CRIMINAL

FIRST DEPARTMENT

People v Roman, 9/24/19 – **SUPPRESSION DENIAL / NEW TRIAL**
The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of 1st degree manslaughter and 2nd degree CPW, after a jury trial. The First Department reversed, granted the defendant's motion to suppress incriminating statements, and remanded for a new trial. Several days before the defendant made the contested statements, he was taken into custody by Las Vegas Police, and he sought to speak with a detective from the Regional Fugitive Task Force who would bring him back to NY. When asked by the detective if he wanted to talk, the defendant responded, "I would like to tell you what happened, but I think I want to talk to an attorney." The detective responded by saying "okay" and did not question the defendant about the homicide. Upon returning to NY, the defendant made incriminating statements to the investigating detective, but his motion to suppress was denied. That was error. When a defendant in custody unequivocally requests the assistance of counsel, any purported waiver of that right, obtained in the absence of counsel, is ineffective. The circumstances surrounding the defendant's statement established that he unequivocally invoked his right to counsel. He was in custody and clearly expressed that he wanted to speak about the homicide; and the detective understood that he wanted an attorney. Thus, the defendant's later statements, made in the absence of counsel to other law enforcement personnel, were inadmissible. The error was not harmless. The Legal Aid Society of NYC (Nancy Little, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2019/2019_06719.htm

APPELLATE TERM, FIRST DEPARTMENT

People v Ramirez, 9/26/19 – **MOTION TO BE RELIEVED / DENIED**
The defendant appealed from a judgment of NY County Criminal Court, convicting her of DWAI. The Appellate Term, First Department affirmed. The verdict was not against the weight of the evidence, and the court properly summarily denied defense counsel's eve-of-trial motion to be relieved, since good cause was not shown. *See People v Porto,* 16 NY3d 93. Good cause does not exist when a defendant is guilty of delaying tactics or where, on the brink of trial, disagreements over trial strategy generate discord. Here, the defendant's refusal to follow counsel's sound advice, to accept the favorable plea offer, did not rise to the requisite level to warrant removal.
http://nycourts.gov/reporter/3dseries/2019/2019_51516.htm

SECOND DEPARTMENT

People v Harris, 9/25/19 – **SUPPRESSION DENIAL / REMITTAL**
The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 2nd degree criminal possession of a forged instrument, upon his plea of guilty. The appeal brought up for review the denial, after a hearing, of a motion to suppress physical

evidence and the defendant's statement to law enforcement officials. The Second Department remitted the matter and held the appeal in abeyance. As a threshold matter, the appeal was not precluded by the purported waiver of appeal. When explaining the waiver, Supreme Court improperly conflated the right to appeal with rights automatically forfeited by a plea of guilty. Moreover, although the defendant executed a written waiver, the court did not ascertain whether he had read the waiver or discussed it with counsel. However, as to the merits, informed appellate review of the order denying suppression was not possible, since Supreme Court failed to set forth its findings of fact or conclusions of law, thus transgressing CPL 710.60 (6). Appellate Advocates (Samuel Barr, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2019/2019_06795.htm

People v Murdock, 9/25/19 – **ENHANCED SENTENCE / UNDULY SEVERE**
The defendant appealed from a judgment of Nassau County Supreme Court, convicting him of DWI and sentencing him to one year of incarceration and three years of probation. The Second Department—which had granted a stay of execution of the sentence—reduced the term to 90 days with credit for time served. The defendant entered a plea of guilty and agreed to abide by multiple conditions during interim probation. When he violated certain terms, Supreme Court imposed an enhanced sentence. The sentencing court had a right to enhance the sentence, but the appellate court had broad, plenary power to modify an unduly harsh enhanced sentence. The defendant demonstrated that his failure to attend treatment sessions was related to his loss of health care benefits and lack of a salary. He submitted evidence that, upon the resumption of his benefits, he re-entered the program; and his progress letters demonstrated his insight into his substance abuse and reported that his urine screenings were negative for any substances. Moreover, a psychologist opined that the defendant had a mild alcohol use disorder and was not likely to be a recidivist. He installed an Ignition Interlock Device and successfully utilized a personal breath-testing device. Moreover, three work supervisors submitted letters of recommendation. For all these reasons, the one-year term, rather than an originally agreed-upon term of 90 days' incarceration, was too harsh. Steven Siegel represented the appellant.
http://nycourts.gov/reporter/3dseries/2019/2019_06801.htm

People v Dym, 9/25/19 – **WAIVER OF APPEAL / NOT FOR VOP**
The defendant appealed from a judgment of Rockland County Supreme Court, revoking a sentence of probation, based on violations of certain conditions, and imposing a sentence of imprisonment. The waiver of his right to appeal, given at the time of the plea of guilty, could not be enforced so as to preclude review of the defendant's contention that the amended sentence was excessive. At the time of the waiver, the defendant was not informed of the maximum that could be imposed if he failed to conform to probation conditions. Thus, he did not knowingly and intelligently waive his right to appeal from an amended sentence that, at that point, had not yet been declared. However, the amended sentence was not excessive.
http://nycourts.gov/reporter/3dseries/2019/2019_06793.htm

ISSUES TO DEVELOP AT TRIAL

Attached is the September edition of ISSUES TO DEVELOP AT TRIAL, provided by the Center for Appellate Litigation. This month's issue sets forth a constitutional challenge for defense counsel to assert if the client is subject to SORA, is homeless, and is charged with failing to register a change of address under Correct. Law § 168-f (4), a class E felony for a first offense, and a class D felony upon subsequent convictions. *See* Correct. Law § 168-t. Also, here is a link to the issue: https://www.appellate-litigation.org/siteFiles/files/Vol_%204%20Issue%206%20Sept%2019.pdf

FAMILY

THIRD DEPARTMENT

Eddy v Eddy, 9/26/19 – **SUPPORT VIOLATION / HEARING NEEDED**
The father appealed from an order of Warren County Family Court, which granted the mother's application, in a proceeding pursuant to Family Court Act Article 4, to hold him in willful violation of a prior support order. In 2016, the mother filed a violation petition. At a subsequent hearing, the father admitted to the allegations. Pursuant to an order on consent, he was adjudged to be in willful violation, ordered to pay arrears, and sentenced to 60 days, with the sentence suspended upon the condition that he comply with the support order. In 2017, on behalf of the mother, Social Services requested an order of commitment. The father sought a support modification based on medical issues. During a hearing, it was revealed that his support obligation had ended; he was seeking an adjustment as to arrears until he could return to work; and the proceedings on the order of commitment had been adjourned pending his sale of certain real property. When the proceedings resumed, the father indicated that he did not have a contract as to the real property or any means to pay the arrears. Family Court adjourned the proceedings to enable him to undergo surgery but directed him to return to court with a check for the $12,000-plus in arrears. When he failed to do so, Family Court issued a warrant and order of commitment. The Third Department reversed and remitted. Family Court erred in revoking the suspension of the jail sentence without affording the father the opportunity to present evidence on his inability to pay arrears. *See* Family Ct Act § 433 (a). The Rural Law Center of NY (Keith Schockmel, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2019/2019_06825.htm

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