State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

May 15 thru May 16, 2024

State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 60 Matter of Elizabeth Street Garden, Inc. v City of New York

Elizabeth Street Garden, Inc. (Garden), which has leased a 20,265 square foot undeveloped lot in lower Manhattan from New York City since 1991, is challenging the City's environmental review of the proposed "Haven Green" project to build a seven-story mixed-use building for low-income senior housing with retail space and public facilities on the lot. The Elizabeth Street Garden lot is a green space and sculpture garden tended by volunteers in the Chinatown and Little Italy Historic District. The Garden claims, among other things, that the City Department of Housing Preservation and Development (HPD) violated the State Environmental Quality Review Act (SEQRA) by failing to complete a full Environmental Impact Statement (EIS) and instead relying on an Environmental Assessment Statement (EAS) when it issued a "negative declaration" for the Haven Green project in November 2018, finding the project "will have no significant effect on the quality of the environment."

Supreme Court vacated the negative declaration, agreeing with the Garden that "HPD failed to take the required 'hard look'" at the project's impact on the neighborhood, and remanded the matter for "a full EIS of the project's impacts." It said, "[P]etitioners are correct that based upon the quantitative analysis of the effect of the Project on open space as analyzed within the EAS..., the reduction in open space ratios is sufficient to indicate the presence of a significant adverse impact. Yet, the EAS goes on to find that because of alleged qualitative factors, the impact is not significant." It said there was no "rational basis in the EAS analysis" for the City's claim "that the open space deficiency in the area would be ameliorated by other resources including bike lanes, other community gardens and the proximity to Washington Square Park." The court said, "Even if ... the qualitative assessment identified factors that would mitigate the impact of the significant decline in the open space ratio caused by the project, there is no evidence ... that such mitigations are sufficient to overcome such significance."

The Appellate Division, First Department modified by confirming the negative declaration and dismissed the suit. "We find that HPD appropriately 'identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination'...," the court said. "[T]he EAS examined the half-mile study area at length. It properly found it to be underserved, identified existing open spaces and described their various attributes, calculated the difference between the future open-space-to-population ratios based on whether or not the project were constructed, and considered the proposed replacement of the current 0.46-acre lot ... with 0.15 acres of open space adjacent to the proposed apartment building with longer and more regular hours of public access. The EAS noted ... the presence of Washington Square Park immediately outside the study area, that the new space with longer hours would help balance the direct loss of the garden, that the added population of senior adults likely would not overburden existing mostly active open spaces, and that qualitative aspects of the surrounding area and nearby Washington Square Park would help mitigate the neighborhood's preexisting open space deficiency."

For appellants Elizabeth Street Garden et al: Norman H. Siegel, Manhattan (212) 455-0300
For respondents City et al: Assistant Corporation Counsel Jamison M. Davies (212) 356-4378

State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 61 MAK Technology Holdings Inc. v Anyvision Interactive Technologies Ltd.

In November 2017, MAK Technology Holdings entered into a referral agreement with Anyvision Interactive Technologies to provide payments to MAK for business it referred to Anyvision. The agreement defined November 23, 2017 as its "Effective Date," and defined the word "Term" to mean it "shall remain in force for a period of three (3) years." The agreement was amended in January 2018 to provide referral fees to MAK for investors who made an equity investment in Anyvision. The parties amended the agreement again on August 24, 2018 (the second amendment) to restructure the fees owed to MAK for investors it referred to Anyvision. Anyvision received a $25 million investment from a MAK referral in July 2021 and MAK contends it is owed a 5% referral fee of $1.25 million. Anyvision refused to pay the fee, arguing the investment occurred after the original referral agreement was to expire in November 2020. MAK brought this breach of contract action against Anyvision, contending the second amendment reset the "Effective Date" of the referral agreement to August 24, 2018, and thus extended Anyvision's three-year payment obligation to August 24, 2021, after the investment was made. The second amendment states, "Except as specifically provided above, the Agreement as amended hereby, shall remain unchanged as originally constituted." But it also provides, "Each of the undersigned hereby agrees that the with affect as of the date hereof and notwithstanding anything to the contrary in the Agreement," which MAK argues modified the original agreement's effective date. Anyvision moved to dismiss the suit, contending the second amendment did not change the effective date of the original agreement.

Supreme Court denied the motion to dismiss, finding the key phrase in the second amendment – "agrees that the with affect as of the date hereof" – is ambiguous. "I suspect there were two typos in that sentence, but I can't be sure," it said. "There's a the before with, which is weird. And affect probably should have been effect, but anyway, this language creates an ambiguity as to what the starting date is for the three-year Term."

