, and directed County Court "to make a record of what statements it reviewed and to state its reasons for refusing to disclose them to defendant."

After receiving the case, County Court stated in its decision: "At the time that [defendant] was sentenced, the Court did seriously consider a youthful offender adjudication. I did consider all the information that I had at my disposal at that time. The Court has reviewed the letter dated January 7, 2015 from [defendant's parents], as well as the attached articles that they had submitted to [the newspaper]. Based upon all of that information and the information that has been provided here today in court, the Court will not adjudicate [defendant] a youthful offender. With regard to the other issue, and that is regarding what statements the Court reviewed; at the time of sentencing, the Court did review the last page of the Pre-Sentence Investigation. The last page was titled Confidential to the Court. I would note for the record that that information was provided to the Probation Department on the promise of confidentiality," and so the Court did review it, but did not require disclosure to the defendant.

The Appellate Division then affirmed, rejecting defendant's contention that "the court erred in failing to state its reasons for not adjudicating him a youthful offender.... Although CPL 720.20(1) requires the sentencing court to determine on the record whether an eligible youth is a youthful offender, ... the statute does not require the court to state its reasons for denying youthful offender status to the defendant." Further, the Appellate Division concluded that County Court sufficiently identified what statements it reviewed at sentencing, and that defendant was not entitled to disclosure of any confidential information.

Defendant argues that County Court erred when it summarily denied his request for a youthful offender adjudication and failed to make a record of the factors relevant to its decision. Defendant also argues that County Court's summary refusal to disclose statements to the defense that were reviewed and considered by the court for sentencing violated both the requirements of CPL 390.50 and defendant's right to due process.

For appellant Minemier: Donald M. Thompson, Rochester (585) 423-8290
For respondent: Monroe County Assistant District Attorney Leah R. Mervine (585) 753-4354

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To be argued Thursday, June 1, 2017

No. 79 **Gevorkyan v Judelson**

In 2011, Arthur Bogoraz was arrested in Puerto Rico and indicted in Kings County, New York in connection with an alleged multi-million dollar insurance fraud. His bond was set at $2,000,000. Bogoraz, with the assistance of his wife and family friends (plaintiffs) sought to obtain a bail bond to secure his pretrial release. After two agencies declined to issue a bond, plaintiffs approached defendant Ira Judelson, a licensed bail bond agent affiliated with the International Fidelity Insurance Company. International Fidelity accepted an application for a $2,000,000 bond and the parties executed an Agreement of Indemnity where plaintiffs paid Judelson, in trust for International Fidelity, a $120,560 premium to obtain the bond. On March 28, 2012, Judelson posted the bail bond with the state court as was required by New York law. That court then elected to conduct a bail sufficiency hearing pursuant to CPL 520.30 and rejected the bond. Bogoraz filed a writ of habeas corpus in the Appellate Division, which denied the writ, concluding that Bogoraz "ha[d] the burden of proving by a preponderance of the evidence that the cash or collateral posted to secure a bail bond originates from a legitimate source and is not the fruit of criminal or unlawful conduct" and that Bogoraz failed to meet this burden. Bogoraz was therefore never released on bail. Plaintiffs sought the return of the premium from Judelson. Their theory, pressed throughout this litigation, was that because bail was denied, Judelson was not entitled to retain the premium because he was never exposed to the risk that Bogoraz would not appear in court when required, which was the purpose of the premium. Judelson refused to return the funds, contending that he satisfied his contractual obligations, and thereby earned the premium, when the bond was "posted and signed" by the state court.

Federal litigation ensued. Following a non-jury trial, the District Court directed entry of judgment in favor of Judelson on plaintiffs' breach of contract, unjust enrichment and conversion claims. On appeal, the United States Court of Appeals for the Second Circuit certified the following question to this Court: "Whether an entity engaged in the 'bail business,' as defined in [New York Insurance Law] § 6801(a)(1), may retain its 'premium or compensation,' as described in [New York Insurance Law] § 6804(a), where a bond posted pursuant to [CPL] 520.20 is denied at a bail-sufficiency hearing conducted pursuant to [CPL] 520.30, and the criminal defendant that is the subject of the bond is never admitted to bail."

For appellants Gevorkyan et al.: Andrew Lavoot Bluestone, New York (212) 791-5600
For amicus curiae NYS Dept. of Finanical Services: Eric Del Pozo, New York (212) 416-6167
For respondent Judelson: Jonathan Svetkey, New York (917) 751-1734

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To be argued Thursday, June 1, 2017

No. 84 **People v Michael E. Prindle**

After defendant's second degree murder conviction was reduced by this Court to one for reckless manslaughter (16 NY3d 768 [2011]), he was resentenced as a persistent felony offender to a term of 15 years to life. The 15-year mandatory minimum is a substantial increase in the minimum sentence that defendant would have faced if he had not been adjudicated a persistent felony offender.

In support of the persistent felony offender status upon resentence, Supreme Court received testimony and evidence about defendant's extensive criminal history including two prior felonies for the purpose of persistent felony offender status; 26 arrests, nine of which were felonies, including 4 violent felony arrests; and various disciplinary reports while imprisoned. Supreme Court also noted that the present offense was committed while defendant was on parole and resulted in the death of a young woman where the defendant "led police on a 2 l/2-to-4-mile chase from the Town of Brighton into the City of Rochester, running at least five red lights, repeatedly driving at high speeds and in the lanes of oncoming traffic before plowing into the rear driver's side of the victim's vehicle... Defendant neither braked nor skidded, and the evidence established that defendant had adequate room to navigate around the vehicle. Defendant fled the scene and was apprehended days later." Supreme Court noted that these circumstances are "chillingly similar" to the circumstances of defendant's 2002 felony conviction for criminal possession of stolen property in the third degree based on defendant stealing a car, sideswiping another car and fleeing in the stolen car in excess of 100 miles per hour, crossing a median and driving eastbound in a westbound lane and exiting the highway via an on ramp. Supreme Court thus concluded that "the history and characteristics of defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest (Penal Law § 70.10[2]). Defendant presents a danger to the community and society must be protected. Unfortunately, this Court can only conclude that defendant is beyond rehabilitation." The Appellate Division affirmed.

Defendant argues that the increase in his prescribed minimum term predicated on non-jury findings violates the rule of Apprendi v New Jersey (530 US 466 [2000]).

For appellant Prindle: James A. Hobbs, Rochester (585) 753-4213
For respondent: Monroe County Assistant District Attorney Leah R. Mervine (585) 753-4354