State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

January 7 thru 9, 2020

State of New York
Court of Appeals

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To be argued Tuesday, January 7, 2020

No. 1 Matter of Regina Metropolitan Co., LLC v New York State Division of Housing and Community Renewal

In August 2005, Leslie Carr and Harry Levy signed a market rate lease for a Manhattan apartment owned by Regina Metropolitan Co., which had removed the apartment from rent stabilization in 2003 pursuant to the luxury decontrol provisions of the Rent Stabilization Law (RSL). Regina was receiving tax benefits for its building through New York City's J-51 program and continued to do so until 2013. The tenants' initial monthly rent was $5,195. In 2009, the Court of Appeals ruled in Roberts v Tishman Speyer Properties (13 NY3d 270) that landlords "were not entitled to take advantage of the luxury decontrol provisions of the [RSL] while simultaneously receiving tax incentive benefits" under the J-51 program. Two weeks later, Carr and Levy filed a rent overcharge complaint against Regina with the Division of Housing and Community Renewal (DHCR), contending they were entitled to a rent-stabilized lease with a legally valid rent, among other things.

DHCR found that Regina's deregulation of the apartment was illegal, but was not willful or fraudulent because it was consistent with DHCR's interpretation of the law prior to Roberts. To calculate the proper amount of rent, DHCR looked beyond the four-year limitations period of RSL § 26-516(a)(2) and CPLR 213-a to find the most recent legal regulated rent, which was the $2,097 per month charged in 2003. It said the market rent actually charged on the "base date" in 2005, four years prior to the tenants' complaint, was "unreliable due to an erroneous deregulation" of the apartment. DHCR then added subsequent increases that would have been allowed under rent stabilization to determine that the proper base date rent was $3,325 and that the tenants were entitled to an overcharge repayment of $207,193 plus interest for the period since 2005.

Regina brought this suit against DHCR to challenge the decision and the tenants intervened. Supreme Court confirmed DHCR's determination, ruling the agency employed a rational method to calculate a reliable base date rent even though it looked beyond the limit of the four-year rule.

The Appellate Division, First Department modified on a 3-2 vote and remanded the case to DHCR "to recalculate the base date rent by looking back to four years before the filing of the overcharge complaint." In the absence of fraud, it said, the RSL and statute of limitations bar DHCR from looking back into rental history more than four years before the complaint was filed. It noted that "DHCR is not limited to calculating the base date rent according to the market rate that obtained pursuant to the parties' lease, and ... the agency has the discretion to implement other methods of base date rent calculation that do not run afoul of the limitations period."

The dissenters said DHCR's method of basing its calculations of legal rent and overcharges on "the last rent-stabilized rent" is necessary to give effect to Roberts. The method "rectifies the erroneously deregulated rent and ensures that subsequent regulated rents are based upon a reliable rent. It restores the parties to the lawful position they would have been in had the Roberts interpretation of the [RSL] been followed at the relevant time."

The parties disagree about whether the Housing Stability and Tenant Protection Act of 2019, enacted after the Appellate Division ruling, applies to this case and permits review of all relevant rental history in overcharge proceedings.

For appellant DHCR: Assistant Solicitor General Ester Murdukhayeva (212) 416-6279
For intervenors-respondents Carr and Levy: Darryl M. Vernon, Manhattan (212) 949-7300
For respondent Regina Metropolitan: Niles C. Welikson, Williston Park (516) 535-1700

State of New York
Court of Appeals

To be argued Tuesday, January 7, 2020

No. 2 Raden v W7879, LLC.

Joel and Odette Raden originally rented their Manhattan apartment under a market rate lease in 1995, the same year the then-owner of their building deregulated the apartment under the luxury decontrol provisions of the Rent Stabilization Law (RSL). The owner had been receiving J-51 tax benefits from New York City since 1993 and continued to receive them into 2014. After the Court of Appeals ruled in Roberts v Tishman Speyer Properties (13 NY3d 270 [2009]) that landlords could not deregulate rent stabilized apartments in buildings for which they were receiving J-51 benefits, the owner determined in 2010 that the Radens' apartment had been improperly deregulated and that they were entitled to a stabilized lease with recalculated rent and a refund of overcharges. Although the Radens had not filed an overcharge complaint, the owner conducted his review as though they had filed one in May 2010 and based his rent and overcharge calculations on the market rate lease that was in effect four years earlier, in May 2006. This resulted in a reduction of the monthly rent from $4,000 to $3,965 and an overcharge refund of $140.59. The Radens then brought this action against the current owners of their building, W7879 LLC and related entities, seeking declaratory relief, additional overcharges, treble damages and attorneys' fees.