The Appellate Division, First Department affirmed on a 3-2 vote, saying "the clause 'the with affect as of the date hereof' contained in ... the 2nd Amendment renders the agreement ambiguous as to whether it did or did not create a new effective date for the modified Referral Agreement." It said "the clause is clearly susceptible of multiple reasonable interpretations" and "additional information is necessary to ascertain the proper interpretation.... While 'mistakes in grammar, spelling or punctuation should not be permitted to alter, contravene or vitiate manifest intention of the parties'..., the 2nd Amendment cannot be rendered grammatically correct without possibly altering the parties' intent."

The dissenters argued the key clause with its "obviously inadvertent errors" is not ambiguous. "Since the Second Amendment is devoid of language purporting to change the definition of the term 'Effective Date' in the original Referral Agreement, that definition ... was not changed.... [T]he phrase 'with effect as of the date hereof' (correcting the typographical errors) plainly modifies the later phrase 'the Agreement shall be amended as follows' – meaning that the first phrase sets forth only the date on which ... the Second Amendment took effect."

For appellant Anyvision: Leonard F. Lesser, Manhattan (212) 599-5455
For respondent MAK: Christoph C. Heisenberg, White Plains (212) 759-4933

State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 62 Matter of United Jewish Community of Blooming Grove, Inc. v Washingtonville Central School District

United Jewish Community of Blooming Grove (UJC), which serves Jewish families in Orange County, and two parents of students attending Jewish schools in the Village of Kiryas Joel filed this suit against the Washingtonville Central School District and State Education Department after the School District denied their request to transport students to nonpublic schools on two days when the public schools were closed during the 2020-21 school year. UJC claimed the District violated Education Law § 3635, which requires school districts outside of New York City to transport students to both public and nonpublic schools. The statute, enacted in 1939, states, "Sufficient transportation facilities ... shall be provided by the school district for all children residing within the school district to and from the school they legally attend...." SED's published guidance advises districts that they are not "required to provide transportation to nonpublic schools on days when public schools are scheduled to be closed."

Supreme Court granted summary judgment to UJC and declared that section 3635 "requires the ... District to provide transportation to all nonpublic school students on all days when their nonpublic schools are open for instruction, regardless of whether the public schools are open." It said, "Where, as here, the text of the statute is clear, the court must ... give import to its plain meaning.... 'All the children' means all the children, without regard to whether the school they attend is private or public.... [T]he statute does not expressly impose any other restriction, and certainly does not condition the obligation to provide transportation to nonpublic schools on the public schools also being open...." Addressing legislative history, it said, "There is nothing in the 1939 Bill Jacket Collection which made transportation to private schools contingent upon public schools being open."

The Appellate Division, Third Department reversed and dismissed the suit, declaring the District "is not required to transport nonpublic school students on days when its public schools are closed." "Inasmuch as the statute is silent as to when transportation must occur...," it said, "an examination of the legislative history is required" to determine the Legislature's intent. A proposed amendment in 1985 initially included a requirement that school districts transport nonpublic school students on two days per year when public schools were closed. "Ultimately, the Legislature omitted this mandate from the final version of the bill, manifesting its intent not to require central school districts to provide transportation to nonpublic school students on days that public schools are closed...," the court said. "It is also noteworthy that the Legislature has not intervened ... to correct SED's longstanding interpretation of [section 3635] as permitting, but not requiring transportation of nonpublic school students on days when the public schools are closed...." It said a contrary ruling "would lead to unreasonable results," requiring districts "to transport nonpublic school students in the summer, on weekends, on state or federal holidays, or on days when public schools are closed for weather-related or other emergency reasons...."

For appellants UJC et al: Robert S. Rosborough IV, Albany (518) 487-7600
For respondent SED: Assistant Solicitor General Beezly J. Kiernan (518) 776-2023
For respondent School District: Mark C. Rushfield, Poughkeepsie (845) 486-4200

State of New York
Court of Appeals

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To be argued Wednesday, May 15, 2024

