

COURT OF APPEALS NEW FILINGS

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

May 18, 2012 through May 24, 2012

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.

BLANKYMSEE (LAWRENCE), PEOPLE v:

2ND Dept. App. Div. order of 2/21/12; affirmance; leave to appeal granted by Graffeo, J., 4/4/12; Rule 500.11 review pending; CRIMES - SENTENCE - RESENTENCE - POSTRELEASE SUPERVISION (PRS) - WHETHER THE ADDITION OF A TERM OF PRS TO DEFENDANT'S SENTENCE AFTER HE FINISHED SERVING THE DETERMINATE SENTENCE FOR WHICH PRS WAS BEING IMPOSED, BUT BEFORE HE FINISHED SERVING HIS TWO CONCURRENT INDETERMINATE SENTENCES, VIOLATED THE PROHIBITION AGAINST DOUBLE JEOPARDY AND DEFENDANT'S DUE PROCESS RIGHTS; Supreme Court, Queens County, resentence which, upon defendant's conviction of two counts of criminal possession of a weapon in the third degree, upon a jury verdict, imposed periods of postrelease supervision in addition to the determinate terms of imprisonment previously imposed; App. Div. affirmed.

CANGRO v SOLOMON:

1ST Dept. App. Div. order of 10/25/11; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved or whether any other jurisdictional basis exists to support an appeal as of right; APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PLAINTIFF'S MOTION FOR AN ORDER VACATING ONE OF THAT COURT'S PRIOR ORDERS AND RESTORING AN APPEAL TO THE COURT'S CALENDAR UPON AN APPENDIX THAT PLAINTIFF PREVIOUSLY FILED OR ENLARGING THE TIME IN WHICH PLAINTIFF COULD RE-PERFECT THE APPEAL; App. Div. denied plaintiff's motion for an order (1) vacating that court's July 21, 2011 order, which had stricken from the Court's September 2011 Term plaintiff's perfected appeal from a July 28, 2010 Supreme Court order, with leave to re-perfect the appeal for the court's December 2011 Term upon the filing of a new appendix, and (2) restoring the appeal to the court's calendar upon the appendix previously filed or enlarging the time in which to re-perfect the appeal beyond the court's December 2011 Term.

LEWIS v CAPUTO:

1ST Dept. App. Div. order of 4/10/12; affirmance with dissents; Rule 500.11 review pending; TORTS - FALSE ARREST - PROBABLE CAUSE - WHETHER THE EVIDENCE, VIEWED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, ESTABLISHED AS A MATTER OF LAW THE AFFIRMATIVE DEFENSE OF PROBABLE CAUSE TO ARREST; Supreme Court, New York County, after a jury trial, awarded plaintiff the principal sum of \$50,000 as against defendant Caputo; App. Div. affirmed.

OATHOUT (CHRISTOPHER), PEOPLE v:

3RD Dept. App. Div. order of 12/29/11; affirmance; leave to appeal granted by Pigott, J., 5/18/12; CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - PEOPLE'S MOTION FOR TRIAL COURT TO INQUIRE INTO DEFENSE COUNSEL'S COMPETENCE; CLAIMED IMPROPER ADMISSION OF EVIDENCE OF PRIOR UNCHARGED CRIMES; Albany County Court, upon a jury verdict, convicted defendant of murder in the second degree; App. Div. affirmed.

RAMKUMAR v GRAND STYLE TRANSPORTATION ENTERPRISES, INC.:

1ST Dept. App. Div. order of 4/10/12; affirmance with dissents; Rule 500.11 review pending; INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - CESSATION OF TREATMENT - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT SUMMARY JUDGMENT DISMISSING THE COMPLAINT WAS APPROPRIATE BECAUSE "A BARE ASSERTION THAT INSURANCE COVERAGE FOR MEDICALLY REQUIRED TREATMENT WAS EXHAUSTED IS UNAVAILING WITHOUT ANY DOCUMENTARY EVIDENCE OF SUCH OR, AT LEAST, AN INDICATION AS TO WHETHER AN INJURED CLAIMANT CAN AFFORD TO PAY FOR THE TREATMENT OUT OF HIS OR HER OWN FUNDS";

Supreme Court, Bronx County granted defendants' cross motions for summary judgment dismissing the complaint; App. Div. affirmed.