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SUPREME COURT JURISDICTION

N.Y. CONST. art. VI, § 4 (k):

The appellate divisions of the supreme court shall have all the jurisdiction possessed by them on the effective date of this article and such additional jurisdiction as may be prescribed by law, provided, however, that the right to appeal to the appellate divisions from a judgment or order which does not finally determine an action or special proceeding may be limited or conditioned by law.

SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

People v. Simmonds¹⁹⁵¹
(decided April 6, 1992)

A criminal defendant, convicted of murder in the second degree, two counts of robbery in the first degree, and assault in the first degree, claimed that New York State's Criminal Procedure Law (CPL) sections 450.10¹⁹⁵² and 450.15,¹⁹⁵³ which authorize

1951. 182 A.D.2d 650, 582 N.Y.S.2d 236 (2d Dep't), *appeal denied*, 80 N.Y.2d 910, 602 N.E.2d 243, 588 N.Y.S.2d 835 (1992).

1952. N.Y. CRIM. PROC. LAW § 450.10 (McKinney 1983 & Supp. 1992).
Section 450.10 states:

An appeal to an intermediate appellate court may be taken as of right by the defendant from the following judgment, sentence and order of a criminal court:

1. A judgment other than one including a sentence of death;
2. A sentence other than one of death, as prescribed in subdivision one of section 450.30;
3. A sentence including an order of criminal forfeiture entered pursuant to section 460.30 of the penal law with respect to such forfeiture order;
4. An order, entered pursuant to section 440.40 setting aside a sentence other than one of death, upon motion of the People.

Id.

1953. N.Y. CRIM. PROC. LAW § 450.15 (McKinney 1983).

an appeal from an order denying a motion to vacate a judgment of conviction¹⁹⁵⁴ only by permission, violates the New York State Constitution.¹⁹⁵⁵ The appellate division affirmed the supreme court's judgment, holding that such a court order, as was given by the lower court in this case, was intermediate in nature, and therefore, an appeal from this order could be "limited or conditioned."¹⁹⁵⁶

At the supreme court level, the defendant claimed that he was convicted based upon false material evidence, and therefore made a motion that the judgment be vacated upon this ground, pursuant to CPL 440.10 (1)(c).¹⁹⁵⁷ This motion was rejected by the supreme court upon the merits, and permission to appeal from the or-

Section 450.15 states in relevant part:

If an appeal by defendant is not authorized as of right pursuant to section 450.10, the defendant may appeal from the following orders of a criminal court, provided that a certificate granting leave to appeal is issued pursuant to section 460.15:

- (1) An order denying a motion, made pursuant to section 440.10, to vacate a judgment other than one including a sentence of death.

Id.

1954. *Id.*; N.Y. CRIM. PROC. LAW § 440.10 (McKinney 1983).

Section 440.10 states in relevant part:

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

. . . .

- (c) Material evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false

Id.

1955. N.Y. CONST. art. VI, § 4(k).

1956. *Simmonds*, 182 A.D.2d at 651, 582 N.Y.S.2d at 236; *accord* *People v. Cambell*, 162 A.D.2d 606, 558 N.Y.S.2d 76, 77 (2d Dep't 1990); *People v. Bellamy*, 160 A.D.2d 886, 887, 554 N.Y.S.2d 320, 321 (2d Dep't 1990); *but see* *People v. Pollenz*, 67 N.Y.2d 264, 269, 493 N.E.2d 541, 542, 502 N.Y.S.2d 417, 418 (1986) (court of appeals declared that Criminal Procedure Law section 450.10 was unconstitutional "where the sole issue raised is the excessiveness of a negotiated sentence imposed by judgment rendered upon a guilty plea" because it imposed a "limitation or condition on the jurisdiction of the Appellate Division . . . in contravention of the N.Y. Constitution").

