

COURT OF APPEALS NEW FILINGS

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

July 19, 2013 through July 25, 2013

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.

ARGYRIS (COSTANDINO), PEOPLE v:

2ND Dept. App. Div. order of 10/10/12; affirmance; leave to appeal granted by Read, J., 7/9/13;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER, BASED ON INFORMATION PROVIDED BY AN ANONYMOUS TELEPHONE CALLER, POLICE HAD REASONABLE SUSPICION TO STOP THE CAR IN WHICH DEFENDANT WAS TRAVELING; SUPPRESSION HEARING;

Supreme Court, Queens County, convicted defendant, upon his guilty plea, of criminal possession of a weapon in the second degree, criminal possession of a weapon in the fourth degree and unlawful possession of pistol ammunition, and imposed sentence; App. Div. affirmed.

DALTON, MATTER OF v AKRON CENTRAL SCHOOLS:

4TH Dept. App. Div. order of 6/14/13; affirmance with dissents;
Rule 500.11 review pending;

SCHOOLS - NOTICE OF CLAIM - LATE NOTICE - SLIP ON SNOW OR ICE IN
SCHOOL PARKING LOT - CLAIMANT'S BURDEN OF ESTABLISHING THAT
RESPONDENT ACQUIRED ACTUAL KNOWLEDGE OF THE ESSENTIAL FACTS OF
THE CLAIM, INCLUDING KNOWLEDGE OF THE INJURIES, WITHIN A
REASONABLE TIME AFTER THE CLAIM AROSE - GENERAL MUNICIPAL LAW
§ 50-e;

Supreme Court, Erie County, granted claimant's application for
leave to serve a late notice of claim; App. Div. affirmed.

DiSALVO (JOHN A.), PEOPLE v:

2ND Dept. App. Div. order of 10/10/12; affirmance; leave to
appeal granted by Read, J., 7/9/13;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER, BASED ON
INFORMATION PROVIDED BY AN ANONYMOUS TELEPHONE CALLER, POLICE HAD
REASONABLE SUSPICION TO STOP THE CAR IN WHICH DEFENDANT WAS
TRAVELING; SUPPRESSION HEARING;

Supreme Court, Queens County, convicted defendant, upon his
guilty plea, of criminal possession of a weapon in the second
degree, criminal possession of a weapon in the fourth degree and
unlawful possession of pistol ammunition, and imposed sentence;
App. Div. affirmed.

JENKINS (BENJAMIN), PEOPLE v:

2ND Dept. App. Div. order of 11/21/12; reversal; leave to appeal
granted by Smith, J., 7/10/13;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WARRANTLESS SEARCH FOR GUN
AFTER LAWFUL ARREST OF DEFENDANT IN HIS APARTMENT FOLLOWING
OBSERVATION OF DEFENDANT WITH GUN - WHETHER EMERGENCY EXCEPTION
TO WARRANT REQUIREMENT APPLIES;

Supreme Court, Kings County, among other things, after a hearing,
granted that branch of defendant's omnibus motion which was to
suppress physical evidence; App. Div. reversed, denied that
branch of defendant's omnibus motion which was to suppress
physical evidence, and remitted the matter to Supreme Court for
further proceedings on the indictment.

KOZIOL v STATE OF NEW YORK, et al.:

3RD Dept. App. Div. order of 6/6/13; 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;

JUDGMENTS - ENFORCEMENT; TAXATION - TAX LIENS, TAX SALES AND TAX
TITLES - DEPARTMENT OF TAXATION AND FINANCE DOCKETED WARRANT
AGAINST PLAINTIFF FOR CHILD SUPPORT ARREARS - SEIZURE AND SALE OF
MOTOR VEHICLES AND OTHER PERSONAL PROPERTY; WHETHER PLAINTIFF'S
CLAIMS ARE BARRED BY FAILURE TO ADMINISTRATIVELY CHALLENGE EITHER
REFERRAL OF SUPPORT CASE TO THE DEPARTMENT OF TAXATION AND
FINANCE OR THE SUBSEQUENT ISSUANCE OF A TAX WARRANT;

Supreme Court, Albany County, among other things, granted a cross motion by State defendants for summary judgment dismissing the complaint against them, and upon searching the record, granted summary judgment to all defendants; App. Div. affirmed.

KRUGER (KEVIN), PEOPLE v:

2ND Dept. App. Div. order of 3/20/13; denial of application for a writ of error coram nobis; leave to appeal granted by Read, J., 7/15/13;

CRIMES - APPEAL - EXTENSION OF TIME TO FILE AN APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS - WHETHER THE APPELLATE DIVISION ERRED IN DENYING DEFENDANT'S APPLICATION FOR A WRIT OF ERROR CORAM NOBIS SEEKING TO FILE A LATE APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS UPON THE GROUND THAT PEOPLE v SYVILLE (15 NY3d 391) DID NOT PROVIDE FOR SUCH RELIEF;

App. Div. denied defendant's application for a writ of error coram nobis seeking to file a late application for leave to appeal to the Court of Appeals from a decision and order of the Appellate Division, Second Department, dated 12/1/09, affirming a judgment of the County Court, Orange County, rendered 3/22/07.

O'NEILL, et al., MATTER OF v PFAU:

2ND Dept. App. Div. order of 12/5/12; modification; leave to appeal granted by App. Div., 7/12/13;

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CPLR ARTICLE 78 PROCEEDING TO COMPEL PAYMENT TO SUFFOLK COUNTY COURT OFFICERS OF A SALARY INCREMENT REFLECTING A CONTINUOUS SERVICE CREDIT; STATUTE OF LIMITATIONS;

Supreme Court, Suffolk County, granted the second amended petition to the extent of remitting the matter to the Chief Administrative Judge for the purpose of recalculating the salaries of persons assigned to the New York State Court Officer title in Suffolk County due to the issuance of administrative orders dated 1/8/04 and 12/22/04; App. Div. modified by deleting the provision remitting the matter to the Chief Administrative Judge of the Courts of the State of New York for the purpose of recalculating the salaries of persons assigned to the New York State Court Officer title in Suffolk County due to the issuance of the administrative order dated 1/8/04, and substituting therefor a provision dismissing, as time-barred, that branch of the second amended petition which sought to compel payment to persons in that title a salary increment reflecting a continuous service credit due to the issuance of the 1/8/04 administrative order.

SIMS (QUENTIN A.), PEOPLE v:

4TH Dept. App. Div. order of 5/3/13; reversal; leave to appeal granted by Fahey, J., 6/28/13; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - VALIDITY OF PAT-DOWN OF

Erie County Court granted those parts of defendant's omnibus motion that sought to suppress certain physical evidence and oral statements; App. Div. reversed, denied those parts of the omnibus motion seeking to suppress physical evidence and statements, and remitted the matter to the Erie County Court for further proceedings on the indictment.