

COURT OF APPEALS NEW FILINGS

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

February 13, 2015 through February 19, 2015

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.

AFILAL (ABDELOUHAD), PEOPLE v:

1ST Dept. App. Term order of 6/4/14; affirmance; leave to appeal granted by Read, J., 2/6/15;

CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WAIVER OF CONSTITUTIONAL RIGHTS - WHETHER THE RECORD ESTABLISHED THAT DEFENDANT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVED HIS BOYKIN RIGHTS WHERE DEFENDANT STATED, AMONG OTHER THINGS, THAT HE UNDERSTOOD HE WAS WAIVING HIS RIGHT TO A TRIAL AND HAD A CHANCE TO FULLY DISCUSS THE PLEA AND ITS CONSEQUENCES WITH COUNSEL; CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE - SUFFICIENCY OF FACTUAL ALLEGATIONS IN ACCUSATORY INSTRUMENT;

Criminal Court of the City of New York, New York County, convicted defendant, upon his guilty plea, of criminal possession of marihuana in the fifth degree, and imposed sentence; App. Term affirmed.

HOGAN (MARCUS D.), PEOPLE v:

4TH Dept. App. Div. order of 6/13/14; affirmance; leave to appeal granted by Lippman, Ch.J., 2/3/15;

CRIMES - CONTROLLED SUBSTANCES - PRESUMPTION OF KNOWING POSSESSION - WHETHER THE EVIDENCE SUPPORTED THE TRIAL COURT'S APPLICATION OF THE "DRUG FACTORY PRESUMPTION" SET FORTH IN PENAL LAW § 220.25(2); RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL WHERE HIS ATTORNEY FAILED TO DISCUSS HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY AND FAILED TO MAKE A TIMELY MOTION TO DISMISS THE INDICTMENT BASED ON THE PEOPLE'S ALLEGED VIOLATION OF CPL 190.50(5)(a);

Supreme Court, Monroe County, convicted defendant, after a nonjury trial, of criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the fifth degree, and imposed sentence; App. Div. affirmed.

MITCHELL, MATTER OF v FISCHER:

3RD Dept. App. Div. judgment of 9/11/14 and orders of 10/23/14 and 12/22/14; sua sponte examination whether (1) the appeal is timely taken from the 10/23/14 order and the 9/11/14 judgment; (2) the 12/22/14 and 10/23/14 orders finally determine the proceeding; (3) the proceeding is moot as to the 9/11/14 judgment; and (4) whether a substantial constitutional question is directly involved in the App. Div. judgment and orders appealed from;

PRISONS AND PRISONERS - CHALLENGE TO APPELLATE DIVISION JUDGMENT DISMISSING, WITHOUT COSTS, CPLR ARTICLE 78 PETITION AS MOOT, APPELLATE DIVISION ORDER DENYING PETITIONER'S MOTION FOR COSTS AND DISBURSEMENTS, AND APPELLATE DIVISION ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION - WHETHER PETITIONER WAS ENTITLED TO COSTS AND DISBURSEMENTS WHERE RESPONDENT'S ADMINISTRATIVE REVERSAL OF THE CHALLENGED DETERMINATION RENDERED THE PROCEEDING MOOT;

App. Div. dismissed as moot a CPLR article 78 petition seeking review respondent's determination finding petitioner guilty of violating certain disciplinary rules; denied petitioner's motion for costs and disbursements; and denied petitioner's motion for reconsideration.

JAMAL S., MATTER OF:

1ST Dept. App. Div. order of 12/4/14; reversal with a two-Justice dissent; sua sponte examination whether the two-justice dissent at the App. Div. is on a question of law;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE POLICE SEARCH, WHICH INVOLVED REQUIRING THE JUVENILE TO REMOVE HIS SHOES WHILE HE WAS HELD IN TEMPORARY DETENTION PENDING HIS MOTHER'S ARRIVAL AT THE POLICE STATION, WAS REASONABLE;

Family Court, Bronx County, adjudicated Jamal S. a juvenile delinquent upon his admission that he committed an act that, if committed by an adult, would constitute the crime of criminal possession of a weapon in the second degree, and placed him on probation; App. Div. reversed the adjudication of juvenile delinquency, vacated the dispositional order, granted the motion to suppress, and dismissed the petition.

THOMAS v GRAY:

2ND Dept. App. Div. order of 10/29/14; reversal; sua sponte examination whether substantial constitutional question is directly involved to support an appeal as of right and whether the App. Div. order finally determines the action;

SPECIFIC PERFORMANCE - LEASE WITH PURCHASE OPTION - CAPACITY OF SIGNATORY TO LEASE - WHETHER ALCOHOL FURNISHED BY ONE SIGNATORY IMPAIRED THE CAPACITY OF OTHER, ALCOHOLIC SIGNATORY TO A LEASE AGREEMENT SO THAT THE LEASE AGREEMENT WAS INVALID;

Supreme Court, Kings County, in effect dismissed the complaint; App. Div. reversed, reinstated the complaint, and remitted to Supreme Court for entry of an amended judgment in favor of plaintiff and against defendant on the cause of action for specific performance of the purchase option clause of the lease agreement.