

COURT OF APPEALS NEW FILINGS

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

**November 22, 2013 through November 28, 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.**

ANDREWS (CHURCHILL), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/24/13; denial of application; leave to appeal granted by Rivera, J., 11/6/13;  
CRIMES - APPEAL - DENIAL OF APPLICATION FOR A WRIT OF ERROR CORAM NOBIS SEEKING TO FILE A LATE NOTICE OF APPEAL FROM A JUDGMENT OF CONVICTION - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL;  
App. Div. denied defendant's application for a writ of error coram nobis seeking to file a late notice of appeal from a 9/3/08 judgment of Supreme Court, Kings County.

GAMMONS v CITY OF NEW YORK, et al.:

2<sup>ND</sup> Dept. App. Div. order of 7/17/13; affirmance; leave to appeal granted by App. Div., 11/12/13;

NEGLIGENCE - INJURIES TO POLICE OFFICERS - WHETHER LABOR LAW § 27-a(3)(a)(1) CONSTITUTES A SUFFICIENT STATUTORY PREDICATE FOR A POLICE OFFICER'S CAUSE OF ACTION TO RECOVER DAMAGES PURSUANT TO GENERAL MUNICIPAL LAW § 205-e EVEN THOUGH LABOR LAW § 27-a DOES NOT PROVIDE FOR A PRIVATE RIGHT OF ACTION;

Supreme Court, Kings County, among other things, denied that branch of defendants' motion which was for summary judgment dismissing the cause of action to recover damages based upon a violation of General Municipal Law § 205-e, and granted that branch of defendants' motion which was for summary judgment dismissing the cause of action to recover damages for common law negligence; App. Div. affirmed.

JONES (CLIFFORD), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 8/6/13; affirmance with dissents; leave to appeal granted by Freedman, J., 11/7/13;

CRIMES - VACATUR OF JUDGMENT OF CONVICTION - PRESENCE OF HAIRS OTHER THAN DEFENDANT'S ON HAT WORN BY PERPETRATOR - WHETHER RESULTS OF DNA TESTING ON THREE OUT OF 18 HAIRS FOUND ON HAT WORN BY PERPETRATOR AND ON FINGERNAIL SCRAPINGS FROM MURDER VICTIM WARRANTED VACATUR OF THE JUDGMENT OF CONVICTION - WHETHER DEFENDANT WAS ENTITLED TO A HEARING ON HIS CPL 440.10 MOTION; Supreme Court, New York County, denied defendant's CPL 440.10 motion to vacate the 7/6/81 judgment of conviction; App. Div. affirmed.

NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION v SEARS:

Supreme Court order of 7/29/13; denial of motion; sua sponte examination whether the order finally determines the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right, and whether a direct appeal lies to this Court from the Supreme Court order;

APPEAL - CHALLENGE TO SUPREME COURT ORDER DENYING DEFENDANT'S MOTION TO VACATE A DEFAULT JUDGMENT;

Supreme Court, Albany County, denied defendant's motion to vacate a default judgment entered in 1992.

SEPE (ROBERT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 9/25/13; modification; sua sponte examination whether the App. Div. order of modification "was on the law alone or upon the law and such facts which, but for the determination of law, would not have led to...modification" (CPL 450.90[2][a]);

CRIMES - MURDER - EXTREME EMOTIONAL DISTURBANCE - WHETHER THE JURY'S FAILURE TO ACCEPT DEFENDANT'S DEFENSE OF EXTREME EMOTIONAL DISTURBANCE WAS AGAINST THE WEIGHT OF THE EVIDENCE;

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County Court, Westchester County, convicted defendant, upon a

jury verdict, of murder in the second degree and imposed sentence; App. Div. modified by reducing defendant's conviction of murder in the second degree to manslaughter in the first degree, and vacating the sentence imposed thereon; and remitted the matter to County Court for resentencing.

THOMAS, MATTER OF v DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION:

3<sup>RD</sup> Dept. App. Div. order of 10/31/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PRISONS AND PRISONERS - CALCULATION OF SENTENCE - WHETHER PETITIONER IS ENTITLED TO A REDUCTION OF HIS AGGREGATE SENTENCE PURSUANT TO PENAL LAW FORMER § 70.30(1)(c)(i); Supreme Court, Greene County, dismissed petitioner's application, in a CPLR article 78 proceeding, to review a determination of respondent Department of Corrections and Community Supervision computing petitioner's prison sentence; App. Div. affirmed.

WORKING FAMILIES PARTY, MATTER OF v FISHER, et al.:

2<sup>ND</sup> Dept. App. Div. judgment of 8/7/13; dismissal of proceeding; leave to appeal granted by Court of Appeals, 11/19/13; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER THE APPELLATE DIVISION PROPERLY HELD THAT PROHIBITION DID NOT LIE AND WHETHER RESPONDENT FISHER, DEPUTY CHIEF ADMINISTRATIVE JUDGE FOR NEW YORK CITY COURTS, ACTED IN EXCESS OF HER JURISDICTION BY GRANTING THE APPLICATION OF RESPONDENT DISTRICT ATTORNEY OF RICHMOND COUNTY FOR DISQUALIFICATION, AND APPOINTING RESPONDENT ADLER AS SPECIAL DISTRICT ATTORNEY; App. Div. denied the petition in the CPLR article 78 proceeding in the nature of prohibition, among other things, to prohibit the enforcement of an order dated 1/12/12, issued by respondent Fisher which, among other things, appointed a Special District Attorney pursuant to County Law § 701 to investigate and prosecute possible violations in connection with a 2009 New York City Council election, and dismissed the proceeding.

XIANG LI v MORRISVILLE STATE COLLEGE, et al.:

3<sup>RD</sup> Dept. App. Div. order of 5/23/13; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; APPEAL - APPELLATE DIVISION - MOTION FOR POOR PERSON RELIEF; App. Div. denied appellant's motion for permission to proceed as a poor person.

YOONESSI, MATTER OF v KING:

3<sup>RD</sup> Dept. App. Div. order of 10/4/13; denial of motion; 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;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION AND FOR FURTHER RELIEF; App. Div. denied appellant's motion for reconsideration and for

further relief.

YOONESSI, MATTER OF v TISCH, et al.:

3<sup>RD</sup> Dept. App. Div. order of 10/4/13; 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;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION AND FOR FURTHER RELIEF; App. Div. denied appellant's motion for reconsideration and for further relief.