State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

May 18 thru May 19, 2022

State of New York
Court of Appeals

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To be argued Wednesday, May 18, 2022 (arguments begin at 2 pm)

No. 52 Matter of Nonhuman Rights Project, Inc. v Breheny

The Nonhuman Rights Project (NhRP) brought this habeas corpus proceeding on behalf of Happy, a 48-year-old elephant at the Bronx Zoo, against the zoo's director James Breheny and its operator, the Wildlife Conservation Society, contending the elephant is being unlawfully confined. For her own safety, Happy has been kept apart from other elephants in an enclosure of about one acre since 2006. NhRP is seeking to have her released to an animal sanctuary that covers about 2,300 acres.

CPLR § 7002(a) provides, "A person illegally imprisoned or otherwise restrained in his liberty within the state, or one acting on his behalf..., may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance." It does not define the term "person."

The NhRP previously sought a writ of habeas corpus on behalf of a chimpanzee named Tommy. The Appellate Division, Third Department denied the petition in People ex rel. Nonhuman Rights Project, Inc. v Lavery (124 AD3d 148 [2014]), (hereinafter, Lavery I), holding that a chimpanzee was not a "person" entitled to the protection of habeas corpus relief. Citing the lack of precedent, the court said that "legal personhood has consistently been defined in terms of both rights and duties" and, "unlike human beings, chimpanzees cannot bear any legal duties, submit to societal responsibilities or be held legally accountable for their actions." The NhRP subsequently brought new habeas corpus proceedings on behalf of Tommy and a second chimp named Kiko, again without success. The Appellate Division, First Department said in Matter of Nonhuman Rights Project, Inc. v Lavery (152 AD3d 73 [2017]), (Lavery II), that it found no "legal support or legal precedent" for concluding that the "human-like characteristics" of chimpanzees "render them 'persons' for purposes of CPLR article 70." It said they lack the "capacity or ability ... to bear legal duties, or to be held legally accountable for their actions."

In this case, NhRP submitted affidavits of five experts on elephant cognition who said elephants share many cognitive abilities with humans, including self-awareness, empathy, awareness of death, intentional communication, learning and memory.

Supreme Court dismissed the petition, saying Happy is "an intelligent being with advanced analytic abilities akin to human beings," but it was bound by the rulings in Lavery I & II "that animals are not 'persons' entitled to rights and protections afforded by the writ of habeas corpus."

The Appellate Division, First Department affirmed based on its ruling in Lavery II that "the writ of habeas corpus is limited to human beings." It said, "A judicial determination that species other than homo sapiens are 'persons' for some juridical purposes, and therefore have certain rights, would lead to a labyrinth of questions that common-law processes are ill-equipped to answer. As we said in Lavery [II], the decisions of whether and how to integrate other species into legal constructs designed for humans is a matter 'better suited to the legislative process."

The NhRP argues, in part, that habeas corpus is a creation of common law, not statute. "Thus, whether an individual is a 'person' who may invoke the protections of habeas corpus is a substantive common law question for this Court to decide, not the legislature." It argues that, as a matter of liberty and equality, the Court should "recognize Happy's common law right to bodily liberty protected by haveas corpus because she is autonomous and extraordinarily cognitively complex." NhRP says elephants' inability to acknowledge a legal duty or responsibility should not determine their right to habeas relief, since the same is true of human infants and comatose adults and they still have the legal rights of persons.

For appellant NhRP: Monica L. Miller, Novato, CA (415) 302-7364
For respondents Breheny et al: Kenneth A. Manning, Buffalo (716) 847-8400

State of New York
Court of Appeals

To be argued Wednesday, May 18, 2022 (arguments begin at 2 pm)

No. 53 Matter of Talbot V. v Kingsboro Psychiatric Center *(papers sealed)*

In 2019, the state-run Kingsboro Psychiatric Center in Brooklyn commenced a proceeding under Mental Hygiene Law § 9.33 for court authorization to continue the involuntary retention of Talbot V., who had been a patient there since 2011, for as much as two more years. Mental Hygiene Legal Service (MHLS), which provides legal representation to hospital patients with mental illnesses, requested a retention hearing on Talbot's behalf and asked Kingsboro to provide a copy of his complete clinical record prior to the hearing. When it refused, MHLS sought an order requiring Kingsboro to provide Talbot's full clinical record pursuant to Mental Hygiene Law § 9.31(b), which requires hospital directors to "forward forthwith a copy of [the hearing] notice with a record of the patient" to the hearing court and MHLS. Mental Hygiene Law § 9.01 defines the "record" of a patient to include "admission, transfer or retention papers and orders, and accompanying data required by this article and by the regulations of the commissioner" of the state Office of Mental Health (OMH). The statute does not define "accompanying data."

