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.

To be argued Friday, September 11, 2015

No. 135 Matter of Bottom v Annucci

Anthony Bottom was an inmate at the Attica Correctional Facility in February 2013, when he was stopped and frisked on his way into the prison law library. The correction officer found two loose postage stamps and personal documents. Inmates are allowed to keep such items in their cells, but a local facility rule at Attica prohibits them in the law library. Stamps are allowed only if they are affixed to envelopes. Bottom was charged with violating Prison Rule 113.22, which prohibits the possession of authorized items in unauthorized areas, as well as rules prohibiting contraband, smuggling and solicitation.

A hearing officer found Bottom guilty of possessing authorized items in an unauthorized area and not guilty of the other charges. "It appears to this hearing officer that inmate Bottom inadvertently carried the reported items en route to the law library," he said, and imposed a penalty of seven days in pre-hearing keeplock, which Bottom had already served.

Bottom brought this article 78 proceeding against Anthony Annucci, acting commissioner of the Department of Corrections and Community Supervision (DOCCS) to challenge the disciplinary determination. The Appellate Division, Fourth Department upheld the determination without opinion.

Bottom argues that Attica's local rule prohibiting loose stamps in its law library, a rule contained in the prison's handbook, is unenforceable because it was never filed with the Secretary of State pursuant to article IV, section 8 of the State Constitution. He says he had no notice of the loose-stamp rule prior to the incident and did not intentionally violate the rule. He argues there was insufficient evidence to support the determination because he was searched and his stamps seized in the D Block lobby, while he was on his way to the law library, but before he entered it.

DOCCS argues that Bottom failed to preserve his constitutional challenge to the loose-stamp rule because he did not raise the claim at his disciplinary hearing, his administrative appeal, or in his article 78 petition. In any event, it says, the rule is exempt from the constitutional filing requirement, in part because the rule relates to the internal management and operation of the Attica prison.

For appellant Bottom: Norman P. Effman, Warsaw (585) 786-8450
For respondent Annucci (DOCCS): Asst. Solicitor General Allyson B. Levine (518) 473-6948

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To be argued Friday, September 11, 2015

No. 136 People ex rel. DeLia o/b/o Stephen S. v Munsey *(papers sealed)*

Stephen S. was involuntarily committed to Holliswood Hospital in Queens under Mental Hygiene Law article 9 in March 2012. Two months later the hospital applied for a court order authorizing his continued retention under Mental Hygiene Law § 9.33. Supreme Court granted the application for a three-month period ending on September 13, 2012. When the order expired, Holliswood continued to retain him without seeking an order authorizing further confinement. Mental Hygiene Legal Service (MHLS) filed this petition for a writ of habeas corpus under CPLR article 70 on October 23, 2012, arguing that Stephen was being illegally detained by the hospital. Two days later, Holliswood sought an order to continue his involuntary confinement under section 9.33. It submitted two certificates from Stephen's physicians, who said he was paranoid, psychotic, unable to care for himself, and could pose a threat to himself and others.

Supreme Court granted the writ and ordered Stephen's discharge, but stayed its order pending appeal. It rejected Holliswood's argument that it was entitled to a hearing on Stephen's mental status under Mental Hygiene Law § 33.15 to determine whether continued retention was warranted, saying it would have held such a hearing "if you did what you were supposed to do" by applying for a new retention order before the prior order expired. The court agreed with MHLS that no hearing is required for a writ of habeas corpus under CPLR article 70.

The Appellate Division, Second Department reversed, ruling that a hearing must be held despite the hospital's failure to comply with the retention procedures of the Mental Hygiene Law. Stephen was discharged before it ruled, but it invoked the exception to mootness because the case raised an important question that is likely to recur and to evade review. A writ sought under CPLR article 70 is not "substantively different from a petition for a writ brought under Mental Hygiene Law § 33.15," which allows patients who are involuntarily confined to challenge the need for their detention, it said. "[A] petition for a writ of habeas corpus, ostensibly filed on behalf of the patient pursuant to CPLR article 70, is still governed by the specific provisions of Mental Hygiene Law § 33.15.... Indeed, because [section] 33.15 is the more specific statute, the provisions of [section] 33.15 ... are controlling, not CPLR article 70.... A contrary determination would frustrate the legislative intent that an examination be conducted when a psychiatric patient seeks habeas corpus relief...."

Stephen S. argues, "The Appellate Division's holding ... unconstitutionally restricts psychiatric detainees' access to the common law, 'great writ' of habeas corpus, available pursuant to CPLR article 70. It improperly conflates the 'great writ,' available to all people illegally restrained in their liberty, and Mental Hygiene Law § 33.15, which the Legislature passed to provide an additional procedural vehicle for patients alleging, prior to the end of a lawful period of retention, that their mental status has improved and that they no longer meet the standard for involuntary retention." He says that, because he "was involuntarily confined ... for approximately six weeks without any application for, or order authorizing, his continued detention, his constitutional and statutory rights were violated, and the Supreme Court properly granted his application for a great writ of habeas corpus and ordered his release" under CPLR article 70.

