State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Monday, March 24, 2014

No. 73 Matter of Allen B. v Sproat *(papers sealed)*
No. 74 Matter of Robert T. v Sproat *(papers sealed)*

The issue in these cases, brought by insanity acquittees released from secure confinement, is whether Supreme Court may, under Criminal Procedure Law § 330.20, authorize their temporary confinement for psychiatric examination if they violate the conditions of their release.

Robert T. was charged with second-degree manslaughter in Ulster County in 1995, after he drove into oncoming traffic in an apparent suicide attempt and collided with a vehicle, killing its driver. Allen B. was charged with arson and reckless endangerment in Delaware County in 1993 for setting fire to a building after he got into a dispute with one of its occupants. Both men were found not responsible by reason of mental disease or defect and were placed in custody of the State Office of Mental Health (OMH) pursuant to CPL 330.20, based on findings that each suffered from a dangerous mental disorder. Robert was released from confinement in 2002 and Allen in 2005, each subject to an order of conditions.

In 2010, when OMH moved to extend the orders of conditions, Supreme Court granted its request to include a provision that, "should the [petitioner] fail to comply with any of the above conditions and refuse to appear for or comply with a psychiatric examination, the Commissioner [of OMH] shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility." Robert and Allen filed these article 78 proceedings at the Appellate Division, seeking writs of prohibition to bar enforcement of the temporary confinement provision.

The Appellate Division, Second Department granted their petitions in a pair of 3-1 decisions, saying the provision "is not authorized by CPL 330.20 and improperly establishes an ex parte enforcement procedure" in violation of due process. "[I]f an individual violates an order of conditions and has a history of dangerous mental disorder, it is clear that the proper procedure is an application for recommitment" under CPL 330.20(14), in which "the subject of the application is entitled to notice and an opportunity to be heard.... The disputed provision in this case did not provide for notice and an opportunity to be heard, thus depriving the petitioner of statutorily prescribed due process protections." It said, "The Supreme Court does not have authority to issue a 'Temporary Confinement Order' without notice until there is an application for recommitment -- temporary or otherwise -- on notice, in its current form."

The dissenter said, "There is nothing in the express language of CPL 330.20 that prohibits or limits the court's authority to entertain an application for a temporary confinement order such as the one at bar." Citing CPL 330.20(1)(o) and (12), he said "the Legislature saw fit to draft the statute in very broad terms so as to allow a court to properly devise 'reasonably necessary or appropriate' conditions.... The temporary confinement order ... constitutes an alternative means, separate from and short of a full recommitment order application process," to monitor and avert "an insanity acquittee's potential degeneration" into a dangerous mental state. Regarding due process, he said the provision "is not a self-executing order" and requires the court to grant or deny OMH's application.

For appellants OMH et al: Assistant Solicitor General Andrew W. Amend (212) 416-8022
For respondents Allen B. and Robert T.: Lisa Volpe, Mineola (516) 746-4373

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No. 66 Matter of Board of Managers of French Oaks Condominium v Town of Amherst

The Board of Managers of the French Oaks Condominium brought this tax certiorari proceeding against the Town of Amherst in 2010 to challenge the Town's $5,176,000 assessment on its 39 condominium units. At trial, the Town moved to dismiss the petition on the ground the report of the Condominium's expert appraiser was so flawed that it failed to show by substantial evidence that the complex was overvalued. The referee denied the motion, saying, "Petitioner's appraisal contained many reasonably comparable rental properties, and the conclusions of value by the appraiser ... were for the most part sufficiently supported by 'facts, figures and calculations,' as required by 22 NYCRR 202.59(g)(2)." Rejecting the Town appraiser's capitalization rate, which was based on nationwide data, and applying the capitalization rate calculated by the Condominium's expert, which was based on actual sales of apartment complexes in local suburban areas, the referee determined the value of the French Oaks complex was $4,353,030. Supreme Court adopted the referee's decision.

