State of New York
Court of Appeals

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To be argued Tuesday, October 16, 2018

No. 121 Matter of Gonzalez v Annucci *(papers sealed)*

Miguel Gonzalez, charged with having sexual relations with a 14-year-old student at a Manhattan school where he had worked as a guard, pled guilty to second-degree rape in 2012 and was sentenced to 2½ years in prison to be followed by 3 years of post release supervision (PRS). He was adjudicated a level one (lowest risk) sex offender and, due to the victim's age, was prohibited by the Sexual Assault Reform Act (SARA) of residing within 1,000 feet of a school or other places where children congregate while he was on PRS. He earned 4 months and 10 days of good time credit, which made his conditional release date May 20, 2014, but he was not released from prison because he had not secured a residence that complied with the SARA restrictions. When he still had not found a SARA-compliant residence by his maximum release date, September 30, 2014, the State Department of Corrections and Community Supervision (DOCCS) transferred him to the Woodbourne Correctional Facility, a medium security prison and residential treatment facility (RTF). After filing an unsuccessful inmate grievance, Gonzalez brought this article 78 proceeding against Acting DOCCS Commissioner Anthony Annucci in December 2014 seeking his immediate release. He argued that DOCCS improperly placed him in the Woordbourne RTF where conditions were "virtually indistinguishable" from prison, improperly deprived him of his good time credit, failed to assist him in finding SARA-compliant housing, and failed to provide required rehabilitation programs. In February 2015, while his suit was pending, DOCCS released Gonzalez to a SARA-compliant homeless shelter in Manhattan.

Supreme Court dismissed the suit as moot because he had been released from Woodbourne. It also said it would have denied his petition on the merits.

The Appellate Division, Third Department modified on a 3-2 vote, applying the mootness exception to reach the merits. The majority declared that when a sex offender subject to "mandatory" SARA housing restrictions is placed in a residential treatment facility, DOCCS "has an affirmative obligation pursuant to Correction Law § 201(5) to provide substantial assistance to the person in locating appropriate housing;" and declared that the services DOCCS provided to Gonzalez at Woodbourne "were not adequate to satisfy that duty." It said DOCCS's "passive approach of leaving the primary obligation to locate housing to an individual confined in a medium security prison facility 100 miles from his family and community, without access to information or communication resources beyond that afforded to other prison inmates, falls far short of the spirit and purpose of the legislative obligation imposed upon DOCCS to assist in this process." The court unanimously rejected Gonzalez's other claims, saying that the decision to withhold his good time credit and deny him conditional release "based upon his failure to find SARA-compliant housing" was rational, and that he failed to show DOCCS "failed to comply with its statutory and regulatory obligations" in placing him at Woodbourne.

In a partial dissent, two justices argued that, based on the record, "it was not irrational, arbitrary or capricious to conclude that [Gonzalez] received adequate assistance in the process of securing SARA-compliant housing." They said "officials met with [him] numerous times to review, investigate and propose potential residences;" investigated 58 residences he proposed, none of which complied with SARA; and "DOCCS ultimately secured a SARA-compliant residence for [him] consistent with his indigent status" in Manhattan.

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State of New York
Court of Appeals

To be argued Tuesday, October 16, 2018

No. 122 People v Damian Jones

Damian Jones and more than two dozen co-defendants were charged with participating in a criminal enterprise in 2011 and 2012 that stole motorcycles in New York City and sold them to customers at home and abroad. The indictment said "the Criminal Enterprise was a New York City-wide association of individuals that worked together to steal, store, dismantle, package, and sell motorcycles ... and to ship the ... stolen motorcycles both domestically and internationally." It identified Jones as one of the "procurers" who stole the motorcycles, while other participants served as distributors who packaged and shipped the bikes or as dealers who made many of the sales. Jones was charged with a single count of enterprise corruption under Penal Law § 460.20, part of the Organized Crime Control Act of 1986, based on allegations that he sold four stolen motorcycles to an undercover police officer on three occasions in the fall of 2011.

He proceeded to a joint jury trial in Manhattan with three co-defendants. At the close of proof, he moved to dismiss the charge on the ground that the prosecution failed to prove the enterprise had a hierarchy of authority and, thus, failed to show it had an "ascertainable structure" as required by the statute. Supreme Court denied the motion, saying "a hierarchical structure ... is not required under the law." The court also denied his request to instruct the jury that the prosecution was required to prove the enterprise had a leadership structure. Jones was convicted of enterprise corruption and sentenced to 5 to 10 years in prison.

