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CasePrepPlus

An advance sheet service summarizing recent and significant New York appellate cases

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COURT OF APPEALS

CONSTITUTIONAL LAW, CRIMINAL LAW.

STATUTES WHICH CRIMINALIZE ASSISTED SUICIDE ARE CONSTITUTIONAL.

The Court of Appeals, in a per curiam opinion with three extensive concurring opinions, determined the statutes criminalizing assisted suicide are constitutional in that they do not violate the due process or equal protection clauses. "Our State's equal protection guarantees are coextensive with the rights protected under the federal Equal Protection Clause ... . In Vacco v. Quill, the United States Supreme Court held that New York State's laws banning assisted suicide do not unconstitutionally distinguish between individuals (521 US 793, 797 [1997]). As the Court explained, '[e]veryone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment; no one is permitted to assist a suicide. Generally, laws that apply evenhandedly to all unquestionably comply with equal protection' ... . The Supreme Court has not retreated from that conclusion, and we see no reason to hold otherwise. * * * ... [T]he State pursues a legitimate purpose in guarding against the risks of mistake and abuse. The State may rationally seek to prevent the distribution of prescriptions for lethal dosages of drugs that could, upon fulfillment, be deliberately or accidentally misused. The State also has a significant interest in preserving life and preventing suicide, a serious public health problem ... . As summarized by the Supreme Court, the State's interests in prohibiting assisted suicide include: 'prohibiting intentional killing and preserving life; preventing suicide; maintaining physicians' role as their patients' healers; protecting vulnerable people from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards euthanasia' ... . These legitimate and important State interests further 'satisfy the constitutional requirement that a legislative classification bear a rational relation to some legitimate end' ...". ***Myers v. Schneiderman*, 2017 N.Y. Slip Op. 06412, CtApp 9-7-17**

LABOR LAW-CONSTRUCTION LAW.

IN THIS LABOR LAW § 240(1) ACTION PLAINTIFF SLIPPED AND FELL FROM A GREASY RAMP HE CONSTRUCTED FROM PLANKS, THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF'S CONDUCT WAS THE SOLE PROXIMATE CAUSE OF HIS INJURIES.

The Court of Appeals, reversing the appellate division, determined there was a question of fact whether plaintiff's own conduct was the sole proximate cause of his injuries. Plaintiff had constructed a ramp out of greasy planks to move from the roof to a scaffold. Plaintiff slipped and fell from the ramp: "We agree with the Appellate Division that the fall of ... plaintiff was the result of an elevation-related risk for which Labor Law § 240 (1) provides protection. We further conclude, however, that there is a triable issue of fact whether plaintiff's 'own conduct, rather than any violation of Labor Law § 240 (1), was the sole proximate cause of the accident' ... . Viewing the facts in the light most favorable to defendants, as we must ... , we conclude that plaintiff's foreman arguably provided conflicting accounts of whether plaintiff had 'adequate safety devices available,' whether 'he knew both that they were available and that he was expected to use them,' whether 'he chose for no good reason not to do so," and whether 'had he not made that choice he would not have been injured' ...". ***Valente v. Lend Lease (US) Constr. LMB, Inc.*, 2017 N.Y. Slip Op. 06400, CtApp 9-5-17**

FIRST DEPARTMENT

CRIMINAL LAW, ATTORNEYS.

FAILURE TO CLEARLY INFORM DEFENDANT THAT PLEADING GUILTY TO AN AGGRAVATED FELONY TRIGGERS DEPORTATION CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, MERELY TELLING DEFENDANT THERE WAS A RISK OF DEPORTATION WAS NOT ENOUGH.

The First Department, over a dissent, determined defendant should be given the opportunity to move to vacate his guilty plea because defense counsel did not make it clear that pleading guilty to an aggravated felony triggered deportation. Informing defendant of a risk of deportation was not sufficient and constituted ineffective assistance of counsel: "Since an aggravated felony results in mandatory deportation ... , counsel is under a duty to provide clear advice as to that consequence. It is thus ineffective assistance to advise a noncitizen of a mere risk or possibility that he 'could be deported' ...". ***People v. Doumbia*, 2017 N.Y. Slip Op. 06402, First Dept 9-5-17**

CRIMINAL LAW, EVIDENCE.

JURY SHOULD HAVE BEEN INSTRUCTED ON THE INNOCENT POSSESSION OF A WEAPON DEFENSE, NEW TRIAL ORDERED.

