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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Addressing Criminal Law, Released by Our New York State Appellate Courts and Posted on the New York Appellate Digest Website in August 2022, Distilled to Practice Points, One or Two Sentences Each. The Entries in the Table of Contents Link to the Summaries Which Link to the Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Newsletter. Copyright 2022 New York Appellate Digest, LLC

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THE MAJORITY AFFIRMED DEFENDANT’S CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE CONVICTION UNDER AN ACCOMPLICE THEORY; DEFENDANT ACCOMPANIED A FRIEND WHO WAS TO SELL COCAINE; TWO DISSENTERS ARGUED THE EVIDENCE OF SHARED INTENT WAS TOO WEAK TO SUPPORT THE CONVICTION (FOURTH DEPT).

[People v Lewis, 2022 NY Slip Op 04846, Fourth Dept 8-4-22](#)

Practice Point: Here defendant accompanied a friend who was to sell cocaine, The majority held the evidence of shared intent, which included evidence defendant was to be compensated, proved shared intent. Two dissenters argued the evidence of shared intent was too weak to support the conviction.

DECRIMINALIZED OFFENSES.

MARIJUANA AND GRAVITY-KNIFE CONVICTIONS VACATED IN THE INTEREST OF JUSTICE BECAUSE THE “OFFENSES” HAVE BEEN DECRIMINALIZED (SECOND DEPT).

[People v Lester, 2022 NY Slip Op 04977, Second Dept 8-17-22](#)

Practice Point: Here the marijuana and gravity-knife convictions were vacated in the interest of justice because the offenses had been decriminalized. The gravity-knife conviction was vacated even though the offense was not decriminalized at the time of its commission.

HARMLESS ERROR ANALYSIS.

ALTHOUGH DEFENDANT WAS PROPERLY DETAINED, ONCE THE PAT-DOWN SEARCH REVEALED DEFENDANT DID NOT HAVE A WEAPON THE POLICE WERE NOT JUSTIFIED IN REMOVING THE (STOLEN) WALLET FROM DEFENDANT’S POCKET AND SEARCHING IT; THE ERROR WAS NOT HARMLESS UNDER THE STANDARD FOR CONSTITUTIONAL ERROR (SECOND DEPT).

[People v Lewis, 2022 NY Slip Op 04920, Second Dept 8-10-22](#)

Practice Point: Although defendant was properly detained in a street stop, once the pat-down search revealed defendant did not have a weapon the police were not justified in seizing the stolen wallet from defendant’s pocket and then searching it.

Practice Point: There are two sets of harmless-error criteria, one for nonconstitutional error and one for constitutional error. Under the constitutional-error criteria, the error in this case was not harmless and a new trial was ordered.

JUDGES, DENIAL OF REQUEST FOR ADJOURNMENT TO ALLOW WITNESS TO TESTIFY, MISSING WITNESS JURY INSTRUCTION.

THE DENIAL OF DEFENDANT’S REQUEST FOR A ONE-DAY ADJOURNMENT TO ALLOW HIS DAUGHTER TO TRAVEL TO COURT TO TESTIFY, COUPLED WITH THE RELATED GRANT OF THE PEOPLE’S REQUEST FOR A MISSING-WITNESS JURY INSTRUCTION, DEPRIVED DEFENDANT OF A FAIR TRIAL (SECOND DEPT).

[People v Reeves, 2022 NY Slip Op 04979, Second Dept 8-17-22](#)

Practice Point: The request for a one-day adjournment to allow defendant’s daughter to travel to court to give ostensibly relevant testimony (re: defendant’s whereabouts at the time of the robbery), coupled with the grant of the People’s request to give the missing-witness jury instruction, deprived defendant of a fair trial. The jury-instruction issue was not preserved and was considered in the interest of justice.

JURY NOTES.

A JURY NOTE WHICH REQUIRES NO ACTION BY THE COURT NEED NOT BE SHARED WITH DEFENSE COUNSEL (SECOND DEPT).

