

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 Thursday, January 9, 2025

No. 11 People v Juan Silva Santos

Juan Silva Santos was arrested with four accomplices for drug trafficking in October 2018 after state and local investigators recovered about 50 pounds of heroin and fentanyl in raids on stash houses in the Bronx and Yonkers and, from Silva Santos's apartment in Yonkers, a ledger recording more than \$6 million in drug transactions. He was indicted on class A-1 felony counts of operating as a major trafficker (Penal Law 220.77) and first-degree possession of a controlled substance, along with lesser drug-related charges. The major trafficker charges carried a statutory minimum sentence of 15 years to life in prison if convicted.

In 2021, Silva Santos accepted a prosecution plea offer in which he pled guilty to third-degree possession of a controlled substance in exchange for a sentence of nine years in prison. As a condition of the plea, he was required to "waive participation in the Shock Incarceration Program" and "agree not to apply for participation in the Program at any time during my incarceration with the New York State Department of Corrections and Community Supervision [DOCCS]." Shock is a six-month program of intensive regimentation and rehabilitation, and inmates who successfully complete it become eligible for early release. Individuals convicted of A-1 felonies are not eligible for Shock and others must apply and be approved for the program by DOCCS when they have three years or less remaining on their sentences.

At his sentencing, Silva Santos asked Supreme Court to include "a shock program or something" in his sentence. The court declined, saying, "Unfortunately, this was an offer made by the People" and a condition of the offer "was that you waive shock. And so, I cannot offer you a program at this time. I wish I could, but I can't."

The Appellate Division, First Department affirmed, saying his "claim that waiver of his right to participate in, and apply to, the shock incarceration program runs afoul of public policy and infringes upon [DOCCS'] statutorily authorized role in determining conditions of confinement is unavailing. Here, the record indicates that he voluntarily, knowingly, and intelligently waived this right."

Silva Santos contends his "sentence was illegal because it contained an unauthorized component: preclusion from Shock. Correction Law § 867 only provides DOCCS with the authority to determine Shock placement and it details the process for DOCCS to determine candidate selection. While the Drug Law Reform Act (DLRA) allows a trial-level court to order enrollment in Shock..., it does not give courts the power to prohibit access to Shock. The Legislature's expressed purpose was to enroll more Shock participants via the DLRA by expanding eligibility and allowing courts to directly sentence participants into the program."

The prosecution argues Silva Santos' waiver of Shock "comported with the statutory scheme" because the Legislature "made clear that the decision to apply for Shock ... belongs to an eligible inmate, not to DOCCS or the sentencing court." Thus, it is the defendant's choice whether to waive the opportunity to apply. Since the original A-1 felony charges would have made Silva Santos ineligible for Shock, the prosecution says "the significant sentence reduction [he] obtained by signing the shock waiver" made his decision "fair and reasonable."

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For respondent: Manhattan Assistant District Attorney Andrew E. Seewald (212) 335-9000

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To be argued Thursday, January 9, 2025

No. 12 Matter of NYP Holdings, Inc. v New York City Police Department

The Police Benevolent Association of the City of New York (PBA) is appealing an order that would compel the New York City Police Department to disclose disciplinary records of police officers under the Freedom of Information Law (FOIL). The FOIL requests for records of 144 NYPD officers were filed by New York Post reporter Craig McCarthy in June 2020 after the Legislature repealed Civil Rights Law § 50-a, which had shielded from disclosure “all personnel records used to evaluate performance toward continued employment or promotion” of police officers since 1976. When the NYPD denied access to all but one officer’s records on various grounds, the Post’s publisher NYP Holdings filed this suit to compel disclosure. The PBA intervened to assert a new defense that the repeal of section 50-a did not apply retroactively to disciplinary records created prior to June 12, 2020, the date of the repeal, and that such records remained confidential. The NYPD took “no position” on the PBA’s retroactivity argument.

Supreme Court granted the Post’s petition to compel disclosure, finding “the NYPD failed to sufficiently justify its claim that the requested documents are so burdensome as to constitute a basis to deny petitioners’ FOIL requests.” It did not address the merits of the PBA’s argument that the repeal did not apply retroactively, saying it “would be wholly inappropriate ... to permit an intervenor to raise arguments not asserted by the agency.”

