

State of New York Court of Appeals

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To be argued Wednesday, January 8, 2025

No. 6 Matter of Oceanview Home for Adults, Inc. v Zucker

In 2013, the State Department of Health (DOH) adopted regulations to promote the deinstitutionalization of persons with mental disabilities in compliance with the U.S. Supreme Court's 1999 decision in Olmstead v L.C. (527 US 581), which held that "unjustified institutional isolation of persons with disabilities is a form of discrimination" that violates title II of the Americans with Disabilities Act (ADA). The regulations were also meant to implement a Federal Court settlement of litigation against New York requiring the state to provide greater opportunities for mentally ill residents of large adult care facilities to move into community-based housing. The regulations set an admissions cap for large "transitional" adult homes, defined as facilities with 80 or more beds and where at least 25% of the residents have serious mental illness, prohibiting them from admitting anyone who would increase their percentage of mentally ill residents above 25%.

Oceanview Home for Adults, a large, privately-owned adult care home, brought this action to challenge the regulations in 2016, after DOH Commissioner Howard Zucker upheld a citation finding Oceanview in violation of the admissions cap. More than 90% of its residents had a serious mental illness in 2013, a share that dropped to about 47% by 2019. Oceanview contended, among other things, that the admissions cap violated the federal Fair Housing Act (FHA) by discriminating in housing against persons with mental illness.

Supreme Court enjoined enforcement of the admissions cap and related provisions, finding they violated and were preempted by the FHA. It rejected DOH's argument that the cap, rather than discriminating against the mentally ill, furthered the integration mandate of Olmstead by diverting them from institutions into community settings more conducive to their recovery. The court ruled the regulations are "not necessary for compliance with Olmstead, nor are they narrowly tailored to suit individuals' particular needs" and that less discriminatory alternatives were available to promote the goal of integration.

The Appellate Division, Third Department reversed and declared the regulations valid under the FHA. It agreed the regulations "are discriminatory on their face – regardless of their remedial purpose," but said Supreme Court erred in applying the "least restrictive alternative" test to determine their validity under the FHA. The proper standard is whether the discriminatory housing restriction "benefits the protected class" and is "narrowly tailored to effectuate the beneficial purpose," it said. The regulations "are narrowly tailored to implement the integration mandate of" the ADA because the admissions cap "applies only to people with a *serious* mental illness" and, thus, "is specifically tailored to the very individuals who are the subject of the integration mandate;" "the regulations apply solely to a subcategory of large adult homes" with higher populations of the mentally ill; "once the mental health census of a transitional adult home has been sufficiently reduced below the cap, the facility may resume accepting residents with serious mental illness;" and a waiver permits facilities to readmit previous residents even if they exceed the 25% limit.

For appellant Oceanview: Michael Hawrylchak, Albany (518) 462-5601

For respondent Zucker (DOH): Gary J. Malone, Manhattan (212) 350-2700

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No. 7 Weisbrod-Moore v Cayuga County

The plaintiff brought this negligence action against Cayuga County under the Child Victims Act in 2021, alleging that the County placed her in a foster home in 1974, when she was three months old, and that she was sexually and physically abused there by her foster father from 1975 to 1982. She claimed the County was negligent in choosing her foster parents and in failing to properly supervise the foster home in which it placed her.

The County moved to dismiss the suit on the ground, among others, that it had immunity because it was acting in a governmental capacity and the plaintiff failed to allege that it had assumed a special duty to her beyond its obligations to the general public and that she did not claim she had relied on any promises by the county to act on her behalf. The plaintiff responded that municipalities have assumed a special duty to protect foster children who are in their legal custody.

Supreme Court denied the County's motion, finding the plaintiff's claims were not barred by governmental immunity. It relied on the Appellate Division, First Department's decision in Sean M. v City of New York (20 AD3d 146), which said, "The weight of appellate authority in this state does not recognize governmental immunity where recovery is predicated on negligence in the supervision of care provided by foster parents to a child placed in their custody. This court agrees that liability may be imposed upon a state or its subdivisions for injuries sustained by children due to negligent oversight of the foster homes that care for them."

The Appellate Division, Fourth Department reversed and dismissed the suit. Because "the County was acting in a governmental capacity in administering the foster care system ... and supervising plaintiff's foster care," the plaintiff was required to show that the County breached a special duty owed to her, it said. The court concluded that the plaintiff "cannot establish the requisite special relationship between the parties based upon the County's alleged voluntary assumption of a duty that generated justifiable reliance on her part," which required her to show "(1) an assumption by the municipality, through promises or actions, of an affirmative duty to act" on her behalf; "(2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking."

