

COURT OF APPEALS NEW FILINGS

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

December 10 through December 16, 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.

FUREY (SCOTT C.), PEOPLE v:

4TH Dept. App. Div. order of 10/1/10; affirmance; leave to appeal granted by Graffeo, J., 12/2/10;

JURY - SELECTION OF JURY - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CHALLENGE FOR CAUSE OF A PROSPECTIVE JUROR MARRIED TO THE CAPTAIN OF THE POLICE DEPARTMENT AND SOCIALLY ACQUAINTED WITH EIGHT POLICE OFFICERS ON THE PROSECUTION'S WITNESS LIST - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CHALLENGE FOR CAUSE OF A PROSPECTIVE JUROR WHO WAS UNABLE TO STATE UNEQUIVOCALLY THAT SHE COULD RENDER AN IMPARTIAL VERDICT;

Oswego County Court convicted defendant of kidnaping in the second degree, burglary in the second degree, menacing in the third degree, criminal mischief in the fourth degree and assault in the third degree; App. Div. affirmed.

HIGHTOWER (JOSEPH), PEOPLE v:

App. Term, 1st Dept. order of 7/19/10; affirmance; leave to appeal granted by Smith, J., 12/2/10;
CRIMES - LARCENY - SUFFICIENCY OF FACTUAL ALLEGATIONS IN ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH PETIT LARCENY (PENAL LAW § 155.05[1]) FOR SELLING A SWIPE ON AN UNLIMITED-FARE METROCARD, THUS ALLOWING THE PURCHASER TO ENTER THE SUBWAY STATION BEYOND THE TURNSTILES WITHOUT PERMISSION OR AUTHORITY TO DO SO;

Criminal Court of the City of New York, New York County convicted defendant, upon his guilty plea, of petit larceny, and imposed sentence; App. Term affirmed.

QUINTO (SANTOS), PEOPLE v:

2ND Dept. App. Div. order of 8/31/10; modification; leave to appeal granted by Ciparick, J., 11/30/10;
CRIMES - TIMELINESS OF PROSECUTION - TOLL APPLICABLE TO SEX CRIMES AGAINST CHILD LESS THAN 18 YEARS OLD (CPL 30.10[3][f]) - WHETHER COMPLAINANT "REPORTED" THE SEX CRIMES CHARGED IN THE INDICTMENT IN 2002 WHEN SHE FALSELY TOLD POLICE, INITIALLY, THAT ONE OF HER CLASSMATES RAPED HER AND, THEREAFTER, THAT SHE HAD CONSENSUAL SEX WITH THAT CLASSMATE - TOLL DURING PERIOD WHEN WHEREABOUTS OF DEFENDANT CONTINUOUSLY UNKNOWN AND UNASCERTAINABLE BY THE EXERCISE OF REASONABLE DILIGENCE (CPL 30.10[4][a][ii]) - CHALLENGE TO APPELLATE DIVISION HOLDING THAT TOLL PROVIDED BY CPL 30.10[4][a][ii] WAS INAPPLICABLE TO NON-SEX-RELATED MISDEMEANORS AND VIOLATIONS;

Supreme Court, Kings County granted defendant's motion to dismiss the indictment in its entirety as time-barred pursuant to CPL 210.20(1)(f) and 30.10(2)(b); App. Div. modified by deleting the provisions of the order granting those branches of the defendant's motion which were pursuant to CPL 210.20(1)(f), 30.10(2)(b) and 30.10(3)(f) to dismiss the charges of three counts of rape in the second degree in violation of Penal Law § 130.30(1), rape in the third degree in violation of Penal Law § 130.25(3), three counts of sexual misconduct in violation of Penal Law § 130.55, and substituting therefor provisions denying those branches of the motion; and affirmed the order as so modified.

RIGLE, MATTER OF v DAINES, et al.:

3rd Dept., App. Div. order of 11/4/10; confirmation of administrative determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PHYSICIANS AND SURGEONS - DISCIPLINARY PROCEEDINGS - REVOCATION OF LICENSE TO PRACTICE MEDICINE - CLAIMED VIOLATION OF DUE PROCESS;

App. Div. confirmed determination of respondent Administrative Review Board for Professional Medical Conduct which revoked petitioner's license to practice medicine in New York, and dismissed the CPLR article 78 petition.

STRACHMAN &c., et al. v THE PALESTINIAN AUTHORITY &c., et al.:

1ST Dept., App. Div. order of 3/30/10; affirmance; leave to appeal granted by App. Div., 12/2/10;

JURY - RIGHT TO JURY TRIAL - DECLARATORY JUDGMENT ACTION - ACTION BY JUDGMENT CREDITORS SEEKING TO ESTABLISH DEFENDANT PALESTINIAN AUTHORITY'S OWNERSHIP OF FROZEN SECURITIES AND DEBT INSTRUMENTS; Supreme Court, New York County, among other things, denied the motion of defendant Palestinian Pension Fund for the State Administrative Employees of the Gaza Strip to strike plaintiff's demand for a jury trial; App. Div. affirmed.