

State of New York
Court of Appeals

Decisions

September 8, 2022

MOTIONS

1 Mo. No. 2022-599
The People &c.,
 Respondent,
 v.
Nathaniel Boone,
 Appellant.

Motion for poor person relief granted.

2 Mo. No. 2022-612
The People &c.,
 Respondent,
 v.
Marcus Brown,
 Appellant.

Motion for poor person relief granted.

3 Mo. No. 2022-564
The People &c.,
 Appellant,
 v.
Christopher Bryant,
 Respondent.

On the Court's own motion, appeal dismissed upon the ground that the criminal prosecution abated by reason of defendant's death (*see People v Mintz*, 20 NY2d 753 [1967]; *see also People v Mason*, 29 NY3d 972 [2017]).

1 Mo. No. 2022-635
The People &c.,
 Respondent,
 v.
Anthony Debellis,
 Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

 Mo. No. 2022-527
The People &c.,
 Respondent,
 v.
Randall Driver,
 Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2 Mo. No. 2022-633
Federal National Mortgage Association, &c.,
Appellant,
v.
Maxi Jeanty, &c. et al.,
Respondents,
et al.,
Defendants.

Motion by Legal Services NYC, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

3 Mo. No. 2022-459
In the Matter of Ja'Sire FF. et al., &c.

Chemung County Department of Social
Services,
Respondent;
Jalyssa GG.,
Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

4 SSD 34
Albert G. Fraccola, Jr., &c.,
Appellant,
v.
1st Choice Realty, Inc., &c. et al.,
Defendants,
Getnick, Livingston, Atkinson, Gigliotti and
Priore, LLP et al.,
Respondents.

Appeal, insofar as taken from so much of the Appellate Division order as affirmed so much of the Supreme Court order as, upon appellant's motion, adhered to the prior dismissal of the complaint, dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question; appeal otherwise dismissed without costs, by the Court *sua sponte*, upon the ground that the remaining portion of the order does not finally determine the action within the meaning of the Constitution.

1 SSD 32
The People &c.,
Respondent,
v.
Corey Gamble,
Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no civil appeal lies from the order entered in this criminal action (*see* NY Const, art VI, § 3 [b]; CPLR 5601; CPL 450.90).

3 Mo. No. 2022-541
In the Matter of the Claim of Kanye Khalid
Green,
 Respondent,
 v.
Dutchess County BOCES et al.,
 Appellants.
Workers' Compensation Board,
 Appellant.

1 SSD 24
In the Matter of Amy R. Gurvey,
 Appellant,
 v.
Elizabeth A. Garry, &c. et al.,
 Respondents.

1 Mo. No. 2022-298
Laury Vasquez Guzman, &c.,
 Respondent,
 v.
Americare, Inc. et al.,
 Appellants,
et al.,
 Defendants.

3 Mo. No. 2022-507
The People &c.,
 Appellant,
 v.
Michael Heiserman,
 Respondent.

Motion by Injured Workers' Bar Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution. Acting Chief Judge Cannataro took no part.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as dismissed appellants' appeal from a Supreme Court decision, dismissed upon the ground that no motion for leave to appeal lies from an Appellate Division order dismissing an appeal from a decision (*see* CPLR 5602); motion for leave to appeal otherwise dismissed upon the ground that the remaining portions of the Appellate Division order do not finally determine the action within the meaning of the Constitution. Motion for a stay dismissed as academic.

Motion for assignment of counsel granted and G. Scott Walling, Esq., 1972 New Scotland Road #1013, Slingerlands, NY 12159, assigned as counsel to the respondent on the appeal herein.

1 Mo. No. 2022-534
Kathleen Henry,
Respondent,
v.
New Jersey Transit Corporation et al.,
Appellants,
et al.,
Defendant.

Motion by Valbona Fetahu for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

1 Mo. No. 2022-549
Kathleen Henry,
Respondent,
v.
New Jersey Transit Corporation et al.,
Appellants,
et al.,
Defendant.

Motion by New York State Trial Lawyers Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

4 SSD 28
In the Matter of Dominique Hunter,
Appellant,
v.
Niagara County Family Court Judge Kathleen Wojtaszek-Gariano, et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it does not lie (*see* NY Const, art VI, § 3 [b]; CPLR 5601).
Judge Troutman took no part.

