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Weekly Reversal
Report
September 3 – 6,
2024.

Contents

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE.	1
THE RELATION-BACK DOCTRINE APPLIES EVEN WHERE A NEW ACTION HAS BEEN COMMENCED AND CONSOLIDATED WITH A PRIOR ACTION (FIRST DEPT).	1
CRIMINAL LAW, CONSTITUTIONAL LAW.	2
A DEFENDANT WHO HAS WAIVED INDICTMENT CANNOT PLEAD GUILTY TO A SUPERIOR COURT INFORMATION (SCI) WHICH INCLUDES AN OFFENSE GREATER THAN ANY CHARGED IN THE CORRESPONDING FELONY COMPLAINT (FIRST DEPT).....	2

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE.

THE RELATION-BACK DOCTRINE APPLIES EVEN WHERE A NEW ACTION HAS BEEN COMMENCED AND CONSOLIDATED WITH A PRIOR ACTION (FIRST DEPT).

The Second Department, reversing (modifying) Supreme Court, in a full-fledged opinion by Justice Rosado, determined the relation-back doctrine applied to the wrongful death action against Dr. Ozcan and reinstated that cause of action. The court noted that the relation-back doctrine applies where, as here, a new action has been commenced and consolidated with a prior action:

Dr. Ozcan does not substantively dispute that the claims in the prior and instant actions arose out of the same conduct or that she is united in interest with Montefiore [Medical Center]. Therefore, the only question to be decided, is whether the third prong of the relation-back doctrine has been established.

Dr. Ozcan, who was named as a defendant in the First Action, should have known that, but for a mistake, the wrongful death claim would have been brought against her as well

Application of the relation-back doctrine is proper even where, as here, a new action has been commenced and consolidated with a prior action [Picchioni v Sabur, 2024 NY Slip Op 04362, First Dept 9–5-24](#)

Practice Point: The relation-back doctrine applies to render an action timely brought even where a new action has been commenced and consolidated with a prior action.

SEPTEMBER 5, 2024

CRIMINAL LAW, CONSTITUTIONAL LAW.

A DEFENDANT WHO HAS WAIVED INDICTMENT CANNOT PLEAD GUILTY TO A SUPERIOR COURT INFORMATION (SCI) WHICH INCLUDES AN OFFENSE GREATER THAN ANY CHARGED IN THE CORRESPONDING FELONY COMPLAINT (FIRST DEPT).

The First Department, reversing defendant’s conviction by guilty plea to a superior court information (SCI), over a dissent, determined an SCI cannot include an offense greater than any offense charged in the felony complaint. Here the SCI “charged [defendant] with a higher level offense than any contained in the felony complaint, that is, robbery in the third degree is a class D felony, whereas grand larceny in the fourth degree, the highest offense charged in the felony complaint is an class E felony:”

Neither the Court of Appeals nor this Court has directly addressed the issue now before us: whether an SCI that charges an offense for which a defendant was held for action of a grand jury can also, under CPL 195.20 and consistent with New York Constitution article I, § 6, charge a joinable offense of a higher grade or degree than any contained in the felony complaint. * * *

... [T]he New York Constitution article I, § 6 permits prosecution pursuant to an SCI only for “an offense” for which a defendant has been “held for the action of a grand jury”. Such an “offense” includes “the lesser included offenses as well as a greater offense charged in the felony complaint” ... , but does not include a greater offense, not charged in the felony complaint, which has additional aggravating elements Permitting inclusion in an SCI of an offense of a higher grade than any charged in the felony complaint “would permit circumvention of” the “constitutional imperative” of prosecution by indictment [People v Perkins, 2024 NY Slip Op 04361, First Dept 9-5-24](#)

[Table of Contents](#)

Practice Point: Here, a defendant, who waived indictment, pled to a superior court information (SCI) which included an offense greater than any in the corresponding felony complaint. The inclusion in the SCI of an offense greater than any for which the defendant was held for indictment violates the NYS Constitution.

SEPTEMBER 5, 2024