

COURT OF APPEALS NEW FILINGS

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

**December 9 through December 15, 2011**

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

DE LUNA (ALBERTO), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 7/7/11; affirmance; leave to appeal granted by Jones, J., 11/28/11; Rule 500.11 review pending; CRIMES - APPEAL - APPEAL WAIVER IN CONNECTION WITH GUILTY PLEA - APPELLATE DIVISION DID NOT SPECIFY WHETHER ITS AFFIRMANCE OF DEFENDANT'S CONVICTION WAS BASED ON THE VALIDITY OF THE APPEAL WAIVER OR ITS REVIEW AND REJECTION OF DEFENDANT'S EXCESSIVE SENTENCE CLAIM;

Supreme Court, New York County convicted defendant, upon his guilty plea, of attempted murder in the second degree, and sentenced him to a prison term of 15 years and 5 years of postrelease supervision; App. Div. affirmed.

GAVAZZI (JOHN), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 5/5/11; reversal; leave to appeal granted by Read, J., 11/28/11;  
CRIMES - UNLAWFUL SEARCH AND SEIZURE - SEARCH WARRANT FAILED TO IDENTIFY ISSUING COURT AND MAGISTRATE - WHETHER WARRANT "SUBSTANTIALLY COMPLIES" WITH STATUTORY REQUIREMENTS (CRIMINAL PROCEDURE LAW § 690.45); SUPPRESSION HEARING;  
Chenango County Court convicted defendant, upon his guilty plea, of the crimes of promoting a sexual performance by a child and possessing a sexual performance by a child; App. Div. reversed, granted defendant's motion to suppress evidence, and remitted the matter to County Court for further proceedings not inconsistent with the decision.

LITTLE, et al. v NEW YORK STATE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT, et al.:

Supreme Court, Albany County order of 12/5/11; dismissed the complaint; sua sponte examination whether jurisdiction lies pursuant to CPLR 5601(b)(2);  
ELECTIONS - REDISTRICTING PLAN - REAPPORTIONMENT - WHETHER PART XX OF CHAPTER 57 OF THE LAWS OF 2010, WHICH REQUIRES THAT INMATES BE COUNTED FOR REAPPORTIONMENT PURPOSES IN THEIR LAST KNOWN RESIDENCE PRIOR TO THEIR IMPRISONMENT RATHER THAN IN THE LOCATION OF THEIR ASSIGNED CORRECTIONAL FACILITY, VIOLATES THE NEW YORK STATE CONSTITUTION; SUMMARY JUDGMENT;  
Supreme Court, Albany County granted two attorneys' motions to withdraw, denied a motion for leave to file an amicus curiae memorandum of law, denied plaintiffs' motion for partial summary judgment on the first cause of action, dismissed plaintiffs' second cause of action on consent of all parties, granted in their entirety the motions of defendants and intervenors-defendants for summary judgment dismissing plaintiffs' remaining causes of action, and dismissed the complaint.

SIEGMUND STRAUSS, INC. v EAST 149<sup>TH</sup> REALTY CORP., et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/21/10; affirmance; leave to appeal granted by Court of Appeals, 11/21/11;  
APPEAL - WHETHER APPELLATE DIVISION ERRED IN HOLDING THAT DEFENDANTS' APPEAL FROM THE FINAL SUPREME COURT JUDGMENT DID NOT BRING UP FOR REVIEW PRIOR NONFINAL SUPREME COURT ORDERS; DISMISSAL OF COUNTERCLAIMS AND THIRD-PARTY CLAIMS; DENIAL OF MOTION FOR LEAVE TO AMEND THE ANSWER; POSSESSION OF REAL PROPERTY PURSUANT TO CONTRACT;  
Supreme Court, New York County declared plaintiff to be the lawful tenant of the subject premises; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v C.B.:

1<sup>ST</sup> Dept. App. Div. order of 10/25/11; affirmance; sua sponte examination whether a substantial constitutional question is

directly involved;

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MENTAL HEALTH - PROCEEDING BY STATE OF NEW YORK SEEKING AN ORDER AUTHORIZING RESPONDENT'S CIVIL MANAGEMENT PURSUANT TO MENTAL HYGIENE LAW ARTICLE 10 - CONFINEMENT OF SEX OFFENDER IN SECURE FACILITY AFTER SERVICE OF PRISON TIME - TRIAL COURT DENIED RESPONDENT'S APPLICATION FOR A PRETRIAL HEARING ON THE VOLUNTARINESS OF A CONFESSION; CLAIMED DENIAL OF DUE PROCESS; Supreme Court, Bronx County, upon a finding of mental abnormality made after a jury trial, and a determination made after a dispositional hearing that respondent is a dangerous sex offender requiring confinement, committed respondent to a secure treatment facility; App. Div. affirmed.

WATSON (TYRONE), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 3/29/11; affirmance; leave to appeal granted by Smith, J., 12/6/11;

CRIMES - AGENCY DEFENSE IN NARCOTICS PROSECUTION - WHETHER "AGENT OF THE BUYER" DEFENSE IS AVAILABLE TO A DEFENDANT CHARGED WITH CRIMINAL FACILITATION FOR ACTING AS INTERMEDIARY BETWEEN DRUG BUYER AND DRUG SELLER;

Supreme Court, Queens County, after a nonjury trial, convicted defendant of criminal facilitation in the fourth degree and criminal possession of a controlled substance in the seventh degree, and imposed sentence; App. Div. affirmed.