

COURT OF APPEALS NEW FILINGS

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

August 22, 2014 through August 28, 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.

DAVIS (TYRONE), PEOPLE v:

2ND Dept. App. Div. order of 2/5/14; affirmance; leave to appeal granted by Lippman, Ch.J., 7/28/14; Rule 500.11 review pending; CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WHETHER DEFENDANT'S GUILTY PLEA, WHICH HE NEVER MOVED TO WITHDRAW, WAS KNOWINGLY AND VOLUNTARILY MADE WHERE THE COLLOQUY MAY HAVE NEGATED AN ELEMENT OF THE CHARGED OFFENSE; County Court, Suffolk County, convicted defendant of attempted burglary in the third degree, upon his guilty plea, and imposed sentence; App. Div. affirmed.

NEALON (KENNETH), PEOPLE v:

2ND Dept. App. order of 4/16/14; reversal; leave to appeal granted by Graffeo, J., 8/15/14;

CRIMES - APPEAL - PRESERVATION OF ISSUE FOR REVIEW - MEANINGFUL NOTICE OF JURY NOTES - FAILURE TO OBJECT - WHETHER THE TRIAL COURT COMMITTED A MODE OF PROCEEDINGS ERROR WHEN, ACCORDING TO THE ORIGINAL TRIAL RECORD, IT READ THE CONTENTS OF THREE JURY NOTES REQUESTING CHARGE CLARIFICATIONS FOR THE FIRST TIME IN FRONT OF THE JURY AND IMMEDIATELY RESPONDED; IF SO, WHETHER THE APPELLATE DIVISION PROPERLY REFUSED TO CONSIDER THE RESETTLED TRIAL RECORD;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of robbery in the first degree, robbery in the second degree, assault in the second degree, and criminal possession of stolen property in the fifth degree, and imposed sentence; App. Div. reversed the judgment and ordered a new trial.

NICHOLSON (CHRISTOPHER A.), PEOPLE v:

4TH Dept. App. Div. orders of 6/20/14; modification and affirmance; leave to appeal granted by Lindley, J., 8/12/14; CRIMES - WITNESSES - REBUTTAL WITNESS IN CHILD SEX PROSECUTION - WHETHER SUPREME COURT ERRED IN ALLOWING THE PEOPLE TO CALL DEFENDANT'S EX-WIFE AS A REBUTTAL WITNESS TO REBUT CERTAIN TESTIMONY OFFERED BY DEFENDANT'S ONLY WITNESS, HIS FORMER GIRLFRIEND; WITNESSES - EXPERT WITNESS - WHETHER SUPREME COURT ERRED IN ADMITTING THE TESTIMONY OF AN EXPERT WITH RESPECT TO CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME; RIGHT TO COUNSEL - CLAIMED INEFFECTIVE ASSISTANCE;

Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of course of sexual conduct against a child in the first degree and imposed sentence; thereafter, the same Court resentenced defendant upon his conviction of course of sexual conduct against a child in the first degree; App. Div. (1) dismissed the appeal from the judgment insofar as it imposed sentence, and otherwise affirmed, and (2) modified the resentence by amending an order of protection, and remitted to Supreme Court to specify in the order of protection an expiration date in accordance with CPL 530.12 former (5)(ii) and to determine the jail time credit to which defendant is entitled.