State of New York
Court of Appeals

To be argued Wednesday, May 18, 2022 (arguments begin at 2 pm)

No. 52 Matter of Nonhuman Rights Project, Inc. v Breheny

The Nonhuman Rights Project (NhRP) brought this habeas corpus proceeding on behalf of Happy, a 48-year-old elephant at the Bronx Zoo, against the zoo's director James Breheny and its operator, the Wildlife Conservation Society, contending the elephant is being unlawfully confined. For her own safety, Happy has been kept apart from other elephants in an enclosure of about one acre since 2006. NhRP is seeking to have her released to an animal sanctuary that covers about 2,300 acres.

CPLR § 7002(a) provides, "A person illegally imprisoned or otherwise restrained in his liberty within the state, or one acting on his behalf..., may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance." It does not define the term "person."

The NhRP previously sought a writ of habeas corpus on behalf of a chimpanzee named Tommy. The Appellate Division, Third Department denied the petition in People ex rel. Nonhuman Rights Project, Inc. v Lavery (124 AD3d 148 [2014]), (hereinafter, Lavery I), holding that a chimpanzee was not a "person" entitled to the protection of habeas corpus relief. Citing the lack of precedent, the court said that "legal personhood has consistently been defined in terms of both rights and duties" and, "unlike human beings, chimpanzees cannot bear any legal duties, submit to societal responsibilities or be held legally accountable for their actions." The NhRP subsequently brought new habeas corpus proceedings on behalf of Tommy and a second chimp named Kiko, again without success. The Appellate Division, First Department said in Matter of Nonhuman Rights Project, Inc. v Lavery (152 AD3d 73 [2017]), (Lavery II), that it found no "legal support or legal precedent" for concluding that the "human-like characteristics" of chimpanzees "render them 'persons' for purposes of CPLR article 70." It said they lack the "capacity or ability ... to bear legal duties, or to be held legally accountable for their actions."

In this case, NhRP submitted affidavits of five experts on elephant cognition who said elephants share many cognitive abilities with humans, including self-awareness, empathy, awareness of death, intentional communication, learning and memory.

Supreme Court dismissed the petition, saying Happy is "an intelligent being with advanced analytic abilities akin to human beings," but it was bound by the rulings in Lavery I & II "that animals are not 'persons' entitled to rights and protections afforded by the writ of habeas corpus."

The Appellate Division, First Department affirmed based on its ruling in Lavery II that "the writ of habeas corpus is limited to human beings." It said, "A judicial determination that species other than homo sapiens are 'persons' for some juridical purposes, and therefore have certain rights, would lead to a labyrinth of questions that common-law processes are ill-equipped to answer. As we said in Lavery [II], the decisions of whether and how to integrate other species into legal constructs designed for humans is a matter 'better suited to the legislative process."

The NhRP argues, in part, that habeas corpus is a creation of common law, not statute. "Thus, whether an individual is a 'person' who may invoke the protections of habeas corpus is a substantive common law question for this Court to decide, not the legislature." It argues that, as a matter of liberty and equality, the Court should "recognize Happy's common law right to bodily liberty protected by haveas corpus because she is autonomous and extraordinarily cognitively complex." NhRP says elephants' inability to acknowledge a legal duty or responsibility should not determine their right to habeas relief, since the same is true of human infants and comatose adults and they still have the legal rights of persons.

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State of New York
Court of Appeals

To be argued Wednesday, May 18, 2022 (arguments begin at 2 pm)

No. 53 Matter of Talbot V. v Kingsboro Psychiatric Center *(papers sealed)*

In 2019, the state-run Kingsboro Psychiatric Center in Brooklyn commenced a proceeding under Mental Hygiene Law § 9.33 for court authorization to continue the involuntary retention of Talbot V., who had been a patient there since 2011, for as much as two more years. Mental Hygiene Legal Service (MHLS), which provides legal representation to hospital patients with mental illnesses, requested a retention hearing on Talbot's behalf and asked Kingsboro to provide a copy of his complete clinical record prior to the hearing. When it refused, MHLS sought an order requiring Kingsboro to provide Talbot's full clinical record pursuant to 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. Mental Hygiene Law § 9.01 defines the "record" of a patient to include "admission, transfer or retention papers and orders, and accompanying data required by this article and by the regulations of the commissioner" of the state Office of Mental Health (OMH). The statute does not define "accompanying data."