Supreme Court denied the motion seeking Talbot's entire medical record, saying "the plain language" of the definition of "record" in section 9.01 required Kingsboro to provide only "admission, transfer or retention papers and orders" and accompanying medical certificates. It said, "There is no legal basis to support the conclusion that 'accompanying data' refers [to] the entire clinical record." After the retention hearing, the court authorized Kingsboro to retain Talbot for six more months.

The Appellate Division, Second Department affirmed. Although the retention period had expired, it invoked the exception to the mootness doctrine to consider the facility's obligation to provide records under the statutes. The court noted that, while the appeal was pending, OMH amended its regulations (14 NYCRR 501.2[a]) to clarify that "accompanying data" does not include a case record, clinical record, medical record, or patient record, but instead "is expressly limited to 'medical certificates providing the basis for the admission of patients and requests for transfer or retention." It said OMH's interpretation was entitled to deference because, in view of MHLS's "undisputed access" to Kingsboro's clinical records, it "is consistent with both the purposes of the statute [section 9.31] and the requirements of due process."

MHLS argues that OMH's amended regulation that redefined "accompanying data" is inconsistent with the statutes and the Legislature's intent, and that it would violate the due process rights of mental patients if it were enforced. It says the lower courts "ignored the tenets of due process and fundamental fairness, hamstrung counsel's efforts to provide effective legal assistance," and denied patients the opportunity "of seeing the evidence to be offered against them before a hearing that impacts their liberty." MHLS says its "access to clinical records at the hospital cannot obviate [Kingsboro's] statutory duty to disclose the full record."

For appellant Talbot V. (MHLS): Arthur A. Baer, Garden City (516) 493-3975
For respondent Kingsboro: Assistant Solicitor General Philip J. Levitz (212) 416-6325

State of New York
Court of Appeals

To be argued Wednesday, May 18, 2022 (arguments begin at 2 pm)

No. 54 People v Carlos Galindo

The primary question in this case is whether an amendment to CPL 30.30, which applied the speedy trial statute's time limits to traffic infractions for the first time, applies retroactively to cases pending on direct appeal when the amendment took effect on January 1, 2020.

Police officers in Queens arrested Carlos Galindo in January 2014, after they found him asleep in the driver's seat of a borrowed car that he had parked next to a fire hydrant. The engine was running, the headlights were on, music was playing, and he held an open bottle of beer in his hand. He did not have a driver's license. He was charged with a half-dozen misdemeanors and traffic infractions. Galindo subsequently made a pretrial motion to dismiss the complaint on speedy trial grounds, contending prosecutors had exceeded the 90 days that CPL 30.30(1) allows them to be ready for trial.

Criminal Court denied the motion in July 2015. Based on longstanding precedent, the court ruled that CPL 30.30 does not apply to traffic infractions. Regarding the misdemeanor counts, the court found only 30 days of delay were chargeable to the prosecution, well short of the 90-day limit. At trial in 2016, a jury found Galindo guilty of two misdemeanor counts of driving while intoxicated and two traffic infractions, consumption or possession of alcohol in a vehicle and unlicensed operation of a vehicle. He was sentenced to a conditional discharge, a six-month license suspension, $1,225 in fines and a $395 surcharge.

The Appellate Term, Second Department reversed and dismissed the charges in June 2020, six months after the amendment in CPL 30.30(1)(e) took effect. It found the prosecution was chargeable with 95 days of delay, requiring dismissal of the misdemeanor counts; and that the amendment to CPL 30.30, applying the speedy trial limits to traffic infractions, is retroactive and required dismissal of those charges as well. It said that generally, when a statute is amended while an appeal is pending, "the law to be utilized is that in effect at the time the decision on appeal is rendered." It said the three factors in People v Pepper (53 NY2d 213), to determine whether a new rule should apply retroactively, favor its decision. The prior version of the speedy trial statute created the "anomaly" of defendants being relieved of serious felonies and misdemeanors while still facing prosecution for lesser traffic infractions, it said. The amendment "serves the purpose of correcting this irregularity" and "constitutes a positive effect on the administration of justice." Although courts "had relied rather consistently on the previous rule that traffic infractions cannot be dismissed pursuant to CPL 30.30," it said, "the amended rule aligns better" with the legislative intent of discouraging "prosecutorial inaction."