Supreme Court referred the matter to a special referee, who found the rent calculations performed by the owners "are substantially correct." He said that, because the state Division of Housing and Community Renewal (DHCR) allowed landlords receiving J-51 benefits to pursue luxury deregulation of their apartments prior to Roberts, the Radens could not show that the owners "knew or should have known that the apartments could not be luxury deregulated." Therefore, the referee concluded, the owners "did not engage in any fraud with respect to deregulating the apartment in question, thereby limiting the look-back period for any overcharge to four years;" and they "did not willfully deregulate the apartment so that [Raden] is not entitled to treble damages or attorney's fees." He found the Radens were entitled to an additional overcharge refund of $448.50. Supreme Court confirmed the referee's report.

The Appellate Division, First Department affirmed on a 4-1 vote, saying, "As we have explained in Matter of Regina Metro. Co., LLC v New York State Div. Of Hous. & Community Renewal," which it decided the same day, "9 NYCRR 2526.1(a)(2)(ii) and CPLR 213-a are 'categorical in barring any examination of a unit's rental history beyond the four-year limitations period,' with the sole exception being cases in which there is evidence that the landlord committed fraud in order to avoid the regulatory scheme...." The court said it previously "considered the very building involved in this case and upheld a determination that this same landlord had not engaged in a fraudulent scheme" to deregulate an apartment "and had not acted with willfulness.... The same result should obtain here."

The dissenter said the case should be remanded "for a recalculation of the rent overcharge in accordance with Taylor v 72A Realty Assoc., L.P. (151 AD3d 95 [1st Dept 2017]), for the reasons explained in both Taylor and the dissent in" Regina Metro. (164 AD3d 420 [1st Dept 2018]).

For appellants Raden: Seth A. Miller, Manhattan (212) 587-2400
For respondents W7879 et al: Nativ Winiarsky, Manhattan (212) 869-5030

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To be argued Tuesday, January 7, 2020

No. 3 Taylor v 72A Realty Associates, L.P.

Tamara Jenkins signed a market-rate lease for a Manhattan apartment in 2000 at a monthly rent of $2,200. The landlord, 72A Realty Associates, had just removed the apartment from rent stabilization under luxury decontrol provisions of the Rent Stabilization Law (RSL). The building was enrolled in the City's J-51 tax abatement program at the time, but the owner relied on legal guidance from the state Division of Housing and Community Renewal (DHCR) that deregulation was permissible in that circumstance. The J-51 benefits expired in 2003. James Taylor was added as a tenant on the lease in 2004. In 2009, this Court rejected DHCR's interpretation of the RSL in Roberts v Tishman Speyer Properties (13 NY3d 270) and held that landlords could not deregulate rent stabilized apartments while they were receiving J-51 benefits. In late 2013, the owner offered Jenkins and Taylor a rent-stabilized lease at $4,076.18 per month, which they signed. In 2014, the tenants brought this overcharge action against the owner seeking a declaration that their apartment is rent stabilized and a judgment setting the maximum legal rent. They also sought recovery of overcharges, treble damages, and attorneys' fees.

Supreme Court declared the plaintiffs were entitled to rent-stabilized status from the beginning of their tenancy, but said further proceedings are needed to determine the legal amount of the current stabilized rent and whether treble damages or attorneys' fees are appropriate.

The Appellate Division, First Department largely affirmed, saying the apartment "must be returned to rent stabilization as of 2000, when the owner first treated the apartment as exempt," and the plaintiffs are the rent-stabilized tenants. To determine the legally regulated rent on the base date of February 21, 2010 – four years before the overcharge suit was filed – it said courts cannot simply accept the $3,500 per month rent in effect on that date because it was "based on the owner's misapprehension that apartment 5M was not subject to rent stabilization." Instead, they must calculate the amount of permissible increases that could have been charged since the initial lease expired in 2002, despite the 4-year limitations period of CPLR 213-a, it said. "We cannot reconcile a mechanical application of CPLR 213-a and give effect to the retroactive application of Roberts ... without considering the permitted rent stabilization increases ... preceding February 21, 2010. Only in this manner can it be determined whether the rent the owner charged plaintiffs on the base date bears any relation to a permissible, rent-stabilized rent." It said the owner "disproved any fraud" in the setting of rent, but said further proceedings are needed to determine whether any overcharge was willful.

