

COURT OF APPEALS NEW FILINGS

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

August 6 through August 12, 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.

ASHE (DWIGHT), PEOPLE v:

1ST Dept. App. Div. order of 6/10/10; reversal; leave to appeal granted by McGuire, J., 7/20/10; Rule 500.11 review pending; CRIMES - INFORMATION - JURISDICTIONAL VALIDITY OF INFORMATION CONTAINING OFFENSE GREATER THAN THAT CHARGED IN ORIGINAL FELONY COMPLAINT - PEOPLE V ZANGHI (79 NY2d 815 [1991]); Supreme Court, New York County convicted defendant, upon his guilty plea, of grand larceny in the first degree; App. Div. reversed, vacated the plea, dismissed the superior court information and remanded to Supreme Court for further proceedings on the felony complaint.

FAIR, ex rel., PEOPLE v ROCK:

3RD Dept. App. Div. order of 6/17/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; HABEAS CORPUS - AVAILABILITY OF RELIEF; SENTENCES - CONCURRENT OR CONSECUTIVE; Supreme Court, Washington County dismissed petitioner's application pursuant to CPLR article 70, without a hearing; App. Div. affirmed.

GIBSON (JEFFREY D.), PEOPLE v:

4TH Dept. App. Div. order of 6/11/10; affirmance; leave to appeal granted by Green, J., 7/30/10; CRIMES - EVIDENCE - DNA IDENTIFICATION TESTS - POLICE OFFERED DEFENDANT CIGARETTE FOR PURPOSE OF OBTAINING DNA EVIDENCE - DEFENDANT KNOWN BY POLICE TO BE REPRESENTED BY COUNSEL ON ANOTHER CHARGE; SUFFICIENCY OF EVIDENCE; ALLEGED DENIAL OF RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; ALLEGED PROSECUTORIAL MISCONDUCT ON SUMMATION; FAILURE OF TRIAL COURT TO SHOW JURY NOTES TO DEFENSE COUNSEL BEFORE RESPONDING TO THEM; Supreme Court, Erie County convicted defendant, upon a jury verdict, of robbery in the first degree; App. Div. affirmed.

PACQUETTE (DEAN), PEOPLE v:

2ND Dept. App. Div. order of 5/18/10; modification; leave to appeal granted by Graffeo, J., 8/4/10; CRIMES - SUPPRESSION HEARING - WHETHER DEFENDANT'S STATEMENTS TAKEN BY BROOKLYN HOMICIDE DETECTIVES IN THE ABSENCE OF AN ATTORNEY MUST BE SUPPRESSED WHERE AN ATTORNEY TOLD THE BROOKLYN DETECTIVES THAT HE REPRESENTED DEFENDANT ON A MANHATTAN DRUG MATTER AND INSTRUCTED THEM NOT TO QUESTION DEFENDANT ON THE HOMICIDE; DEFENDANT TOLD BROOKLYN DETECTIVES THAT HE DID NOT HAVE AN ATTORNEY IN THE MANHATTAN MATTER; Supreme Court, Kings County convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree and imposed sentence; App. Div. modified by vacating the sentence and remitted the matter to Supreme Court for resentencing.

PARISI (JOHN), PEOPLE v:

2ND Dept. App. Div. order of 4/20/10; affirmance; leave to appeal granted by Read, J., 7/27/10; Rule 500.11 review pending; CRIMES - SENTENCE - POST-RELEASE SUPERVISION (PRS) - PRS IMPOSED IN JUDGMENT OF RESENTENCE AFTER DEFENDANT SERVED PART OF HIS PRISON SENTENCE AND WHILE HE WAS STILL CONFINED - ALLEGED VIOLATION OF DOUBLE JEOPARDY AND DUE PROCESS RIGHTS; Supreme Court, Suffolk County upon defendant's convictions of rape in the first degree and sodomy in the first degree under Indictment No. 1505-01, upon a jury verdict, imposed periods of post-release supervision of five years in addition to each of the previously imposed determinate sentences of imprisonment of 25 years; and upon defendant's conviction of assault in the second

degree under Indictment No. 1051-01, upon a jury verdict, imposed a period of post-release supervision of five years in addition to the previously imposed determinate sentence of imprisonment of seven years; App. Div. affirmed.

RAYNOR, MATTER OF v LANDMARK CHRYSLER, et al.:

3RD Dept. App. Div. order of 7/1/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; WORKERS' COMPENSATION - AGGREGATE TRUST FUND - MANDATORY LUMP-SUM PAYMENT OF PRESENT VALUE OF NONSCHEDULE PERMANENT PARTIAL DISABILITY (PPD) AWARDS MADE ON OR AFTER JULY 1, 2007 - CHALLENGE TO 2007 AMENDMENT TO WORKERS' COMPENSATION LAW § 27(2) (L 2007, Ch 6, § 46) - APPLICABILITY TO AWARD MADE AFTER JULY 1, 2007 WHERE INJURIES ARE SUSTAINED BEFORE THE MARCH 31, 2007 EFFECTIVE DATE OF AMENDMENT CAPPING THE NUMBER OF WEEKS FOR WHICH A CLAIMANT CAN RECEIVE PPD BENEFITS - CONSTITUTIONAL CHALLENGES TO THE 2007 AMENDMENT BASED UPON THE TAKING, CONTRACTS, DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FEDERAL CONSTITUTION - CLAIM THAT COMPUTATION OF THE PRESENT VALUE OF A LUMP-SUM PAYMENT OF UNCAPPED PPD AWARD IS SPECULATIVE AND THEREFORE IMPROPER; App. Div. affirmed a 5/7/09 Workers' Compensation Board decision that directed the employer's workers' compensation carrier to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27(2).