State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 15 Fossella v Adams

The New York City Council amended the City Charter in 2022 to permit certain non-citizens to vote for mayor and other City officials in municipal elections, but not in state or national elections. This new class of non-citizen "municipal voters" must be "a lawful permanent resident or authorized to work in the United States" and must have been a resident of the City for at 30 days, a class estimated to include more than 800,000 New Yorkers. When outgoing Mayor Bill de Blasio and incoming Mayor Eric Adams declined to sign or veto the bill, it took effect as chapter 46-A of the City Charter in January 2022, 30 days after the Council passed it. The following day, the state and national Republican Committees, Republican office holders and others filed this suit to challenge its validity, contending that it violated the State Constitution, the Municipal Home Rule Law and Election Law. Nine non-citizen residents of the City intervened in defense of the municipal voter law.

Supreme Court granted summary judgment to the plaintiffs, declaring that the municipal voter law violates the State Constitution, Municipal Home Rule Law and Election Law. Relying largely on article II, section 1 of the Constitution, which states, "Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people...," the court said "it is clear ... that voting is a right granted to citizens of the United States" and no others. It said the City Council enacted the amendment in violation of the Home Rule Law, which requires that any law that "changes the method of nominating, elevating, or removing an elective officer" must be approved by a public referendum, because the Council did not submit it to a public vote.

The Appellate Division, Second Department modified by declaring the Council did not violate the Election Law, but on a 3-1 vote, affirmed the findings of constitutional and home rule violations. The majority said because article II, section 1 gives the right to vote to "every citizen" with no reference to noncitizens, an "irrefutable inference applies that noncitizens were intended to be excluded from those entitled to vote." It said the term "citizen" means United States citizen, not citizen of the state, and the section applies to municipal elections as well as statewide elections. It further held that enactment of the new voting law violated the referendum requirement of the Municipal Home Rule Law because it "changed the method of electing an elective officer" by creating a new class of voters. "Since eligibility to vote is a prerequisite to casting a ballot..., it follows that eligibility criteria to vote falls within the election process or 'method' of conducting an election," it said.

The dissenter agreed "that the word 'citizen' in article II, § 1, means 'United States citizen," but said that did not resolve the constitutional issue because the section governs state elections and "does not directly apply to elections for local offices." She said courts must consider article IX, which provides that local governments "shall have a legislative body elective by the people thereof" and that the term 'people' "shall mean or include ... [p]ersons entitled to vote" under article II, § 1. In view of article IX's purpose "to provide local governments with 'autonomy'" to handle local issues locally, she said, "The City's decision to ... to expand the franchise in local elections to include noncitizens should therefore be afforded deference." She said the Home Rule Law did not require a referendum for that new voter law because "the process for conducting elections of local officers is unchanged. The law broadens the scope of persons who may participate in that process without changing the process itself."

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For respondents Fossella et al: Michael Y. Hawrylchak, Albany (518) 462-5601

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 16 Burrows v 75-25 153rd Street, LLC

Brian Burrows and three other rent-stabilized tenants of a Queens apartment building brought this rent overcharge action against their landlord, 75-25 153rd Street, LLC, in 2020. They alleged that the landlord engaged in a fraudulent scheme to evade the protections of the Rent Stabilization Law (RSL) by basing current rent increases on initial legal regulated rents that were improperly calculated and registered by the original building owner in 2007. Those registered rents were thousands of dollars higher than rents actually paid by the original tenants beginning in 2005, which is 15 years outside of the four-year lookback period allowed for rent overcharge claims under the RSL. The lookback rule allows courts to review an apartment's rental history no more than four years prior to the date the overcharge claim was filed, but there is an exception for cases where a landlord engaged in a fraudulent scheme to deregulate or inflate the rent of a stabilized apartment.

Supreme Court in Manhattan denied the landlord's motion to dismiss the suit, finding the tenants "successfully pled a cause of action for rent overcharge." It said the tenants provided "sufficient indicia of fraud to allow the court to look back past the four-year look-back limit" and they were not required "to demonstrate fraud conclusively to survive a motion to dismiss."