The owner argues the Appellate Division "erred in employing a novel method of calculating the base date rent and overcharges that utilizes rental history prior to the four-year base date.... The method ... used by the court below is inconsistent with unambiguous controlling law, decisions of this Court and multiple other First Department cases." It contends the court also erred in remanding to consider whether it acted willfully, saying other First Department panels "have held that even if there were overcharges, attorneys' fees and treble damages are not available in J-51 cases like this one where the owner did nothing more than rely on the DHCR's mistaken statutory interpretation." The owner argues an apartment's stabilized status should end when J-51 benefits expire. "The legislature's intent in enacting the J-51 exception to luxury decontrol ... was to ensure that buildings would not simultaneously receive J-51 benefits and luxury decontrol benefits.... That concern ends when the J-51 expires."

For appellant 72A Realty Associates: Joel M. Zinberg, Manhattan (917) 721-4319
For respondents Taylor and Jenkins: Robert E. Sokolski, Manhattan (212) 571-4080

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To be argued Tuesday, January 7, 2020

No. 4 Reich v Belnord Partners, LLC

In 2005, Elizabeth Reich and Stanlee Brimberg signed a market-rate lease for an apartment in the Belnord building on the Upper West Side. The then-owner of the Belnord had deregulated the apartment under the luxury decontrol provisions of the Rent Stabilization Law (RSL) while the building was enrolled in the City's J-51 tax abatement program. Subsequent owners continued to receive J-51 benefits until 2018. The initial monthly rent was $18,500 for the eight-room apartment, which included four bedrooms and a maid's room, and rose to $20,000 per month for the last two years of the lease, from 2008 to 2010. In 2009, this Court ruled in Roberts v Tishman Speyer Properties (13 NY3d 270) that landlords could not deregulate rent stabilized apartments while they were receiving J-51 benefits, rejecting longstanding legal guidance from the Division of Housing and Community Renewal (DHCR). In 2010, Extell Belnord LLC, which had acquired the building in 2006, informed Reich and Brimberg of the Roberts ruling, gave them a stabilized lease, and registered the apartment as rent stabilized with DHCR. Belnord Partners LLC (Belnord) continued to give the tenants rent-stabilized leases each year after it acquired the building in 2015. The tenants brought this overcharge action against Belnord and Extell in 2016, claiming their current stabilized rent was improperly based on the "illegal" base date rent of $20,000 per month that was in effect in 2010.

Supreme Court dismissed their overcharge claim as time barred by the 4-year limitations period set in CPLR 213-a. It noted that the First Department considered rental history beyond the 4-year look back period in Taylor v 72A Realty Assocs. (151 AD3d 95 [2017]), but said this case is distinguishable. "[A]fter the Roberts decision, some owners simply ignored the ruling and later scrambled to comply only after tenants brought overcharge complaints. But the defendants here did exactly what those owners (and the owner in Taylor) did not do – they acknowledged the Roberts decision, informed tenants about the ruling, quickly registered the apartment with the DHCR and provided subsequent rent increases in accordance with the applicable guidelines. The court finds no reason to look beyond the four-year look back period where there is no indication of fraud by defendants...." Further, it said, the plaintiffs did not explain their delay in filing suit. "Plaintiffs were told in 2010 about Roberts and they waited until 2016 to bring this case, after they had signed rent-stabilized leases in 2011, 2012, 2013, and 2014."

The Appellate Division, First Department affirmed, saying, "Consistent with both Matter of Regina Metro. Co., LLC v New York State Div. Of Hous. & Community Renewal (164 AD3d 420 ... [1st Dept 2018] ...) and Taylor..., there was no basis for considering the subject apartment's rental history more than four years before the commencement of the overcharge claim.... In Taylor..., we permitted a longer look back period under certain circumstances not necessarily indicative of fraud. Those circumstances are not present where, as here, the tenant received a rent stabilized lease and the landlord registered the rent with DHCR more than four years before any rent overcharge complaint was filed."

The tenants argue they are entitled to an award of overcharges, treble damages, and legal fees. Pursuant to Roberts and the Housing Stability and Tenant Protection Act of 2019, they say, "a landlord must prove a proper and legally established base date rent, and not simply use the rent from an illegally deregulated lease, any registration statement relied upon by a landlord must be a reliable one, and the court may go back more than four years from the filing of a complaint ... in examining all available evidence necessary to establish a legal stabilized rent...."