The prosecution argues that "the Legislature failed to amend section 30.30 effectively so as to abrogate settled law that [the statute] does not apply to traffic infractions" and that the Appellate Term erred in applying "the supposedly newly enacted time limit" to a case "that was prosecuted in 2016, years before the new section was ever enacted. It thereby retroactively placed a timing requirement on the prosecution that it never knew, or could have known, that it would someday have." It says there is no evidence "of a legislative intent to apply the amendment retroactively," and the Pepper factors weigh against retroactive application because "it would have a negative effect on the administration of justice, it would frustrate the purpose to be served by the amendment, and it would punish prosecutors for reasonably relying on settled precedent."

For appellant: Queens Assistant District Attorney Eric C. Washer (718) 286-5832
For respondent Galindo: Rachel L. Pecker, Manhattan (212) 577-3384

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To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 34 ACE Securities Corp. v DB Structured Products, Inc.

This breach of contract action stems from a residential mortgage-backed securities (RMBS) investment deal that went sour. The appeal hinges on whether the trustee of an RMBS trust qualifies as a "plaintiff" under CPLR 205(a), which gives a "plaintiff" six months to revive an action that is dismissed for reasons other than the merits, when the original action was commenced by the trust's certificate holders rather than the trustee.

DB Structured Products, Inc. (DBSP) purchased 8,815 residential mortgages, which were pooled in a trust and securitized through the sale of more than $500 million in certificates to investors in 2006. In a Mortgage Loan Purchase Agreement (MLPA), executed on March 28, 2006, DBSP made representations and warranties regarding the quality of the mortgage loans. The MLPA and related agreements require that DBSP be notified of a breach of any of its warranties and gives it 60 days to cure the breach. If the breach cannot be cured, DBSP is required to repurchase the affected loan within 90 days of receiving notice. The agreements provide that the trustee -- HSBC Bank USA, National Association -- may not sue or demand that DBSP repurchase a defective loan until the cure period expires.

Two investors filed this suit on behalf of the trust against DBSP on March 28, 2012, the last day of the 6-year limitations period, alleging extensive breaches of the loan warranties. In September 2012, HSBC, as trustee, sought to substitute itself as the plaintiff, making similar claims of extensive breaches and DBSP's refusal to cure or repurchase the loans. The Appellate Division, First Department dismissed the suit as untimely (112 AD3d 522). The Court of Appeals affirmed the dismissal (25 NY3d 581), in part because the investor-plaintiffs failed to comply with a contractual condition precedent to suit when they commenced the action without affording DBSP 60 days to cure and 90 days to repurchase the loans.

While that appeal was pending at this Court, HSBC commenced this action to revive the original action pursuant to CPLR 205(a), noting that "the 60- and 90-day cure and repurchase periods ... have now elapsed." Supreme Court dismissed HSBC's suit, finding the trustee was not a "plaintiff" under the statute.

The Appellate Division, First Department affirmed, saying, "The dispositive issue ... is whether the trustee of a [RMBS] trust is a 'plaintiff' within the meaning of CPLR 205(a) when the prior action was commenced by the trust's certificateholders. In U.S. Bank N.A. v DLJ Mtge. Capital, Inc. (141 AD3d 431 ...), we concluded that 'the trustee [was] not entitled to refile the claims under CPLR 205(a), because it [was] not a "plaintiff" under that statute....'"

HSBC argues that prior cases interpreting CPLR 205(a) have applied a "same rights" test to determine who is a proper "plaintiff" to revive an action under the statute, and that it is entitled to the benefits of the statute "because the named plaintiffs in the Original Action and this Revival Action acted to enforce the exact same rights each time – those afforded to the Trust by the securitization agreements that DBSP sponsored.... In each of the two actions, the same rights were invoked, the same allegations were made, and the same relief was sought on behalf of the same true party in interest."

