

COURT OF APPEALS NEW FILINGS

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

March 28, 2014 through April 3, 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.

BROWN (WILLIAM), PEOPLE v:

1ST Dept. App. Div. order of 1/16/14; reversal; leave to appeal granted by Saxe, J., 2/27/14;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE POLICE DID NOT HAVE REASONABLE SUSPICION THAT DEFENDANT WAS INVOLVED IN A CRIME;

Supreme Court, New York County, convicted defendant of grand larceny in the third and fourth degrees and fraudulent accosting, and imposed sentence; App. Div. reversed, granted the motion to suppress the out-of-court identification, and remanded the matter for a new trial preceded by an independent source hearing.

DeJESUS (JOSHUE), PEOPLE v:

1ST Dept. App. Div. order of 4/19/13; affirmance; leave to appeal granted by Rivera, J., 4/2/14;

CRIMES - RIGHT OF CONFRONTATION - WHETHER POLICE TESTIMONY THAT DEFENDANT WAS ALREADY A SUSPECT BEFORE THE POLICE SPOKE TO THE SOLE WITNESS WHO IDENTIFIED HIM WAS PROPERLY ADMITTED INTO EVIDENCE "FOR THE LEGITIMATE NONHEARSAY PURPOSES OF COMPLETING THE NARRATIVE, EXPLAINING POLICE ACTIONS, PROVIDING THE CONTEXT OF THE INTERVIEW, CORRECTING A MISIMPRESSION CREATED BY DEFENDANT ON CROSS-EXAMINATION AND PREVENTING JURY SPECULATION";

Supreme Court, New York County, convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 20 years to life; App. Div., affirmed.

JARVIS (KHARYE), PEOPLE v:

1ST Dept. App. Div. order of 1/3/14; reversal with dissents; leave to appeal granted by Whalen, J., 3/20/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - DEFENSE COUNSEL'S FAILURE TO OBJECT TO TESTIMONY THAT HE SUCCESSFULLY SOUGHT TO PRECLUDE - DEFENSE COUNSEL'S PRESENTATION OF ALIBI EVIDENCE WITH ERRONEOUS DATE/TIMING;

County Court, Monroe County, upon a jury verdict, convicted defendant of two counts of murder in the second degree; App. Div. affirmed; App. Div. then granted defendant's petition for a writ of error coram nobis and vacated the prior order of affirmance; App. Div. reversed and granted a new trial.

SANDERS (RASAUN), PEOPLE v:

2ND Dept. App. Div. order of 12/11/13; affirmance; leave to appeal granted by Hall, J., 3/13/14;

CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF HIS RIGHT TO APPEAL WAS KNOWING AND VOLUNTARY - COUNTY COURT DID NOT INDICATE THAT APPEAL SUBJECT TO WAIVER WAS TO A HIGHER COURT - PROSECUTOR ASKED DEFENDANT IF HE UNDERSTOOD HE WAS WAIVING HIS RIGHT TO APPEAL TO THE APPELLATE DIVISION, SECOND DEPARTMENT -- SIGNIFICANCE OF DEFENDANT'S BACKGROUND AND FAMILIARITY WITH CRIMINAL JUSTICE SYSTEM; SUPPRESSION HEARING - WHETHER COUNTY COURT PROPERLY DENIED SUPPRESSION OF CERTAIN STATEMENTS MADE AFTER AN FBI AGENT ADVISED DEFENDANT HE MIGHT BE A CANDIDATE FOR THE FEDERAL DEATH PENALTY; CLAIMED INSUFFICIENCY OF PLEA ALLOCUTION FOR INTENTIONAL ACT;

County Court, Westchester County, convicted defendant, upon his guilty plea, of manslaughter in the first degree and gang assault in the first degree, and imposed sentence; App. Div. affirmed.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, MATTER OF v FITZGERALD:

2ND Dept. App. Div. order of 11/16/13; reversal; leave to appeal granted by Court of Appeals, 4/1/14;

INSURANCE - AUTOMOBILE INSURANCE - SUPPLEMENTARY
UNINSURED/UNDERINSURED MOTORIST (SUM) ENDORSEMENT - WHETHER A
POLICE VEHICLE IS A "MOTOR VEHICLE" WITHIN THE MEANING OF THE SUM
ENDORSEMENT CONTAINED IN THE INSURANCE POLICY AT ISSUE;
Supreme Court, Queens County, granted the petition in a
proceeding pursuant to CPLR article 75 to permanently stay
arbitration of a claim for underinsured motorist benefits; App.
Div. reversed and denied the petition.

STATE OF NEW YORK, MATTER OF v ENRIQUE T.:

1ST Dept. App. Div. orders of 2/27/14 (affirmance) and 1/26/12
(reversal); sua sponte examination whether (1) a substantial
constitutional question is directly involved in the 2/27/14 App.
Div. order and the 1/26/12 App. Div. order, (2) the 1/26/12 App.
Div. order necessarily affects the 2/27/14 App. Div. order, and
(3) the appeal insofar as it seeks review of the pretrial
detention order should be dismissed for mootness or under the
fugitive disentitlement doctrine;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION -
VALIDITY OF STATUTE - PRETRIAL DETENTION - WHETHER MENTAL HYGIENE
LAW §10.06(k) VIOLATES THE DUE PROCESS CLAUSES OF THE NEW YORK
AND FEDERAL CONSTITUTIONS ON ITS FACE AND AS APPLIED - WHETHER
THE APPELLATE DIVISION ERRED BY APPLYING THE FUGITIVE
DISENTITLEMENT DOCTRINE - ADMISSION INTO EVIDENCE OF SEX OFFENDER
TREATMENT RECORDS ALLEGEDLY DISCLOSED IN VIOLATION OF THE HEALTH
INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA);
Supreme Court, Bronx County, upon finding that the pretrial
detention provisions of MHL § 10.06(k) are facially
unconstitutional, ordered Enrique T.'s immediate release without
supervision; App. Div. reversed, vacated the unconditional
release order, and remanded the matter for further proceedings
consistent with its order; Supreme Court ordered Enrique T.'s
pretrial detention, and then, upon a jury verdict that respondent
suffers from a mental abnormality and a finding that he is a
dangerous sex offender requiring confinement, committed
respondent to a secure treatment facility; App. Div. affirmed.