For appellants Reich and Brimberg: Darryl M. Vernon, Manhattan (212) 949-7300
For respondents Belnord and Extell: Deborah Riegel, Manhattan (212) 551-8462

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Court of Appeals

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To be argued Tuesday, January 7, 2020

No. 5 Collazo v Netherland Property Assets LLC

Tenants of 18 apartments in a Bronx building owned by Netherland Property Assets LLC brought this action against Netherland and its management company in 2016, alleging that the landlord illegally charged them unregulated rents while it was receiving J-51 tax benefits from New York City. They relied on the Court of Appeals' 2009 ruling in Roberts v Tishman Speyer Properties (13 NY3d 270), which held that landlords "were not entitled to take advantage of the luxury decontrol provisions of the Rent Stabilization Law (RSL) while simultaneously receiving tax incentive benefits under the City of New York's J-51 program." The tenants sought a judgment that their apartments are subject to rent stabilization under the RSL and determining their legal regulated rents; judgment that non-stabilized leases are invalid; separate judgments for their rent overcharges, as well as treble damages and attorneys' fees for violation of the RSL. They also made a claim for deceptive business practices under General Business Law § 349. The apartments have since been re-registered as rent stabilized, but the Tenants still seek a judgment declaring their leases invalid, judgments for their rent overcharges, along with treble damages and attorneys' fees. Netherland moved to dismiss the suit under the doctrine of primary jurisdiction, which generally provides that courts should refer issues that are within an agency's area of special expertise to that agency for resolution. Netherland argued the action should be resolved by the state's Division of Housing and Community Renewal (DHCR).

Supreme Court granted the defense motion to dismiss the complaint, saying that although it "clearly has concurrent jurisdiction with DHCR," issues of whether the apartments are subject to rent stabilization, the legal rents to be charged, and rent overcharge claims "are questions best for DHCR.... [T]he questions raised about the applicability of the rent stabilization law and the proper amount of rent is within the agency's specialized experience and technical expertise." It dismissed the General Business Law claims because they relate to a "private contract dispute" with a landlord that did not involve "consumer oriented conduct aimed at the public at large."

The Appellate Division, First Department affirmed, saying the lower court "providently exercised its discretion in ruling that plaintiffs' rent overcharge claims should be determined by [DHCR] in the first instance...."

The tenants say they "elected to bring their individual claims as a multi-plaintiff action in Supreme Court, as was their right. In the Supreme Court all of Plaintiffs' claims can be heard together, whereas at the DHCR their claims would be filed individually and assigned to individual case examiners. Also, in Supreme Court, Plaintiffs would have full rights of pre-trial discovery..., which are not available at the DHCR. Moreover, as the facts of Plaintiffs' cases are all very similar, and all Plaintiffs have elected to retain the same counsel, it is desirable that they be brought together in Court rather than individually at the DHCR." They say New York courts "have held repeatedly that it is the tenant's choice whether to bring this type of claim in the Court or at the DHCR." They also cite language in the Housing Stability and Tenant Protection Act of 2019 giving courts and DHCR concurrent jurisdiction for rent overcharge claims "subject to the tenant's choice of forum."

For appellants Collazo et al (Tenants): Ronald S. Languedoc, Manhattan (212) 349-3000
For respondents Netherland et al: Adrienne B. Koch, Manhattan (212) 953-6000

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To be argued Wednesday, January 8, 2020 (arguments begin at 10 a.m.)

No. 6 Matter of Bohlen v DiNapoli

After the September 11, 2001 terrorist attack on the World Trade Center – which destroyed the headquarters of the Port Authority of New York and New Jersey and caused the death of more than 70 of its employees and the loss of nearly all of its records – the Port Authority relied heavily on the expertise of Bruce Bohlen and ten other long-term executives to maintain its operations. In 2002, when the State Legislature enacted a retirement incentive program, the Port Authority declared the 11 key executives ineligible for the retirement incentive. Instead, it offered them a "parity" benefit or "longevity allowance" – a percentage of their salary that would be added to their biweekly paychecks – if they continued to work beyond the end of the year. A memorandum agreement explained that the amount of the allowance was calculated to make the executives' eventual pension benefits "roughly equivalent" to what they would have received under the retirement incentive if they remained employed for three more years. The executives each signed memorandum agreements accepting the offer in December 2002.

