State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

January 8 thru 10, 2019

State of New York
Court of Appeals

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To be argued Tuesday, January 8, 2019

No. 1 Matter of Mental Hygiene Legal Service v Sullivan *(papers sealed)*

Prior to the end of his prison sentence, D.J. was adjudicated a dangerous sex offender requiring confinement under Mental Hygiene Law article 10 and was civilly committed to the St. Lawrence Psychiatric Center, where officials were required to develop a treatment plan for him. In preparing the treatment plan, Mental Hygiene Law § 29.13(b) provides that certain persons "shall be interviewed and provided an opportunity to actively participate," including "an authorized representative of the patient" and "a significant individual to the patient including any relative, close friend or individual otherwise concerned with the welfare of the patient." The statute does not further define "authorized representative" or "significant individual." D.J. asked that his attorney from the Mental Hygiene Legal Service (MHLS) be allowed to attend his treatment planning meetings, but officials of the psychiatric center denied his request on the ground that counsel was not legally entitled to attend the meetings and counsel's presence could be counterproductive to his therapy. D.J. and MHLS brought this proceeding to challenge the denial. Supreme Court dismissed the suit, ruling the Mental Hygiene Law does not give MHLS staff the right to attend treatment planning meetings.

The Appellate Division, Third Department affirmed in a 3-2 decision, finding MHLS attorneys are neither an "authorized representative" or "significant individual" under section 20.13(b). The majority said the language of the statute "suggests that an 'authorized representative' is one 'authorized' to make treatment decisions on the patient's behalf, which is consistent with the general meaning of the term as a person with 'some sort of tangible delegation to act in [another's] shoes'.... Counsel does not have authority to make these types of decisions on behalf of a client -- instead, counsel must maintain a conventional attorney-client relationship with an impaired client so far as possible and then take steps to consult with individuals who have decision-making authority...." It said the text and history of the statute "reveal that a 'significant individual' is personally interested in a patient's mental health and welfare and in a position to assist in setting appropriate treatment goals while a patient is hospitalized and ensuring an appropriate placement upon his or her discharge. Counsel from MHLS, in contrast, comes from an agency whose 'statutory mission is to provide legal assistance to the residents of certain facilities' such as D.J., and legal advocacy may easily conflict with crafting an appropriate treatment plan if the medically advisable treatment conflicts with the client's legal goals...."

The dissenters turned to MHLS's enabling statute, saying "the plain language of Mental Hygiene Law §§ 47.01 and 47.03 establishes the broad scope of the duties of MHLS, encompassing the provision of 'legal services and assistance' related to a resident's 'care and treatment' and permitting MHLS full access to these facilities in carrying out these duties.... As to Mental Hygiene Law § 29.13, the Legislature expressly stated that its purpose in amending the act in 1993 was for the 'inclusion of a friend or advocate in treatment ... planning activities.... Recognizing the inherent vulnerability of residents encompassed by [section] 29.13, MHLS properly serves its duties by providing advocacy services concerning a resident's objections to care and treatment ... and concerning whether treatment is provided in accordance with statutory and regulatory standards...." They concluded that "MHLS counsel serves as a resident's authorized representative and, where identified by the resident as such, an MHLS employee constitutes a significant individual concerned with the welfare of the resident's welfare."

For appellants MHLS and D.J.: Shannon Stockwell, Albany (518) 451-8710
For respondents Sullivan et al: Assistant Solicitor General Kathleen M. Treasure (518) 776-2021

State of New York Court of Appeals

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To be argued Tuesday, January 8, 2019

No. 2 Matter of Mental Hygiene Legal Service v Daniels

Mental Hygiene Legal Service (MHLS), which provides legal representation to hospitalized mental patients in New York, brought this proceeding against the director of the state-run Bronx Psychiatric Center (BPC) in 2016 to compel the facility to provide it with a copy of the complete clinical record of each patient who faced an involuntary retention hearing under Mental Hygiene Law § 9.31. MHLS argued that by copying only portions of the medical charts, BPC failed to comply with Mental Hygiene Law § 9.31(b), which requires hospital directors to "forward forthwith a copy of [the hearing] notice with a record of the patient" to the hearing court and MHLS.

