

State of New York Court of Appeals

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To be argued Thursday, February 20, 2014

No. 55 People v Reynaldo Perez

No. 56 People v Ivan Calaff

No. 57 People v Alexander Dockery a/k/a John Harris

No. 58 People v Teofilo Lopez a/k/a Garcia Lopez a/k/a Isidoro Garcia

The common issue here is whether the Appellate Division, First Department abused its discretion or violated the appellants' rights by dismissing their appeals, many years after they were convicted, for failure to timely prosecute or perfect their appeals under CPL 470.60(1).

Reynaldo Perez was convicted of two counts of murder and sentenced to consecutive terms of 25 years to life in 1996. His trial counsel filed a timely notice of appeal and Perez retained private counsel in 1997 to pursue it, but the appeal was never perfected. In 2012, he retained new counsel and unsuccessfully moved to enlarge the time to perfect his appeal.

Ivan Calaff pled guilty to attempted burglary in 1993 and was sentenced to three to six years in prison. He filed a timely notice of appeal, but did not move for assignment of appellate counsel until 2012. The First Department assigned him counsel, who filed a brief, but the court then granted the prosecution's motion to dismiss.

Alexander Dockery was 16 years old in 1986, when he was convicted of robbery and sentenced to two to six years. A notice of appeal was filed, but not perfected. In 2011, while serving 25 years to life as a persistent felony offender, he sought assignment of counsel to appeal the 1986 conviction. The First Department granted his request, but dismissed his appeal six months later without opinion.

Teofilo Lopez absconded before his robbery trial in 1999. He was convicted in absentia and sentenced to 15 years. He was recaptured in 2010 and sought to appeal his conviction in 2012. The court granted the prosecution's motion to dismiss without opinion.

The First Department discussed its dismissal only in Calaff. "The right to appeal is a statutory right that must be affirmatively exercised and timely asserted," it said, quoting People v West (100 NY2d 23). "The sentencing minutes establish that [Calaff] was advised of the simple procedural steps to be taken by defendant, personally, to obtain poor person relief and assigned appellate counsel," but did not do so for 19 years.

The appellants argue the Appellate Division abused its discretion under People v Ventura (17 NY3d 675), which said the court's "discretionary power" to dismiss appeals under CPL 470.60(1) "cannot be accorded such an expansive view as to curtail defendants' basic entitlement to appellate consideration. As a matter of fundamental fairness, all criminal defendants shall be permitted to avail themselves of intermediate appellate courts as 'the State has provided an absolute right to seek review in criminal prosecutions.'" They also say the court should have considered the merits of their appeals, importance of the issues, and whether the prosecution would have been prejudiced. Dockery argues that minors, due to their lack of maturity and sound judgment, are entitled to assistance of counsel in obtaining poor person relief and assigned appellate counsel.

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