The plaintiff argues the special duty requirement was satisfied by the fact that she was in the custody of the County. "As a matter of law, a governmental entity that assumes custody of a foster child undertakes a positive duty to advance the child's health, safety, and well-being. This duty imposes a 'supervisory mandate' on the governmental entity having custody to act affirmatively, and without negligence, in placing the foster child and supervising the placement," she argues, saying the custodial agency "assumes the role of 'substitute parent'.... The negligent breach of this duty ... causing foreseeable injuries to the child can result in liability."

For appellant Weisbrod-Moore: Jeffrey Herman, Manhattan (212) 390-0100

For respondent Cayuga County: Matthew J. Larkin, Syracuse (315) 425-2805

For amicus New York City: Assistant Corporation Counsel Philip W. Young (212) 356-2375

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No. 8 People v Divine Fredericks

Divine Fredericks was accused of shooting two men sitting in a car in the Bronx, killing Tyreek Simmons and severely wounding the other man, after all three spent a night together drinking at a club in June 2017. Dissatisfied with his assigned counsel, Fredericks wrote a letter to the court asking for the appointment of new counsel. He complained that his attorney “is not working in my best interest,” refused to meet with him “even via Video,” hung up on him when Fredericks called, and was needlessly delaying the case, among other things.

Supreme Court treated the letter as a pro se motion and showed it to defense counsel, who responded, “Well, I’m opposing ... that. I want to put on the record ... that ... sometimes you want to shoot the messenger ... because you don’t like the message. I, and my investigator..., have gone over this stuff with Mr. Fredericks any number of times. And we have gone through everything and Mr. Fredericks just doesn’t like what I have to tell him. I’m required to give him an honest assessment of the case.” The court asked Fredericks if he wanted to hire a private attorney and he said he didn’t have the money, “but I do want another attorney.” The court denied the motion, saying, “The State is paying for this attorney. This is a highly confident and experienced attorney. So your request for a new attorney by the state is denied. If you come into funds and hire your own attorney, you are free to do that.” Fredericks was convicted of second-degree murder, attempted murder and weapon possession, and sentenced to 45 years in prison.

The Appellate Division, First Department affirmed, finding that Fredericks received effective assistance of counsel and that the court “providently exercised its discretion” in denying his request for new counsel without a hearing. “Defendant ‘failed to proffer specific allegations of a seemingly serious request that would require the court to engage in a minimal inquiry’...,” it said. “Defendant expressed only a generalized and conclusory complaint about counsel’s representation, and this complaint did not require an inquiry under all the circumstances. In addition, counsel did not argue that defendant’s motion lacked merit, but ‘merely [outlined] his efforts on his client’s behalf.’”

Fredericks argues, in part, that his assigned counsel opposed his motion for new counsel and, “[w]ithout any question posed by the court, he then stated that ‘Mr. Fredericks just doesn’t like what I have to tell him’ and was thus ‘shoot[ing] the messenger.’” The court did not ask Mr. Fredericks a single question to elaborate on his request for new counsel, not even after his lawyer opposed the motion and expressed that it lacked merit. The court’s failure to conduct a minimal inquiry warrants reversal. Mr. Fredericks’ convictions should also be reversed and a new trial ordered because, by opposing and opining that Mr. Fredericks’ motion lacked merit, counsel took a position adverse to his client, depriving him of the right to counsel and creating a conflict of interest.”

For appellant Fredericks: V. Marika Meis, Manhattan (212) 577-2523

For respondent: Bronx Assistant District Attorney Nicole Neckles (718) 838-6150

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No. 9 People v Mitchell Hernandez

This appeal raises two primary questions: whether time spent incarcerated before sentencing on a prior conviction extends the 10-year look-back period for determining whether a defendant is a persistent violent felony offender under Penal Law § 70.04(1)(b)(iv)(v); and whether the U.S. Supreme Court’s recent decision in Erlinger v United States (602 US 821) requires that facts necessary to apply the tolling provisions of New York’s predicate felony statutes must be determined by a jury rather than a judge.

Mitchell Hernandez was convicted of first-degree robbery and related crimes for robbing a convenience store at gunpoint on Manhattan’s Lower East Side in March 2015. He was sentenced to 20 years to life in prison as a persistent violent felony offender based on his two prior violent felony convictions for second-degree robbery in 1991 and for first-degree robbery and burglary in 1997. For the earlier offense, which was committed in March 1990, he was incarcerated beginning in January 1991, nine months prior to his sentencing in October 1991.

