

COURT OF APPEALS NEW FILINGS

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

June 26, 2015 through July 2, 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.

BROWN (JAMES), PEOPLE v:

1ST Dept. App. Div. order of 3/17/15; affirmance; leave to appeal granted by Stein, J., 6/17/15;

CRIMES - RIGHT TO SPEEDY TRIAL - WHETHER THE PEOPLE'S SUBSEQUENT STATEMENT OF UNREADINESS RENDERED THEIR OFF-CALENDAR CERTIFICATE OF READINESS ILLUSORY; COURTS - COURT OF APPEALS - APPLICATION OF PLURALITY OPINIONS - PEOPLE v SIBBLIES (22 NY3d 1174 [2014]); Supreme Court, New York County, convicted defendant, after a jury trial, of robbery in the first degree and sentenced him, as a persistent violent felony offender, to a term of 22 years to life imprisonment; App. Div. affirmed.

CF HY, LLC v HUDSON YARDS, LLC, et al.:

1ST Dept. App. Div. order of 1/20/15; affirmance; 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;

MORTGAGES - DEFICIENCY JUDGMENTS - DETERMINATION OF FAIR MARKET VALUE - CLAIMED CONSTITUTIONAL AND EVIDENTIARY ERRORS;

Supreme Court, New York County, adjudged that the fair market value of the subject property as of September 7, 2011, is \$26 million, and directed the clerk to enter a deficiency judgment in favor of plaintiff and against defendant Singer in the amount of \$21,779,544.36 plus statutory interest; Supreme Court then denied defendant Singer's motion to vacate the order and entered judgment in favor of plaintiff; App. Div. affirmed.

COUSER (PHILLIP), PEOPLE v (APPEAL NO. 1):

4TH Dept. App. Div. order of 3/20/15; modification; leave to appeal granted by Stein, J., 6/24/15;

CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - ROBBERY AND ATTEMPTED ROBBERY - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE SENTENCE FOR ROBBERY WAS PROPERLY MADE CONSECUTIVE TO THE SENTENCES FOR ATTEMPTED ROBBERY;

Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of robbery in the first degree, two counts of criminal possession of a weapon in the second degree, three counts of attempted robbery in the first degree, and criminal possession of a weapon in the third degree; App. Div. modified by directing that the sentences imposed on the fifth through seventh counts run concurrently with each other and consecutively to the sentence imposed on the second count.

COUSER (PHILLIP), PEOPLE v (APPEAL NO. 2):

4TH Dept. App. Div. order of 3/20/15; affirmance; leave to appeal granted by Stein, J., 6/24/15;

CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - ATTEMPTED MURDER - WHETHER THE MODIFICATION OF THE AGGREGATE SENTENCE IN APPEAL NO. 1 NULLIFIED AN EXPRESSLY PROMISED BENEFIT OR

CONSTITUTED MATERIAL INDUCEMENT TO PLEA AT ISSUE IN APPEAL NO. 2

- WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE MODIFICATION OF DEFENDANT'S AGGREGATE SENTENCE ON ROBBERY AND ATTEMPTED ROBBERY CHARGES DID NOT ENTITLE HIM TO VACATUR OF THE PLEA ON THE ATTEMPTED MURDER CHARGE; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER THE APPELLATE DIVISION ERRED IN REJECTING DEFENDANT'S CLAIM THAT HE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL BASED ON COUNSEL'S ALLEGED FAILURE TO RECOGNIZE THAT DEFENDANT WAS NOT SUBJECT TO A CONSECUTIVE SENTENCE FOR THE ATTEMPTED MURDER COUNT;

Supreme Court, Monroe County, convicted defendant, upon his plea of guilty, of attempted murder in the first degree; App. Div. affirmed.

DAVIDSON (MARTESHA), PEOPLE v:

Tompkins County Court order of 3/10/15; reversal; leave to appeal granted by Read, J., 6/10/15;

CRIMES - DISTRICT AND PROSECUTING ATTORNEYS - SPECIAL PROSECUTOR - WHETHER THE SPECIAL PROSECUTOR OF THE NEW YORK STATE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS (CREATED BY EXECUTIVE LAW § 552) IS AUTHORIZED TO PROSECUTE CASES OF ABUSE OR NEGLECT OF VULNERABLE PERSONS BY THEIR CAREGIVERS IN NEW YORK'S LOCAL CRIMINAL COURTS;

Lansing Town Court granted defendant's CPL 170.30 motion to dismiss the accusatory instrument and dismissed the case; County Court reversed and remanded for further proceedings.