No. 63 Liggett v Lew Realty LLC

K. E. Liggett, who rents a Manhattan apartment on East 25th Street, brought this action against her landlord, Lew Realty LLC, in 2021 seeking a declaration that her apartment is subject to the Rent Stabilization Law and that it was illegally decontrolled based on a private agreement in 2000 between the owner and a previous occupant, Edward McKinney. The apartment had been rent controlled for decades while it was leased by Edward Brown, who died in 1998 when his monthly rent was $141.23. McKinney claimed he had succession rights to the apartment, and Lew Realty commenced a licensee holdover proceeding to evict him. They settled the holdover proceeding in 2000 by stipulation, in which they agreed the apartment was no longer rent controlled, but was rent stabilized. They stipulated that the initial legal regulated rent would be $1,650 per month, but further agreed that McKinney would pay a preferential rent of only $650 per month, plus allowable renewal increases, as long as he was the tenant and did not challenge the rent. Those terms were included in a rider to the lease, which Lew Realty filed with the Division of Housing and Community Renewal. The legal rent of $1,650, plus authorized increases for improvements and vacancy, reached the high-rent threshold for deregulation in 2001 and a new tenant signed an unregulated market-rate lease the same year. Liggett leased the apartment in 2020 and filed this suit the following year, claiming the 2000 settlement was designed to circumvent the initial rent registration procedures for decontrolling an apartment and that the initial legal rent for her apartment is the preferential monthly rent of $650 that McKinney and Lew Realty agreed to.

Supreme Court denied Lew Realty's motion to dismiss, saying the 2000 settlement agreement "is unenforceable to the extent it waives the protections of the rent control law."

The Appellate Division, First Department reversed and dismissed the suit in a 3-2 decision, saying, "An agreement by a tenant to waive the benefit of any provision of the rent control law is expressly prohibited and void.... However, when McKinney and defendant settled their dispute over McKinney's status, McKinney was not a tenant.... He was not on the lease and had no evident rights, other than being an occupant of the apartment who claimed that he had succession rights.... By entering into the 2000 stipulation, both sides ... resolved their dispute as to whether McKinney had any statutory right to the apartment. By doing so, McKinney and defendant chose the certainty of settlement, rather than the uncertainty of a judicial declaration.... There is no public policy for disregarding that choice." It said Liggett's argument that her legal rent is the preferential rent in the 2000 agreement is "unavailing" because the stipulation "clearly shows that both parties agreed that $650 was the preferential rent, but $1,650 was the legal rent that was subject to applicable guidelines increases and other increases authorized by law."

The dissenters said Liggett "sufficiently pleaded" that the 2000 stipulation "was void under applicable statutes" and "undermined the statutory process by which initial regulated rents are set.... McKinney and defendant agreed to an initial legal regulated rent that was one vacancy increase away from high rent decontrol, and which McKinney would never have to pay and agreed never to challenge. By doing so, they thwarted the Rent Stabilization Code's mechanism for ensuring a fair and reasonable initial legal regulated rent: a true arm's length negotiation in which the tenant has both the right and the incentive to challenge the initial legal regulated rent if it were unreasonable.... Plaintiff correctly argues in her complaint ... that the only rent that the landlord proposed and McKinney agreed to pay was $650 per month, that this sum was the only rent subject to the arm's length negotiation contemplated by the Rent Stabilization Code to establish fair market value, and that it should therefore have been registered as the initial legal regulated rent."

For appellant Liggett: Roger A. Sachar Jr., Manhattan (212) 619-5400
For respondent Lew Realty: Mark C. Zauderer, Manhattan (212) 485-0005

State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 64 People v Alvin King

In September 2018, during an argument with his wife outside his mother's house in Syracuse, Alvin King threatened two of their children with a knife and then cut and stabbed his wife as she sat behind the wheel of her car. Police found him several hours later in a wooded area nearby, where he menaced them with the knife before they subdued and arrested him. Prosecutors charged King in a felony complaint on the day of his arrest, September 5, 2018, and then filed an indictment and announced readiness for trial on March 14, 2019. The trial was ultimately scheduled to begin on January 27, 2020.

Meanwhile, in April 2019, the Legislature amended the speedy trial provisions of Criminal Procedure Law (CPL) 30.30 and enacted CPL article 245, which provides for automatic discovery by prosecutors of all information in their possession that is relevant to a case and requires them to file a certificate of compliance when they have disclosed the required materials. Further, CPL 245.50 provides, "Notwithstanding the provisions of any other law..., the prosecution shall not be deemed ready for trial for purposes of [CPL] 30.30 ... until it has filed a proper certificate" of compliance. The amendments were made effective January 1, 2020.