For appellant HSBC (as trustee): Zachary W. Mazin, Manhattan (212) 402-9400
For respondent DB Structured Products: William T. Russell, Jr., Manhattan (212) 455-2000

State of New York
Court of Appeals

To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 55 Matter of DCH Auto v Town of Mamaroneck

In 2007, DCH Auto entered into 20-year lease with the owner of a parcel in the Town and Village of Mamaroneck, which it uses for its automotive repair business. The lease required DCH to pay all real estate taxes levied on the property. It also gave DCH the right to contest the tax assessments and the right to settle any such proceeding without the owner's consent. In 2014, DCH filed administrative complaints pursuant to Real Property Tax Law (RPTL) 524(3), in its own name and not the owner's, to challenge the Town's assessments for five years, from 2009 to 2014, and the Village's assessments for three of those years. After the Town and Village Boards of Assessment Review denied the administrative complaints, DCH commenced these tax certiorari proceedings under RPTL article 7 to challenge the assessments in court.

The Town and Village moved to dismiss the suits on the ground that the administrative complaints in the RPTL 524 proceedings were defective because they were not brought in the name of the property owner. RPTL 524(3) provides that a complaint "must be made by the person whose property is assessed, or by some person authorized in writing by the complainant or his officer or agent to make such statement who has knowledge of the facts stated therein." While RPTL 704(1) authorizes "any person claiming to be aggrieved" to bring a tax certiorari proceeding under article 7, the municipalities argued that a valid complaint under RPTL 524 is a condition precedent to filing suit under RPTL article 7.

Supreme Court dismissed the tax proceedings, ruling that it lacked subject matter jurisdiction to review the assessments because DCH, by filing the administrative complaints under RPTL 524 in its own name instead of the owner's, "did not satisfy a condition precedent to the commencement of these proceedings."

The Appellate Division, Second Department affirmed. It said DCH "may qualify as an aggrieved party pursuant to RPTL 704(1), since it paid the real estate taxes in the challenged tax years. However, in filing the administrative complaints under RPTL 524 in its own name, it failed to satisfy a condition precedent to the commencement of an RPTL article 7 proceeding since it was neither the owner, nor identified in the complaints as an agent of the owner...."

DCH argues that the Second Department's holding that only a property's owner may file a RPTL 524 complaint is not supported by the language or legislative history of the statute, in which the word "owner" does not appear. It says that it was authorized by its lease to challenge the assessment, and that RPTL 524(3) should be read together with RPTL 704(1) to permit any "aggrieved" person to file a complaint at the administrative level. And it contends that its filing of the RPTL 524 complaints in its own name was, at most, a "technical" defect which should be waived due to the municipalities' failure to object during the administrative proceedings and to further the "remedial" purposes of the RPTL's tax grievance provisions.

For appellant DCH Auto: Matthew S. Clifford, Bronxville (914) 961-1300
For respondents Mamaroneck et al: William Maker, Jr., Mamaroneck (914) 381-7815

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To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 56 People v Sergio Cerda *(papers sealed)*

Sergio Cerda was charged with sexually abusing an 11-year-old girl, who was related to him, at his home in Port Washington, Nassau County, in November 2016. The girl testified at trial that Cerda penetrated her vagina with his finger and then fondled her breast while she was sitting on a couch watching television with him and two younger girls. One of those girls testified that she did not see Cerda touch the complainant. The prosecution presented records of the complainant's sexual assault examination, which showed two petechiae (burst blood vessels) on her hymen. The prosecution's expert witness testified that such petechiae result from "pressure or force" and that they could have been caused by digital penetration. He noted that they may have been a result of masturbation or accidental injury, but said it was unlikely.

Cerda moved to admit evidence from a forensic report, which found the complainant's own saliva in her underwear and a vulvar swab. It also found a mixture of DNA from at least two males in a stain on her underwear, but the sample was insufficient to generate DNA profiles to identify the contributors. A vaginal swab contained prostate specific antigen, which is found in several bodily fluids including semen, but no sperm were present on the swab. The prosecutor argued the evidence should be excluded under the Rape Shield Law (CPL 60.42) because it did not exonerate Cerda and it could be used to imply the complainant was promiscuous. CPL 60.42 provides, "Evidence of a victim's sexual conduct shall not be admissible in a prosecution for" specified sex offenses "unless such evidence" fits within one of five of the statute's enumerated exceptions. Cerda argued the forensic evidence was admissible under three of the exceptions because it provided alternative explanations for the petechiae, including that the complainant had injured herself by masturbating or by sexual contact with a third party. Those exceptions allow evidence to rebut prosecution evidence that the victim did not engage in sexual conduct during a given period of time; rebut evidence "that the accused is the cause of pregnancy of disease of the victim, or the source of semen found in the victim; and defense evidence the trial court finds "to be relevant and admissible in the interest of justice."