The Appellate Division, First Department reversed and dismissed the suit in April 2023. It found "the 'legal regulated rent' set forth on the initial registration statement was unlawfully inflated" because it was "higher than the rent actually charged to the tenant," an amount that was also reflected in the registration statements as "Actual Rent Paid." However, it further held that the plaintiffs could not invoke the fraud exception to the four-year lookback rule "because neither plaintiffs nor their predecessors in interest could have reasonably relied upon the inflated legal regulated rents in the registration statements.... [T]he inflation of the legal regulated rents set forth on the publicly filed registration statements was evident from the registration statements themselves, negating the element of reliance as a matter of law."

Months later, in 2024, the Legislature enacted legislation to clarify the fraud exception to the lookback rule, stating that courts must determine whether an owner engaged in a fraudulent scheme "after a consideration of the totality of the circumstances" and that "there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate" that it was. The law provided that it took effect immediately and "shall apply to any action or proceeding in any court ... on the effective date."

The tenants and the State Attorney General, as amicus curiae, argue that the 2024 legislation applies to this case and expressly provides that plaintiffs need not establish the elements of common law fraud in order to invoke the fraud exception to the lookback rule. Alternatively, they argue that prior law did not require proof of reliance or other elements of fraud in order to invoke the exception.

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For amicus Attorney General: Assistant Solicitor General Daniel S. Magy (212) 416-6073
For respondent Landlord: Deborah Riegel, Manhattan (212) 551-1223

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 18 People v Marquese Scott

Marquese Scott was charged with three counts of second-degree burglary in an indictment alleging that he illegally entered three separate Buffalo-area homes in 2012 and 13. The maximum sentence for each class C felony charge is 15 years and, during plea negotiations, the prosecutor and the court informed Scott that his maximum sentencing exposure would be 45 years if he were to be convicted at trial. Scott accepted an offer to plead guilty to all three burglary counts in exchange for a determinate sentence of six to eight years, with a condition that he must be "truthful" in answering questions from the Probation Department. At sentencing, the prosecutor informed the judge that Scott had denied responsibility for the burglaries during a probation interview. Supreme Court found that he had violated his plea agreement by lying to probation and, instead of the agreed prison term, sentenced him to three consecutive five-year terms for an aggregate of 15 years in prison.

On appeal, Scott argued that his plea was not knowing, voluntary or intelligent because he was given incorrect information about his sentencing exposure. Penal Law 70.30(1)(e)(i) would have limited his exposure for consecutive sentences on the three burglary counts to no more than 20 years, not the 45 years he was told before he accepted the plea. The prosecution argued that, despite the error, his plea was voluntary under the totality of the circumstances.

The Appellate Division, Fourth Department affirmed Scott's conviction without addressing the merits if his involuntary plea claim. The court said he failed to preserve his claim for appellate review because he did not move to withdraw his plea or vacate the judgment of conviction on the ground that he had been misinformed about his sentencing exposure. However, the court also found that his 15-year sentence, "nearly double the maximum of the original sentence promise," was "unduly harsh and severe under the circumstances" and reduced it to 10 ½ years in the interest of justice.

Scott argues that he was not required to preserve his involuntary plea claim "because he never had an opportunity to discover or object to a fundamental defect in the plea: significant misrepresentations of his potential maximum sentence" if he went to trial. He cites decisions from the First and Second Departments in similar cases, which held that where a defendant was unaware of or misled about his actual sentencing exposure, he does not have a reasonable opportunity to withdraw his plea and preservation is not required. On the merits, he says Supreme Court's "significant misrepresentations" of his potential maximum sentence had "a misleading effect" on his decision to plead guilty and rendered the plea involuntary. He says the 45-year maximum he was told he faced "is more than twice" the length of the 20-year maximum he actually faced. "The two terms present categorically different degrees of threat to a defendant considering whether going to trial is worth the risk."

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For respondent: Erie County Assistant District Attorney Michael J. Hillery (716) 858-2424

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 28 People v Dwight Moss

This proceeding under the Sex Offender Registration Act (SORA) stems from Dwight Moss's 2016 conviction of first-degree sexual abuse and endangering the welfare of a child for abusing a seven-year-old girl in Monroe County. He was given an enhanced 10-year prison term as a second child sexual assault felony offender based on his felony sex crime conviction in 2006 for having intercourse with a 10-year-old girl. The Appellate Division, Fourth Department upheld the conviction, but vacated the sentence and remitted the case for County Court to determine whether his 2006 conviction "was unconstitutionally obtained." After a hearing, County Court found Moss met his burden of showing that his 2006 guilty plea was coerced by the trial court's threat to sentence him to 50 years if he went to trial, when he actually faced a maximum of 25 years. County Court said it lacked authority to vacate the plea, which "must be done by a higher court," but it ruled the 2006 guilty plea was unconstitutionally obtained and could not be used as a predicate conviction to enhance sentencing in the 2016 case. The court resentenced Moss to six years in prison.