For appellant Stephen S.: Lisa Volpe, Mineola (516) 746-4373
For respondent Holliswood: Eric Broutman, Lake Success (516) 328-2300

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To be argued Friday, September 11, 2015

No. 137 People v Dupree Harris *(papers sealed)*

Dupree Harris was charged with bribing witnesses and witness tampering for persuading three teenage girls to recant their statements identifying his half-brother, Wesley Sykes, as the gunman who shot and killed Dennis Brown in front of numerous witnesses in a Brooklyn park in 2001. Harris approached each of the girls in the two months leading up to Sykes' trial in 2002. They testified they had heard Harris was dangerous, but he showered them with gifts and attention, took them to restaurants and sometimes gave them cash. One of the girls had a sexual relationship with him. On separate occasions, Harris took each girl to the office of Sykes' attorney, where they recorded statements recanting their prior identifications of Sykes and claiming another man committed the murder. They said Harris gave each of them $500 after they left the office. When another eyewitness, Bobby Gibson, was shot to death on the eve of Sykes' trial, the three teenage girls said they became frightened and told a detective about Harris' conduct. The Brooklyn District Attorney's Office relocated the girls and their families to hotels, and all three girls testified at Sykes' trial that he shot Brown. Travis Ragsdale later confessed to shooting Gibson in a drunken dispute unrelated to Brown's murder. A jury acquitted Ragsdale of murder on a witness-elimination theory, but convicted him of intentional murder in June 2004.

At Harris' trial for witness tampering and bribery in July 2004, Supreme Court allowed the prosecutor to elicit testimony about Gibson's murder, in part to explain why the three girls, after recanting their identifications of Sykes, changed their minds and testified against him, and in part to explain why they were placed in the witness relocation program. The court also allowed one of the girls to testify that, shortly before Sykes' trial began, she heard Harris say he wanted to talk to Gibson. Harris was acquitted of witness tampering, but convicted of three counts of bribing a witness and sentenced to 15 years to life in prison.

The Appellate Division, Second Department affirmed on a 3-1 vote, rejecting Harris' claim that the admission of evidence concerning Gibson's murder deprived him of a fair trial. It said "evidence that Gibson was murdered two days before he was scheduled to testify against Sykes did not constitute proof that the defendant committed an uncharged crime or bad act," and thus was not prejudicial Molineux evidence, and it had probative value, even though Gibson was killed after the girls recanted their original statements and accepted $500. "Evidence that Gibson's death motivated the girls to come forward to the police and admit that they had been bribed by the defendant was particularly important to an assessment of their credibility..., since ... a major theme of the defense was that the girls had retracted their recantations because of the money and benefits they received through ... the witness protection program."

The dissenter said the evidence of Gibson's murder "had a far-reaching impact on the course and character of the defendant's entire trial. The court's evidentiary rulings permitted the defendant to be cast as a man who had been involved in a heinous witness-elimination murder and the specter of that uncharged crime overshadowed the charges for which the defendant was on trial. The focus of the trial was so completely shifted to the uncharged murder that the case unraveled into a trial within a trial" regarding "the defendant's involvement in the uncharged crime." The evidence had little or no probative value, he said, and the "prejudice suffered by the defendant ... was severe and unmistakable."

For appellant Harris: Mark W. Vorkink, Manhattan (212) 693-0085
For respondent: Brooklyn Assistant District Attorney Morgan J. Dennehy (718) 250-2515

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To be argued Friday, September 11, 2015

No. 138 People v Vincent Izzo *(papers sealed)*

Vincent Izzo was 21 years old in 2010, when he was arrested in Chemung County for sexual misconduct with two 14-year-old girls and for endangering the welfare of a child and aggravated harassment for his dealings with a third girl, who was 13 years old. The 14-year-old girls had come to Izzo's apartment after numerous telephone and online communications. Izzo told police he engaged in oral sex with one of them after they made food and watched a movie during a "date;" and when the other 14-year-old came to his apartment, they kissed and he touched her breasts and buttocks over her clothing. Izzo also told police about his telephone and online communications with the 13-year-old girl, including a webcam conversation in which he touched himself over his clothing near his crotch and told her she could "fix it" if she were with him. Izzo pled guilty to the entire indictment and was sentenced to one year of interim probation. After he violated probation by failing to complete sex offender treatment and by purchasing a computer and sending numerous messages, including some with sexual content, to a 17-year-old community college student, he was sentenced to two years in prison.

Prior to his release, the Board of Examiners of Sex Offenders recommended that he be assessed 105 points on the risk assessment scale, presumptively making him a risk level II offender under the Sex Offender Registration Act (SORA). County Court adopted the Board's recommendations and designated Izzo a level II offender. It found he was properly assessed 30 points under risk factor 3 for having three or more victims, rejecting Izzo's argument that the 13-year-old should not count as a victim because he did not engage in "sexual conduct" with her and the endangerment and harassment charges are not SORA offenses. The court said he was properly assessed 20 points under risk factor 7, based on his relationship with the victims, finding he "groomed" them in order to sexually offend against them. Izzo requested a downward departure from level II based on the "statutory rape exception" under risk factor 2, because he was not accused of using force and the lack of consent was due to the ages of the girls, and based on his developmental disabilities. The court denied the request.

The Appellate Division, Third Department affirmed in a 3-2 decision, saying the 30 points assessed for three or more victims "was entirely appropriate" based on "clear and convincing evidence ... that defendant indeed touched himself in a sexual manner while in contact with one of his victims via a webcam." Upholding the 20 points assessed for his relationship to the victims, it said, "While it is true that the online contact between defendant and his victims precludes a finding that the victims were 'strangers' for purposes of SORA..., there is clear and convincing evidence ... that defendant engaged in 'grooming' behavior by cultivating a relationship with each of his victims for the purpose of satisfying his sexual desires."

The dissenters said Izzo was improperly assessed points for a third victim because there was insufficient proof of "prohibited sexual conduct" with the girl on the webcam; "viewed objectively, the testimony demonstrates nothing more than a brief swipe of defendant's hand in his genital region, accompanied by innuendo." They said there was insufficient proof he "purposefully 'groomed' the victims," due to his disabilities and lack of maturity, and they argued the case should be remitted "for a full and express analysis" of his request for a downward departure.

For appellant Izzo: Adam Bevelacqua, Manhattan (917) 656-7076
For respondent: Chemung County Assistant District Attorney Damian Sonsire (607) 737-2944