Eight of the executives retired from the Port Authority between 2003 and 2010 and each received pension benefits that were enhanced by the inclusion of the longevity allowance payments in their final average salaries. When the three remaining executives filed their retirement applications in 2012, the State and Local Employees' Retirement System concluded that the longevity allowances must be excluded from their final average salaries under Retirement and Social Security Law § 431, which provides that "the salary base for the computation of retirement benefits shall in no event include ... any additional compensation paid in anticipation of retirement." The Retirement System also reviewed the pension benefits being paid to the first eight retirees, determining that their longevity allowances were compensation paid in anticipation of retirement which must be excluded from their pension calculation and that the improperly enhanced portion of their benefits must be repaid. Comptroller Thomas DiNapoli, who administers the Retirement System, denied the executives' administrative appeal.

The Appellate Division, Third Department annulled the Comptroller's determination in a 3-2 decision and ordered the Retirement System to recalculate the executives' pensions with credit for the longevity allowances. It said the allowances "are more appropriately characterized as payments genuinely made to delay petitioners' retirements, not to artificially inflate their final average salary in anticipation of retirement. We see the primary purpose of the memorandum agreement as twofold – to retain key employees following the September 11, 2001 terrorist attack and to adequately compensate petitioners for their dedication and commitment to remain in their vital positions.... This is certainly neither a lump-sum payment on the eve of retirement nor a disproportionate salary increase designed to artificially inflate a pension benefit...."

The dissenters argued that "the primary purpose of the longevity allowance payments was to make up for the lost enhancement to petitioners' final average salaries" they would have received had they been allowed to take advantage of the retirement incentive. "Although the longevity allowance payments were clearly intended to induce petitioners to remain employed after December 2002, the ... evidence amply supports the conclusion that the primary purpose of the ... payments was to provide petitioners with an elevated level of compensation in retirement, whenever that might be. Accordingly, notwithstanding evidence in the record that could support a contrary conclusion, we find substantial evidence ... to support the Comptroller's determination that the longevity allowance payments" must be excluded from the calculation of pension benefits.

For appellant DiNapoli: Assistant Solicitor General Sarah L. Rosenbluth (518) 776-2050
For respondents Bohlen et al: George J. Szary, Albany (518) 462-5300

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To be argued Wednesday, January 8, 2020 (arguments begin at 10 a.m.)

No. 7 People v Damon Wheeler

Damon Wheeler was stopped by the side of a road in Middletown in April 2014 when two police officers, one with his gun drawn, approached him with a warrant to search his car. Wheeler threw his vehicle into reverse and drove backwards at high speed for nearly a quarter-mile, when his car stalled and he was arrested. The officers said they found crack cocaine on the floor, the driver's seat, and in the trunk of the car. Wheeler was charged with obstructing governmental administration in the second degree (Penal Law § 195.05) in an information, which alleged that he attempted to elude the officers as they were "effecting a proper vehicle stop." The charging document did not mention the search warrant. He was also charged with drug possession, a count that was later dismissed. Wheeler moved to dismiss the obstruction charge as jurisdictionally defective because it failed to allege facts sufficient to establish that the officers were "authorized" by the warrant to stop and search his car. City Court denied the motion. After the prosecutor proved at trial that the search warrant was valid, the jury convicted Wheeler of second-degree obstruction and he was sentenced to one year in jail.

The Appellate Term for the 9th and 10th Judicial Districts affirmed, finding the accusatory instrument was facially sufficient. "What must normally be alleged in an accusatory instrument charging an obstruction of a police officer's function is conduct representing the performance of a particular official duty, as opposed to merely being 'on duty' or pursuing a nonofficial function while in uniform.... While a 'vehicle stop' may not be as descriptive of an official function as the execution of a search warrant, such conduct nevertheless represents an official function of police officers." The court said, "While we are aware that a contrary result was reached by the Appellate Division, First Department, in People v Sumter (151 AD3d 556 [2017]), in criminal matters, we are not bound by contrary determinations of a court of the Appellate Division.... While the People had the ultimate burden, at the trial, to prove that the police were authorized to stop defendant's vehicle, to require such facts at the pleading stage would impose 'an unacceptable hypertechnical interpretation of the pleading requirements'...."

