State of New York
Court of Appeals

To be argued Wednesday, September 11, 2024

No. 79 People ex rel. Neville, on behalf of Ralph S. v Toulon

In 2006, Ralph S. pled guilty to first-degree sexual abuse for fondling a 4-year-old girl and was sentenced to 1½ to 3 years in prison. Prior to his release, the State commenced a civil management proceeding under Mental Hygiene Law (MHL) article 10 and in 2010, after he was found to be "a dangerous sex offender requiring confinement," Ralph S. was committed to a secure treatment facility. In October 2016, a court found he was no longer a dangerous sex offender and released him on a program of strict and intensive supervision and treatment (SIST) under MHL § 10.11. Three years later, he was taken into custody for violating conditions of his SIST program by drinking alcohol and tampering with a device that monitored his alcohol use. On December 24, 2019, the State filed a petition to revoke his release on SIST and commit him to a secure facility. On the same day, Supreme Court found under MHL § 10.11(d)(4) that there was probable cause to believe Ralph S. was a dangerous sex offender requiring confinement – based solely on the State's allegations in its petition for confinement – and authorized the State to hold him at the Suffolk County Jail until the petition for confinement was decided.

Michael Neville, Director of Mental Hygiene Legal Service, filed this habeas corpus petition for the release of Ralph S. on the ground that his detention under the statute deprived him of due process. MHL § 10.11(d)(4) provides that, when the State files a petition for confinement, "the court shall promptly review the petition and, based on the allegations in the petition and any accompanying papers, determine whether there is probable cause to believe that the respondent is a dangerous sex offender requiring confinement." If probable cause is found, the statute authorizes detention of the respondent until the proceeding is concluded. Neville argued the statute, in directing the court to determine probable cause based only on the State's allegations and with no opportunity for Ralph S. to be heard, is unconstitutional on its face and as applied to him.

Supreme Court rejected the constitutional claims and denied the petition. The court subsequently denied the State's petition for confinement and released Ralph S. on SIST.

The Appellate Division, Second Department invoked an exception to the mootness doctrine and declared the statute does not violate due process on its face or as applied. Rejecting the facial challenge, it noted that offenders facing SIST revocation have already been found at trial to have a mental condition that predisposes them to commit sex offenses and it said the statutory procedures "are sufficient, at least in some circumstances, to protect offenders' liberty interests from erroneous deprivation, especially when balanced with the State's 'strong interest in providing treatment to sex offenders with mental abnormalities and protecting the public from their recidivistic conduct.'"

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For respondent State: Assistant Solicitor General Kwame N. Akosah (212) 416-8025

State of New York
Court of Appeals

To be argued Wednesday, September 11, 2024

No. 80 Orellana v Town of Carmel

A light snow was falling in December 2018 when Town of Carmel Highway Superintendent Michael Simone drove out in a town-owned SUV to assess the condition of the roads. After about 20 minutes, he radioed his office to direct the snow removal crews to clear the roadways, then headed back to the office. About five minutes later he stopped at an intersection, looked to his left but not his right, where a minivan was approaching, then drove forward and broadsided the van in the middle of the intersection. The driver of the van, Ana Orellana, had the right of way.

Orellana filed this negligence action against the Town and Simone to recover damages for her injuries. The defendants moved for summary judgment dismissing the suit, arguing they were exempt from liability under Vehicle and Traffic Law (VTL) § 1103(b), which states that the ordinary rules of the road "shall not apply to persons [or] motor vehicles ... while actually engaged in work on a highway." The statute further provides that the exemption does not protect "such operators of motor vehicles or other equipment from the consequences of their reckless disregard for the safety of others."

Supreme Court granted the motion to dismiss, finding the defendants had statutory immunity from liability under VTL § 1103(b). "Simone was 'actually engaged in work on a highway' at the time of the collision," it said. "While he was not operating a snowplow, he was operating his work vehicle to assess the conditions of the road for snow treatment and possible removal.... [T]hese actions constitute maintenance of the Town roads." The court further found that Simone's actions, "while clearly negligent, are insufficient to constitute recklessness."

The Appellate Division, Second Department affirmed, finding that "Simone was actually engaged in work on a highway" and that his "conduct did not rise to the level of reckless disregard, but rather evinced a momentary lapse in judgment."

Orellana argues that Simone "was not actually performing work on a highway at the time of the accident" because he had already ordered his snow removal crews into action five minutes earlier and was simply traveling back to his office. "There was nothing about his return to his office that prevented him from complying with the rules of the road." She says the lower courts "improperly and unnecessarily" expanded the scope of the statute "to all supervisors" with responsibility for public roads so that "any time [they] are driving through their town [and] happen to notice a street or sidewalk condition that might need attention, [they] would be shielded from the rules of the road unless their conduct meets the reckless disregard standard." Alternatively, she says whether Simone was actually working on a highway or his conduct was reckless are issues of fact that should be decided by a jury.

