State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

May 17 thru May 18, 2023

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.

For appellants OOIDA et al: Charles R. Stinson, Washington, DC (202) 944-8600
For respondents DOT et al: Assistant Solicitor General Kevin C. Hu (518) 776-2007

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...."

For appellant Parole Board et al: Assistant Solicitor General Jonathan D. Hitsous (518) 776-2044
For respondent E.S.: Marquetta Christy, Manhattan (917) 581-2757

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.

For appellant Rivera: Kerry Elgarten, Manhattan (646) 847-5672
For respondent DOCCS: Assistant Solicitor General Frank Brady (518) 776-2054

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.

For appellants Foundation and JMAC: Stephen Shackelford Jr., Manhattan (212) 336-8330
For respondents PJT and Park Hill: Aidan Synnott, Manhattan (212) 373-3000

State of New York
Court of Appeals

To be argued Thursday, May 18, 2023

No. 51 IKB International v Wells Fargo Bank (and three other actions)

Plaintiffs IKB International and two related companies purchased more than $1 billion of residential mortgage-backed securities (RMBS) certificates issued by more than 100 RMBS trusts. The defendants are banks that served as Trustees of the RMBS trusts. The IKB plaintiffs brought these actions against the Trustees in 2016, alleging that their investments are almost worthless due to the Trustees' breaches of their contractual, fiduciary, and statutory duties, including a duty to enforce repurchase protocols that require the sellers of the securities to cure, substitute, or repurchase mortgage loans that do not conform to the representations and warranties they made regarding the quality of the underlying mortgages. The Trustees moved to dismiss on multiple grounds and contended, in part, that they did not have sufficient notice – prior to a contractually defined "Event of Default" (EOD) – of any breaches of representations and warranties to trigger their duty to enforce the repurchase protocols on behalf of investors. They also contended that all of IKB's claims were barred by "no-action clauses" in the trusts' governing agreements, which prohibit investors from suing to enforce their rights unless they first demand that a Trustee initiate the suit and obtain consent to the litigation from at least 25% of all investors.

Supreme Court, among other things, denied the Trustees' motions to dismiss the pre-EOD breach of contract claims based on failure to enforce the repurchase protocols, the post-EOD breach of contract claims, and claims for breach of conflict of interest and post-EOD breach of fiduciary duty.

The Appellate Division, First Department modified, in a 3-2 decision, by granting dismissal motions "as to the post-[EOD] breach of contract claims insofar as related to the subset of trusts governed by pooling and servicing agreements (PSAs) requiring written notice from an authorized party to constitute an event of default and the post-[EOD] breach of fiduciary duty claims insofar as based on alleged failures to act as contractually required...," among other things. The court said IKB's "noncompliance with the no-action clauses in the governing agreements is not a ground for dismissal of the complaints. Plaintiffs' compliance was excused because 'it would be futile to demand that the trustee commence an action against itself'...." It said that "Supreme Court correctly found that the provision that '[t]he Trustee agrees to ... exercise the rights referred to above for the benefit of all present and future [certificateholders]' imposed an express duty on the trustees to enforce the repurchase protocol for the benefit of the investors.... Notably, defendants do not dispute plaintiffs' assertion that 'the rights referred to above' include the right to have noncompliant loans repurchased...."

In a partial dissent, two justices disagreed with the majority "on two threshold issues. First, the agreements do not state that the trustee is under a [pre-EOD] affirmative duty to enforce the seller's repurchase obligations. The majority, in the guise of contract interpretation, creates an affirmative duty not found in the agreements. Second, to the extent that the agreements require written notice to be given to the trustee in the event of an EOD, [we] would vacate the motion court's decision on this issue and remand for a determination whether the written notice was sufficiently specific to permit the [post-EOD] claims to proceed under U.S. Bank N.A. v DLJ Mtge. Capital, Inc. (38 NY3d 169 [2022])."

For appellant Trustees (Wells Fargo et al): Matthew D. Ingber, Manhattan (212) 506-2500
For respondents IKB et al: John J.D. McFerrin-Clancy, Manhattan (646) 771-7377

State of New York
Court of Appeals

To be argued Thursday, May 18, 2023

No. 49 People v Michael Worley

Michael Worley was 19 years old in December 2012, when he was charged with forcibly raping a 12-year-old girl in his family's Brooklyn apartment. He pled guilty to attempted first-degree rape and was sentenced to three and a half years in prison. Prior to his release from prison in 2016, the Board of Examiners of Sex Offenders prepared a risk assessment instrument (RAI) by assessing Worley points for various risk factors, including 15 points for factor 12 (refused or expelled from treatment) and 10 points for factor 13 (unsatisfactory conduct while confined). His total score of 115 made him a presumptive level three offender. The Board noted that Worley had been referred to sex offender treatment, but was removed for disciplinary reasons. It also noted that he had received multiple disciplinary sanctions for fighting, drug use, creating disturbances, and other things.

