

COURT OF APPEALS NEW FILINGS

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

August 29, 2014 through September 4, 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.

IZZO (VINCENT), PEOPLE v:

3RD Dept. App. Div. order of 8/7/14; affirmance with two-Justice dissent;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT - LEVEL II
SEX OFFENDER - CHALLENGE TO ASSESSMENT OF 30 POINTS UNDER RISK
FACTOR 3 (NUMBER OF VICTIMS) DUE TO THREE OR MORE VICTIMS -
CHALLENGE TO ASSESSMENT OF 20 POINTS UNDER RISK FACTOR 7
(RELATIONSHIP BETWEEN OFFENDER AND VICTIM) FOR ENGAGING IN
"GROOMING" BEHAVIOR WITH HIS VICTIMS FOR THE PRIMARY PURPOSE OF
VICTIMIZATION - DEFENDANT'S ENTITLEMENT TO A DOWNWARD DEPARTURE
FROM THE PRESUMPTIVE RISK LEVEL CLASSIFICATION - EFFECT OF COUNTY
COURT'S FAILURE TO EXPRESSLY REFERENCE IN ITS OPINION DEFENDANT'S
REQUEST FOR A DOWNWARD DEPARTURE;

County Court, Chemung County, classified defendant as a risk level II sex offender pursuant to the Sex Offender Registration Act; App. Div. affirmed.

JAY, MATTER OF v FISCHER &c.:

4TH Dept. App. Div. order of 6/13/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - RULINGS BY HEARING OFFICER - WHETHER HEARING OFFICER IN DISCIPLINARY HEARING DEMONSTRATED BIAS OR IMPROPERLY PRECLUDED INMATE FROM OFFERING EVIDENCE;

Supreme Court, Wyoming County, dismissed the CPLR article 78 proceeding to annul a determination finding petitioner guilty of violating certain inmate rules; App. Div. affirmed.

KENT, MATTER OF v LEFKOWITZ &c., et al.:

3RD Dept. App. Div. order of 7/17/14; reversal with two-Justice dissent; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

CIVIL SERVICE - PUBLIC EMPLOYMENT RELATIONS BOARD (PERB) - IMPROPER PRACTICE CHARGE - WHETHER THE DUTY OF THE STATE RACING AND WAGERING BOARD TO NEGOTIATE WAGES FOR SEASONAL TRACK EMPLOYEES WAS SATISFIED BY THE EXECUTION OF A SIDE LETTER AGREEMENT BETWEEN THE UNION AND THE STATE;

Supreme Court, Albany County, dismissed petitioners' application in a CPLR article 78 proceeding to review a PERB determination dismissing an improper practice charge against respondent NYS Racing and Wagering Board; App. Div. reversed, annulled the determination of PERB, and remitted the matter to PERB for further proceedings not inconsistent with its decision.

PEOPLE &c. ex rel. LOYD v DEMARS:

Supreme Court, Clinton County judgment of 7/21/14; sua sponte examination whether the only question involved on the appeal is the constitutional validity of a statutory provision (CPLR 5601[b][2]);

HABEAS CORPUS - WHEN REMEDY AVAILABLE - DISMISSAL OF HABEAS CORPUS PETITION CHALLENGING THE SUFFICIENCY OF THE EVIDENCE AT A FINAL PAROLE REVOCATION HEARING - FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BY TAKING AN ADMINISTRATIVE APPEAL TO THE BOARD OF PAROLE;

Supreme Court granted respondent's motion to dismiss the habeas corpus petition, and dismissed the petition.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. orders of 6/4/14; sua sponte examination of whether the orders appealed from finally determine the action 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 ORDERS - AFFIRMANCE OF SUPREME COURT ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT TO ADD DEFENDANTS - DISMISSAL OF APPEALS AS OF RIGHT; DENIAL OF MOTIONS FOR LEAVE TO APPEAL TO THE APPELLATE DIVISION;

App. Div. (Nos. 2009-02637 and 2009-02640) (1) denied the branches of plaintiff's motion which are for leave to appeal from Supreme Court, Kings County, orders dated 10/30/08 and 12/4/08 and (2) dismissed the appeals purportedly taken as of right from the 10/30/08 and 12/4/08 Supreme Court orders; App. Div. (No. 2009-03661) (1) denied plaintiff's motion for leave to appeal from a 1/22/09 Supreme Court, Kings County, order and (2) dismissed plaintiff's appeal from so much of the 1/22/09 Supreme Court order as denied her request for reimbursement of costs in the sum of \$5,300 from her former attorney; App. Div. (No. 2009-04744), as relevant here, (1) denied appellant's motion for leave to appeal from a 1/22/09 Supreme Court, Kings County, order upon the ground that the order is appealable as a right, and (2) affirmed the 1/22/09 Supreme Court order, which denied plaintiff's motion for leave to amend the complaint to add defendants.

NEGRON (JULIO), PEOPLE v:

2ND Dept. App. Div. order of 12/11/13; affirmance; leave to appeal granted by Smith, J., 8/20/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS TRIAL COUNSEL FAILED TO OBJECT TO THE TRIAL COURT'S IMPROPER USE OF THE "CLEAR LINK" STANDARD FOR THE INTRODUCTION OF THIRD-PARTY CULPABILITY EVIDENCE, AMONG OTHER FAILURES; CRIMES - DISCLOSURE - FAILURE TO DISCLOSE EXCULPATORY MATERIAL - WHETHER THE PEOPLE COMMITTED PREJUDICIAL BRADY VIOLATIONS BY FAILING TO DISCLOSE THAT DEFENDANT'S NEIGHBOR FLED WITH A CACHE OF WEAPONS THE NIGHT OF THE SHOOTING, WHICH INCLUDED THE SAME CALIBER OF AMMUNITION USED IN THE SHOOTING;

Supreme Court, Queens County, denied, without a hearing, defendant's motion pursuant to CPL 440.10 to vacate a 4/26/06 judgment of the same court convicting defendant, upon a jury verdict, of attempted murder in the second degree, assault in the first degree, reckless endangerment in the first degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, and imposing sentence; App. Div. affirmed.

SMALL (SAMUEL), PEOPLE v a/k/a SMALLS (SAMUEL):

2ND Dept. App. Div. order of 12/18/13; affirmance; leave to appeal granted by Smith, J., 8/8/14;

GRAND JURY - RIGHT TO APPEAR BEFORE GRAND JURY - DEFENDANT IN CUSTODY FOR ONE BURGLARY WHEN FELONY COMPLAINT ISSUED CHARGING HIM WITH ANOTHER BURGLARY WAS NOT ARRESTED OR ARRAIGNED ON THE SECOND CHARGE - WHETHER DEFENDANT WAS ENTITLED TO NOTICE THAT THE SECOND CHARGE WOULD BE PRESENTED TO THE GRAND JURY; SECOND VIOLENT FELONY OFFENDER STATUS - TOLLING OF TIME TO EXTEND 10-YEAR LIMITATION ON PRIOR FELONIES (PENAL LAW § 70.04[1]) WHERE DEFENDANT WAS GRANTED HABEAS CORPUS RELIEF FROM INCARCERATION FOR PRIOR PAROLE VIOLATION;

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of two counts of burglary in the second degree, and imposed sentence; App. Div. affirmed.