Wheeler argues that the "failure to allege the facts which authorized the vehicle stop rendered the accusatory instrument facially insufficient" under Sumter, which held that an information charging a defendant with resisting arrest "is jurisdictionally defective if it fails to allege facts showing that the arrest was authorized." He says, "Just as an information for resisting arrest must allege that the arrest was lawful, and explain why, the lawfulness of the vehicle stop must be alleged and explained.... There are any number of reasons why a vehicle may be stopped by the police, some of which are lawful and others are not. In order to defend, it is incumbent upon the prosecution to set forth the lawful basis for the stop in the information." He also argues, "Stare decisis requires that the decisions of the Appellate Division for criminal appeals, regardless of the department, be followed by the Appellate Term" because it is "a court of inferior jurisdiction.... The Appellate Term is strictly a function of Appellate Division rulemaking" and its decisions are not binding on courts outside of its own department.

For appellant Wheeler: Richard L. Herzfeld, Manhattan (212) 818-9019
For respondent: Orange County Assistant District Attorney Andrew R. Kass (845) 291-2050

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To be argued Wednesday, January 8, 2020 (arguments begin at 10 a.m.)

No. 8 People v Anonymous *(papers sealed)*

The defendant in this case was arrested at his Manhattan apartment in March 2012 when police executed a search warrant and found him in possession of 7.5 ounces of cocaine. In April 2013, he pled guilty to criminal possession of a controlled substance in the fourth degree in exchange for a promised sentence of four years in prison. Supreme Court adjourned the sentencing and imposed three conditions on the four-year promise, including that the defendant "stay out of trouble.... [T]hat means no new arrests of any kind." The court advised him that he would get the four-year sentence if he complied with the conditions, but if he failed he would face up to nine years. In August 2013, the defendant was charged with first-degree robbery in an unrelated case. While his drug sentencing was still pending, the defendant testified at his robbery trial that he had conducted a major drug deal at the complainant's apartment, but there had been no robbery. He was acquitted of robbery and the trial record was sealed pursuant to CPL 160.50.

The District Attorney's Office, which prosecuted both cases against the defendant, applied to the court handling the drug case to unseal the defendant's testimony from his robbery trial to show through his admission under oath to drug trafficking that he had violated a condition of his plea bargain. The prosecutor argued that the nine-year maximum sentence should be imposed. The court unsealed the trial record and, after a hearing, found the defendant violated the terms of his plea and sentenced him to eight years in prison.

The Appellate Division, First Department affirmed. The three-judge majority found the defendant's trial testimony was improperly unsealed under Matter of Katherine B. v Cataldo (5 NY3d 196), which said the law enforcement exception in CPL 160.50(1)(d)(ii) was not "broad enough to encompass an ex parte request by a prosecutor to unseal records for purposes of making sentencing recommendations." However, it rejected his request for resentencing without the sealed testimony, saying there is no remedy for the statutory violation. It said, "In People v Patterson (78 NY2d 711 [1991]), the Court of Appeals held that suppression was not required where the police obtained identification evidence in violation of CPL 160.50, and the witness then identified the defendant in court. The Court ruled that 'there is nothing in the history of CPL 160.50 or related statutes indicating a legislative intent to confer a constitutionally derived "substantial right," such that the violation of that statute, without more, would justify invocation of the exclusionary rule with respect to subsequent independent and unrelated criminal proceedings'.... We conclude that defendant is entitled to no greater relief based on the statutory violation that resulted in the court's consideration of the improperly unsealed information at sentencing than he would have been entitled to had the information been admitted at trial." Two concurring justices agreed the defendant was not entitled to suppression of his trial testimony, but suggested the sentencing court might have had authority to access the sealed records under its "legal mandate to determine whether a defendant complied with plea conditions."

The defendant argues, "The purpose of the sealing requirement is to protect defendants from any adverse consequences stemming from criminal prosecutions that terminate in their favor," and applying the exclusionary rule in cases like this is the only way "to deter prosecutors and courts from seeking and obtaining unlawful unsealing orders for the express purpose of uncovering incriminating information in order to punish defendants more harshly. Far from being a mere statutory violation, the unsealing here directly implicated appellant's due process rights – including the presumption of innocence, the central concern of the legislature when it enacted the sealing statute – and his Sixth Amendment right to testify without concomitantly incriminating himself in an unrelated case."

For appellant Anonymous: Katherine M. A. Pecore, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Julia P. Cohen (212) 335-9000

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To be argued Thursday, January 9, 2020

No. 9 Matter of Leggio v Devine

Tina Leggio applied to the Suffolk County Department of Social Services (DSS) to continue her Supplemental Nutritional Assistance Program (SNAP) benefits in October 2014. At that time, she was a divorced mother living with her six children, five of whom were under the age of 22. Two of those children were full-time college students. She received nearly $600 per week in child support for the five younger children, including the college students. DSS denied Leggio's application on the ground that her household income exceeded the eligibility limit for SNAP benefits. DSS did not count the college students in determining the size of her household because they were full-time students over the age of 18 who did not meet the work requirement to qualify for SNAP benefits. However, DSS did include the college students' share of child support in calculating Leggio's household income.