Supreme Court granted the petition "insofar as it establishes that in failing to provide [MHLS] with a complete copy of a patient's medical chart in any proceeding pursuant to Mental Hygiene Law § 9.31(a), [BPC] is violating the clear language and legislative intent of Mental Hygiene Law § 9.31(b), which when read together with Mental Hygiene Law §§ 9.01, 33.16(a)(1), and 14 NYCRR 501.2(a), requires that [BPC] provide copies of the entire chart not just portions thereof prior to a hearing." It rejected BPC's argument that MHLS lacked standing.

The Appellate Division, First Department affirmed on a 3-2 vote, agreeing with the trial court that, "when read together, these statutory duty and regulatory provisions impose upon BPC a compulsory duty to provide MHLS with a copy of its clients' complete medical charts" before their retention hearings are held. "Ultimately, as a matter of due process..., the detriment that these patients may experience in not having copies of their charts available at their hearings is of a plainly higher and more compelling nature than the detriment to the hospital in having to undertake additional photocopying responsibilities...." While MHLS has the right to review and copy its clients' charts at their hospitals, the majority said, "It is abundantly clear that the medical charts ... are a fluid set of documents that the medical staff ... are constantly updating during the continuing constant treatment and care of the patient. Thus, MHLS attorneys' right to access the charts, 'at any given time,' would not assure the attorney that he or she was looking at the very same documents BPC relies on at the retention hearing." It also ruled MHLS had organizational standing to bring the proceeding.

The dissenters said, "Pursuant to Mental Hygiene Law § 47.03(d), MHLS is entitled to access to patient charts 'at any and all times,' and MHLS -- which has offices at BPC -- admits that it has always had such around-the-clock access to patient charts, as well as the ability to make copies.... Thus, the majority's concern that not requiring BPC to copy patient charts for MHLS might somehow deprive patients of 'due process' ... is unfounded.... [T]he majority simply cannot point to any provision of either the Mental Hygiene Law or of the regulations issued thereunder that provides authority for construing section 9.31(b) to require BPC to provide MHLS, at BPC's expense, with a physical paper copy of a patient's entire medical chart in advance of a retention hearing.... BPC honors the right of MHLS ... to inspect the chart of any patient it represents whenever it wants, and to copy as much of that chart as it sees fit. However, there is simply no provision of law that authorizes this court to shift from MHLS to BPC the expense of copying an entire patient chart for MHLS's benefit."

For appellant Daniels (BPC): Assistant Solicitor General Matthew W. Grieco (212) 416-8014
For respondent MHLS: Sadie Zea Ishee, Manhattan (646) 386-5891

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To be argued Tuesday, January 8, 2019

No. 3 Matter of James Q. *(papers sealed)*

James Q. was charged with statutory rape, weapon possession, and related crimes for assaulting his underage girlfriend in Suffolk County in 2010. He entered a plea of not responsible by reason of mental disease or defect and was committed to the custody of the Office for People with Developmental Disabilities (OPWDD) at the Sunmount Developmental Center, a secure facility in Franklin County. He remained confined under a series of retention orders issued pursuant to Criminal Procedure Law (CPL) 330.20, based on findings that he continued to suffer from a dangerous mental disorder. After OPWDD applied for a fifth retention order in 2015, the parties agreed to an 18-month retention order without a hearing.

James Q. moved to seal the entire record of the proceeding under Mental Hygiene Law § 33.13. Section 33.13(a) provides that a patient's clinical record "shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient or client and shall include all pertinent documents relating to the patient or client;" and section 33.13(c) provides, "Such information about patients or clients reported to the [Office of Mental Health or OPWDD (the offices)], including the identification of patients or clients, clinical records or clinical information tending to identify patients or clients..., at office facilities ... shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices...."

Supreme Court sealed the report of a psychologist who evaluated James Q. for the proceeding, but refused to seal OPWDD's retention petition, the psychologist's sworn affidavit, or the retention order.

In a 3-2 decision, the Appellate Division, Third Department modified by ordering redaction of any information about James Q.'s diagnoses and treatment, and otherwise affirmed. It said, "The distinction between an insanity acquittee, as we have here, and an involuntarily committed civil patient is apparent by the Legislature's enactment of a separate statutory scheme -- CPL 330.20 -- to address the commitment and retention procedures for persons found not responsible for their crimes by reason of mental disease or defect. The detailed statutory framework of CPL 330.20 does not include a provision that requires, or even contemplates, the sealing of these commitment and retention proceedings.... By its own language, the prohibition contained in Mental Hygiene Law § 33.13(c) applies solely to the Office of Mental Health, OPWDD" and their facilities. It is a confidentiality provision, not a sealing provision...." As a matter of policy, it said, "The victim of [James Q.'s] crimes, as well as the public at large, have a right to know how [he] is being civilly managed pursuant to CPL 330.20."

