

COURT OF APPEALS NEW FILINGS

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

April 5, 2013 through April 11, 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.

ABNER (JESSE), PEOPLE v:

4TH Dept. App. Div. order of 12/21/12; affirmance; leave to appeal granted by Court of Appeals, 3/26/13;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - SEX OFFENDER REGISTRATION PROCEEDING - FAILURE TO ARGUE THAT SEX OFFENDER REGISTRATION ACT (SORA) WAS INAPPLICABLE TO SEX CRIME AS TO WHICH DEFENDANT'S SENTENCE EXPIRED FIVE YEARS BEFORE THE ENACTMENT OF SORA;

Erie County Court determined that defendant is a level three risk pursuant to SORA; App. Div. affirmed.

BEATY (KATISHA), PEOPLE v:

4TH Dept. App. Div. order of 6/8/12; affirmance and grant of motion; leave to appeal granted by Smith, J., 3/5/13; Rule 500.11 review pending;

CRIMES - SENTENCE - POST-RELEASE SUPERVISION (PRS) - TRIAL COURT'S ALLEGED FAILURE TO ADVISE DEFENDANT REGARDING PRS; ALLEGED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR NOT RAISING ISSUE OF WHETHER PENAL LAW § 70.85 CAN BE APPLIED TO UPHOLD A GUILTY PLEA THAT IS INVALID FOR FAILURE TO ADVISE DEFENDANT OF PRS REQUIREMENTS (PEOPLE v CATU 4 NY3d 242); ANDERS BRIEF;

Erie County Court convicted defendant of manslaughter in the first degree and sentenced her to a determinate term of 23 years; thereafter, the same court resentenced defendant to 23 year without PRS; App. Div. affirmed the sentence and granted defense counsel's motion to be relieved as assigned counsel.

BHUGRA v MASSACHUSETTS CASUALTY INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 2/7/13; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - APPELLATE DIVISION - MOTION TO STRIKE AND FOR ENLARGEMENT OF TIME AT APPELLATE DIVISION;

App. Div., in an appeal from a 10/25/11 order of Supreme Court, New York County, granted appellant's motion to strike the App. Div. Clerk's designation of the appeal as non-enumerated, to strike respondents' brief, and for an enlargement of time to file appellant's reply brief only to the extent of adjourning the perfected appeal to the March 2013 Term, and otherwise denied the motion.

GONZALEZ (VICTOR), PEOPLE v:

1ST Dept. App. Div. order of 1/10/11; affirmance; leave to appeal granted by Lippman, Ch. J., 3/29/13;

CRIMES - INSTRUCTIONS - WHETHER DEFENDANT'S REQUEST FOR AN EXTREME EMOTIONAL DISTURBANCE CHARGE BASED ENTIRELY ON PROOF OFFERED BY THE PEOPLE IN THEIR DIRECT CASE, IS PROPERLY DEEMED CPL 250.10(2) NOTICE OF THE DEFENDANT'S INTENT TO PRESENT PSYCHIATRIC EVIDENCE, ENTITLING THE PEOPLE TO REOPEN THEIR CASE AND PRESENT PSYCHIATRIC EVIDENCE; WHETHER TRIAL COURT VIOLATED DEFENDANT'S FIFTH AMENDMENT RIGHTS BY CONDITIONING A JURY INSTRUCTION TO WHICH HE WAS ENTITLED ON A WAIVER OF HIS RIGHT TO REMAIN SILENT;

Supreme Court, Bronx County convicted defendant, upon a jury verdict, of murder in the second degree, and sentenced him to a term of 25 years to life; App. Div. affirmed.

ODDONE (ANTHONY), PEOPLE v:

2ND Dept. App. Div. order of 11/9/11; modification; leave to appeal granted by Pigott, J., 3/29/13;
CRIMES - WITNESSES - EXPERT WITNESS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT COUNTY COURT PROPERLY DENIED, WITHOUT A FRYE HEARING, THE DEFENDANT'S APPLICATION TO STRIKE THE TESTIMONY OF THE PEOPLE'S FORENSIC PATHOLOGIST REGARDING THE CAUSE OF THE VICTIM'S DEATH - DENIAL OF DEFENDANT'S REQUEST TO PRESENT EXPERT TESTIMONY FROM PSYCHOLOGIST ABOUT ACCURACY OF EYEWITNESS ESTIMATIONS OF DURATION OF EVENTS; EVIDENCE - PRIOR STATEMENT NOT ALLOWED TO REFRESH WITNESS'S RECOLLECTION - CONSTITUTIONAL CHALLENGE TO CPL 60.35; SUFFICIENCY OF THE EVIDENCE; ALLEGED JUROR BIAS; PROSECUTORIAL MISCONDUCT IN SUMMATION; INTOXICATION - WHETHER COUNTY COURT ERRED IN REFUSING TO GIVE AN INTOXICATION CHARGE TO THE JURY - PENAL LAW § 15.25; Suffolk County Court convicted defendant, upon a jury verdict, of manslaughter in the first degree, and sentenced him to a determinate term of 22 years of imprisonment with five years of postrelease supervision; App. Div. modified by reducing the sentence imposed on the conviction of manslaughter in the first degree from a determinate term of 22 years of imprisonment with five years of postrelease supervision to a determinate term of 17 years of imprisonment with five years postrelease supervision, and affirmed the judgment as so modified.

SIBBLIES (MARSHA), PEOPLE v:

1ST Dept. App. Div. order of 8/28/12; affirmance; leave to appeal granted by Smith, J., 3/28/13;
CRIMES - RIGHT TO SPEEDY TRIAL - PEOPLE FILED AN OFF-CALENDAR STATEMENT OF READINESS AND SUBSEQUENTLY APPEARED IN COURT TO EXPLAIN THEY WERE NOT READY FOR TRIAL BECAUSE THEY HAD NOT YET RECEIVED MEDICAL RECORDS - WHETHER PEOPLE'S ORIGINAL STATEMENT OF READINESS WAS ILLUSORY AND WHETHER DENIAL OF DEFENDANT'S CPL 30.30 MOTION TO DISMISS VIOLATED HER RIGHT TO A SPEEDY TRIAL; Supreme Court, Bronx County convicted defendant, after a jury trial, of obstructing governmental administration in the second degree and resisting arrest, and sentenced her to a conditional discharge for a period of one year; App. Div. affirmed.

TEAGUE (EAMON), MATTER OF, &c.:

1ST Dept. App. Div. order of 2/6/13; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - APPELLATE DIVISION ORDER DENYING MOTION TO, AMONG OTHER THINGS, PRECLUDE DEPARTMENTAL DISCIPLINARY COMMITTEE FROM OFFERING ANY EVIDENCE AT HEARING, INCLUDING SUPPRESSION OF TRANSCRIPT OF EXAMINATION UNDER

OATH;

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App. Div. denied attorney's motion for, among other things, an order precluding the Departmental Disciplinary Committee from offering any evidence at a hearing scheduled to commence January 16, 2013, including suppression of the transcript of an examination under oath.