CRIMINAL

FOURTH DEPARTMENT

People ex rel. Suarez v Livingston Corr. Fac., 2/5/21 – **SARA / NOT FOR YOS**
In Livingston County Supreme Court, the petitioner sought an order annulling a Board of Parole determination imposing a SARA school-grounds mandatory condition. The Fourth Department reversed and granted the petition (a habeas corpus converted to an Article 78). The petitioner had been adjudicated a youthful offender following an attempted rape conviction. Neither the SARA statute nor legislative history indicated that the mandatory condition was intended to be imposed on YOs. Further, so doing would contravene the purpose of YO treatment—to avoid the stigma and practical consequences of a criminal conviction. Two justices concurred, and one dissented in part. Legal Aid Society–NYC (Elon Harpaz, of counsel) represented the petitioner.
http://nycourts.gov/reporter/3dseries/2021/2021_00705.htm

People v Murray, 2/5/21 – **EXPERT OPINION / NEW TRIAL**
The defendant appealed from a Supreme Court judgment, convicting him of 3rd degree insurance fraud and 1st degree falsifying business records, in connection with claims for property lost in a house fire. The Fourth Department reversed and granted a new trial. The trial court erred in allowing an arson investigator to testify that the fire was intentionally set. Such opinion was irrelevant to prove any element of the crimes. Even if the testimony completed the narrative, prejudice trumped probative value. Moreover, a limiting instruction did more harm than good in linking the defendant to the arson. The error was not harmless. Unlike in the case against the defendant's spouse, here the evidence was not overwhelming. The Monroe County Conflict Defender (Carolyn Walther, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00722.htm

People v Padilla, 2/5/21 – **CHALLENGES FOR CAUSE / NEW TRIAL**
The defendant appealed from an Onondaga County Court judgment, convicting him of 2nd degree robbery and another crime. The Fourth Department reversed and granted a new trial. The lower court erred in denying the defendant's challenges for cause to two prospective jurors whose statements raised serious doubts about their ability to render an impartial verdict. Their silence, in response to the court's question to the entire panel, did not constitute an unequivocal assurance. Hiscock Legal Aid Society (Piotr Banasiak, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00732.htm

People v Nguyen, 2/5/21 – **DIRECT CONSEQUENCES / PLEA VACATED**
The defendant appealed from a Supreme Court judgment, convicting him of aggravated DWI and other crimes. The Fourth Department reversed, because not until immediately before sentencing did the plea court tell the defendant about the fine, mandatory conditional discharge period, and ignition interlock device. The Monroe County Conflict Defender (Carolyn Walther, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00724.htm

People v Cordon, 2/5/21 – **SENTENCE REDUCED / ARMY VET**
The defendant appealed from a Supreme Court judgment, convicting him of 2nd degree burglary, attempted 2nd degree burglary, and two other crimes. In the interest of justice, the Fourth Department ordered that the sentences would run concurrently. The waiver of the right to appeal was invalid because the plea court incorrectly characterized it as an absolute bar to an appeal. Consecutive sentences were unduly severe considering that: (1) while serving in the Army, the defendant was injured; (2) as a result of the injury, he developed an opiate addiction; (3) in addition, he struggled with mental illness: (4) he had accepted responsibility for his actions; and (5) he had shown remorse. Legal Aid Bureau of Buffalo (Erin Kulesus, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00751.htm

People v Reed, 2/5/21 – **CPL 440.10 / SPEEDY TRIAL / IAC**
The defendant appealed from an order of Onondaga County Supreme Court, which, without a hearing, denied his CPL 440.10 motion to vacate a judgment convicting him of 1st degree robbery (two counts). The Fourth Department reversed and remitted. The defendant raised a triable factual issue regarding counsel's ineffective assistance in failing to make a sufficient motion to dismiss on CPL 30.30 grounds. In opposing the 440 motion, the People asserted that 88 days were excludable because, during such period, the defendant had been trying to avoid apprehension. However, that claim was based on mere speculation of an unnamed police investigator. Hiscock Legal Aid Society (Sara Goldfarb, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00758.htm