As his release date approached in 2022, the Board of Examiners of Sex Offenders prepared a Risk Assessment Instrument that would have made Moss a lowest-risk level one offender. However, the Board said his 2006 conviction triggered an automatic override requiring a risk level three designation, the highest risk level.

County Court accepted the Board's recommendation and applied the automatic override to designate Moss a level three sexually violent predicate offender, although it said the case "presents a novel issue that the court has not found any other court in New York has directly addressed," It said, "Here, the People have met their burden of proving, by clear and convincing evidence, the existence of the prior sex crime conviction. Defendant ... does not argue that the conviction does not exist, but rather that the court should not consider the prior conviction because of this court's decision in the second felony offender hearing that the prior sex crime conviction was obtained unconstitutionally." The court said it was "bound" by Second Department precedent holding that "once the People establish the existence of a prior conviction..., then the applicability of the override is automatic to create a presumptive Level III risk" designation. Since Moss's 2006 conviction has not been overturned, it said, "the automatic override applies and defendant/offender is presumptively a Level III risk to reoffend." Since Moss did not request a downward departure, "the court will not consider a departure."

The Fourth Department affirmed "for reasons stated" by County Court.

Moss argues that "the fundamental defect" in his 2006 conviction "was a coerced guilty plea that, as a matter of law, is inherently unreliable" and that County Court erred "by concluding that a still-existing conviction can support an automatic override under SORA despite an uncontested finding that the conviction resulted from a coerced guilty plea.... County Court had both the authority and the duty to distinguish between reliable and unreliable convictions and to deny application of the override based upon a conviction that Mr. Moss had proven, by substantial evidence, was unreliable." Moss says the decision "violates the legislative intent of SORA" to protect public safety and violates his right to due process.

For appellant Moss: David R. Juergens, Rochester (585) 753-4093
For respondent: Monroe County Asst. District Attorney Martin P. McCarthy, II (585) 753-4534

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 19 People v Juan Padilla-Zuniga

Juan Padilla-Zuniga was charged with six traffic offenses after he crashed into two parked cars in Levittown, Nassau County, in July 2019. A blood test determined that his blood-alcohol content was .23 percent. He agreed to plead guilty to three counts – first-degree aggravated unlicensed operation of a motor vehicle, aggravated driving while intoxicated, and leaving the scene of an accident – in exchange for a sentence of five years probation. During his virtual plea allocution, when Supreme Court asked if he had known that his license to drive "was suspended, revoked or otherwise withdrawn" on the day of the crashes, he said no. Defense counsel then asked him, "Did you have the privilege to drive on the date of then incident?" Padilla-Zuniga replied, "No, I didn't have a license. I've never had a license." The court did not inquire further about his license and ultimately accepted his guilty plea. At sentencing, the court sentenced him to time served and five years probation. It also imposed $500 mandatory minimum fines on the aggravated unlicensed and aggravated DWI counts, fines that had not been mentioned during the plea proceeding.

The Appellate Division, Second Department affirmed, finding that Padilla-Zuniga "knowingly, voluntarily, and intelligently waived his right to appeal," which "precludes appellate review of his objection to the factual sufficiency of the plea allocution." It further held that he failed to preserve his claims that the allocution regarding the status of his drivers license rendered his plea involuntary and that the court improperly imposed an enhanced sentence with the $500 fines.

Padilla-Zuniga argues that his statements about his drivers license during the allocution failed to establish that he knew or should have known that his privilege to drive was "suspended, revoked or otherwise withdrawn," as required by the statute. He says his responses triggered the court's duty to inquire further before accepting his plea and rendered the plea involuntary, a claim that does not require preservation. He contends the court's failure to inform him of the mandatory $500 fines before it imposed them left him with no practical opportunity to object or withdraw the plea and rendered his plea involuntary. He also argues that the court failed to obtain a valid waiver of his right to appear in person at his plea hearing, which was held virtually.

For appellant Padilla-Zuniga: Argun Ulgen, Hempstead (516) 560-6423
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