The dissenters, noting that CPL 330.20(17) "affords [James Q.] 'the rights granted to patients under the [M]ental [H]ygiene [L]aw,'" said documents filed in the retention proceeding must be sealed because they "formed part of his clinical record within the meaning of Mental Hygiene Law § 33.13.... [I]t is difficult to perceive how they do not, for each document directly pertains to [James Q.'s] legal status. Moreover, the subject documents are protected from being made public pursuant to Mental Hygiene Law § 33.13(c), not only due to their classification as clinical records, but also because they all identify [James Q.] by name..., identify [his] status as a resident at an OPWDD secure facility, and ... disclose clinical information," including the psychologist's opinion that he "suffers from a 'dangerous mental disorder'...."

For appellant James Q.: Brent R. Stack, Albany (518) 451-8710
For respondent: Suffolk County Assistant District Attorney Guy Arcidiacono (631) 852-2500

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To be argued Wednesday, January 9, 2019

No. 4 Arrowhead Capital Finance, Ltd. v Cheyne Specialty Finance Fund L.P.

Arrowhead Capital Finance, Ltd. brought this action against Cheyne Specialty Finance Fund L.P. and its general partner in June 2014 for alleged breaches of two trust agreements. In December 2015, Supreme Court partially granted Cheyne's motion to dismiss by dismissing all claims except for breach of fiduciary duty and breach of contract.

In May 2016, the court granted Cheyne's request to file a second motion to dismiss, this one based on its claim that Cheyne's attorney, Barry L. Goldin, failed to maintain a New York law office as required by Judiciary Law § 470. Goldin was licensed to practice in New York, but his attorney registration listed an office address in Allentown, Pennsylvania. The complaint Goldin filed for Arrowhead listed his Allentown office address with its telephone and fax numbers, as well as an address at 240 Madison Avenue in Manhattan. Cheyne said the Madison Avenue address "is not an actual law office occupied by him, or, for that matter, anyone else." On the same day that Cheyne obtained permission to file its second motion, the New York firm of Wollmuth Maher & Deutsch LLP filed a notice of appearance as co-counsel for Arrowhead. Goldin argued that any violation of Judiciary Law § 470 was cured by Wollmuth's appearance as co-counsel in this action. He also said the New York office requirement was suspended at the time he filed this action because U.S. District Court had declared section 470 unconstitutional in Schoenefeld v Schneiderman (907 F Supp 2d 252 [ND NY 2011]). The Second Circuit reversed that decision in April 2016 (821 F3d 273), after the New York Court of Appeals held in answer to a certified question that section 470 "requires nonresident attorneys to maintain a physical office in New York" (Schoenefeld v State of New York [25 NY3d 22 (2015)].

Supreme Court granted Cheyne's motion and dismissed the action, without prejudice to commencing a new action. It said, "[T]here is no evidence that Goldin maintained an office or a phone in New York when this action was filed in June 2014.... Receiving mail and documents is insufficient to constitute maintenance of an office." The court rejected rulings of the Second and Third Departments that allow parties to cure a violation of section 470 by obtaining new counsel with a New York office or by filing a pro hac vice application, and applied the First Department's rule "that a court should strike a pleading, without prejudice, where it is filed by an attorney who fails to maintain a local office...."

The Appellate Division, First Department affirmed, saying, "The record supports the court's determination that plaintiff's counsel failed to maintain an in-state office at the time he commenced this action.... Plaintiff's subsequent retention of cocounsel with an in-state office did not cure the violation, since the commencement of the action in violation of Judiciary Law § 470 was a nullity.... [T]he court was not bound by the holding of a federal district court at the time of the commencement of this action that Judiciary Law § 470 was unconstitutional."

