RTA CASELAW

2/3/2019

Timeliness of retention motion

- People v. R.K., Sup. Ct. N.Y. Co., Jan. 28, 2019: "The plain language of CPL §722.23(1)(a) mandates that this Court, "shall" order removal unless a motion to prevent removal is made within thirty calendar days of the Defendant's arraignment. The motion to prevent removal was filed…more than thirty calendar days after the Defendant's…arraignment in this case. The court therefore must order removal of the action to Family Court."

Extraordinary circumstances

- People v. J.C., Sup. Ct., N.Y. Co. , December 19, 2018. "The Court specifically rejects the proposition that a preexisting violent felony charge, standing alone, is sufficient to constitute extraordinary circumstances and prevent the removal of a case to Family Court. Rather, all of the circumstances presented to the Court must be considered in determining whether the defendant and the safety of the public are best served by a removal to Family Court…The Defendant is only sixteen years old and has no reported criminal convictions. He appears not to have played the primary role in his pre-existing case, where a different person brandished a weapon and shoved the complainant. The Defendant's role was apparently limited to using his Facebook account to arrange a fake sale and holding on to the bike while the accomplices confronted the complainant. There is no supportable basis for depriving the Defendant of the opportunity to utilize the rehabilitative and specifically tailored corrective measures offered in Family Court. While it is true his older case will remain in Supreme Court, that case at this point in time is still pre-trial and may or may not lead to adult penal consequences."

- People v. R.K., Sup. Ct. N.Y. Co., January 28, 2019: "The Defendant is sixteen years old, has no reported criminal convictions, and has one finding of juvenile delinquency for criminal possession of stolen property in the fifth degree. The Defendant is accused of committing a robbery after being released in this case. The District Attorney described this robbery as a, "gunpoint" robbery, but there is no evidence to suggest anyone involved in this event had a gun, said they had a gun, or displayed a gun. It is alleged that the Defendant placed his hand near his waistband while an accomplice snatched five dollars from the complainant's hand.

  There is no other substantive evidence that the Defendant has been involved in other criminal activity. The information and arguments provided by the District Attorney relating to possible gang involvement and unproven allegations of other criminal actively [sic] is not sufficiently supported and does not to [sic] establish extraordinary circumstances given all of the circumstances in this matter.

Based on the evidence submitted by the District Attorney's office, the Defendant and his mother have a proven track record of being open and receptive to receiving and actively engaging in counseling, therapeutic, prosocial and other rehabilitative services. The Defendant is routinely described as cooperative and willing to engage. His challenges include a history of exposure to domestic violence, learning disabilities, a community near his home that is plagued by negative influences, and appending delinquency charge in Family Court. He has no proven history of violence or involvement with weapons, no serious psychological problems, no history of drug or alcohol abuse, and no difficulty engaging in rehabilitative services. The Defendant continues to show a willingness to accept help, try to new treatment modalities, and work on rehabilitation as clearly demonstrated by the letter from the mental health professional who is helping him at Crossroads.

There is no supportable basis for depriving the Defendant of the opportunity to utilize the rehabilitative and specially tailored corrective measures offered in Family Court. The Court does not minimize the pending allegations in this case or the case that is simultaneously being removed to Family Court, and recognizes the important interest in keeping the community safe and no duplicating rehabilitative efforts that have been unsuccessful. However, the high burden that must be satisfied in order to direct retention is not met by the circumstances that are present."

- People v. J.M., Sup. Ct. Queens Co., January 9, 2019: "CPL §722.23[1](b) mandates that every motion to prevent removal of an action to family court must `contain allegations of sworn fact based upon personal knowledge of the affiant.' Here, the Affirmation in Support of the Motion and the Felony Complaint contain hearsay claims and do not contain allegations of sworn fact based upon personal knowledge. As such, the motion to prevent removal must be denied.

  While the statute does not define "extraordinary circumstances", this Court looks for facts that are highly unusual or irregular. Upon a review of the motion, there are no circumstances present which meet this definition. At bar, defendant is alleged to have committed two separate offenses, both of which defendant is not alleged to be the primary aggressor. The fact that defendant has two open cases in the Youth Part, does not constitute an extraordinary circumstance such that removal is inappropriate. Both matters can be effectively adjudicated in the family court where either rehabilitation and/or detention can be imposed. "

- People v. A.G., 62 Misc.3d 1210 (Sup. Ct., Queens Co) Dec. 20, 2018: "defendant is alleged to have committed several offenses involving robbery and grand larceny. All of these offenses were allegedly committed while he was on Family court Probation. This Court finds that the instant matters as well as defendant's numerous pending cases constitute an extraordinary circumstance such that removal should be prevented.

Assuming arguendo these matters are removed to Family court, defendant would still have five (5) matters in Queens Supreme Court and Queens Criminal Court pending disposition. This could lead to the likelihood of different and/or duplicative judicial processes and outcomes, which would not be in the interest of justice for the community or the defendant. Moreover, a global disposition of all matters in the Youth Part would provide a consistent outcome for defendant's potential rehabilitation. Therefore, this Court finds that extraordinary circumstances exist such that removal would not be in the interest of justice."