People v Bell-Bradley, 2/5/21 – **CPL 440.20 / PREDICATE FELONY**
The defendant appealed from a County Court order, summarily denying his CPL 440.20 motion. The Fourth Department reversed and remitted. The motion asserted that the defendant was illegally sentenced as a second felony offender in that his prior federal conviction was not equivalent to a NY felony. Such argument was not determined in the direct appeal. Indeed, the appellate court had previously held that resolution of the unpreserved question would require resort to outside facts, documentation, or foreign statutes. Legal Aid Bureau of Buffalo (Alan Williams, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00761.htm

People v Huntley, 2/5/21 – **SORA / RIGHT TO COUNSEL**
The defendant appealed from a County Court order determining that he was a level-two risk under SORA. The Fourth Department reversed. The defendant's purported waiver of the right to counsel was invalid. The SORA court did not conduct the requisite searching inquiry and instead relied on a form notice notation. The reviewing court observed that the subject form was defective in not fully describing the SORA hearing or the consequences for not appearing. Also, apparently the lower court failed to give the defendant a copy of the recommendation of the Board of Examiners. The Monroe County Public Defender (David Juergens, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00688.htm

FAMILY

FOURTH DEPARTMENT

M/O David W. (Patrizio C.), 2/5/21 – **NEGLECT / REVERSED**
The respondent appealed from an Oneida County Family Court order, which held that he neglected one child and derivatively neglected another. The Fourth Department reversed. The challenged finding was based on the respondent rear-ending the mother's car while a child was in his car. Yet the petitioner agency did not establish that the child was, in fact, in the father's vehicle at the time of the incident. Peter DiGiorgio Jr. represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00734.htm

M/O Beulah J. (Darlene H. – Johnny J.), 2/5/21 – **TPR / VACATED**
The father and child Ebony J. appealed from an order of Onondaga County Family Court terminating his parental rights as to three children based on permanent neglect. The Fourth Department vacated such disposition as to Ebony. A new dispositional hearing was needed because the order made her a legal orphan, and the AFC who jointly represented the children at trial failed to effectively advocate Ebony's position regarding adoption. Hiscock Legal Aid Society (Danielle Blackaby, of counsel) represented the father, and Kimberly Seager represented Ebony.
http://nycourts.gov/reporter/3dseries/2021/2021_00767.htm

M/O Ryan M.E. v Shelby S., 2/5/21 – **PATERNITY / BOYFRIEND #2**
The mother and her boyfriend Ryan S. appealed from an order of filiation entered in Allegany County Family Court, which declared that the petitioner was the father of the subject child. The Fourth Department modified. Ryan S. had executed an acknowledgment of paternity (AOP). Thereafter, within weeks of the birth, the petitioner commenced the instant proceeding, and genetic testing conclusively established that he was the biological father. The appellate court denied relief to the appellants, but granted the petitioner's motion seeking to vacate the AOP.
http://nycourts.gov/reporter/3dseries/2021/2021_00717.htm

M/O Henshaw v Hildebrand, 2/5/21 – **FAMILY OFFENSE / VISITATION / REVERSALS**
The father appealed from orders of Ontario County Family Court regarding his family offense and visitation enforcement petitions. The Fourth Department reversed. Family Court erred in dismissing the father's Article 8 petition, which stated a claim for 2nd degree harassment by alleging that the mother contacted him 110 times over two days via text and/or phone, after he told her to stop. Her oral motion to dismiss the enforcement petition was not made on notice. Thus, an appeal as of right did not lie. *See* CPLR 5701 (a) (2), (3). The appellate court treated the notice of appeal from that order as a motion for leave, granted leave, and found error. Family Court had granted dismissal on the ground that Texas—where the mother lived—would be the better forum. But the trial court failed to engage in the requisite "inconvenient forum" analysis, and the mother failed to make a proper written motion on notice and to submit supporting evidence or arguments. Cara Waldman represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_00653.htm