The Appellate Division, Fourth Department affirmed in a 3-2 decision. The comparable properties used by the Condominium's appraiser were older than French Oaks and he did not describe their interiors, it said, but he "provided the year in which many of the comparable sales were built and the square footage, size and unit prices of the comparable sales. Thus, there was sufficient information provided in the appraisal to allow [the Town] to prepare for cross-examination of petitioner's expert on any differences between the comparable sales and the complex." And while the expert based the income and expense information for the comparable sales on "forecasts" rather than actual income and expenses, "there was sufficient information in the appraisal to allow [the Town] to explore the absence of historical financial information ... on cross-examination." Questioning "the frequency and ease with which an appraiser is able to obtain *private* and often *proprietary* income data" for comparable properties, the court concluded that, "under these circumstances, disturbing the order based on the failure of petitioner's expert to provide 'hard' data with respect to all of the comparable sales used in his capitalization analysis would stifle the ability to challenge a tax assessment."

The dissenters would have adopted the $5,080,000 assessment in the Town's trial appraisal, saying "the conclusion of petitioner's appraiser with respect to his capitalization rate is legally and factually flawed, and each flaw is independently fatal to petitioner's case." They said, "The legal flaw ... is that he relied on his 'personal exposure' to at least three of the four comparable properties to justify the financial figures that he used to calculate his capitalization rate.... An appraiser cannot simply list financial figures of comparable properties in his or her appraisal report that are derived from alleged personal knowledge; he or she must subsequently 'prove' those figures to be facts at trial (22 NYCRR 202.59[g][2]...). Petitioner's appraiser, however, failed to offer any factual support for the great majority of his figures.... [W]e see no occasion here to take a plain failure of proof and to extrapolate from it a new, relaxed evidentiary standard in tax assessment cases based on the assumption that to do otherwise would stifle petitions challenging tax assessments."

For appellants Town of Amherst et al: Craig A. Leslie, Buffalo (716) 847-8400
For respondent French Oaks: B. P. Oliverio, Buffalo (716) 852-1300

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To be argued Monday, March 24, 2014

No. 67 People v Floyd L. Smart

Floyd Smart was charged with breaking into a house in the Town of Greece, Monroe County, in October 2008. His girlfriend, Sherry Grant, testified before the grand jury that she stayed in the car and slept while Smart and another man went in to rob the house and that she honked the horn to warn them when the homeowner returned. On the eve of Smart's trial, prosecutors were unable to locate Grant and they sought to introduce her grand jury testimony as part of their direct case, arguing that she was unavailable to testify due to Smart's misconduct.

County Court held a Sirois hearing on the issue. Based on the testimony of investigators and Smart's taped phone calls from jail, the court found the prosecution "established by clear and convincing evidence" that Smart, "acting in concert with his mother pressured the witness's unavailability up to today through threats and chicanery, among other things, encouraging his mother to keep [Grant] away from trial." The court cited testimony that Smart encouraged his mother "to hide her out, take her out of town..., drive her around, give her drugs, keep her high." Before the hearing ended, Grant was arrested on unrelated charges and was subpoenaed to testify at Smart's trial. Grant's attorney appeared at the hearing and informed the court that she would invoke her Fifth Amendment right to remain silent. The court found this was irrelevant to the Sirois issue, saying, "The fact she is here is moot. [Grant's attorney] stated on the record she is not going to testify. She is so unavailable." The court granted the prosecution request to admit her grand jury testimony at trial. Smart was convicted of second-degree burglary and sentenced to 20 years to life in prison.

The Appellate Division, Fourth Department reduced the sentence to 15 years to life and otherwise affirmed, rejecting Smart's claim that the admission of Grant's grand jury testimony violated his Sixth Amendment right to confront and cross-examine her. "The People presented clear and convincing evidence establishing that misconduct by defendant and his mother, who acted at defendant's behest, caused the witness to be unavailable to testify at trial," it said, citing People v Geraci (85 NY2d 359 [1995]).

Smart argued that, "because Sherry Grant refused to testify based upon Fifth Amendment grounds, her unavailability was, as a matter of law, not due to Mr. Smart's misconduct, but due to her own choice to make herself unavailable by invoking the Fifth Amendment privilege." She had valid reasons to remain silent since she faced four sets of pending charges and the prosecution refused to give her immunity for her testimony, Smart says, arguing that her assertion of the privilege "breaks the causal connection between Defendant's alleged misconduct and her refusal to testify" and excludes his case from the Geraci exception to the right of confrontation.

For appellant Smart: Mark D. Funk, Rochester (585) 325-4080
For respondent: Monroe County Assistant District Attorney Matthew Dunham (585) 753-4627