Supreme Court denied the motion seeking Talbot's entire medical record, saying "the plain language" of the definition of "record" in section 9.01 required Kingsboro to provide only "admission, transfer or retention papers and orders" and accompanying medical certificates. It said, "There is no legal basis to support the conclusion that 'accompanying data' refers [to] the entire clinical record." After the retention hearing, the court authorized Kingsboro to retain Talbot for six more months.

The Appellate Division, Second Department affirmed. Although the retention period had expired, it invoked the exception to the mootness doctrine to consider the facility's obligation to provide records under the statutes. The court noted that, while the appeal was pending, OMH amended its regulations (14 NYCRR 501.2[a]) to clarify that "accompanying data" does not include a case record, clinical record, medical record, or patient record, but instead "is expressly limited to 'medical certificates providing the basis for the admission of patients and requests for transfer or retention." It said OMH's interpretation was entitled to deference because, in view of MHLS's "undisputed access" to Kingsboro's clinical records, it "is consistent with both the purposes of the statute [section 9.31] and the requirements of due process."

MHLS argues that OMH's amended regulation that redefined "accompanying data" is inconsistent with the statutes and the Legislature's intent, and that it would violate the due process rights of mental patients if it were enforced. It says the lower courts "ignored the tenets of due process and fundamental fairness, hamstrung counsel's efforts to provide effective legal assistance," and denied patients the opportunity "of seeing the evidence to be offered against them before a hearing that impacts their liberty." MHLS says its "access to clinical records at the hospital cannot obviate [Kingsboro's] statutory duty to disclose the full record."

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State of New York
Court of Appeals

To be argued Wednesday, May 18, 2022 (arguments begin at 2 pm)

No. 54 People v Carlos Galindo

The primary question in this case is whether an amendment to CPL 30.30, which applied the speedy trial statute's time limits to traffic infractions for the first time, applies retroactively to cases pending on direct appeal when the amendment took effect on January 1, 2020.

Police officers in Queens arrested Carlos Galindo in January 2014, after they found him asleep in the driver's seat of a borrowed car that he had parked next to a fire hydrant. The engine was running, the headlights were on, music was playing, and he held an open bottle of beer in his hand. He did not have a driver's license. He was charged with a half-dozen misdemeanors and traffic infractions. Galindo subsequently made a pretrial motion to dismiss the complaint on speedy trial grounds, contending prosecutors had exceeded the 90 days that CPL 30.30(1) allows them to be ready for trial.

Criminal Court denied the motion in July 2015. Based on longstanding precedent, the court ruled that CPL 30.30 does not apply to traffic infractions. Regarding the misdemeanor counts, the court found only 30 days of delay were chargeable to the prosecution, well short of the 90-day limit. At trial in 2016, a jury found Galindo guilty of two misdemeanor counts of driving while intoxicated and two traffic infractions, consumption or possession of alcohol in a vehicle and unlicensed operation of a vehicle. He was sentenced to a conditional discharge, a six-month license suspension, $1,225 in fines and a $395 surcharge.

The Appellate Term, Second Department reversed and dismissed the charges in June 2020, six months after the amendment in CPL 30.30(1)(e) took effect. It found the prosecution was chargeable with 95 days of delay, requiring dismissal of the misdemeanor counts; and that the amendment to CPL 30.30, applying the speedy trial limits to traffic infractions, is retroactive and required dismissal of those charges as well. It said that generally, when a statute is amended while an appeal is pending, "the law to be utilized is that in effect at the time the decision on appeal is rendered." It said the three factors in People v Pepper (53 NY2d 213), to determine whether a new rule should apply retroactively, favor its decision. The prior version of the speedy trial statute created the "anomaly" of defendants being relieved of serious felonies and misdemeanors while still facing prosecution for lesser traffic infractions, it said. The amendment "serves the purpose of correcting this irregularity" and "constitutes a positive effect on the administration of justice." Although courts "had relied rather consistently on the previous rule that traffic infractions cannot be dismissed pursuant to CPL 30.30," it said, "the amended rule aligns better" with the legislative intent of discouraging "prosecutorial inaction."

The prosecution argues that "the Legislature failed to amend section 30.30 effectively so as to abrogate settled law that [the statute] does not apply to traffic infractions" and that the Appellate Term erred in applying "the supposedly newly enacted time limit" to a case "that was prosecuted in 2016, years before the new section was ever enacted. It thereby retroactively placed a timing requirement on the prosecution that it never knew, or could have known, that it would someday have." It says there is no evidence "of a legislative intent to apply the amendment retroactively," and the Pepper factors weigh against retroactive application because "it would have a negative effect on the administration of justice, it would frustrate the purpose to be served by the amendment, and it would punish prosecutors for reasonably relying on settled precedent."

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