Arrowhead says the First Department's "nullity rule" conflicts with Dunn v Eickhoff (35 NY2d 698), which "held a party's representation by a person not even authorized or admitted to practice law [in New York] does not create a 'nullity' or render prior proceedings void." It says the Second and Third Department cases allowing parties to cure a section 470 violation comply with Dunn and reflect "a wiser policy, particularly where (as here) defendant did not seek Judiciary Law § 470 dismissal until several years after complaint filing; extensive proceedings had been had and substantial resources invested by litigants and court; and 'office' compliance had been cured."

For appellant Arrowhead: Barry L. Goldin, Manhattan (646) 569-5526 and Allentown, PA
For respondent Cheyne: Shaimaa Hussein, Manhattan (212) 728-8000

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To be argued Wednesday, January 9, 2019

No. 5 People v Michael Thomas

Michael Thomas was adjudicated a youthful offender in 1988 after pleading guilty to two counts of second-degree robbery in Brooklyn. In 1989, he pled guilty in Manhattan to second-degree attempted robbery and in Brooklyn to first-degree attempted robbery. In both of the 1989 cases, his prior youthful offender adjudications were improperly used as prior felony convictions to permit enhanced sentencing as a second felony offender. In 2009 and 2011, his sentences for the 1989 convictions were set aside on the ground that they were improperly based on his youthful offender adjudications, and he was re-sentenced in both cases as a first felony offender.

Meanwhile, in February 1993, Thomas committed another stick-up in Brooklyn and was convicted at a jury trial of third-degree robbery. His prior convictions were used as predicate felonies and he was sentenced as a second felony offender to 3½ to 7 years in prison. In 2013, Thomas moved to vacate his sentence, arguing that his second felony offender status was improperly based on either his 1988 youthful offender adjudications or on a 1989 conviction for which he was not legally sentenced until after the commission of the 1993 robbery. The "sequentiality provision" of the second felony offender statutes, Penal Law §§ 70.04(1)(b)(ii) and 70.06(1)(b)(ii), provide that for a prior felony to serve as a predicate conviction, "Sentence upon such prior conviction must have been imposed before commission of the present felony."

Supreme Court denied Thomas's motion, ruling that "the original sentence date controls for the purpose of establishing predicate felony status." After the Appellate Division, Second Department decided People v Esquiled (121 AD3d 807 [2014]), holding that a prior conviction may not serve as a predicate felony if a "lawful sentence on that conviction was not imposed until after the instant crimes were committed," Thomas filed a second motion to vacate his sentence in 2015. Supreme Court granted the new motion and re-sentenced Thomas as a first felony offender to 2⅓ to 7 years in prison.

The Appellate Division, Second Department affirmed, saying Supreme Court "providently exercised its discretion in granting the defendant's second motion to vacate his sentence because the defendant established good cause for the second motion and the second motion had merit (see CPL 440.20[3] [and] Esquiled ...)."

The prosecution argues, "More than fifteen years after defendant was sentenced as a second felony offender in this case, defendant's sentences on his underlying predicate felony convictions were corrected at resentencing proceedings.... In light of the plain language of New York's second felony offender statutes, the legislative intent underlying those statutes, and Court of Appeals precedent interpreting those statutes, defendant is a second felony offender, because the original sentencing date, not the resentencing date, is the controlling date for determining whether a prior felony conviction qualifies as a predicate felony conviction."

For appellant: Brooklyn Assistant District Attorney Jean M. Joyce (718) 250-3383
For respondent Thomas: Melissa S. Horlick, Manhattan (212) 693-0085

State of New York Court of Appeals

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To be argued Wednesday, January 9, 2019

No. 6 & 7 U.S. Bank National Association v DLJ Mortgage Capital, Inc. (and other actions)

These breach of contract actions arise from residential mortgage-backed securities transactions sponsored by DLJ Mortgage Capital, Inc. prior to the 2008 financial crisis. DLJ placed thousands of residential mortgages with a principal value of nearly $4 billion into four trusts, which sold certificates representing interests in the mortgages to investors. U.S. Bank National Association, suing in its capacity as trustee of the trusts, alleges in each case that DLJ breached its representations and warranties about the quality of the mortgages and is obligated under the trust agreements to repurchase underperforming loans.

In No. 6, involving three of the trusts, the actions were originally commenced by the Federal Housing Finance Agency (FHFA) as conservator for Freddie Mac, an investor in the trusts. Due to a trust provision that strictly limits suits by the investors, FHFA lacked standing to sue and it substituted U.S. Bank as plaintiff. Supreme Court dismissed the suit with prejudice, barring U.S. Bank from refiling it.

