

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 24 through April 30, 2009

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.

DIAZ (SALVADOR), PEOPLE v:

1ST Dept. App. Div. order of 4/9/09; affirmance; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - VARIOUS CONSTITUTIONAL CHALLENGES TO LEVEL TWO SEX OFFENDER DESIGNATION AND DETERMINATION THAT DEFENDANT IS A SEXUALLY VIOLENT OFFENDER;

Supreme Court, New York County adjudicated defendant a level two sex offender pursuant to SORA; App. Div. affirmed.

DRAYTON (GREGORY M.), PEOPLE v:

4TH Dept. App. Div. order of 11/21/08; affirmance; leave to appeal granted by Smith, J., 3/19/09;
CRIMES AND CRIMINAL PROCEDURE - SEARCH AND SEIZURE - WHETHER SEIZURE OF BLOOD TAKEN FROM DEFENDANT BY A MEDICAL PROFESSIONAL AT A HOSPITAL VIOLATES THE PHYSICIAN - PATIENT PRIVILEGE (CPLR 4505[a]) - SUPPRESSION OR EXCLUSION OF EVIDENCE;
Monroe County Court convicted defendant, upon a jury verdict, of vehicular assault in the second degree, driving while ability impaired by drugs, two counts of endangering the welfare of a child, and a traffic infraction; App. Div. affirmed.

EDWARDS (MICHAEL), PEOPLE v:

4TH Dept. App. Div. order of 10/3/08; affirmance; leave to appeal granted by Jones, J., 4/3/09; Rule 500.11 review pending;
CRIMES AND CRIMINAL PROCEDURE - MOTION TO SUPPRESS STATEMENTS TO INVESTIGATORS FROM ATTORNEY GENERAL'S OFFICE AS BEING MADE IN VIOLATION OF DEFENDANT'S RIGHT TO COUNSEL - WHETHER DEFENDANT MADE AN UNEQUIVOCAL REQUEST FOR COUNSEL;
Monroe County Court convicted defendant, upon a jury verdict, of sexual abuse in the first degree and wilful violation of the health laws; App. Div. affirmed.

HENSE v HENSE:

2ND Dept. App. Div. order of 3/17/09; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether defendant is an "aggrieved party" (CPLR 5511) to the extent the appeal involves review of an October 23, 2006 so-ordered stipulation;
HUSBAND AND WIFE - DIVORCE - VARIOUS CHALLENGES TO DIVORCE JUDGMENT AND RELATED ORDERS;
Supreme Court, Westchester County judgment of divorce and related order; App. Div. affirmed.

HERNANDEZ (EFRAIN), PEOPLE v:

1ST Dept. App. Div. order of 2/5/09; affirmance; leave to appeal granted by Lippman, Ch.J., 4/16/09;
CRIMES AND CRIMINAL PROCEDURE - SENTENCE - POST-RELEASE SUPERVISION (PRS) - WHETHER A TRIAL COURT IS AUTHORIZED TO CORRECT A PRIOR FAILURE TO IMPOSE PRS BY RESENTENCING A DEFENDANT TO PRS AFTER HIS CONDITIONAL RELEASE FROM PRISON;
Supreme Court, New York County resentenced defendant to a term of 7 years with 5 years' post-release supervision; App. Div. affirmed.

KOLUPA (SHANNON M.), PEOPLE v:

4TH Dept. App. Div. order of 2/11/09; modification with dissents; leave to appeal granted by Martoche, J., 4/6/09; Rule 500.11 review pending;

CRIMES AND CRIMINAL PROCEDURE - CORROBORATION OF TESTIMONY OF UNSWORN VICTIM - SEVEN-YEAR OLD VICTIM OF SEX OFFENSES; WHETHER POLICE OFFICER'S ALLEGED PROMISE TO CHARGE DEFENDANT WITH A MISDEMEANOR, ISSUE HIM AN APPEARANCE TICKET AND RELEASE HIM IF HE GAVE A STATEMENT THAT HE HAD EXPOSED HIMSELF TO THE VICTIM RENDERED DEFENDANT'S STATEMENTS TO THE POLICE INADMISSIBLE; Oneida County Court convicted defendant, upon a jury verdict, of attempted rape in the first degree, sexual abuse in the first degree, criminal sexual act in the first degree, attempted sexual abuse in the first degree and endangering the welfare of a child; App. Div. modified by directing that the sentences imposed on counts one through four of the indictment shall run concurrently with respect to each other.

LEWIS (CRAIG), PEOPLE v:

1ST Dept. App. Div. order of 3/5/09; affirmance; leave to appeal granted by Graffeo, J., 4/15/09;

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - POST-RELEASE SUPERVISION (PRS) - WHETHER A TRIAL COURT IS AUTHORIZED TO CORRECT A PRIOR FAILURE TO IMPOSE PRS BY RESENTENCING A DEFENDANT TO PRS AFTER HIS ORIGINALLY IMPOSED SENTENCE HAS BEEN FULLY SERVED;

Supreme Court, New York County resentenced defendant to a term of 5 years with 5 years' post-release supervision; App. Div. affirmed.

MAYO (RAHEEM), PEOPLE &c.:

1ST Dept. App. Div. order of 2/19/09; reversal with dissents; leave to appeal granted by Acosta, J., 4/14/09; Rule 500.11 review pending;

CRIMES - INDICTMENT - SUFFICIENCY OF EVIDENCE BEFORE GRAND JURY - CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD AND FOURTH DEGREES - CONSTRUCTIVE POSSESSION - STATUTORY ROOM PRESUMPTION;

Supreme Court, New York County granted defendant's motion to dismiss counts two and three of the indictment, charging, respectively, criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the fourth degree; App. Div. reversed, denied defendant's motion to dismiss counts two and three of the indictment and reinstated those counts.

ROSENZWEIG v GIVENS:

1ST Dept. App. Div. order of 1/8/09; modification; leave to appeal granted by App. Div., 3/31/09; Rule 500.11 review pending; MORTGAGES - FORECLOSURE - WHETHER DEFENDANT HAS RAISED ISSUES OF FACT CONCERNING A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES SUFFICIENT TO PRECLUDE SUMMARY JUDGMENT; FRAUD;

Supreme Court, New York County granted plaintiff summary judgment on his claim to foreclose on certain mortgages, dismissed defendant's first, second and third affirmative defenses and two counterclaims, and struck defendant's claim for punitive damages; App. Div. modified by denying plaintiff's motion for summary judgment on his foreclosure claim, reinstating the first and second counterclaims, and reinstating the first affirmative defense.

WILLIAMS (DARRELL), PEOPLE v:

1ST Dept. App. Div. order of 2/5/09; affirmance; leave to appeal granted by Read, J., 4/3/09;

CRIMES AND CRIMINAL PROCEDURE - POST-RELEASE SUPERVISION (PRS) - WHETHER TRIAL COURT IS AUTHORIZED TO CORRECT A PRIOR FAILURE TO IMPOSE PRS BY RESENTENCING A DEFENDANT TO PRS AFTER HIS ORIGINALLY IMPOSED SENTENCE HAS BEEN FULLY SERVED - ALLEGED VIOLATIONS OF DOUBLE JEOPARDY AND DEFENDANT'S DUE PROCESS RIGHTS; Supreme Court, New York County resentenced defendant to a term of 3 years with 3 years' post-release supervision; App. Div. affirmed.