

COURT OF APPEALS NEW FILINGS

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

August 10, 2012 through August 16, 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.

DIAZ (RICHARD), PEOPLE v:

1ST Dept. App. Div. order of 2/2/12; affirmance; leave to appeal granted by Lippman, Ch. J., 7/20/12;

CRIMES - PLEA OF GUILTY - WHETHER THE TRIAL COURT FAILED TO SUFFICIENTLY INFORM DEFENDANT OF THE DEPORTATION CONSEQUENCES OF HIS GUILTY PLEA AND, IF SO, WHETHER DEFENDANT DID NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTER INTO THE PLEA;

Supreme Court, New York County convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the third degree, and sentenced him to a term of 2 1/2 years; App. Div. affirmed.

COMMISSIONER OF SOCIAL SERVICES, MATTER OF, o/b/o ELIZABETH S. v JULIO J.:

1ST Dept. App. Div. order of 4/24/12; reversal with dissents; leave to appeal granted by App. Div., 7/31/12; Rule 500.11 review pending;

CHILDREN BORN OUT OF WEDLOCK - PATERNITY PROCEEDING - EQUITABLE ESTOPPEL - ABSENCE OF PARENT-CHILD RELATIONSHIP - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT PETITIONER FAILED TO ESTABLISH BY EVIDENCE THAT WAS CLEAR, CONVINCING AND ENTIRELY SATISFACTORY, THAT RESPONDENT ACTED AS THE CHILD'S FATHER TO SUCH AN EXTENT AS TO GIVE RISE TO EQUITABLE ESTOPPEL BARRING HIM FROM DENYING PATERNITY AND RENDERING A BIOLOGICAL PATERNITY TEST INAPPROPRIATE;

Family Court, New York County declared respondent to be the father of the subject child; App. Div. reversed and remanded the matter for further proceedings to include the performance of a biological paternity test.

EMPIRE STATE CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, INC., et al. v SMITH, &c., et al.:

4TH Dept. App. Div. order of 7/6/12; modification with dissents; MUNICIPAL CORPORATIONS - HOME RULE POWERS - CONSTITUTIONAL CHALLENGE TO 2008 AMENDMENTS TO WICKS LAW - AMENDMENTS TO MONETARY THRESHOLD AMOUNTS FOR PUBLIC WORKS PROJECTS - WHETHER THE THREE-TIERED MONETARY THRESHOLD ESTABLISHED BY THE 2008 AMENDMENTS WAS ENACTED IN VIOLATION OF THE HOME RULE PROVISIONS OF THE NEW YORK STATE CONSTITUTION - WHETHER THE APPRENTICESHIP REQUIREMENTS IN LABOR LAW § 222 VIOLATE THE PRIVILEGES AND IMMUNITIES CLAUSE AND "DORMANT" COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION, AND THE EQUAL PROTECTION CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS;

Supreme Court, Erie County granted defendants' motion to dismiss the complaint; App. Div. modified by denying defendants' motion to the extent that it sought dismissal of the complaint, reinstating the complaint insofar as declaratory relief was sought, and granting judgment in favor of defendants as follows: "It is ADJUDGED AND DECLARED that the 2008 amendments to the Wicks Law are valid and constitutional," and affirmed the judgment as so modified.

THOMAS (MICHAEL), a/k/a ADAMS (NEIL), PEOPLE v.:

2ND Dept. App. Div. order of 11/15/11; affirmance; leave to appeal granted by Smith, J., 8/7/12;

CRIMES - PLEA OF GUILTY - WHETHER DEFENDANT DID NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTER INTO HIS GUILTY PLEA WHERE THE TRIAL COURT FAILED TO INFORM HIM OF THE POSSIBLE IMMIGRATION CONSEQUENCES OF THE PLEA; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE REPRESENTATION OF COUNSEL BASED UPON COUNSEL'S FAILURE TO INFORM DEFENDANT OF THE DEPORTATION CONSEQUENCES OF HIS GUILTY PLEA; Supreme Court, Queens County convicted defendant of criminal sale of a controlled substance in the third degree, upon his guilty

TORRES (VINCENT), PEOPLE v:

4TH Dept. App. Div. orders of 7/6/12; dismissal and reversal with dissents; vacatur of resentence; leave to appeal granted by Scudder, J., 8/3/12; Rule 500.11 review pending;

CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT CLOSED THE COURTROOM TO DEFENDANTS'S WIFE AT THE START OF JURY SELECTION ON THE GROUND THAT THERE "WASN'T ANY ROOM" IN THE COURTROOM FOR HER - PRESERVATION - DURATION OF CLOSURE - WHETHER A TRIVIALITY EXCEPTION TO THE PER SE RULE OF REVERSAL EXISTS AND APPLIES IN THIS CASE;

Onondaga County Court convicted defendant, upon a jury verdict, of burglary in the second degree, attempted sodomy in the first degree, two counts of sodomy in the first degree, and sexual abuse in the first degree; the same court resentenced defendant upon his conviction of burglary in the second degree; App. Div. dismissed the appeal from the judgment insofar as it imposed sentence on the conviction of burglary in the second degree, reversed the judgment and granted a new trial on counts two through five and seven of the superseding indictment, and, in a separate order, vacated the resentence.

VERIZON NEW ENGLAND, INC. v TRANSCOM ENHANCED SERVICES, INC.:

1ST Dept. App. Div. order of 6/28/12; affirmance with dissents;

JUDGMENTS - ENFORCEMENT - RESTRAINING NOTICE - PAYMENTS TO JUDGMENT DEBTOR PURSUANT TO PRE-EXISTING CONTRACT AFTER RECEIPT OF RESTRAINING NOTICE - WHETHER PAYMENTS CONSTITUTED A "DEBT" OWING TO THE JUDGMENT DEBTOR OR WHETHER JUDGMENT DEBTOR HAD RIGHTS UNDER THE CONTRACT THAT CONSTITUTED "PROPERTY" WITHIN THE MEANING OF CPLR 5222(b);

Supreme Court, New York County, among other things, dismissed a petition in a CPLR article 52 turnover proceeding; App. Div. affirmed.