

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**July 25 through July 31, 2008**

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.

**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.**

BARRON, MATTER OF, v MITCHELL:

2<sup>ND</sup> Dept. App. Div. order of 7/3/08; affirmance; leave to appeal granted by Court of Appeals, 7/16/08; argument date, 8/26/08; ELECTIONS - WHETHER ELECTION LAW § 42 REQUIRES THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK TO CONDUCT A PRIMARY ELECTION IN SEPTEMBER 2008 AND A GENERAL ELECTION IN NOVEMBER 2008 FOR THE PUBLIC OFFICE OF MEMBER OF THE NEW YORK STATE ASSEMBLY FROM THE 40<sup>TH</sup> ASSEMBLY DISTRICT FOR THE TERM OF OFFICE ENDING DECEMBER 31, 2008 - WHETHER THE PETITIONING PERIOD SHOULD BE EXTENDED FROM JULY 2, 2008 TO JULY 10, 2008 AND PETITIONERS PRECLUDED FROM USING SIGNATURES OBTAINED BEFORE JULY 2, 2008; Supreme Court, Kings County, among other things, granted a petition in a proceeding pursuant to Election Law §§ 16-100 and 16-104 to compel the Board of Elections in the City of New York to conduct a primary election to be held on September 9, 2008, for the party nominations of candidates for the public office of member of the New York State Assembly from the 40<sup>th</sup> Assembly District for the term of office ending December 31, 2008, and a general election to be held on November 4, 2008, in order to fill the vacancy in the public office of member of the New York State

Assembly from the 40<sup>th</sup> Assembly District for the term of office ending December 31, 2008; and ordered that the period of circulating designating petitions by candidates for the primary election to fill the vacancy in the term ending December 31, 2008 shall commence on July 2, 2008 and end on July 10, 2008; App. Div. affirmed so much of the order as granted the petition to, among other things, compel the Board of Elections in the City of New York to conduct a primary and general election, and reversed so much of the order as fixed July 2, 2008, rather than June 3, 2008, as the commencement date for the circulation of designating petitions for the primary election to fill the vacancy in the term ending December 31, 2008.

JACKSON (FRANCIS), PEOPLE v:

1<sup>ST</sup> Dept. App. order of 12/13/07; affirmance;  
CRIMES AND CRIMINAL PROCEDURE - CONSTITUTIONAL LAW - DUE PROCESS - EQUAL PROTECTION - SEX OFFENDER REGISTRATION ACT (SORA) (CORRECTION LAW ARTICLE 6-C) - WHETHER INDIVIDUAL CONVICTED OF ABDUCTION-RELATED OFFENSE INVOLVING A CHILD CAN BE REQUIRED TO REGISTER AS A "SEX OFFENDER" WHERE THE SURROUNDING FACTS REVEAL NO SEXUAL MOTIVE FOR OR COMPONENT TO THE CRIME;  
Supreme Court, Bronx County, adjudicated defendant a level one sex offender under SORA; App. Div. affirmed.

LOWE (RICHARD), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 4/24/08; affirmance; leave to appeal granted by McGuire, J., 6/27/08;  
CRIMES AND CRIMINAL PROCEDURE - CONTROLLED SUBSTANCES - UNLAWFUL SEARCH AND SEIZURE - SUFFICIENCY OF EVIDENCE - ADEQUACY OF PROBABLE CAUSE SHOWING AT DARDEN HEARING - NON-DISCLOSURE OF DARDEN HEARING MINUTES TO PROTECT CONFIDENTIAL INFORMANT;  
Supreme Court, New York County, convicted defendant of criminal possession of a controlled substance in the first degree and sentenced him to a term of fifteen years to life; App. Div. affirmed.

MAYE (TYRONE), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 8/9/07; affirmance; leave to appeal granted by Kaye, Ch.J., 7/18/08;  
CRIMES AND CRIMINAL PROCEDURE - UNLAWFUL SEARCH AND SEIZURE - STRIP SEARCH AND BODY CAVITY SEARCH AT POLICE STATION INCIDENT TO ARREST - CONTRABAND FOUND IN DEFENDANT'S SOCKS - LEGAL SUFFICIENCY OF THE EVIDENCE SUPPORTING CONVICTION FOR PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE;  
County Court, Warren County, convicted defendant of criminal possession of a controlled substance in the third degree (two counts), criminal possession of a controlled substance in the first degree, criminal use of drug paraphernalia in the second degree and promoting prison contraband in the first degree; App. Div. affirmed.

MCLEAN et al. v CITY OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 3/18/08; affirmance; leave to appeal granted by App. Div., 7/8/08;

MUNICIPAL CORPORATIONS - TORT LIABILITY - EXISTENCE OF TRIABLE ISSUES OF FACT AS TO WHETHER CITY DEFENDANT HAD AN OBLIGATION TO PLAINTIFFS PURSUANT TO CONTRACT BETWEEN THE STATE AND CITY'S DEPARTMENT OF HEALTH REGARDING THE ENFORCEMENT OF STATE REGULATIONS GOVERNING THE CERTIFICATION AND OPERATION OF PRIVATE HOME DAY CARE CENTERS (18 NYCRR PART 417) - EXISTENCE OF SPECIAL RELATIONSHIP SUBJECTING CITY DEFENDANT TO LIABILITY;

Supreme Court, New York County denied defendant City of New York's motion to dismiss the complaint against it; App. Div. affirmed.

WASHINGTON (LORRAINE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 5/15/08; affirmance; leave to appeal granted by Ciparick, J., 7/24/08;

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - WHETHER MANDATORY SURCHARGE AND FEES PURSUANT TO CPL 60.35 MUST BE IMPOSED ORALLY BY JUDGE AS PART OF DEFENDANT'S SENTENCE;

Supreme Court, New York County, convicted defendant, upon her guilty plea, of criminal sale of a controlled substance in the third degree and sentenced her, as a second felony drug offender, to a term of 4 1/2 years; App. Div. affirmed.