[People v Edwards, 2022 NY Slip Op 04818, Second Dept 8-3-22](#)

Practice Point: A jury note which does not require action by the judge need not be shared with defense counsel. Here the note informed the judge that they were near a verdict on certain counts.

LESSER INCLUDED OFFENSES.

UPON CONVICTION OF ROBBERY SECOND, ROBBERY THIRD, AS A LESSER INCLUDED OFFENSE, MUST BE DISMISSED (SECOND DEPT).

[People v Hardy, 2022 NY Slip Op 04820, Second Dept 8-3-22](#)

Practice Point: Upon conviction of the greater offense, a lesser included offense must be dismissed.

PLEA AGREEMENTS, JUDGES.

HERE THE DEFENDANT DID NOT COMPLETE THE TREATMENT REQUIRED BY THE PLEA AGREEMENT; THE GUILTY PLEA WAS THEREFORE INDUCED BY AN UNFULFILLED PROMISE WHICH USUALLY REQUIRES THAT THE PLEA BE VACATED; HERE SUPREME COURT FELT DEFENDANT SHOULD NOT HAVE BEEN TERMINATED BY THE TREATMENT PROGRAM AND PROPERLY EXERCISED DISCRETION IN FASHIONING A SENTENCE MUCH LESS THAN THAT REQUIRED BY THE PLEA AGREEMENT, LEAVING THE GUILTY PLEA IN PLACE (SECOND DEPT).

[People v Boissard, 2022 NY Slip Op 05042, Second Dept 8-24-22](#)

Practice Point: Usually a guilty plea induced by a plea agreement that was not fulfilled will be vacated. Here the defendant did not wish to withdraw his guilty plea and the court properly exercised discretion in fashioning a sentence much more lenient than that required by the plea agreement. The judge took into account the defendant's attempts to comply with the treatment required by the plea agreement, and expressed the opinion defendant should not have been terminated by the program.

SEX OFFENDER REGISTRATION ACT (SORA), APPEALS, SEX OFFENDER CERTIFICATION.

HERE DEFENDANT, WHO PLED GUILTY TO BURGLARY AS A SEXUALLY MOTIVATED FELONY, ATTEMPTED TO CHALLENGE HIS CERTIFICATION AS A SEX OFFENDER, PRONOUNCED AT SENTENCING, IN THE SORA RISK-LEVEL ASSESSMENT PROCEEDING; THE SEX OFFENDER CERTIFICATION WAS DEEMED TO BE PART OF THE JUDGMENT OF CONVICTION WHICH CAN ONLY BE CHALLENGED ON DIRECT APPEAL (SECOND DEPT).

[People v Matos, 2022 NY Slip Op 04984, Second Dept 8-17-22](#)

Practice Point: Here the defendant was certified as a sex offender at sentencing for burglary as a sexually motivated felony. He attempted to challenge the certification at the SORA risk-level-assessment proceeding. The Second Department, like the First Department, held the sex offender certification was part of the judgment of conviction and can only be challenged by direct appeal.

SEX OFFENDER REGISTRATION ACT (SORA), RIGHT AGAINST SELF-INCRIMINATION.

WHERE DEFENDANT ASSERTED HIS INNOCENCE AT TRIAL, HAS A PENDING APPEAL AND ASSERTS HIS RIGHT AGAINST SELF-INCRIMINATION IN THE SORA PROCEEDING, THE SORA COURT SHOULD NOT ASSESS POINTS UNDER RISK FACTOR 12 FOR FAILURE TO TAKE RESPONSIBILITY FOR THE OFFENSE (FIRST DEPT).

[People v Krull, 2022 NY Slip Op 04783, First Dept 8-2-22](#)

Practice Point: Here defendant asserted his innocence at trial, had a pending appeal and asserted his right against self-incrimination in the SORA proceedings. The SORA court should not have assessed points under risk factor 12 for failure to take responsibility for the offense.