For a prior conviction to serve as a predicate violent felony, Penal Law § 70.04(1)(b) provides in (iv) that “sentence must have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted;” and states in (v) that to calculate that ten-year span, “any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration.”

Although Hernandez had been at liberty for 10.4 years between his 1991 sentence and his commission of the 2015 crime, Supreme Court determined that his nine months of presentence incarceration in 1991 qualified that offense as a predicate offense under “the plain language of the statute.” The Appellate Division, First Department affirmed, implicitly rejecting his claim that the trial court misinterpreted Penal Law 70.04 to improperly penalize defendants who go to trial, and spend time in pre-trial detention, by making them more likely to be deemed persistent violent felony offenders than those who plead guilty and are sentenced more quickly.

With his appeal pending here, the U.S. Supreme Court issued its decision in Erlinger on June 21, 2024, holding that facts necessary to increase the penalty for a crime beyond the statutory maximum must be proven beyond a reasonable doubt before a jury. Hernandez says Erlinger “makes clear that the trial court’s application of the enhanced sentencing framework violated [his] right to a trial by jury” because he “simply would not have received an indeterminate life sentence without unconstitutional, judge-found facts” needed to toll the 10-year limitation for predicate felonies in Penal Law 70.04. The New York Attorney General has intervened to defend the constitutionality of the state’s sentencing scheme for second and persistent felony offenders.

For appellant Hernandez: Amit Jain, Manhattan (212) 763-0883

For respondent Manhattan D.A.: Appeals Division Chief Steven C. Wu (212) 335-9000

Intervenor Attorney General: Solicitor General Barbara D. Underwood (212) 416-6037

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No. 10 People v Raymond Williams

In January 2017, Raymond Williams entered the CVS store at 300 Park Avenue South in Manhattan, took two cans of Red Bull from a display at the rear of the store, then walked back toward the front. He was confronted there by the store manager, who was aware that Williams had been issued a trespass notice four months earlier after he allegedly attempted to steal 23 bottles of nail polish and eyeshadow from a different CVS store in Manhattan. The notice, which Williams signed, informed him that he was barred from entering any CVS property in the future and warned that if he did enter he would be arrested for trespassing. The store manager asked him to leave and, after handing over the Red Bull cans, he left the store.

Williams was arrested a month later and indicted on a charge of third-degree burglary, alleging that he knowingly entered the Park Avenue CVS unlawfully with the intent to commit a crime. At his jury trial, Supreme Court denied his motion to dismiss the burglary charge for insufficient evidence. He was convicted as charged and sentenced to 3½ to 7 years in prison.

The Appellate Division, First Department affirmed in a 3-2 decision, finding that the trespass notice established Williams' knowledge that his entering the store was unlawful and that surveillance and other evidence "supported the jury's finding that defendant entered CVS with the intent to commit a crime." The video "shows defendant walking past the CVS store while looking inside, and then returning a few seconds later and entering the store. This conduct was consistent with defendant surveying the store to determine whether he should go in and take property or whether anyone might recognize him as a prohibited customer. Defendant's arguably furtive behavior continued after he entered the store. As he walked down aisle nine" toward the Red Bull cooler, "he looked over his shoulder several times, conduct which the jury could certainly find was consistent with trying to make sure that he was not being watched.... We disagree with the dissent that the surveillance video supports a reasonable inference that defendant was planning to purchase the two cans of Red Bull because he has 'what appears to be cash' in his hand.... Defendant never indicated that he intended to buy the two cans of Red Bull or made any effort to pay for them."

The dissenters argued the evidence of criminal intent was insufficient and "susceptible to an innocent explanation" that Williams entered the store to buy Red Bull. "The video shows defendant entering the store holding a plastic bag in his left hand and what appears to be cash in his right hand.... That the video shows him looking over his shoulder once as he walks to the rear of aisle nine is not conduct indicative of guilt." When he took the Red Bull from the cooler and returned to the front of the store, "with the cans visibly in each hand," the dissenters said he did not try to conceal them. "The video ... shows that he went past the exit doors and stood next to the cashier and self-checkout register when he was confronted by the manager who took the two Red Bull cans from his hands. Because his actions were susceptible to a reasonably innocent explanation, the verdict was not supported by legally sufficient evidence."

For appellant Williams: Ayushe Misra, Manhattan (212) 225-2000

For respondent: Manhattan Assistant District Attorney Anna Notchick (212) 335-9000