

# *State of New York Court of Appeals*

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Thursday, June 1, 2017

## No. 79 **Gevorkyan v Judelson**

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

Federal litigation ensued. Following a non-jury trial, the District Court directed entry of judgment in favor of Judelson on plaintiffs' breach of contract, unjust enrichment and conversion claims. On appeal, the United States Court of Appeals for the Second Circuit certified the following question to this Court: "Whether an entity engaged in the 'bail business,' as defined in [New York Insurance Law]

§ 6801(a)(1), may retain its 'premium or compensation,' as described in [New York Insurance Law]

§ 6804(a), where a bond posted pursuant to [CPL] 520.20 is denied at a bail-sufficiency hearing conducted pursuant to [CPL] 520.30, and the criminal defendant that is the subject of the bond is never admitted to bail."

For appellants Gevorkyan et al.: Andrew Lavoot Bluestone, New York (212) 791-5600

For amicus curiae NYS Dept. of Financial Services: Eric Del Pozo, New York (212) 416-6167

For respondent Judelson: Jonathan Svetkey, New York (917) 751-1734

# *State of New York Court of Appeals*

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Thursday, June 1, 2017

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

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

In support of the persistent felony offender status upon resentencing, Supreme Court received testimony and evidence about defendant's extensive criminal history including two prior felonies for the purpose of persistent felony offender status; 26 arrests, nine of which were felonies, including 4 violent felony arrests; and various disciplinary reports while imprisoned. Supreme Court also noted that the present offense was committed while defendant was on parole and resulted in the death of a young woman where the defendant "led police on a 2 1/2-to-4-mile chase from the Town of Brighton into the City of Rochester, running at least five red lights, repeatedly driving at high speeds and in the lanes of oncoming traffic before plowing into the rear driver's side of the victim's vehicle... Defendant neither braked nor skidded, and the evidence established that defendant had adequate room to navigate around the vehicle. Defendant fled the scene and was apprehended days later." Supreme Court noted that these circumstances are "chillingly similar" to the circumstances of defendant's 2002 felony conviction for criminal possession of stolen property in the third degree based on defendant stealing a car, sideswiping another car and fleeing in the stolen car in excess of 100 miles per hour, crossing a median and driving eastbound in a westbound lane and exiting the highway via an on ramp. Supreme Court thus concluded that "the history and characteristics of defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest (Penal Law § 70.10[2]). Defendant presents a danger to the community and society must be protected. Unfortunately, this Court can only conclude that defendant is beyond rehabilitation." The Appellate Division affirmed.

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

For appellant Prindle: James A. Hobbs, Rochester (585) 753-4213

For respondent: Monroe County Assistant District Attorney Leah R. Mervine (585) 753-4354