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COURT OF APPEALS NEW FILINGS

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

April 30 through May 6, 2010

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.

BRUNNER (MICHAEL), PEOPLE v:
1ST Dept. App. Div. order of 11/10/09; affirmance; leave to appeal granted by Lippman, Ch.J., 4/21/10;
CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - COUNSEL'S FAILURE TO MOVE TO DISMISS INDICTMENT ON SPEEDY TRIAL GROUNDS PURSUANT TO CPL 30.30; ALLEGED SANDOVAL VIOLATION; WITNESSES - FAILURE TO CALL WITNESS - DENIAL OF DEFENDANT'S REQUEST FOR MISSING WITNESS CHARGE AS TO CERTAIN POLICE OFFICERS;
Supreme Court, New York County convicted defendant, after a jury trial, of criminal sale of a controlled substance in the third degree and resisting arrest, and sentenced him, as a second felony offender, to an aggregate term of 4 1/2 years; App. Div. affirmed.

HOFFLER, MATTER OF v JACON, &c., et al.:
3RD Dept. App. Div. judgment of 4/1/10; dismissal of CPLR article 78 petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER DOUBLE JEOPARDY PRINCIPLES BAR RESPONDENTS FROM TRYING PETITIONER ON AN INDICTMENT CHARGING HIM WITH MURDER IN THE FIRST AND SECOND DEGREES WHERE PETITIONER'S PREVIOUS CONVICTION ON THAT INDICTMENT WAS REVERSED BY THE APPELLATE DIVISION UPON THE GROUND THAT THE TRIAL WAS RENDERED A NULLITY BECAUSE THE PROSPECTIVE JURORS HAD NOT BEEN PROPERLY SWORN TO TRUTHFULLY ANSWER THE QUESTIONS POSED TO THEM REGARDING THEIR QUALIFICATIONS TO SERVE AS JURORS; APPELLATE DIVISION'S FAILURE TO ADDRESS PETITIONER'S LEGAL SUFFICIENCY AND WEIGHT OF THE EVIDENCE CLAIMS ON HIS DIRECT APPEAL OF THE PRIOR MURDER CONVICTION;
App. Div. dismissed a CPLR article 78 petition seeking to prohibit respondents from trying petitioner on an indictment charging him with murder in the first degree and murder in the second degree.

MEBANE (SCOTT), PEOPLE ex rel. v LACLAIR:
3RD Dept. App. Div. order of 2/4/10; affirmance; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;
HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT THE DEPARTMENT OF CORRECTIONAL SERVICES ACTED WITHIN ITS AUTHORITY IN DETERMINING THAT PETITIONER'S SENTENCES ON CONVICTIONS IN 2007 WERE TO RUN CONSECUTIVE TO HIS PRIOR UNDISCHARGED TERMS OF IMPRISONMENT - PENAL LAW § 70.25(2-a);
Supreme Court, Franklin County denied petitioner's application for a writ of habeas corpus; App. Div. affirmed.

NEW YORK STATE PSYCHIATRIC ASSOCIATION, et al. v NEW YORK STATE DEPARTMENT OF HEALTH:
2ND Dept. App. Div. order of 3/16/10; modification; 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;
HEALTH - MEDICARE REIMBURSEMENT PAYMENTS - CONSTITUTIONALITY OF PROVISIONS IN THE 2008 BUDGET BILL (L. 2008, ch 58, part C) PROVIDING THAT LICENSED PSYCHIATRISTS ARE NOT ENTITLED TO BE PAID THE FULL MEDICARE PART B COINSURANCE AMOUNT FOR SERVICES RENDERED BETWEEN APRIL 1, 2007 AND APRIL 11, 2008 TO CERTAIN INDIVIDUALS WHO ARE ELIGIBLE FOR BOTH MEDICAID AND MEDICARE BENEFITS AND/OR FOR CLAIMS PROCESSED BETWEEN APRIL 1, 2007 AND APRIL 11, 2008;
Supreme Court, Nassau County denied plaintiffs/petitioners' motion for summary judgment on causes of action for declaratory relief and granted the cross motion of defendant/respondent for summary judgment on those causes of action and, in effect, denied the amended petition in a hybrid action for a judgment declaring

York State 2008 budget which provide that licensed psychiatrists are not entitled to be paid the full Medicare Part B coinsurance amount for services rendered between April 1, 2007 and April 11, 2008 to certain individuals who are eligible for both Medicaid and Medicare benefits and/or for claims processed between April 1, 2007 and April 11, 2008 are unconstitutional, and in effect, proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the New York State Department of Health to pay licensed psychiatrists the full Medicare Part B coinsurance amount for those individuals pursuant to the 2006 amendment to Social Services Law § 367-a(1)(d)(iii) for services rendered and/or claims processed between April 1, 2007 and April 11, 2008; App. Div. modified the amended order (1) by deleting the provision thereof denying the motion for summary judgment on the causes of action for declaratory relief and substituting therefor a provision granting the motion to the extent of declaring that those portions of sections 53 and 54 of part C of the New York State 2008 budget bill which provide that licensed psychiatrists are not entitled to be paid the full Medicare Part B coinsurance amount for services rendered to certain individuals who are eligible for both Medicaid and Medicare benefits and/or for claims processed between August 12, 2007 and April 11, 2008 are unconstitutional and declaring that the New York State Department of Health must pay to licensed psychiatrists the full Medicare Part B coinsurance for those individuals for services rendered or claims processed between August 12, 2007 and April 11, 2008, and otherwise denying the motion; and (2) by deleting the provision thereof granting the cross motion for summary judgment and substituting therefor a provision granting the cross motion only to the extent that the services or claims at issue were rendered or processed prior to August 12, 2007, and otherwise denying the cross motion; and (3) by deleting the provision thereof, in effect, denying the amended petition and substituting therefor a provision granting the amended petition to the extent of directing the defendant/respondent to pay to licensed psychiatrists the full Medicare Part B coinsurance amount for those individuals pursuant to the 2006 amendment to Social Services Law § 367-a(1)(d)(iii) for services rendered or claims processed between August 12, 2007 and April 11, 2008, and otherwise denying the amended petition; affirmed the amended order as so modified; and remitted the matter to Supreme Court, Nassau County for the entry of a judgment, among other things, declaring that those portions of sections 53 and 54 of Part C of the New York State 2008 budget bill which provide that licensed psychiatrists are not entitled to be paid the full Medicare Part B coinsurance amount for services rendered to certain individuals who are eligible for both Medicaid and Medicare benefits and/or for claims processed between August 12, 2007 and April 11, 2008 are unconstitutional.

WOODS, MATTER OF v NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES:
1ST Dept. App. Div. order of 4/8/10; affirmance with dissents;
PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING TO REVIEW A DETERMINATION OF RESPONDENT NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES NOT TO PLACE PETITIONER ON A "SPECIAL ELIGIBLE LIST" PURSUANT TO MILITARY LAW §§ 243(7) AND 243(7-b) - PETITIONER SEEKING APPOINTMENT AS FIREFIGHTER; CIVIL SERVICE;
Supreme Court, New York County denied a CPLR article 78 petition and dismissed the proceeding; App. Div. affirmed.