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State of New York
Court of Appeals

To be argued Wednesday, September 11, 2024

No. 81 People v Randall K. McGovern

Randall McGovern was convicted of charges including second-degree forgery and third-degree grand larceny after engaging in a fraudulent scheme to steal tires and other property from three vendors in Erie County. In a phone call in July 2017, he impersonated the owner of Basil Ford Truck Center, a dealership in Cheektowaga, when he ordered 22 truck tires worth nearly $10,000 from Exxpress Tire Delivery. When the tires arrived the next day, McGovern had them loaded into his truck, signed the invoice with the name of the dealership owner, and left with the bill unpaid. He was arrested in Buffalo two months later, after a similar theft by fraud of electrical equipment and an attempted theft of more tires.

He was sentenced in Erie County Court to 9 to 18 years in prison, including consecutive terms of 3½ to 7 years for the forgery and grand larceny convictions based on the truck tire thefts in Cheektowaga. The court said "consecutive sentencing is both warranted and lawful because these crimes constitute separate and distinct acts, even if some of them occurred on the same date and were part of a single transaction. Specifically, the act of forgery under count two is distinct from the act of larceny under count one. Although these two crimes took place on the same day and although the forgery occurred during the larceny, these two crimes were successive, separate acts. Furthermore, the statutory elements of each crime are categorically discrete. One is not a legal component of the other, nor do the material elements of these offenses overlap."

McGovern argued on appeal that the consecutive sentences for forgery and grand larceny were illegal under Penal Law § 70.25(2), which states, "When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and was also a material element of the other, the sentences ... must run concurrently." The Appellate Division, Fourth Department affirmed the judgment with expressly addressing the consecutive sentencing issue.

McGovern argues it was unlawful to impose consecutive terms for forgery and grand larceny "because both counts represent the same criminal transaction. The forgery of the second count was the final act in the grand larceny of the first count, it occurred at the same time as the first count and could have served no other purpose than to further that larceny." He says "the actus reus is the same in both counts" because "the larceny and forgery ... share the same act of signing a false name to the Exxpress Tire invoice. While the larceny also involved the physical act of taking the tires, the signing of the invoice was part and parcel of the theft.... And the mens reus is clearly identical. The unlawful intent in both counts was to deprive the rightful owner [of] possession of the twenty-two tires by means of fraud."

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State of New York
Court of Appeals

To be argued Wednesday, September 11, 2024

No. 77 Matter of O'Reilly v Board of Education of the City School District of N.Y.C.
No. 78 Matter of Clarke v Board of Education of the City School District of N.Y.C.

Eight tenured New York City school teachers commenced these proceedings to challenge the implementation of a COVID-19 vaccination mandate by the City Department of Education in 2021, which resulted in their being placed on unpaid leave when they did not comply. The mandate was originally issued by the City Department of Health (DOH) in August 2021, shortly after the federal Centers for Disease Control approved the COVID-19 vaccine for persons aged 16 or older and shortly before public schools were to open for the 2021-2022 academic year, and it required "all DOE staff" and other employees who worked inside school buildings to provide proof they were vaccinated. The United Federation of Teachers (UFT) sought to negotiate the implementation of the mandate with DOE and, after an impasse was declared pursuant to Civil Service Law § 209, an arbitrator issued an "Impact Award" that established a procedure for handling requests for religious and medical exemptions and gave DOE unilateral authority to place unvaccinated employees without exemptions on unpaid leave. The award stated, "Placement on leave without pay for these reasons shall not be considered a disciplinary action for any reason." In these suits, the teachers sought, among other things, to compel DOE to provide them with evidentiary hearings and other due process protections required for tenured teachers under Education Law §§ 3020 and 3020-a before taking action against them.

Four Supreme Court justices dismissed the teachers' lawsuits based, in part, on their conclusion that being placed on leave without pay was not a disciplinary action that would trigger the tenure protections of the Education Law, but instead was a response to the teachers' refusal to comply with a condition of employment.

The Appellate Division, First Department affirmed the dismissals in a pair of decisions, by a 4-1 vote in O'Reilly and 5-0 in Clarke. The majority in O'Reilly said that the teachers' "placement on leave for failure to prove vaccination, a condition of employment, is 'unrelated to job performance, misconduct or competency' and does not constitute 'teacher discipline'.... Therefore..., Education Law §§ 3020 ... and 3020-a ... 'are inapplicable inasmuch as they address issues relating to a teacher's competency and the applicable procedures and penalties attendant thereto.'" The court said "due process mandates only notice and some opportunity to respond.... Because petitioners were given the opportunity to submit proof of vaccination, request religious or medical exemptions and accommodations if immunocompromised, or opt for extended benefits and severance on more favorable terms, their due process rights were not violated...."

The dissenter said, "The pandemic may have necessitated excluding unvaccinated teachers from classrooms, but it did not somehow erase the precedents of the Court of Appeals addressing the due process to which tenured teachers are entitled before they may be terminated.... Since the legislature has never authorized the imposition of a new condition [of employment] upon tenured teachers..., that condition may lawfully be enforced against petitioners only as an ordinary work rule, through the procedural mechanisms prescribed by Education Law § 3020-a."

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