

COURT OF APPEALS NEW FILINGS

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

**March 7, 2014 through March 13, 2014**

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.**

BASILE (CURTIS), PEOPLE v:  
App. Term, 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Judicial Districts, order of 4/22/13; affirmance; leave to appeal granted by Lippman, Ch. J., 2/25/14; CRIMES - CRUELTY TO ANIMALS - MENS REA - WHETHER THE PEOPLE ARE REQUIRED TO PROVE THAT A DEFENDANT HAS A CULPABLE MENTAL STATE TO SUPPORT A CONVICTION FOR FAILING TO PROVIDE AN ANIMAL WITH NECESSARY SUSTENANCE IN VIOLATION OF AGRICULTURE AND MARKETS LAW § 353 - DEFENDANT FINANCIALLY UNABLE TO PROVIDE FOR HIS DOG; Criminal Court of the City of New York, Queens County, convicted defendant, upon a jury verdict, of failing to provide proper sustenance to an animal under Agriculture and Markets Law § 353; App. Term affirmed.

GOLDSTEIN, MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.:

3<sup>RD</sup> Dept. App. Div. judgment of 11/7/13; confirmation; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; TAXATION - PERSONAL INCOME TAX - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE TAX APPEALS TRIBUNAL DETERMINATION THAT PETITIONER TRUST BENEFICIARIES, WHO WERE OWED A REFUND FOR TAX YEAR 1994, WERE NOT ENTITLED TO INTEREST ON THE REFUND FROM THE DATE THE ORIGINAL 1994 RETURN WAS FILED, BUT ONLY FROM THE DATE THE AMENDED RETURN WAS FILED; CLAIMED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS RELATED TO INTEREST CALCULATIONS AND TREATMENT OF OVERPAYMENTS AND UNDERPAYMENTS IN VARIOUS TAX YEARS; App. Div. confirmed determination of respondent Tax Appeals Tribunal which denied petitioners' request for a refund of personal income tax imposed under Tax Law article 22, and dismissed the CPLR article 78 petition.

PINES, et al. v STATE OF NEW YORK:

2<sup>ND</sup> Dept. App. Div. order of 1/22/14; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; JUDGES - JUDICIAL SALARIES - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE COMPENSATION OF JUDGES AND JUSTICES OF THE UNIFIED COURT SYSTEM OF THE STATE OF NEW YORK WAS NOT INCREASED BY THE ENACTMENT OF THE LAWS OF 2009, CHAPTER 51, § 3; Supreme Court, Nassau County, judgment that, upon a February 9, 2011 order of the same court, denied defendant's converted motion for summary judgment, granted plaintiffs' cross motion for summary judgment, declared that the compensation of judges and justices of the Unified Court System was increased pursuant to the Laws of 2009, chapter 51, § 3 and directed defendant, among other things, to pay the judges and justices of the Unified Court System of the State of New York accordingly, retroactive to April 1, 2009; App. Div. reversed the judgment, denied plaintiffs' cross motion for summary judgment, granted defendant's converted motion for summary judgment, modified the order accordingly, and remitted the matter to Supreme Court, Nassau County, for entry of an appropriate judgment declaring that the compensation of judges and justices of the Unified Court System of the State of New York was not increased by the enactment of the Law of 2009, chapter 51, § 3.

PEOPLE ex rel., RODRIGUEZ v SMITH:

3<sup>RD</sup> Dept. App. Div. order of 2/6/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING A JUDGMENT DENYING PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS;

Supreme Court, Ulster County, denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing; App. Div. affirmed.

SHAULOV (BORIS), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/12/13; affirmance; leave to appeal granted by Lippman, Ch. J., 2/28/14;

CRIMES - RAPE - EVIDENCE CONCERNING BOTH PROMPT OUTCRY AND DELAYED OUTCRY AT TRIAL - WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR A MISTRIAL ON THE GROUND OF UNFAIR SURPRISE WHERE THE PEOPLE INTENDED TO PROCEED WITH THE CASE AS ONE INVOLVING A DELAYED OUTCRY BUT THE COMPLAINANT TESTIFIED AT TRIAL THAT SHE HAD MADE A PROMPT OUTCRY; ALLEGED VIOLATION OF DEFENDANT'S RIGHT TO CONFRONTATION AND DEPRIVATION OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

Supreme Court, Kings County, convicted defendant of two counts of rape in the third degree, criminal sexual act in the third degree, endangering the welfare of a child, and sexual abuse in the third degree, upon a jury verdict, and imposing sentence; App. Div. affirmed.

SIDNEY W., MATTER OF v CHANTA J.:

2<sup>ND</sup> Dept. App. Div. order of 12/26/13; reversal with a two-Justice dissent; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether the two-justice dissent is on a question of law;

CHILDREN BORN OUT OF WEDLOCK - ACKNOWLEDGMENT OF PATERNITY - MATERIAL MISTAKE OF FACT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT A PARTY SEEKING TO VACATE AN ACKNOWLEDGMENT OF PATERNITY NEED ONLY ARTICULATE "SOME BASIS" FOR THE ALLEGATIONS OF NONPATERNITY;

Family Court, Westchester County, denied a petition pursuant to Family Court Act § 516-a to vacate an acknowledgment of paternity; App. Div. reversed, reinstated the petition, and remitted to Family Court for further proceedings in accordance with its decision and order.