

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

June 8, 2012 through June 14, 2012

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

AUGUSTINE (TRAVIS), PEOPLE v:

3RD Dept. App. Div. order of 11/10/11; affirmance; leave to appeal granted by Jones, J., 6/1/12;

CRIMES - SUPPRESSION HEARING - WHETHER COUNTY COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENTS MADE TO POLICE - WHETHER DEFENDANT WAS REPRESENTED BY COUNSEL ON AN UNRELATED VIOLATION OF PROBATION CHARGE SO THAT QUESTIONING COULD NOT TAKE PLACE ON THE MURDER AND OTHER CHARGES UNLESS COUNSEL WAS PRESENT OR DEFENDANT WAIVED HIS RIGHTS IN COUNSEL'S PRESENCE; SUFFICIENCY OF THE EVIDENCE AT TRIAL; RIGHT TO FORMAL COMPLAINT ABOUT EFFECTIVENESS OF COUNSEL;

Greene County Court convicted defendant of the crimes of murder in the second degree, aggravated cruelty to animals and two counts of criminal possession of stolen property in the fourth degree; App. Div. affirmed.

BHUGRA v MASSACHUSETTS CASUALTY INSURANCE COMPANY, et al.:

1st Dept. App. Div. order of 4/17/12; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

STIPULATIONS - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING A SUPREME COURT ORDER GRANTING MOTION TO COMPEL PLAINTIFF TO ACCEPT SERVICE OF ANSWER UPON THE GROUND THAT THE ANSWER WAS TIMELY SERVED IN ACCORDANCE WITH A STIPULATION SIGNED BY COUNSEL FOR DEFENDANTS AND PLAINTIFF'S PRIOR COUNSEL;

Supreme Court, New York County granted the cross motion of defendants Massachusetts Casualty Insurance Company, Centre Life Insurance Company, Centre Solutions, and Zurich American Insurance Company to compel plaintiff to accept service of their answer; App. Div. affirmed.

MITCHELL (ROBERT), PEOPLE v:

1st Dept. App. Div. order of 11/29/11; affirmance; leave to appeal granted by Jones, J., 6/1/12;

CRIMES - PLEA OF GUILTY - ALLEGED INEFFECTIVE ASSISTANCE OF PRIOR COUNSEL WHO PURPORTEDLY FAILED TO DISCUSS THE CASE WITH DEFENDANT IN THE FOUR YEARS LEADING UP TO HIS PLEA - WHETHER MOTION BY NEWLY APPOINTED COUNSEL TO WITHDRAW THE PLEA SHOULD HAVE BEEN DECIDED AFTER A HEARING AS OPPOSED TO A SUMMARY DISPOSITION;

Supreme Court, Bronx County convicted defendant, upon his guilty plea, of two counts of murder in the second degree, and sentenced him to concurrent terms of 25 years to life; App. Div. affirmed.

MONROE (WILLIAM), PEOPLE v:

1st Dept. App. Div. order of 11/1/11; affirmance; leave to appeal granted by Smith, J., 5/24/12;

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - WHETHER DEFENDANT IS ENTITLED TO WITHDRAW HIS GUILTY PLEA ON THE GROUND THAT HIS PROMISED SENTENCE RAN CONCURRENTLY WITH OTHER SENTENCES THAT WERE REDUCED BECAUSE THE PROMISE MADE TO INDUCE THE PLEA CANNOT BE KEPT - APPLICATION OF PEOPLE v PICHARDO (1 NY3d 126[2003]) AND PEOPLE v ROWLAND (8 NY3d 342 [2007]) TO CASE INVOLVING RESENTENCING UNDER THE DRUG LAW REFORM ACT (DLRA); ENTITLEMENT TO RESENTENCING ON CONVICTION FOR CONSPIRACY;

Supreme Court, New York County denied defendant's (1) CPL 440.10 motion to vacate a judgment convicting him, on his guilty plea, of conspiracy in the second degree, and (2) CPL 440.46 motion for resentencing under the same conviction; App. Div. affirmed.