The Appellate Division, First Department affirmed, saying, "There was a sufficiently ascertainable structure in which members of the enterprise played specific roles and worked collaboratively to effectuate the common purpose of the enterprise. There were procurers like defendant, who stole the bikes on the streets, distributors or brokers who found a market for the bikes, and dealers who resold the stolen bikes in the United States and overseas. In addition, the enterprise members worked together to swap parts on bikes, alter vehicle identification numbers, and remove any antitheft devices.... The evidence demonstrated a level of coordinated activity that went beyond what would be expected in a mere market, and instead evinced the existence of a distinct criminal enterprise with a common purpose and ascertainable structure...."

Jones argues the evidence was legally insufficient to support his conviction. He says "courts interpreting the ascertainable structure element have -- until now -- universally required proof of a 'leadership' or other 'system of authority' to sustain an enterprise corruption conviction. Here, the prosecution did not prove any leadership or other system of authority governing the affairs of the alleged 'enterprise.' Quite the contrary: The prosecution's sole cooperating witness ... testified ... that 'there was no boss'.... [T]he evidence showed that buyers, sellers and brokers transacted at arm's length, competed with, and even undermined one another -- conduct antithetical to the very concept of an 'organization.'" He also argues the prosecution failed to prove that he knew of the existence of a criminal enterprise and intended to participate in it.

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To be argued Tuesday, October 16, 2018

No. 123 Matter of New York City Asbestos Litigation - Juni v A.O. Smith Water Products

Arthur Juni, Jr. brought this personal injury action against Ford Motor Company and others in 2012, after he was diagnosed with mesothelioma. He claimed his disease was caused by his exposure to asbestos-containing products installed or supplied by Ford -- including brakes, clutches, and manifold gaskets -- when he worked for Orange & Rockland Utilities as an auto mechanic on the Ford vehicles in its fleet from 1964 to 2009. For the first 25 years, he worked without a respirator to protect him from asbestos fibers. Juni died in 2014 and his widow was substituted as the plaintiff. After a 20-day trial, much of it devoted to expert testimony, the jury rendered a verdict for Juni, awarding his estate $8 million for pain and suffering and awarding $3 million to his widow for loss of consortium. It apportioned 49 percent of the liability to Ford and 51 percent to Orange & Rockland Utilities.

Supreme Court granted Ford's motion under CPLR 4404(a) to set aside the verdict on the ground that there was insufficient evidence that Juni developed mesothelioma as a result of his exposure to asbestos-containing products distributed by Ford.

The Appellate Division, First Department affirmed on a 3-1 vote. The majority said that, under Parker v Mobil Oil Corp. (7 NY3d 434 [2006]) and Cornell v 360 W. 51st St. Realty, LLC (22 NY3d 762 [2014]), "[P]laintiff was obliged to prove not only that Juni's mesothelioma was caused by exposure to asbestos, but that he was exposed to sufficient levels of the toxin from his work on brakes, clutches, or gaskets, sold or distributed by [Ford], to have caused his illness. We agree with the trial court that the standards enunciated by Parker and Cornell are applicable here, that they are not altered by Lustenring v AC&S, Inc. (13 AD3d 69 [1st Dept 2004] ...) or other asbestos cases, and that plaintiff's evidence failed to satisfy that standard.... The evidence presented by plaintiff here was insufficient because it failed to establish that the decedent's mesothelioma was a result of his exposure to a sufficient quantity of asbestos in friction products sold or distributed by [Ford]. Plaintiff's experts effectively testified only in terms of an increased risk and association between asbestos and mesothelioma..., but failed to either quantify the decedent's exposure levels or otherwise provide any scientific expression of his exposure level with respect to Ford's products...."

The dissenter said, "The parties produced conflicting expert evidence as to whether chrysotile asbestos in friction products can cause disease, whether asbestos causes disease by cumulative exposures or only after a certain amount of exposure, and whether Juni had been exposed to a sufficient level of asbestos from Ford's products to cause his mesothelioma.... It is well established that it is within the province of the jury to reject or accept an expert's testimony in whole or in part; the weight to be given to opinion evidence and expert evidence is ordinarily entirely for the jury's determination.... This [c]ourt, and others, have accepted a consensus from the medical and scientific communities that even low doses of asbestos exposure, above that in the ambient environment, are sufficient to cause mesothelioma.... Parker explicitly recognized that in toxic tort cases it is often 'difficult or impossible to quantify' a plaintiff's exposure to the toxin.... For these reasons, the standard being adopted by the majority erects an insurmountable hurdle requiring plaintiffs to recreate the work environment, to establish precise exposure levels, dust and fiber counts, air quality levels throughout the day...." He said the evidence "was legally sufficient and the disputed issues were properly submitted to the jury for factual determination. By setting aside this verdict the trial court and the majority have usurped the jury's function and redefined the nature of proof required to establish specific causation in asbestos cases."

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