At his Sex Offender Registration Act (SORA) hearing, Worley challenged the assessment of points for risk factor 12, arguing that he did not refuse to participate in treatment, but was not allowed to participate because of his prison disciplinary violations. Removing those points from his RAI would make him a presumptive level two offender. When Supreme Court suggested that "the extensive disciplinary history may be a reason for [upward] departure," Worley complained that the prosecutor had not requested a departure and that he had "no notice of departure" prior to the hearing. The court ultimately declined to assess any points for risk factor 12 and then said, "So, based upon the 100 points [Worley] would be required to register as a Level Two sex offender.... However, I do use the extensive prior disciplinary history established by the record for an upward departure to level three." When Worley objected that the court could not grant an upward departure on its own without a request from the prosecutor, the prosecutor asked for an upward departure. Worley objected that he was entitled to 10 days notice of such a request. In the end, the court designated him a level three sexually violent offender.

Worley argued on appeal that he was denied his constitutional right to due process and to the statutory notice required by Correction Law § 168-n(3), which states, "If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the [SORA hearing] the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations."

The Appellate Division, Second Department affirmed without expressly addressing the lack of notice regarding an upward departure. It said Supreme Court "properly determined that the defendant's extensive number of disciplinary violations while confined was an aggravating factor not adequately taken into account by the guidelines..., the People proved the existence of this factor by clear and convincing evidence...," and "the court providently exercised its discretion in upwardly departing from the presumptive level two designation...."

Worley argues the hearing court violated due process and the Correction Law by granting the upward departure with no prior notice to him. He says "all four Appellate Division departments have consistently held that a SORA hearing court's sua sponte assessment or determination, with no advance notice, violates the Correction Law and due process, and this Court and federal courts have recognized that fair notice is the bedrock of any constitutionally fair procedure." He also argues the hearing court improperly based the upward departure on his disciplinary record "because 10 points had already been assessed under factor 13 for unsatisfactory conduct while confined" and thus, "the prosecution failed to establish a qualifying aggravating factor not already taken into account by the guidelines."

For appellant Worley: William Kastin, Manhattan (212) 693-0085
For respondent: Brooklyn Assistant District Attorney Michael Bierce (718) 250-2005

State of New York
Court of Appeals

To be argued Thursday, May 18, 2023

No. 50 People v Christopher J. Weber

Christopher Weber was 17 years old in 2013, when he was charged with engaging in oral sex with a 10-year-old relative in Monroe County. He pled guilty to first-degree sexual abuse and was sentenced to one year of interim probation to be followed by a youthful offender adjudication if he successfully completed probation. However, two months into his term, he was charged with engaging in intercourse and other sexual conduct with a 12-year-old girl in 2014. County Court revoked his interim probation and resentenced him to three years in prison in the first case. In the second case, Weber was adjudicated a youthful offender in 2015 after he pled guilty to first-degree rape and related crimes. He was sentenced to one to three years in prison.

Prior to Weber's release in 2018, the Board of Examiners of Sex Offenders assessed him 110 points on a risk assessment instrument (RAI) for his 2013 offense, making him a presumptive level three offender. The total included 10 points under risk factor 1 for use of forcible compulsion. At his Sex Offender Registration Act (SORA) hearing, Weber challenged the 10 points assessed for forcible compulsion and also sought a downward departure. The prosecution did not seek an upward departure. County Court denied Weber's request, assessed the full 110 points in the RAI, and designated him a risk level three offender.

At the Appellate Division, Fourth Department the prosecution conceded that points for forcible compulsion should not have been assessed and the court agreed, making Weber a presumptive level two offender, but the prosecution asked for a remittal to seek an upward departure by County Court. Weber objected that the request was unpreserved because the prosecution had not sought an upward departure at his SORA hearing. The Appellate Division remitted the case.

County Court determined that an upward departure to risk level three was warranted. It said the RAI did not "adequately take into account" that Weber, while on probation for his 2013 conviction, was arrested for new sex crimes and ultimately pled guilty.

The Appellate Division affirmed, rejecting Weber's claim that the prosecution request for an upward departure was unpreserved. "[A]lthough the People did not request such a departure during the original SORA proceeding," it said, "there was no reason for them to do so inasmuch as the court had classified defendant as a level three risk based upon the presumptive risk level yielded by the score on his risk assessment instrument...." It further held the upward departure was justified by Weber's conduct while on probation in 2014.

Weber argues the Appellate Division erred by remitting his case and he should be designated a level two offender. He says, "At SORA hearings, the parties must assert their right to a discretionary departure from the defendant's presumptive risk level..." and, at his hearing, "the People had a full and fair opportunity to seek an upward departure to seek an upward departure but simply failed to pursue that option as an alternative basis for a level three classification." Because the prosecution did not request an upward departure at his initial hearing, County Court did not rule on it and "that issue was not properly before the Appellate Division on Mr. Weber's original SORA appeal. Accordingly, the Appellate Division had no authority to grant the People ... any affirmative relief on their unasserted claim."

For appellant Weber: David R. Juergens, Rochester (585) 753-4093
For respondent: Monroe County Assistant District Attorney Nancy Gilligan (585) 753-4637