

COURT OF APPEALS NEW FILINGS

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

**October 19, 2012 through October 25, 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.**

G & C TRANSPORTATION, INC., MATTER OF v McGRANE, et al.:

2<sup>ND</sup> Dept. App. Div. order of 7/25/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78  
PROCEEDING TO REVIEW DETERMINATION OF CITY COUNCIL OF CITY OF NEWBURGH ADOPTING CITY OF NEWBURGH ORDINANCE NO. 3-2008 REGULATING TAXICABS; ACTION FOR JUDGMENT DECLARING ORDINANCE NO. 3-2008 OF CHAPTER 272 OF THE CITY OF NEWBURGH CODE OF ORDINANCES UNCONSTITUTIONAL;  
Supreme Court, Orange County denied petitioners/plaintiffs' motion for summary judgment, granted respondents/defendants' cross motion for summary judgment, and declared that Chapter 272 of the City of Newburgh Code of Ordinances, as amended by City of Newburgh Ordinance No. 11-2010, is valid, constitutional and enforceable; App. Div. affirmed.

RODRIGUEZ (JOSE), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/27/12; affirmance; leave to appeal granted by Ciparick, J., 10/4/12; Rule 500.11 review pending; CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER, UPON VACATING DEFENDANT'S ORIGINAL SENTENCE, SUPREME COURT HAD THE AUTHORITY TO RUN HIS NEW DETERMINATE PRISON TERMS CONCURRENTLY, DESPITE THAT ONE OF THE THREE ORIGINAL PRISON TERMS WAS TO RUN CONSECUTIVELY TO THE FIRST TWO; Supreme Court, Kings County resentenced defendant to, among other things, three determinate terms of imprisonment of 15 years upon his convictions of three counts of criminal sale of a controlled substance in the first degree, with two of those terms of imprisonment to run concurrently with each other and the third term of imprisonment to run consecutively to the first two; App. Div. affirmed.

SANTIAGO, JR. (CARLOS), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 6/8/12; modification; leave to appeal granted by Pigott, J., 10/3/12; CRIMES - SENTENCE - SECOND FELONY OFFENDER - USE OF OUT-OF-STATE CONVICTION AS A PREDICATE FELONY - DEFENDANT CONVICTED WHEN HE WAS 15 YEARS OLD OF MURDER IN THE THIRD DEGREE UNDER PENNSYLVANIA STATUTE; Monroe County Court convicted defendant, upon a jury verdict, of two counts of sexual abuse in the first degree and unlawful imprisonment in the second degree; App. Div. modified by reversing that part convicting defendant of sexual abuse in the first degree under the fourth count of the indictment and dismissing that count of the indictment.

TYRELL (CAVELL CRAIG), PEOPLE v (APPEAL NO. 1):

App. Term, 1<sup>ST</sup> Dept. order of 7/16/12; affirmance; leave to appeal granted by Graffeo, J., 10/4/12; CRIMES - PLEA OF GUILTY - WHETHER DEFENDANT WAS REQUIRED TO PRESERVE FOR APPELLATE REVIEW HIS CHALLENGE TO THE GUILTY PLEA - WHETHER PLEA COURT ERRED IN ACCEPTING DEFENDANT'S GUILTY PLEA TO A MISDEMEANOR CHARGE IN THE ABSENCE OF A FACTUAL ALLOCUTION BY OR OTHER COLLOQUY WITH THE DEFENDANT - WHETHER PLEA WAS KNOWING, INTELLIGENT AND VOLUNTARY ABSENT A FACTUAL ALLOCUTION AND WHERE DEFENDANT WAS NEVER ADVISED OF HIS CONSTITUTIONAL RIGHTS BEFORE HIS COUNSEL INFORMED THE COURT THAT DEFENDANT HAD AUTHORIZED HIM TO ENTER A GUILTY PLEA TO CRIMINAL POSSESSION OF MARIJUANA IN THE FIFTH DEGREE;

Criminal Court of the City of New York, New York County convicted defendant, upon his guilty plea, of criminal possession of marijuana in the fifth degree; App. Term affirmed.

TYRELL (CAVELL CRAIG), PEOPLE v (APPEAL NO. 2):

App. Term, 1<sup>st</sup> Dept. order of 7/16/12; affirmance; leave to appeal granted by Graffeo, J., 10/4/12;

CRIMES - PLEA OF GUILTY - WHETHER DEFENDANT WAS REQUIRED TO PRESERVE FOR APPELLATE REVIEW HIS CHALLENGE TO THE GUILTY PLEA - WHETHER THE GUILTY PLEA WAS VOLUNTARY, KNOWING AND INTELLIGENT WHERE DEFENDANT ALLEGEDLY WAS NEVER INFORMED OF HIS

CONSTITUTIONAL RIGHTS BEFORE THE COURT ACCEPTED THE GUILTY PLEA; Criminal Court of the City of New York, New York County convicted defendant, upon his guilty plea, of criminal sale of marijuana in the fourth degree, and imposed sentence; App. Term affirmed.