HIGHBRIDGE BROADWAY, LLC, MATTER OF v ASSESSOR OF THE CITY OF SCHENECTADY:

3RD Dept. App. Div. order of 1/29/15; modification; leave to appeal granted by Court of Appeals, 6/11/15;

TAXATION - ASSESSMENT - FAILURE TO FILE ANNUAL CHALLENGE TO EACH ASSESSMENT PENDING DETERMINATION OF ORIGINAL ASSESSMENT CHALLENGE - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT PETITIONER WAS REQUIRED TO COMMENCE SEPARATE, ANNUAL TAX CERTIORARI PROCEEDINGS WHILE ITS 2008 CHALLENGE WAS PENDING IN ORDER FOR THE 2011 JUDGMENT TO BE BINDING AS TO SUBSEQUENT YEARS;

Supreme Court, Schenectady County, among other things, granted petitioner tax exemptions under RPTL 285-b in stated amounts for the years 2008 through 2014, and directed the Schenectady City School District to issue tax refunds for the years 2009 through 2014; App. Div. modified the order by reversing so much thereof as ordered the Schenectady City School District to issue refunds based on the 2009 through 2011 assessment rolls.

MALDONADO (FERNANDO), PEOPLE v:

2ND Dept. App. Div. order of 7/2/14; affirmance; leave to appeal granted by Lippman, Ch.J., 6/19/15;

CRIMES - LARCENY - WHETHER LEGALLY SUFFICIENT EVIDENCE SUPPORTED DEFENDANT'S CONVICTION FOR GRAND LARCENY OF REAL PROPERTY BASED ON A FORGED DEED - SUFFICIENCY OF EVIDENCE TO SUPPORT POSSESSION AND ATTEMPT CHARGES; EFFECTIVENESS OF COUNSEL;

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of grand larceny in the first degree, attempted grand larceny in the first degree, and criminal possession of a forged instrument in the second degree, and imposed sentence; App. Div. affirmed.

MUNOZ, MATTER OF v LEWIS:

2ND Dept. App. Div. order of 5/15/15; dismissal of appeal; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any basis exists to support an appeal as of right; JUDGES - DISQUALIFICATION - DENIAL OF A MOTION TO DISQUALIFY FAMILY COURT JUDGE;

Family Court, Orange County, denied petitioner's motion to disqualify Family Court Judge; App. Div. dismissed the appeal on the ground that no appeal lies as of right from a nondispositional order in a proceeding pursuant to Family Court Act article 6, par 3, and leave to appeal had not been granted.

PABON (LUIS A.), PEOPLE v:

4TH Dept. App. Div. order of 3/27/15; affirmance; leave to appeal granted by DeJoseph, J., 6/10/15;

CRIMES - TIMELINESS OF PROSECUTION - TOLL OF LIMITATIONS PERIOD FOR SEXUAL OFFENSES COMMITTED AGAINST MINOR - WHETHER THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT THE INDICTMENT WAS NOT TIME-BARRED; HARMLESS AND PREJUDICIAL ERROR - PERMITTING DETECTIVE TO TESTIFY THAT DEFENDANT LIED DURING INTERVIEW - WHETHER THE APPELLATE DIVISION PROPERLY HELD THAT THE DETECTIVE'S TESTIMONY WAS HARMLESS; WITNESSES - EXTRINSIC EVIDENCE NOT PERMITTED TO CONTRADICT WITNESS'S ANSWERS CONCERNING COLLATERAL MATTERS SOLELY TO IMPEACH CREDIBILITY; ARGUMENT AND CONDUCT OF COUNSEL - PROSECUTOR'S COMMENTS DURING SUMMATION; EVIDENCE - WHETHER THE APPELLATE DIVISION CORRECTLY REJECTED DEFENDANT'S CLAIM THAT THE TRIAL COURT'S REFUSAL TO SEQUESTER CERTAIN EVIDENCE DEPRIVED HIM OF APPELLATE REVIEW OF HIS MISTRIAL MOTION BASED ON THE TRIAL COURT'S ALLEGED MISCONDUCT;

Supreme Court, Monroe County, convicted defendant, after a nonjury trial, of course of sexual conduct against a child in the first degree; App. Div. affirmed.

PEOPLE &c., v GREENBERG et al.:

1ST Dept. App. Div. order of 4/16/15; affirmance; leave to appeal granted by App. Div., 6/18/15;

FRAUD - MARTIN ACT - DISGORGEMENT - AVAILABILITY OF DISGORGEMENT AND PERMANENT INJUNCTIVE RELIEF AS REMEDIES - WHETHER DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT DISMISSING ATTORNEY GENERAL'S COMPLAINT;

Supreme Court, New York County, denied defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

RUOTOLO v FANNIE MAE, et al.:

3RD Dept. App. Div. order of 4/16/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT - PRE-ANSWER MOTIONS TO DISMISS COMPLAINT PURSUANT TO CPLR 3211 (a)(5) AND (7) - CLAIMED DUE PROCESS VIOLATION BY SUPREME COURT IN FAILING TO FULLY CONSIDER DOCUMENTS SUBMITTED BY PLAINTIFF IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE COMPLAINT;

Supreme Court, Ulster County, granted defendants' motions to dismiss the complaint; App. Div. affirmed.