On the first morning of his trial – January 27, 2020 – King moved to dismiss the indictment under CPL 30.30, contending the prosecution was not ready for trial within the six-month speedy trial period because it had not filed a certificate of compliance with discovery obligations. Prosecutors filed a certificate later that day. Supreme Court refused to dismiss the indictment "based on a statute that was not in effect, and, in fact, not in existence" when the prosecution announced ready for trial. King was convicted of second-degree assault, weapon possession and related crimes, and was sentenced to 14 years in prison.

The Appellate Division, Fourth Department reversed and dismissed the indictment on a 4-1 vote, agreeing with King that "upon the effective date of CPL article 245, the People were returned to a state of unreadiness, and the People's subsequent attempt to serve and file a certificate of compliance did not occur until after the time to declare trial readiness had expired." It acknowledged that, in an "already pending" prosecution, a newly enacted statute effecting procedural change applies to proceedings occurring after its effective date, but not "where the effect is to reach backward, and nullify by relation the things already done." But it said the new statute did not "invalidate the People's previous statements of readiness," but instead "reset the People's readiness status by tying it to the fulfillment of their obligations under the new discovery laws.... Consequently, as of the effective date of CPL article 245, the People had no longer 'done all that [was] required of them to bring the case to a point where it may be tried'... until they filed a proper certificate of compliance...."

The dissenter said the amendments "should not be applied in a manner that renders illusory the People's readiness for trial or takes their case out of a postreadiness posture." If they had not declared readiness before the amendments took effect, they "could not do so unless or until they complied with the new discovery obligations and the filing of a certificate of compliance.... Here, however, the People complied with their obligations to be ready for trial as required under the prior version of CPL 30.30 when they announced their trial readiness on March 14, 2019" and "any new legislation affecting the People's readiness would have the effect of reaching backward. The effect of the majority's conclusion ... rendering the People unready for trial, is to improperly nullify a 'thing[ ] already done'...."

For appellant: Onondaga County Sr. Asst. District Attorney Bradley W. Oastler (315) 435-2470
For respondent King: Philip Rothschild, Syracuse (315) 422-8191 ext 179

State of New York
Court of Appeals

To be argued Thursday, May 16, 2024

No. 65 Matter of Prisoners' Legal Services of New York v New York State Department of Corrections and Community Supervision

Prisoners' Legal Services of New York (PLS), which provides legal representation to inmates, filed Freedom of Information Law (FOIL) requests on behalf of four clients who were facing Tier III disciplinary hearings for alleged misconduct. PLS sought surveillance videos, unusual incident (UI) reports, and other material related to incidents that took place in the yards of the Auburn and Clinton Correctional Facilities in May and June 2019. The State Department of Corrections and Community Supervision (DOCCS) denied the requests for surveillance videos for all four clients, on the ground that disclosure could interfere with ongoing law enforcement investigations, and denied the request for one UI report.

After its administrative appeal was rejected, PLS commenced this suit seeking disclosure of the withheld materials. While the suit was pending, DOCCS withdrew its denials of three requests and provided PLS with two of the surveillance videos and the UI report.

Supreme Court denied as moot the challenges to DOCCS's denial of requests for the videos and UI report that it ultimately produced. The court said the issues – the applicability of the law enforcement and intra-agency materials exemptions to FOIL – did not fall within the exception to the mootness doctrine because they were not "substantial, novel, or likely to evade review." The court subsequently upheld the determination by DOCCS to withhold the remaining two surveillance videos.

The Appellate Division, Third Department affirmed, saying PLS's demand for the produced materials was moot and did not fall within the mootness exception because PLS "failed to establish that this issue is one that would typically evade review as these exemptions and their invocation are frequently examined by this court." It said DOCCS "satisfied its burden of demonstrating that the withheld materials fell within the safety exemption to FOIL disclosure as it 'could potentially endanger the life or safety of the persons involved,'" which a DOCCS official described as "race-related gang activity."

PLS argues that DOCCS's initial denial of the disputed records that it ultimately produced "warrant exceptions to the mootness doctrine to allow a decision on the merits, as the case presents compelling and novel issues concerning the limits of prison officials' authority to thwart essential oversight." It says the FOIL exemptions invoked by DOCCS – law enforcement investigations and intra-agency documents in draft form – are of a "transient nature" because investigations are completed and reports finalized. "[T]he phenomenon that here evades review ... is the agency's reliance on time-limited conditions to deny records under exemptions that are facially inapplicable from the outset. Those time-limited constraints will typically resolve before the underlying FOIL denial can be fully litigated" and "DOCCS's statutory misinterpretations will therefore continue to evade review and correction."

