

COURT OF APPEALS NEW FILINGS

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

**May 28 through June 3, 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.**

CONCEPCION (REYNALDO), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 1/26/10; affirmance; leave to appeal granted by Pigott, J., 5/25/10;

CRIMES - EVIDENCE - SUPPRESSION HEARING - CONSENT TO SEARCH OF VAN; APPEAL - SCOPE OF REVIEW OF INTERMEDIATE APPELLATE COURT - WHETHER, ON DEFENDANT'S APPEAL TO THE APPELLATE DIVISION, CPL 470.15(1) PERMITTED THE COURT TO DECIDE THE ISSUE OF CONSENT WHERE THE CONSENT ISSUE WAS NOT DECIDED ADVERSELY TO DEFENDANT IN THE TRIAL COURT;

Supreme Court, Kings County convicted defendant of criminal possession of a weapon in the second degree, criminal possession of a controlled substance in the third degree, and assault in the third degree, and imposed sentence; App. Div. affirmed.

LEWIE (ALICIA), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 11/5/09; modification; leave to appeal granted by Lippman, Ch.J., 5/28/10;  
CRIMES - SUFFICIENCY OF EVIDENCE - SECOND DEGREE MANSLAUGHTER AND RECKLESS ENDANGERMENT OF A CHILD - INFANT BATTERED BY DEFENDANT'S BOYFRIEND; ALLEGED VIOLATIONS OF DEFENDANT'S DUE PROCESS RIGHTS - CONTINUED QUESTIONING AFTER POLICE BECAME AWARE DEFENDANT WAS REPRESENTED BY COUNSEL IN A RELATED FAMILY COURT PROCEEDING - QUESTIONABLE CONDUCT BY JUROR;  
Warren County Court convicted defendant of two counts of manslaughter in the second degree, reckless endangerment in the first degree and endangering the welfare of a child, sentenced defendant and thereafter resentenced defendant; App. Div. modified by reversing defendant's conviction of manslaughter in the second degree under count 6 of the indictment, dismissing that count and the sentence imposed thereon, and directing that defendant's sentence on counts 7 and 8 of the indictment should run concurrently to one another.

PEREZ, PEOPLE ex rel. v HOURIHANE:

1<sup>ST</sup> Dept. App. Div. order of 2/2/10; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
HABEAS CORPUS - AVAILABILITY OF RELIEF;  
App. Div. denied application for writ of habeas corpus.

VENTURA (CARLOS), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 9/10/09; dismissal of appeal; leave to appeal granted by Lippman, Ch.J., 5/21/10;  
CRIMES - APPEAL - ABSENCE OF DEFENDANT - INVOLUNTARY DEPORTATION - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING DEFENDANT'S APPEAL ON THE GROUND THAT HE HAD BEEN DEPORTED AND WAS NO LONGER AVAILABLE TO OBEY THE MANDATE OF THE COURT WHERE DEFENDANT SERVED HIS SENTENCE, HAD BEEN PAROLED TO THE CUSTODY OF IMMIGRATION AND CUSTOMS ENFORCEMENT AND ARGUED ON APPEAL SOLELY THAT THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT HIS CONVICTION;  
App. Div. granted the People's motion to dismiss an appeal from a July 31, 2006 Supreme Court, Queens County judgment convicting defendant of knowing possession of stolen property, and dismissed the appeal on the ground that the appellant had been deported and was no longer available to obey the mandate of the court.