

COURT OF APPEALS NEW FILINGS

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

January 4, 2013 through January 10, 2013

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.

BELL (EARL, JR.), PEOPLE v:

2ND Dept. App. Div. order of 3/15/11; affirmance; leave to appeal granted by Smith, J., 11/26/12; Rule 500.11 review pending;
CRIMES - MURDER - DEPRAVED INDIFFERENCE MURDER - WHETHER THE TRIAL COURT ERRED IN SUBMITTING TO THE JURY COUNTS OF INTENTIONAL MURDER AND DEPRAVED INDIFFERENCE MURDER - KIDNAPPING - MERGER DOCTRINE;

Orange County Court convicted defendant, upon a jury verdict, of murder in the second degree (depraved indifference murder), murder in the second degree (felony murder), kidnapping in the first degree and tampering with physical evidence, and imposed sentence; App. Div. affirmed.

CINTRON (ANGEL), PEOPLE v:

1ST Dept. App. Div. order of 10/4/12; dismissal; leave to appeal granted by Graffeo, J., 12/21/22; Rule 500.11 review pending; CRIMES - SENTENCE - POSTRELEASE SUPERVISION (PRS) - WHETHER REINSTATMENT OF A RESENTENCING COURT'S IMPOSITION OF PRS IS PRECLUDED WHERE, ALTHOUGH DEFENDANT WAS STILL SERVING HIS ORIGINAL SENTENCE AT THE TIME OF RESENTENCING, HE HAD COMPLETED SERVING THE SENTENCE BY THE TIME THE APPELLATE DIVISION FOUND THAT THE RESENTENCE HAD BEEN VACATED IN ERROR; DISMISSAL OF APPEAL AS ACADEMIC; DOUBLE JEOPARDY;

Supreme Court, Bronx County, in an order amended 5/28/10, granted defendant's CPL 440.20 motion to set aside a resentence to the extent that the resentence imposed a period of PRS; and, in an order entered 6/8/10, vacated the determinate sentence imposed on 6/18/08, and resentenced defendant, as a second felony offender, to a determinate term of ten years on his conviction of robbery in the first degree, without any period of PRS; App. Div. dismissed defendant's appeal from the Supreme Court order amended on 5/28/10, as academic.

COLLIER (ANDRE), PEOPLE v:

3RD Dept. App. Div. orders of 1/5/12 and 12/2/10; affirmance and modification; leave to appeal granted by Smith, J., 9/18/12; CRIMES - PLEA OF GUILTY - RESENTENCE TO CONCURRENT TERMS - FIVE YEAR TERM OF ORIGINAL CONSECUTIVE SENTENCE FOUND TO BE ILLEGALLY SHORT - RESENTENCE TO CONCURRENT TERMS RESULTED IN OVERALL SHORTER TERM THAN ORIGINAL SENTENCE - WHETHER DEFENDANT SHOULD NEVERTHELESS BE ALLOWED TO WITHDRAW HIS PLEA BASED ON THE FACT THAT THE FIVE YEAR TERM OF THE SENTENCE WAS REPLACED BY A 10 YEAR TERM, EVEN WHERE OVERALL SENTENCE WAS SHORTER;

Albany County Court, without a hearing, denied defendant's motion pursuant to CPL 440.10 and 440.20 to vacate the judgment convicting him of two counts of robbery in the first degree and to set aside the sentence; App. Div. modified by vacating defendant's sentence, and remitted the matter to County Court for further proceedings not inconsistent with its decision; County Court resentenced defendant to concurrent terms of 10 and 25 years; App. Div. affirmed.

FINCH (NATURE G.), PEOPLE v:

Onondaga County Court order of 8/23/12; modification; leave to appeal granted by Pigott, J., 12/13/12;

CRIMES - RESISTING ARREST - WHETHER "AUTHORIZED ARREST" ELEMENT OF CRIMINAL CHARGE OF RESISTING ARREST UNDER PENAL LAW § 205.30 CAN BE ESTABLISHED BY CRIMINAL TRESPASS CHARGE FOUND NOT TO BE SUPPORTED BY SUFFICIENT EVIDENCE AS A MATTER OF LAW;

Syracuse City Court convicted defendant, after a jury trial, of two counts of criminal trespass in the third degree and resisting arrest, and sentenced him to two consecutive 90-day terms for the criminal trespass convictions and a one-year consecutive term for

the resisting arrest conviction; Onondaga County Court modified by reversing and vacating the convictions for two counts of criminal trespass in the third degree and dismissing the accusatory instruments, and affirmed the conviction for resisting arrest.

GURVEY (ADMITTED AS WEISSBROD), AN ATTORNEY, MATTER OF:

1ST Dept. App. Div. order of 12/4/12; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - SUSPENSION FROM PRACTICE OF LAW - CLAIMED LACK OF JURISDICTION OF APPELLATE DIVISION, FIRST DEPARTMENT, OVER RESPONDENT; CLAIMED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS;
App. Div. granted petitioner Departmental Disciplinary Committee's motion recommending suspension of respondent from the practice of law for a period of one year to the extent of suspending respondent for a period of six months.

JIMENEZ (JOSEFINA), PEOPLE v:

1ST Dept. App. Div. order of 9/25/12; affirmance; leave to appeal granted by Lippman, Ch. J., 12/28/12;
CRIMES - UNLAWFUL SEARCH AND SEIZURE - WARRANTLESS SEARCH OF DEFENDANT'S SHOULDER BAG AFTER IT HAD BEEN REMOVED FROM HER SHOULDER AND AFTER SHE HAD BEEN HANDCUFFED AND FRISKED; WHETHER SEARCH OF BAG WAS LAWFUL AS INCIDENT TO A LAWFUL ARREST;
SUPPRESSION MOTION;
Supreme Court, Bronx County convicted defendant, after a jury trial, of criminal possession of a weapon in the second degree and criminal trespass in the first degree, and sentenced her to an aggregate term of 3 1/2 years; App. Div. affirmed.

SMITH (TORREL), PEOPLE v:

2ND Dept. App. Div. order of 5/15/12; affirmance; leave to appeal granted by Lippman, Ch. J., 12/28/12;
CRIMES - IDENTIFICATION OF DEFENDANT - IMPROPER BOLSTERING OF IDENTIFICATION EVIDENCE - WHETHER TRIAL COURT ERRED BY ALLOWING POLICE OFFICERS TO RECOUNT AT TRIAL DESCRIPTION OF PERPETRATOR THAT COMPLAINANT PROVIDED IMMEDIATELY AFTER ROBBERY - WHETHER TO EXTEND PEOPLE v HUERTAS (75 NY2d 487 [1990]), WHICH ALLOWED SUCH TESTIMONY FROM A VICTIM, TO TESTIMONY ELICITED FROM POLICE OFFICERS;
Supreme Court, Westchester County convicted defendant, upon a jury verdict, of robbery in the first degree, and imposed sentence; App. Div. affirmed.