After a fair hearing, the State Office of Temporary and Disability Assistance (OTDA) affirmed DSS's decision to deny benefits. OTDA said the child support attributable to the two college students should be included in household income because they were not living outside the household and because child support "is paid to and under the control of the parent." It said that, "even if the child is an ineligible member due to student or employment status," support paid for that child should not be excluded from household income "simply because it is not [the child's] income.... This income is given to the parent and is under the parent's control."

The Appellate Division, Second Department confirmed OTDA's decision, although it rejected the agency's view that child support payments are income of the parent, not the child. The court said child support "is an obligation 'to the child, not to the payee spouse,'" and custodial parents "are no more than conduits of that support from the noncustodial parent to the child." However, it said Leggio's two college students "were part of the household" under federal and state regulations. "They were disqualified from receiving benefits, primarily because they do not comply with work requirements. Therefore, they could not be counted in determining the number of persons in the household, but their pro rata share of child support was includable in household income." It said 7 CFR 273.11(c) (Subsection C) "explicitly" provides for the "inclusion of income from certain specific persons who shall not be considered members of the household in determining household size," including "persons disqualified because of ... noncompliance with a work requirement."

Leggio says the Appellate Division was correct in ruling that child support is income of the child, not the parent, for determining SNAP benefits. However, she says the court erred in holding that Subsection C requires that her college students' share of child support be included in her household income "because the federal regulation that specifically addresses how the income of an ineligible student is handled for SNAP purposes" – 7 CFR 273.11(d) (Subsection D) – "expressly provides that this income 'shall not be considered available to the household with whom [the student] resides." Thus, based on the court's ruling that child support is income of the child, she says she is eligible for SNAP benefits.

OTDA argues, in part, that it "reasonably interpreted its regulations to treat the [child support] payments as [Leggio's] income, not her children's," and that the Appellate Division should have upheld the denial of benefits on that basis.

For appellant Leggio: Beth C. Zweig, Islandia (631) 232-2400 ext 3337
For respondent Devine (OTDA): Assistant Solicitor General Andrew W. Amend (212) 416-8022

State of New York
Court of Appeals

To be argued Thursday, January 9, 2020

No. 10 People v Ganesh Ramlall

After he struck another vehicle while driving in Brooklyn in May 2012, Ganesh Ramlall was charged with three counts of driving under the influence of alcohol: two misdemeanor charges of driving while intoxicated (DWI) under Vehicle and Traffic Law §§ 1192(2) and (3), and one infraction of driving while ability impaired (DWAI) under VTL § 1192(1). In March 2013, Criminal Court granted Ramlall's CPL 30.30 motion to dismiss the misdemeanor DWI charges on speedy trial grounds, finding the prosecution had been responsible for 111 days of delay, which exceeded the 90-day time limit. However, the court denied his motion to dismiss the DWAI traffic infraction, holding that CPL 30.30 does not apply to infractions and that Ramlall's constitutional speedy trail claim under CPL 30.20 was meritless because he "alleges neither extended pretrial incarceration nor impairment of his defense." Nineteen months later, Ramlall filed a second CPL 30.20 motion to dismiss the DWAI infraction. After the court dismissed his motion in December 2014, he pled guilty to DWAI.

The Appellate Term, Second Department, 2d, 11th and 13th Judicial Districts affirmed, ruling that Ramlall's constitutional right to a speedy trial under CPL 30.20 was not violated based on the five-factor analysis adopted in People v Taranovich (37 NY2d 442). "Defendant was not incarcerated for any significant period of time and did not demonstrate that his defense had been impaired.... While there was a protracted delay, such delay 'will not, in and of itself, be sufficient to warrant the drastic measure of dismissal,'" it said, quoting Taranovich.

