

COURT OF APPEALS NEW FILINGS

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

June 24, 2016 through June 30, 2016

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.

COONEY (ROGER), PEOPLE v (APPEAL NO. 2):

4TH Dept. App. Div. order of 3/25/16; reversal; leave to appeal granted by Centra, J., 6/7/16; sua sponte examination whether an appeal to the Court of Appeals lies from the Appellate Division order of reversal;

CRIMES - EVIDENCE - SUFFICIENCY OF EVIDENCE TO SUPPORT CONVICTION OF ROBBERY IN THE SECOND DEGREE - WHETHER EVIDENCE OF CUT ON VICTIM'S FINGER WAS SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THE ELEMENT OF "PHYSICAL INJURY" AS DEFINED IN PENAL LAW § 10.00(9) - WHETHER INDICTMENT SHOULD BE DISMISSED OR CONVICTION REDUCED TO LESSER INCLUDED OFFENSE OF ROBBERY IN THE THIRD DEGREE;

County Court, Monroe County, convicted defendant, upon a jury verdict, of robbery in the second degree; App. Div. reversed "on the facts," dismissed the indictment and remitted the matter to County Court for further proceedings pursuant to CPL 470.45.

JOHNSON, MATTER OF v ANNUCCI, &c.:

3RD Dept. App. Div. order of 5/19/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - CONDITIONS OF CONFINEMENT - JUDICIAL REVIEW OF DENIAL OF INMATE GRIEVANCE - WHETHER THE CHANGE IN PETITIONER'S PAY GRADE AND JOB ASSIGNMENT AND DENIAL OF HIS REQUEST FOR PREFERENCE TRANSFER WAS ARBITRARY AND CAPRICIOUS, IRRATIONAL OR AFFECTED BY AN ERROR OF LAW, WHERE PETITIONER REFUSED TO COMPLETE THE SEX OFFENDER COUNSELING AND TREATMENT PROGRAM BASED UPON HIS CLAIM OF INNOCENCE OF THE UNDERLYING SEX OFFENSE CRIME;

Supreme Court, Franklin County, dismissed petitioner's CPLR article 78 petition to review a determination of the Central Office Review Committee denying petitioner's inmate grievance; App. Div. affirmed.

PERRY (ROBERT), PEOPLE v:

2ND Dept. App. Div. order of 4/6/16; affirmance; leave to appeal granted by DiFiore, Ch.J., 6/16/16;

CRIMES - EVIDENCE - DNA IDENTIFICATION TESTS - PROPRIETY OF DENIAL OF MOTION FOR FORENSIC DNA TESTING - WHETHER DEFENDANT SATISFIED THE "REASONABLE PROBABILITY" STANDARD FOR FORENSIC DNA TESTING UNDER CPL 440.30 - WHETHER A COURT MAY CONSIDER EVIDENCE OUTSIDE THE TRIAL RECORD ON A CPL 440.30 MOTION;

Supreme Court, Richmond County, denied, without a hearing, defendant's motion pursuant to CPL 440.30(1-a) for forensic DNA testing on certain evidence recovered by the police; App. Div. affirmed.