

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.

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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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.

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For respondent: Orange County Assistant District Attorney Andrew R. Kass (845) 291-2050

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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.”

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For respondent: Manhattan Assistant District Attorney Julia P. Cohen (212) 335-9000