For appellant PLS: Matthew McGowan, Albany (518) 438-8046
For respondent DOCCS: Assistant Solicitor General Beezly Kiernan (518) 776-2023

State of New York
Court of Appeals

To be argued Thursday, May 16, 2024

No. 67 People v Matthew Corr
No. 68 People v Bryan McDonald

Matthew Corr and Bryan McDonald were convicted of sex offenses in other states – Corr pled guilty to possession of child pornography in Rhode Island and registered as a sex offender in his home state of Massachusetts in 2016; McDonald was found guilty in Delaware of videotaping a 19-year-old woman while she showered and he registered as a sex offender there in 2015. Both men relocated to New York State in 2019, were designated level one sex offenders and were required to register in New York under the Sex Offender Registration Act (SORA), which provides, "The duration of registration and verification for a sex offender ... who is classified as a level one risk ... shall be annually for a period of twenty years from the initial date of registration" (Correction Law § 168-h[1]). Both men requested credit for the time they served on the out-of-state registries toward the 20 years they were required to register as sex offenders in New York.

Supreme Court denied their requests for time-served credit, saying in Corr that SORA "is clear that when you come to New York, you register for 20 years."

The Appellate Division, Second Department affirmed the denial of credit in both cases, saying in Corr that "the 'initial date of registration'" in the statute " refers to the initial date that the defendant registers as a sex offender with the Division [of Criminal Justice Services] ... in New York. SORA does not mention registration under any other state's laws or agencies. Further, other provisions of the statute refer to the initial registration date, requiring the sex offender to register each anniversary of that date..., which plainly means the date of initial registration in New York." It concluded, "The remedial goals of SORA are advanced when a sex offender relocating to New York is obligated to comply with SORA's registration requirements, including the full duration of the required registration time period."

Corr and McDonald argue, "The unambiguous – and indeed, only – plain reading of [section 168-h(1)] is that Level 1 registrants, those deemed least likely to reoffend, should be credited all time from the initial date of registration, be it in New York or another state, consistent with the Legislature's view that the total and maximum period of registration should be a definite 20 years.... Defining 'initial' as the date upon which the individual first registered for the offense also achieves SORA's legislative purpose.... [T]he Legislature intended to allow individuals who present the lowest likelihood of recidivism to be removed from the registry after 20 years. Extending that period undermines SORA's goal of accurately determining a registrant's risk to public safety, thereby diminishing the usefulness of the registry and distorting the law's purpose." They say the fact the Legislature has not "narrowed the plain meaning of 'initial date of registration' to refer only to the date of registration in New York evinces its intent to credit time registered in other jurisdictions."

For appellants Corr & McDonald: Ava C. Page, Manhattan (212) 693-0085 ext. 263
For respondent: Brooklyn Assistant District Attorney Anthea H. Bruffee (718) 250-2475

State of New York
Court of Appeals

To be argued Thursday, May 16, 2024

No. 19 People v Steven Sidbury

In January 2014, while being held in solitary confinement at Rikers Island, Steven Sidbury set fire to papers inside the metal "cuffing port" or "food box" built into his cell door. The fire was quickly extinguished and did not trigger the fire alarm or sprinkler system, but the plexiglass lid of the port was partially melted and the fire left soot marks on the door. Sidbury was charged with second-degree arson under Penal Law § 150.15, which provides that a defendant is guilty when he intentionally damages an occupied building by starting a fire.

Prior to trial, Supreme Court declined to accept defense counsel's late notice of intent to offer psychiatric evidence under CPL 250.10, which requires that such notice be filed within 30 days of arraignment. Sidbury's notice was submitted nearly four years later. His psychiatric expert was prepared to testify, based on Sidbury's medical records since childhood, about his lack of criminal responsibility by reason of mental disease or defect, but needed to examine him to provide a specific diagnosis. The court rejected the notice, without inquiring into whether the prosecution would be prejudiced, based on the long delay in filing and because "there's no basis" for a psychiatric defense. It said, "There is no psychiatric issue. There is a malingering issue. There is a wonderful act that he puts on. There is this calculated effort to interrupt and defeat a trial.... Your client does not possess a psychiatric issue." Sidbury was convicted of second-degree arson and sentenced to 25 years in prison.