- People v. BH, 2019 WL 321860 (Sup. Ct. Nassau County, 1/23/19) Held that the People failed to prove the existence of extraordinary circumstances. Analysis bases on legislative intent that "denying removal of a case to the Family Court would be `extremely rare' (Assembly Record, 38-39). The phrase `extraordinary circumstances" itself was described as applying to instances where `highly unusual and heinous facts' were demonstrated and `there is a strong proof' that the AO would `not be amenable or would not benefit from the heightened services' offered in the Family Court (Id., 39)" Court balanced the aggravating and mitigating circumstances and found extraordinary circumstances do not exist. AO did not commit "numerous crimes over several days. While the assault was violent, there is no evidence in the record which would permit the Court to conclude that it was the AO who actually stabbed the most seriously injured victim in the back….[t]here is also no evidence in the record that the AO was a leader of the assault or that he was on of the individuals responsible for the attempt to coerce and intimate [sic] the victim's younger brother into joining the group….There is no evidence in the record showing that the AO is not amenable to services".

  Court analyzed the legislative framing of "the discussion of extraordinary circumstances in terms of aggravating and mitigating factors that a Court could consider. Among the aggravating factors that a Court might consider were (1) whether the AO had committed a series of crimes over many days; (2) whether the AO had acted in an especially cruel and/or heinous manner; and (3) whether the AO was a leader of the criminal activity who had threatened or coerced other reluctant youths into committing the crimes before the court (Assembly Record, p. 40). In contrast to the short list of aggravating factors a court could consider, the Assembly set forth a lengthy, comprehensive list of mitigating factors. These factors include economic difficulties faced by the AO, substandard housing the AO may have lived in, educational challenges experienced by the AO; and emotional/psychological difficulties the AO may have, such as lack of insight, susceptibility to peer pressure due to immaturity, the absence of positive role models or positive behavioral role models in the AO's life, and abuse of alcohol or drugs (40). **The Assembly envisioned that the courts, in assessing these aggravating and mitigating factors would fashion a standard with a `very high bar' for retention of cases in the Youth Part, a standard which would take into consideration of all the factors in a given case and where, ultimately, `one in a thousand' cases would be held in the criminal court and the rest would go to Family Court. (Assembly Record, 83-34)"**

- People v. D.L., 2018 WL 6817304, ____ NYS3d____ Family Co., Monroe Co. (2018): No extraordinary circumstances found. "[T]he Court finds no highly unusual or heinous facts. Nor is there any indication that D.L. will be unable to benefit from the services available in the Family Court." DL 3 weeks past her 16th birthday and she is not charged with a JO offense and would not have been criminally responsible as a 15 year old. " DL's behavior is precisely the type of impulsive act done without thought of consequences, which is typical of young people. Had DL truly intended to burn the house and harm the inhabitants, a fire could have been set at night or in a manner where no one was aware of her actions. Instead, DL rang the complainant's door bell and announced her plan to set a fire because she was mad, thereby allowing the adult occupant to take action to curb her behavior."

Significant Physical Injury

- People v. B.H., 89 NYS3d 855, 861 (2018)(Co. Ct. Nassau Co.) "There can be no question that the victim who was stabbed six times and it in the head with a baseball bat, causing him facial paralysis, sustained a significant physical injury. That the victim may fully recover from his wounds and not suffer any permanent effects from the injury should not mitigate its significance as a physical injury." (but see sole actor argument)

Sole Actor

- Practice Commentary CPL 722.10, William C. Donnino:

  The key Assembly sponsor of the legislation noted that the three items require[ ] that the defendant be the sole actor who causes the conduct....Assembly, Record of Proceedings, April 8, 2017, p. 51.

  The rationale behind subdivision two was that not all felonies defined as violent for plea and sentencing purposes necessarily involve a violent act [e.g., burglary of a dwelling, Penal Law § 140.25(2)]; thus, by requiring a finding of one of those three items, only those cases [of] the truly violent felons would stay in the criminal part and those kids who were not violent would transfer to Family Court. Assembly, Record of Proceedings, April 8, 2017,p. 21-22.

  - People v. B.H., 89 N.Y.S.3d 855, 861(Co. Ct. Nassau Co) Dec. 11, 2018: People concede that the AO did not directly cause the victim's injury, but rather that the MS-13 gang, which the AO is allegedly a part of and liability is based on in concert theory. Held: "However, liability based on the AO "acting in concert" with others, while a basis for criminal liability, is precluded in the RTA's legislative history as a factor for retaining the AO's case in the Youth Part. In discussing the three factors for retention of an AO's case in the Youth Part, the Assembly's main sponsor of the Bill states that the three factor test "required the defendant to be the sole

> actor who causes the conduct outlined…The Legislative history states that this is consistent with the spirit of the law because “kids happen to get in trouble together all the time” and the Assembly did not want to punish an entire group for `one bad apple’. (Assembly Record, 51) Indeed, the Legislative history specifically states that `gang assault’, including, but not limited to `breaking car windows, breaking apartment windows, beating up kids or tampering with witnesses’ could be adjudicated in the Family Court (Assembly Record, 31). Based on this stated legislative intent to exclude gang activity from the three factors for retaining a case in the Youth Part, the People’s argument is unavailing.

Sufficiency of Evidence in support of retention motion

- People v. J.M., Sup. Ct. Queens Co., January 9, 2019: “CPL §722.23[1](b) mandates that every motion to prevent removal of an action to family court must `contain allegations of sworn fact based upon personal knowledge of the affiant.’ Here, the Affirmation in Support of the Motion and the Felony Complaint contain hearsay claims and do not contain allegations of sworn fact based upon personal knowledge. As such, the motion to prevent removal must be denied.