The First Department, in a full-fledged opinion by Justice Kapnick, reversing defendant's conviction for possession of a weapon, determined the jury should have been instructed on the innocent possession of a weapon defense. There was evidence that the defendant had taken the pistol away from decedent, who had struck him with it. Defendant walked away with the pistol. Three minutes later defendant was grabbed from behind by a man who was with the decedent. There was evidence the defendant shot the man and the decedent. The jury was instructed on the justification defense and acquitted the defendant of manslaughter: "When this evidence is viewed in the light most favorable to defendant, nothing he did or failed to do in the very brief interval between excusably obtaining the pistol and being confronted by the decedent and his companions constituted 'us[ing the pistol] in a dangerous manner' ... . Given the justification defense, which, as the court correctly determined, warranted a justification charge, the fact that defendant shot the decedent did not constitute a 'dangerous use' barring the court from giving a temporary lawful possession charge. Courts have found that the firing of shots did not negate a defendant's entitlement to a temporary lawful possession instruction where the shooting was justified and the possession was otherwise lawful." ***People v. Bonilla*, 2017 N.Y. Slip Op. 06405, First Dept 9-5-17**

LANDLORD-TENANT, PERSONAL INJURY.

QUESTION OF FACT WHETHER LANDLORD'S FAILURE TO UPGRADE 1930s ELECTRICAL SYSTEM BREACHED A DUTY OWED TO THE TENANT TO KEEP THE APARTMENT SAFE, PLAINTIFF TENANT WAS INJURED IN A FIRE WHICH STARTED IN THE ELECTRICAL WIRING.

The First Department, over a two-justice dissent, determined there was a question of fact whether the defendant landlord had breached its duty to keep plaintiff's apartment reasonably safe. Plaintiff was injured in a fire in his apartment which was determined to have started in electrical wiring. Plaintiff had complained over the years about the inadequacy of the number of electrical outlets and the condition of the outlets. Plaintiff used extension cords and a power strip compensate for the allegedly inadequate outlets. The issue is whether the landlord's failure to upgrade the 1930s electrical system in the apartment breached a duty owed plaintiff: "There is a triable issue of fact as to whether defendant had actual or constructive notice that a dangerous condition existed in plaintiff's apartment that it failed to remedy ... . Specifically, plaintiff's expert raised factual issues as to whether the building's 1930s electrical system constituted a dangerous condition and whether defendant was on notice of same. Although the expert, a professional engineer, did not personally inspect the premises, he based his opinion that the fire was caused by overloaded electrical wires on specific factual evidence in the record and his knowledge of consumers' changed needs since the 1930s because of the invention and development of power-hungry personal appliances that simply require more electrical power ... ". ***Daly v. 9 E. 36th LLC*, 2017 N.Y. Slip Op. 06404, First Dept 9-5-17**

FOURTH DEPARTMENT

ELECTION LAW.

DESIGNATING PETITION SHOULD NOT HAVE BEEN INVALIDATED, WIFE SIGNED FOR HUSBAND WHO WAS PRESENT, AT MOST ONLY THE ONE SIGNATURE SHOULD HAVE BEEN STRUCK, NOT THE ENTIRE PAGE OF SIGNATURES.

The Fourth Department, reversing Supreme Court, determined the designating petition should not have been invalidated. One of the signatories to the petition had apparently signed on her husband's behalf because his hands were weak. The wife put her initials next to the signature and testified her husband had given her permission to sign and she had the authority to sign pursuant to a power of attorney. Supreme Court struck all signatures on the relevant page. The Fourth Department held that, at most, only the one signature should have been struck: "... [T]he use of a proxy to sign the purported signatory's name was apparent from the face of the petition sheet. Even assuming, arguendo, that the signature was invalid, we conclude that, in the absence of any hidden infirmity in the petition sheet or in the subscribing witness statement that would potentially 'confuse, hinder, or delay any attempt to ascertain or to determine the identity, status, and address' of any signatory or witness ... , the court improperly struck the entire page on which the signature appeared ... . Only the invalid signature should have been stricken under the circumstances of this case, leaving respondent with 347 signatures, one more than the required 346 ...". ***Matter of Van Der Water v. Czarny*, 2017 N.Y. Slip Op. 06408, Fourth Dept 9-6-17**

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