The Appellate Division, First Department affirmed, saying, "Generally, actions dismissed on standing grounds may be refiled pursuant to CPLR 205(a).... However, here, the trustee is not entitled to refile the claims under CPLR 205(a), because it is not a 'plaintiff' under that statute.... Moreover, the trustee may not rely on relation-back (CPLR 203[f]) to save its refiled claims, because there was no 'valid preexisting action' to relate back to.... Because the trustee cannot benefit from either CPLR 203(f) or 205(a), the refiled claims are time-barred on standing grounds."

In No. 7, Supreme Court granted DLJ's motion to dismiss the suit without prejudice to refiling. It found the action was timely commenced, but ruled that because "the backstop provision expressly conditions DLJ's repurchase obligation on notice to both DLJ, as Seller, and Ameriquest, as Originator, it imposes conditions precedent to suit." U.S. Bank failed to serve a repurchase demand on Ameriquest prior to suing DLJ, "rendering the summons with notice defective."

The Appellate Division, First Department affirmed. It said U.S. Bank "did not meet the condition precedent to enforcement of [DLJ's] secondary 'backstop' repurchase obligation, which required that the trustee first provide notice of the alleged breaches to defendant Ameriquest Mortgage Company, and allow a 90-day cure period to expire. Under these circumstances, the trustee's timely claims were properly dismissed without prejudice to refiling pursuant to CPLR 205(a)...."

No. 6 For appellant U.S. Bank: Hector Torres, Manhattan (212) 506-1700
For respondent DLJ: Robert Loeb, Washington, DC (202 339-8400
No. 7 For appellant DLJ: Barry S. Levin, Manhattan (212) 506-5000
For respondent U.S. Bank: Philippe Selendy, Manhattan (212) 390-9000

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To be argued Thursday, January 10, 2019

No. 8 Matter of New York City Asbestos Litigation (South v Chevron Corporation)

After he was diagnosed with mesothelioma in 2014, Mason South and his wife Anne brought this action against Texaco and other defendants under the federal Jones Act, alleging that the disease resulted from his exposure to asbestos while he served as a seaman in the Merchant Marine from 1945 to 1982. South died of his mesothelioma in 2015 and his wife was substituted as plaintiff.

Texaco moved to dismiss the complaint against it based on a release South signed in 1997 in settling a Jones Act lawsuit that he and other plaintiffs filed in federal court against Texaco and 115 other defendants, seeking damages for injuries he suffered as a result of his exposure to asbestos and second-hand smoke on merchant ships. South was paid $1,750 to settle his claims against Texaco, and in return he agreed to "forever discharge and release Texaco ... from any and all actions or causes of actions, suits [or] claims ... which [he] has now, has ever had, or which may accrue in the future." The release included any illness or injury "allegedly caused as a result of the exposure to asbestos, silica, asbestos fibers, and asbestos dusts, and/or silica or asbestos-containing products, smoke and carcinogenic chemicals (not including benzene...). Further, [South] understands that the long term effects of exposure to asbestos ... may result in obtaining a new and different diagnosis from the diagnosis as of the date of this Release. Nevertheless, [he] understands that ... he is giving up the right to bring an action against [Texaco] ... in the future for any new or different diagnosis that may be made about [his] condition as a result of exposure" to asbestos or other products.

Supreme Court denied Texaco's motion. It ruled the release could not be used to bar South's suit under section 5 of the Federal Employers' Liability Act (FELA), which prohibits agreements that exempt common carriers from liability, and the Third Circuit's decision in Wicker v Consolidated Rail Corp. (142 F3d 690 [1998]), which held that "a release does not violate [FELA] provided it is executed for valid consideration as part of a settlement, and the scope of the release is limited to those risks which are known to the parties at the time the release is signed." Supreme Court, noting the "meager" amount of South's settlement and the fact that the release "does not even mention cancer [or] mesothelioma," said Texaco "offered no proof ... that Mason South intended to release a future claim for mesothelioma."

The Appellate Division, First Department affirmed on a 3-1 vote, saying, "The 1997 complaint ... is exceedingly vague as to whether [South] had actually contracted an asbestos-related disease.... Indeed, the 'meager' consideration he received for resolving the claim suggests that he had not been diagnosed with an asbestos-related disease.... [T]he lack of an actual diagnosis reveals the language in the release as mere boilerplate, and not the result of an agreement the parameters of which had been specifically negotiated and understood by South. Even under the stricter standard of Wicker, 'the release[] do[es] not demonstrate [South] knew of the actual risks to which [he was] exposed and from which [Texaco] was being released' (142 F3d at 701)."