Supreme Court precluded the forensic evidence, saying it "is very speculative. I think it's going to confuse the jurors. I think there's a risk that the jurors might conclude" the victim had sexual contract with a third party, "and I think that's exactly what the rape shield law is designed to prevent." The prosecutor argued in summation that "there's nothing in the medical record to support" Cerda's "alternate theories" that the complainant's injuries were self-inflicted. Cerda was convicted of first-degree sexual abuse and sentenced to three years in prison.

The Appellate Division, Second Department affirmed, saying Cerda "was not denied his constitutional rights to due process and to confront witnesses by the Supreme Court's application of the Rape Shield Law (CPL 60.42) to prohibit him from introducing into evidence portions of a laboratory report. The defendant was given ample opportunity to develop evidence at trial to support his defenses...."

Cerda argues, in part, "The trial court's evidentiary rulings, exploited by the prosecutor on summation, cumulatively crippled the defense, providing the jury with an inaccurate and unfair view of complainant's credibility, and depriving Mr. Cerda of his constitutional rights to present a defense, to confront witnesses, and to a fair trial. He says the precluded evidence would have provided "clear and direct evidence of at least two alternative sources for the observation of petechiae on [the complaint's] hymen" and "dispelled the prosecution's repeated attempts to cast [her] as a sexually innocent and naive child" who lacked the knowledge and experience to fabricate her claims.

For appellant Cerda: Donna Aldea, Garden City (516) 745-1500
For respondent: Nassau County Assistant District Attorney Andrew Fukuda (516) 571-3660

State of New York
Court of Appeals

To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 57 People v Ron Hill

Ron Hill was arrested on drug possession charges in the Bronx in November 2018. In a misdemeanor complaint, the arresting officer said he "observed defendant to have on his person, in his left hand, which he tossed to the ground, one (1) clear ziplock bag containing a shredded dried plant-like material with a chemical odor." The officer said that "based upon deponent's training and experience, which includes training in the recognition of controlled substances, and their packaging, the aforementioned substance is alleged and believed to be SYNTHETIC CANNABINOID/SYNTHETIC MARIJUANA (K2)." At his arraignment in Criminal Court, Hill accepted an offer to plead guilty to the top count of criminal possession of a controlled substance in the seventh degree, an A misdemeanor, in exchange for a conditional discharge.

On appeal, Hill argued that the misdemeanor complaint was jurisdictionally defective because the officer's factual allegations did not identify the particular type of synthetic marijuana he possessed and, therefore, the complaint failed to allege every element of the charged offense. A wide variety of chemicals can be used to make synthetic marijuana, but only ten of them are listed as a "controlled substance" in Public Health Law § 3306(g) and thereby criminalized for prosecution under Penal Law § 220.03.

The Appellate Term, First Department affirmed, saying, "The misdemeanor complaint was jurisdictionally valid because it described facts of an evidentiary nature establishing reasonable cause to believe that defendant possessed synthetic cannabinoids, a Schedule 1 controlled substance.... The instrument recited that the officer observed defendant in possession of a 'clear ziplock bag containing a shredded dried plant-like material with a chemical odor' ... and that the officer concluded that the substance was 'synthetic cannabinoid/synthetic marijuana (K2),' 'based on [his] training and experience, which include[d] training in the recognition of controlled substances, and their packaging'.... Where, as here, 'the defendant has waived prosecution by information (and therefore has assented to the more lenient reasonable cause standard), these legal and factual allegations are sufficient to particularize the crime charged and protect against a constitutional double jeopardy violation...."

Hill argues the complaint was insufficient because "the arresting officer did not allege that the substance the appellant possessed was one of the synthetic cannabinoids specified in Public Health Law § 3306(g). Moreover, synthetic cannabinoids can only be identified by chemists conducting specialized testing in a laboratory setting.... [T]hey cannot be identified usually by the naked eye.... In New York, the State Legislature has made a determination that only specific synthetic cannabinoids are illegal and subject to criminal prosecution." He says "the complaint was jurisdictionally defective because it failed to set forth sufficient factual allegations to provide reasonable cause that the substance ... recovered from appellant was one of the synthetic cannabinoids that is illegal in New York. As such, the complaint ... did not allege a crime."

For appellant Hill: Harold V. Ferguson, Jr., Manhattan (212) 577-3548
For respondent: Bronx Assistant District Attorney Joshua P. Weiss (718) 838-6229