The Appellate Division, First Department affirmed and, further, held that the repeal of section 50-a applies retroactively to records created prior to the repeal. “While ‘the legislature made no express statement in the repeal itself, or in the limited legislative history..., as to whether the repeal was to be applied retroactively’..., the repeal ‘went into effect immediately and, by its plain reading and intent, applies to records then existing and not simply to records created’ subsequently, it said. “The legislative history clarifies that the legislature ‘conveyed a sense of urgency’ and intended for the legislation to be remedial...,” which “should be given retroactive effect in order to effectuate its beneficial purpose.” It said, “PBA’s position ... would run counter to the clear legislative purpose of providing public access to records that may contain information about actual or alleged police misconduct.”

The PBA argues, “The First Department violated New York’s strong presumption against retroactivity by writing retroactivity into the repeal of [section] 50-a where the legislature was silent.” “Retroactive application of the repeal of [] 50-a creates the fundamentally unfair result of exposing long-closed, confidential disciplinary records to disclosure only after officers made decisions based on the promise of confidentiality,” it says. The First Department “wrote retroactivity into the repeal ... because the court, without explanation, labeled the repeal as ‘remedial,’ which is not sufficient to imply retroactivity “since virtually any legislation can be labeled as such.... [A]s this Court recently confirmed, the repeal of legislation after decades of consistent interpretation is not remedial and, in fact, indicates a prospective change.”

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For respondents NYP Holdings and McCarthy: Jeremy A. Chase, Manhattan (212) 489-8230

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No.13 Matter of New York Civil Liberties Union v City of Rochester

The City of Rochester and its Police Department are appealing an order requiring them to disclose, under the Freedom of Information Law (FOIL), disciplinary records of unsubstantiated complaints against police officers. In June 2020, the Legislature repealed Civil Rights Law § 50-a, which had shielded police disciplinary records from disclosure since 1976. Among other amendments enacted at the same time, the Legislature amended Public Officers Law § 86(7) to define “law enforcement disciplinary proceeding,” records of which must be disclosed, as “the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency.” In September 2020, as part of its review of police accountability procedures in more than a dozen jurisdictions around the state, the New York Civil Liberties Union (NYCLU) filed a FOIL request for all civilian complaints against Rochester police offices, investigative reports, and related disciplinary records dating back to Jan. 1, 2000. In February 2021, Rochester disclosed substantiated disciplinary records for 117 active police officers dated between 1986 and 2021. It refused to disclose unsubstantiated complaints on two grounds: that complaints which did not result in a hearing or disciplinary action were not records of a “law enforcement disciplinary proceeding” as newly defined in FOIL; and that disclosure of unsubstantiated complaints would constitute an unwarranted invasion of personal privacy, an exception to disclosure under FOIL.

Supreme Court denied the NYCLU’s petition for disclosure of unsubstantiated claims, saying the repeal of Civil Rights Law § 50-a “does not require a law enforcement agency to disclose ‘unsubstantiated and unfounded complaints against an officer’ where such agency determines that disclosure of the complaint would constitute an unwarranted invasion of personal privacy.... [T]he public’s interest in the release of the documents related to unsubstantiated [claims] does not outweigh the privacy concerns of individual officers.”

The Appellate Division, Fourth Department reversed on that issue and ordered disclosure of unsubstantiated complaints, subject to redactions permitted by FOIL. It said FOIL’s privacy exemption does not “create a blanket exemption allowing [the City] to categorically withhold the law enforcement disciplinary records” of unsubstantiated claims. The court relied on its decision issued the same day in a companion case, M/O New York Civil Liberties Union v City of Syracuse (210 AD3d 1401), which held, “In order to invoke the personal privacy exemption ... [the] respondents must review each record responsive to petitioner’s FOIL request and determine whether any portion of the specific record is exempt as an invasion of personal privacy.”

Rochester argues that records concerning unsubstantiated complaints are not subject to FOIL because they do not relate to a “law enforcement disciplinary proceeding” as defined in Public Officers Law § 86(7) since unverified complaints do not result in any “hearing or disciplinary action.” The lower courts did not address this issue. In any case, the City contends, the release of records of unverified or unfounded complaints would be “an unwarranted invasion of personal privacy,” making them exempt from disclosure under FOIL.

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For respondent NYCLU: Robert Hodgson, Manhattan (212) 607-3300