The dissenter said, "[T]he parties executed a release that should be enforced and that constitutes a complete bar to this action.... The release was properly limited to those risks known to the parties at the time of its execution (see Wicker...), including the known risk that the decedent could contract mesothelioma in the future.... [T]he release's language establishes that the decedent understood that his exposure to asbestos could result in future injuries and diagnoses..., but that despite those risks he agreed to give up his right to bring any actions against Texaco for 'any new or different diagnosis' as a result of his exposure to asbestos."

For appellant Texaco: Meir Feder, Manhattan (212) 326-3939
For respondent South: Louis M. Bograd, Washington, DC (202) 232-5504

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To be argued Thursday, January 10, 2019

No. 9 People v Emmanuel Diaz
No. 10 People v Ali Cisse

The common issue in these appeals is whether a pretrial detainee's implied consent to the recording of calls he makes on jail telephones also implies consent to jail authorities giving the recordings to prosecutors for use against him at trial. Defendants argue in both cases that such recordings were improperly admitted at their trials because, while they had been given notice that their calls from Rikers Island would be monitored and recorded, they had not been told the recordings could be released to prosecutors. This Court left the issue open in People v Johnson (27 NY3d 199 [2016]).

Emmanuel Diaz was arrested in July 2012 for breaking into a Brooklyn home and robbing the elderly owners. Unable to make bail, he was held at Rikers for more than a year awaiting trial. Supreme Court admitted into evidence excerpts of recorded calls in which Diaz made incriminating statements. Convicted of first-degree robbery and burglary, he was sentenced to 15 years in prison. The Appellate Division, Second Department affirmed on a 3-1 vote.

Ali Cisse was walking in upper Manhattan in December 2012 when he was stopped by officers who said he was acting nervously. They seized an illegal handgun and MetroCards, which provided user history that placed him near the scene of a gun-point robbery outside of a midtown nightclub four days earlier. He was held at Rikers for more than 500 days awaiting trial. Supreme Court permitted the prosecutor to play for the jury three recorded jailhouse calls in which Cisse made incriminating statements. He was convicted of first-degree robbery, weapon possession and related crimes, and was sentenced to 12 years in prison. The Appellate Division, First Department unanimously affirmed, rejecting his claim that the Rikers calls were inadmissible. It also rejected his claim that the pistol and MetroCards should have been suppressed as the fruit of an illegal stop.

In Diaz, the Second Department majority said, "[T]he defendant impliedly consented to the monitoring and recording of his telephone conversations by using the prison telephones despite being notified that such calls were being monitored.... The record reflects that the defendant was on notice from several sources of the prison's policy of" recording the calls, "including the inmate handbook, signs posted next to the telephones, and a recorded message which plays prior to each telephone call. In light of these notifications, 'it was no longer reasonable for [the defendant] to presume an expectation of privacy as to the content of those telephone conversations'...." It said "the better practice" may be for Rikers to expressly notify detainees that their calls may be turned over to prosecutors, but "the absence of such a warning does not render the calls inadmissible...."

The dissenter argued the calls were inadmissible. Because Diaz "was never informed that the recordings of his telephone calls would be provided to the prosecutor handling his case," he "never expressly or impliedly consented to the recordings of those calls being disseminated to the prosecutor for potential use at his criminal trial. While the defendant admittedly 'had no reason to expect privacy in his calls, that does not equate to any consent that the agents and prosecutors working on this case would gain access' to the calls'.... In this context, the defendant's consent can be no broader than the notice provided to him." She said the access prosecutors are given to Rikers recordings "simply adds to the well-documented disparities between defendants who can afford to make bail and are at liberty, and those who cannot afford to make bail...."

No. 9 For appellant Diaz: Dina Zloczower, Manhattan (212) 693-0085
For respondent: Brooklyn Asst. District Attorney Howard B. Goodman (718) 250-2512
No. 10 For appellant Cisse: Matthew Bova, Manhattan (212) 577-2523 ext. 543
For respondent: Manhattan Asst. District Attorney Susan Axelrod (212) 335-9000