

COURT OF APPEALS NEW FILINGS

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

August 1, 2014 through August 7, 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.

ALAMIN v UDDIN, et al.:

2ND Dept. App. Div. order of 5/23/14; denial of motion; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the order appealed from finally determines the action within the meaning of the Constitution;

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION TO AMEND AN APPELLATE DIVISION ORDER OR TO EXTEND THE TIME TO MOVE FOR LEAVE TO APPEAL TO THE COURT OF APPEALS FROM THAT ORDER;

App. Div. denied appellant's motion to amend an order of the App. Div. dated 1/22/14 or to extend the time to move for leave to appeal to the Court of Appeals from that order dated 1/22/14.

ASHMORE v ASHMORE:

2ND Dept. App. Div. order of 6/17/14; denial of motion; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the order appealed from finally determines the action within the meaning of the Constitution;

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING REARGUMENT;

App. Div. denied defendant's motion for leave to reargue appeals from a 11/7/13 Supreme Court judgment and two Supreme Court orders of dated 6/19/12, and 7/2/12, which were determined by App. Div. order 2/13/14.

GIBSON (JOHN), PEOPLE v:

3RD Dept. App. Div. order of 5/29/14; affirmance; leave to appeal granted by Rose, J., 7/24/14;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER EXIGENT CIRCUMSTANCES EXISTED TO JUSTIFY THE WARRANTLESS ENTRY INTO DEFENDANT'S APARTMENT - REASONABLE BELIEF THAT ARMED PERPETRATOR COULD BE IN BUILDING - SEIZURE OF GUN THAT WAS PURPORTEDLY IN PLAIN VIEW; ARREST - PROBABLE CAUSE - HEARSAY STATEMENTS - BASIS FOR KNOWLEDGE TRANSMITTED THROUGH CHAIN OF INFORMANTS;

SUPPRESSION HEARING - DENIAL OF MOTION TO REOPEN HEARING; SENTENCE - ALLEGEDLY EXCESSIVE AND HARSH SENTENCE; INDICTMENT - SUFFICIENCY OF FACTUAL ALLEGATIONS - POSSESSION OF WEAPON; County Court, Warren County, convicted defendant, upon his guilty plea, of criminal possession of a weapon in the third degree and menacing in the second degree; App. Div. affirmed.

HOLLEY (TODD), PEOPLE v:

1ST Dept. App. Div. order of 4/3/14; affirmance; leave to appeal granted by Lippman, Ch.J., 7/31/14;

CRIMES - IDENTIFICATION OF DEFENDANT - PHOTOGRAPHIC ARRAY - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE PROCEDURE BY WHICH A WITNESS IDENTIFIED DEFENDANT FROM A SERIES OF PHOTO ARRAYS GENERATED BY THE POLICE PHOTO MANAGER COMPUTER SYSTEM WAS NOT UNDULY SUGGESTIVE AND THAT A DIFFERENT CONCLUSION WAS NOT WARRANTED BECAUSE THE POLICE FAILED TO PRESERVE THE PHOTO ARRAYS VIEWED BY THE WITNESS; LINEUP - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT THE RECORD SUPPORTED THE HEARING COURT'S FINDING THAT THE LINEUP WAS NOT UNDULY SUGGESTIVE;

Supreme Court, New York County, convicted defendant of attempted robbery in the third degree and two counts of assault in the third degree, and sentenced him, as a second felony offender, to an aggregate term of two to four years; App. Div. affirmed.

JF CAPITAL ADVISORS, LLC v THE LIGHTSTONE GROUP, LLC, et al.:

1ST Dept. App. Div. order of 3/25/14; modification; leave to appeal granted by App. Div., 7/24/14;

OBLIGATIONS LAW § 5-701(a)(10) - "NEGOTIATING THE PURCHASE ... OF ANY REAL ESTATE ... OR ... BUSINESS OPPORTUNITIES" - ACTION SEEKING COMPENSATION FROM DEFENDANTS FOR FINANCIAL ADVISORY SERVICES PLAINTIFF PROVIDED UNDER AN ALLEGED ORAL CONTRACT IN CONNECTION WITH DEFENDANTS' ACQUISITION OF CERTAIN HOTELS AND OTHER INVESTMENT OPPORTUNITIES - WHETHER PLAINTIFF'S CLAIMS FOR QUANTUM MERUIT AND UNJUST ENRICHMENT WERE PROPERLY DISMISSED AS BARRED BY THE STATUTE OF FRAUDS;

Supreme Court, New York County, granted in part defendants' motion to dismiss the complaint for failure to state a cause of action under CPLR 3211(a)(7); App. Div. modified by granting defendants' motion as to the remainder of the complaint, otherwise affirmed, and directed the Clerk to enter judgment dismissing the complaint.

JONES (ANTHONY), PEOPLE v.:

1ST Dept. App. Div. order of 3/11/14; affirmance; leave to appeal granted by Pigott, J., 7/21/14; Rule 500.11 review pending; CRIMES - SENTENCE - MANDATORY SURCHARGE - WHETHER THE SENTENCING JUDGE HAS DISCRETION TO GRANT DEFENDANT RELIEF FROM THE MANDATORY SURCHARGE AT THE TIME OF SENTENCING, OR WHETHER DEFENDANT WAS REQUIRED TO SEEK SUCH RELIEF BY MOTION FOR RESENTENCING PURSUANT TO CPL 420.10(5);

Supreme Court, New York County, convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the third degree and sentenced him to concurrent terms of six months; App. Div. affirmed.

ROBERITES (JESSE), PEOPLE v.:

4TH Dept. App. Div. order of 3/28/14; reversal; leave to appeal granted by Nancy E. Smith, J., 7/17/14; CRIMES - JURORS - NOTE FROM JURY - TRIAL COURT'S FAILURE TO NOTIFY PRO SE DEFENDANT OF JURY NOTE REQUESTING EXHIBITS - WHETHER TRIAL COURT'S FAILURE CONSTITUTES A MODE OF PROCEEDINGS ERROR REQUIRING REVERSAL OF THE JUDGMENT, EVEN IF THE ISSUE WAS NOT PRESERVED AT TRIAL;

County Court, Livingston County, convicted defendant, upon a jury verdict, of arson in the third degree and insurance fraud in the second degree; App. Div. reversed, and granted a new trial.

SILVERMAN, &c. v SILVER, &c., et al.:

1ST Dept. App. Div. order of 7/10/14; affirmance with two-Justice dissents;

JUDGES - JUDICIAL SALARIES - SEPARATION OF POWERS DOCTRINE - REMEDY FOR VIOLATION OF SEPARATION OF POWERS DOCTRINE - WHETHER LEGISLATION THAT CREATED A COMMISSION ON JUDICIAL COMPENSATION TO RECOMMEND PROSPECTIVE-ONLY ADJUSTMENTS TO JUDICIAL PAY, VIOLATES MATTER OF MARON v SILVER AND OTHER CASES DECIDED THEREWITH (14 NY3d 230 [2010]), BECAUSE IT DOES NOT PROVIDE FOR CONSIDERATION OF RETROACTIVE COMPENSATION - ENTITLEMENT TO DAMAGES FOR BACK PAY BASED UPON RETROACTIVE PAY INCREASES;

Supreme Court, New York County, dismissed the supplemental complaint following the grant of defendants' motion to dismiss; App. Div. affirmed.