1957. *Simmonds*, 182 A.D.2d at 651, 582 N.Y.S.2d at 238.

ders was denied twice by the same court.¹⁹⁵⁸ The defendant nevertheless attempted to appeal “as of right” to the second department.¹⁹⁵⁹

The appellate division declared that the defendant’s appeal was not “properly before [the] court” because an “order denying a motion pursuant to CPL 440.10 to vacate a judgment . . . is an intermediate order.”¹⁹⁶⁰ The court noted that according to the New York Constitution, article VI, section 4(k),¹⁹⁶¹ “the right to appeal . . . from [an] order which does not finally determine an action . . . may be limited . . . by law.”¹⁹⁶² Therefore, if the defendant is not “authorized [to appeal] as of right” under section 450.10, CPL section 450.15(1) provides that an order denying a motion to vacate a judgment requires permission to appeal to an intermediate court.¹⁹⁶³ The second department, therefore, declared that the defendant’s “attempt to appeal from those orders as of right must fail”¹⁹⁶⁴ Consequently, the court dismissed the appeal, holding the CPL sections 450.10 and 450.15 constitutional.¹⁹⁶⁵

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

N.Y. CONST. art. VI, § 19(a):

The supreme court may transfer any action or proceeding, except one over which it shall have exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court having jurisdiction of the subject matter within the judicial

1958. *Id.* at 651, 582 N.Y.S.2d at 237.

1959. *Id.* at 651, 582 N.Y.S.2d at 238.

1960. *Id.*

1961. N.Y. CONST. art. VI, § 4(k).

1962. *Id.*

1963. N.Y. CRIM. PROC. LAW § 450.10 (McKinney 1983 & Supp. 1992).

1964. *Simmonds*, 182 A.D.2d at 651, 582 N.Y.S.2d at 238.

1965. *Id.* at 651, 582 N.Y.S.2d at 237.

department provided that such other court has jurisdiction over the classes of persons named as parties.

Nish v. Town of Poestenkill¹⁹⁶⁶
(decided January 23, 1992)

Plaintiff Nish brought suit against the State of New York and others, alleging "appropriation of and trespass upon her property" during the widening of a state highway.¹⁹⁶⁷ As an affirmative defense, the defendant, the State of New York, claimed that the supreme court lacked subject matter jurisdiction over this action, pursuant to Civil Practice Law and Rules section 3211a(2).¹⁹⁶⁸

The court held that the supreme court erred in transferring the suit to the Court of Claims without first determining whether that court had subject matter jurisdiction over the action.¹⁹⁶⁹ It reasoned that the Court of Claims did not have the requisite jurisdiction due to the fact that the plaintiff "failed to timely and properly" serve the claim on the Clerk of the Court of Claims and on the Attorney General.¹⁹⁷⁰

Nish, the plaintiff, was a property owner, who claimed that the State appropriated and trespassed upon her property during the widening of Route 66, a State highway in Rensselaer County.¹⁹⁷¹ She commenced this action in the Supreme Court, Rensselaer

1966. 179 A.D.2d 929, 579 N.Y.S.2d 189 (3rd Dep't 1992).

1967. *Id.* at 930, 579 N.Y.S.2d at 190.

1968. *Id.*; N.Y. CIV. PRAC. L. & R. 3211a(2) (McKinney 1992). Section 3211a(2) provides in pertinent part: "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: the court has no jurisdiction of the subject matter of the cause of action." *Id.*

1969. *Nish*, 179 A.D.2d at 930, 579 N.Y.S.2d at 190; *see* N.Y. CONST. art. VI, § 19(a) (providing that the supreme court may transfer any action "to any other court having jurisdiction of the subject matter").

1970. *Nish*, 179 A.D.2d at 930, 579 N.Y.S.2d at 190; *see also* CT. CL. ACT, art. II, §§ 10, 11. (Section 10 providing for filing in a timely fashion, and Section 11 providing that claim must be served on the court clerk and on the Attorney General.).

1971. *Nish*, 179 A.D.2d at 930, 579 N.Y.S.2d at 190.