Ramlall argues that, because CPL 30.30 sets specific time frames for bringing felonies, misdemeanors and criminal violations to trial, but does not address non-criminal infractions, lower courts address delays in prosecuting DWAI infractions under constitutional speedy trial guarantees and Taranovich. "The absurd result is that DWAI infractions may remain pending long after the related DWI misdemeanor has been dismissed." He argues that a CPL 30.30 dismissal of related misdemeanor charges should create a presumption in favor of dismissal of a less serious infraction under CPL 30.20 and Taranovich. "Indeed, if delays warranted the actual dismissal of the DWI misdemeanors, at the very least, the same delays warrant a presumption of prejudice." The DWAI count remained pending against him for nearly two years after the misdemeanors were dismissed, with 306 days of that attributed to the prosecutors, he says. "That delay should have weighed heavily against the People instead of being excused by the court. Prejudice should have been presumed, not ignored."

The People argue that the Sixth Amendment – which provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial" – "does not apply to prosecutions for New York traffic infractions.... Because a traffic infraction is not a crime, because any punishment imposed therefor cannot be deemed a 'criminal punishment' for any purpose, and because the prosecution of a traffic infraction is a civil action, the prosecution of a traffic infraction is not a criminal prosecution." Even if the Sixth Amendment applies, they say, Ramlall "failed to establish a constitutional violation."

For appellant Ramlall: Natalie Rea, Manhattan (212) 577-3403
For respondent: Brooklyn Assistant District Attorney Ann Bordley (718) 250-2464

State of New York
Court of Appeals

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To be argued Thursday, January 9, 2020

No. 11 People v Gerald Francis

In 1988, Gerald Francis pled guilty in Manhattan to a felony charge of third-degree criminal possession of a weapon in exchange for a promised sentence of no more than one year in jail. Although he had previously been convicted of a felony drug sale charge under the name Lawrence Benjamin in 1982, making him a predicate felony offender, he was given a split sentence of six months in jail and five years probation as a first-time felony offender on the 1988 weapon conviction. In 1991, Francis pled guilty to first-degree attempted robbery under the name Bernell Gould. And finally, in 1997, he was convicted at trial of first-degree robbery under the name Lawrence Benjamin. In the 1997 case, Francis was adjudged a persistent violent felony offender, based on his prior convictions for weapon possession in 1988 and attempted robbery in 1991, and was sentenced to 23 years to life in prison.

After exhausting his appeals of the 1997 conviction, Francis brought this CPL 440.20 motion to set aside his sentence in the 1988 weapon case as illegally low because he had been improperly sentenced as a first felony offender. He acknowledges that his real goal, if he obtains a ruling that his 1988 sentence is illegal, is to move to withdraw his guilty plea on the ground that a legal sentence would violate his plea agreement and, in that way, prevent the use of his 1988 conviction as a predicate offense to enhance his 1997 sentence. Supreme Court denied his motion to set aside his 1988 sentence.

The Appellate Division, First Department affirmed, finding it was barred from reviewing Francis's claim by CPL 470.15(1), which states that an "intermediate appellate court may consider and determine any question of law or issue of fact involving error or defect in the criminal court proceedings which may have adversely affected the appellant." The court said, "[B]ecause defendant was not 'adversely affected' by the court's error in sentencing him on his 1988 conviction in this case, and, indeed, benefitted from the imposition of a lesser sentence than he would have received had he been properly adjudicated, defendant's CPL 440.20 claim must be rejected without consideration of its merits.... As we have no jurisdiction to reach the merits of defendant's claim, his argument as to the illegality of his sentence is unavailing...."

Francis argues that "the Appellate Division misconstrued the import of CPL 470.15(1) and this Court's precedents in People v LaFontaine (92 NY2d 470) and People v Nicholson (26 NY3d 813)," which "explicitly held that CPL 470.15(1) constituted 'a legislative restriction on the Appellate Division's power to review issues either decided in appellant's favor, or not ruled upon by the trial court'.... Here, appellant's CPL 440.20 motion was summarily denied by the motion court. It was not decided in appellant's favor. Therefore..., CPL 470.15(1) does not constitute a jurisdictional bar to the consideration of the merits of appellant's appeal." He also argues that, "even under the Appellate Division's misinterpretation" of the statute, he was "adversely affected" by the denial of his motion for resentencing. Had the motion court vacated his 1988 sentence, "he would have had the opportunity to withdraw his guilty plea and then taken this case to trial. Irrespective of the outcome of this trial, the vacatur of this plea conviction would have fundamentally altered appellant's present [23 year] to life sentence as a mandatory persistent violent felony offender because he would no longer have two prior predicate violent felony convictions."

For appellant Francis: Harold V. Ferguson, Jr., Manhattan (212) 577-3548
For respondent: Manhattan Assistant District Attorney Samuel Z. Goldfine (212) 335-9000