The Appellate Division, First Department affirmed the conviction, but reduced the sentence to ten years. It said, "The evidence established that defendant intentionally caused damage to a building by setting a fire in the cuffing port in the door of his jail cell and damaging that part of the door.... It is undisputed that a door is part of a building for purposes of the arson statutes." It said, "The court providently exercised its discretion in precluding defendant from raising a psychiatric defense, because his CPL 250.10(2) notice was both grossly untimely and lacking any showing that the proffered psychiatric expert testimony would be relevant to a particular defense." The court also rejected Sidbury's claim that his attorney was ineffective in failing to request submission of fourth-degree arson as a lesser-included offense, saying "[r]easonable strategic concerns would support counsel's decision."

Sidbury argues his conviction should be vacated because the fire he set was confined to "a cuffing port – a small metal box that does not fall within the definition of 'building' set forth in the Penal Law." He says the legislative intent of the second-degree arson statute "is to punish people who threaten the lives and safety of others by setting fire to occupied buildings" and application of the statute to his case "would frustrate the legislature's carefully designed arson regime." He says the trial court improperly precluded his psychiatric defense because "the prosecution never made any claim of prejudice, and the court did not consider it at any point.... The court's ruling transformed the statute into a means of assessing Mr. Sidbury's defense before he was allowed to develop it." He also pursues his ineffective assistance of counsel claim.

For appellant Sidbury: Stephen R. Strother, Manhattan (212) 402-4100
For respondent: Bronx Assistant District Attorney Lori Ann Farrington (718) 838-6223

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To be argued Thursday, May 16, 2024

No. 66 Matter of Karlin v Stanford

This First Amendment challenge to parole conditions was brought by Daniel Karlin, who was convicted in 1993 of first-degree sodomy, sexual abuse and related charges for engaging in sexual conduct with eight pre-teen boys when he worked as a camp counselor in 1991. He was sentenced to 6 to 18 years in prison. In 1994, Karlin pled guilty to first-degree sodomy for engaging in oral sex with a 10-year-old boy he was babysitting, and he was sentenced to a concurrent term of 8⅓ to 25 years. He was released on parole in 2018, enrolled in college, and obtained permission from his parole officer to use a computer for his academic work. In return, Karlin agreed to a special condition of parole providing that he "shall not view, access, possess and/or download any materials depicting sexual activity, nudity, or erotic images."

Five months after his release, his parole officer conducted a random search of Karlin's computer and found he had used his Rochester Public Library account to access a Netflix film titled "Nymphomaniac" and an issue of Q Magazine with an article about anal sex and a cover photo of four nude men with their backs to the camera. At his parole revocation hearing, Karlin pled guilty to charges that he violated the special condition of parole by accessing "materials depicting sexual activity" and "materials depicting sexual nudity." The hearing officer returned him to prison for 22 months. After his administrative appeal was rejected, Karlin filed this suit against Tina Stanford, as chair of the Parole Board, contending the special condition is unconstitutionally overbroad and violates his First Amendment rights.

Supreme Court dismissed the suit, holding that, in view of Karlin's sex offenses, the special condition was "reasonably and necessarily related to the legitimate interests of the parole regime, including [his] rehabilitation and the protection of the public." It said the condition applied only to Karlin and he was the only person whose First Amendment conduct "may be chilled."

The Appellate Division, Third Department affirmed, finding the special condition "was reasonably related to [Karlin's] past crimes and the mitigation of his future risk of recidivism." It said, "Given that overbreadth challenges address the chilling effect that a law can have on the free speech of the public at large," his overbreadth claim "is without merit. Notably, [Karlin's] First Amendment rights are circumscribed by his status as a parolee. Therefore, we cannot say that the special condition was unconstitutionally overbroad. Rather, the special condition was a plainly legitimate sweep to regulate [his] access to certain materials during his conditional release based upon his criminal history and risk of recidivism...."

Karlin argues the special condition is overbroad because its "blanket ban on <u>any</u> depiction of the nude human body or people engaged in any form of sexual activity threatens imprisonment for conduct as unremarkable as flipping through television channels at night, browsing a used bookstore, or visiting an art museum." The condition "is not reasonably related to penological interests," he says, since the fact he "has a 'significant criminal sexual history against children,' does not support a finding that the Condition is reasonably related to that history. The Condition extends to <u>any</u> depiction of nudity or sexual activity, regardless of the age of the individuals depicted or the nature of the depiction." He argues the restrictions "need not apply to the public at large" to be unconstitutional and "even if the Condition is only overbroad as to one person – Mr. Karlin – it is unlawful and invalid."

For appellant Karlin: Christina N. Neitzey, Ithaca (607) 255-9182
For respondent Stanford: Assistant Solicitor General Kate H. Nepveu (518) 776-2016