4 Mo. No. 2022-629
In the Matter of Dannez Hunter,
Appellant.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine an action or proceeding within the meaning of the Constitution.
Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).
Motion for poor person relief dismissed as academic.

4 Mo. No. 2022-490
In the Matter of McKinley H.-W.

Genesee County Department of Social
Services,
Respondent;
Daniel W.,
Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2022-590
The People &c.,
Respondent,
v.
Donna Jordan,
Appellant.

Motion for assignment of counsel granted and
Patricia Pazner, Esq., Appellate Advocates, 111 John
Street, 9th Floor, New York, NY 10038 assigned as
counsel to the appellant on the appeal herein.

3 SSD 33
The People &c.,
Respondent,
v.
Michael N. Kelsey,
Appellant.

Appeal dismissed without costs, by the Court *sua
sponte*, upon the ground that no civil appeal lies from
the order of the Appellate Division entered in this
criminal action (*see* NY Const, art VI, § 3 [b]; CPLR
5601; CPL 450.90).

2 Mo. No. 2022-583
In the Matter of D.L.,
Appellant,
v.
S.B. et al.,
Respondents.

Motion by New York City Administration for
Children's Services for leave to file a brief amicus
curiae on the appeal herein granted and the proposed
brief is accepted as filed. Two copies of the brief
must be served, an original and nine copies filed, and
the brief submitted in digital format within seven
days.

2 Mo. No. 2022-641
In the Matter of City of Long Beach,
Respondent,
v.
New York State Public Employment
Relations Board,
Appellant,
Long Beach Professional Firefighters
Association, IAFF, Local 287,
Appellant.

Motion by New York State Professional Firefighters Association for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 SSD 25
Nella Manko,
Appellant,
v.
Lenox Hill Anesthesiology, PLLC, et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

4 SSD 27
Caitlin McCann,
Respondent,
v.
David Gordon,
Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

1 Mo. No. 2022-457
The People &c.,
Respondent,
v.
Yoselyn Ortega,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2022-607
The People &c.,
Respondent,
v.
Pablo Pastrana,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2022-649
The People &c.,
 Respondent,
 v.
Thomas P. Perdue,
 Appellant.

Motion for assignment of counsel granted and Mark D. Funk, Esq., Monroe County Conflict Defender, 16 East Main Street, Suite 600, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2022-561
The People &c.,
 Respondent,
 v.
Michael Saenger,
 Appellant.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2022-488
The People &c.,
 Appellant,
 v.
Jayquaine Seignious,
 Respondent.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the respondent on the appeal herein.

1 SSD 26
Daniel Shatz,
 Respondent,
 v.
Douglas Chertok, et al.,
 Appellants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

3 Mo. No. 2022-478
The People &c.,
 Respondent,
 v.
Jason A. Sherwood,
 Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

3 Mo. No. 2022-575
In the Matter of Town of Southampton et al.,
Respondents,
et al.,
Petitioner,
v.
New York State Department of
Environmental Conservation et al.,
Respondents,
Sand Land Corporation et al.,
Appellants.

Motion by New York Construction Materials Association, Inc. for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

3 Mo. No. 2022-495
In the Matter of Jeffrey Terborg,
Appellant,
v.
New York State Department of Corrections
and Community Supervision,
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.
Motion for a stay dismissed as academic.

3 SSD 31
In the Matter of the Dissolution of Twin Bay
Village, Inc.
Vladimir Chomiak et al.,
Respondents;
Tatiana Chomiak Kasian, &c. et al.,
Appellants,
Dennis J. Tarantino, &c.,
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

2 SSD 29
In the Matter of Cheryl Uzamere,
Appellant,
v.
Austin I. Idehen, &c., et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

2 Mo. No. 2022-600
The People &c.,
 Respondent,
 v.
Michael Worley,
 Appellant.

Motion for poor person relief granted.

2 Mo. No. 2022-624
The People &c.,
 Respondent,
 v.
Noe Zapata,
 Appellant.

Motion for assignment of counsel granted and
Patricia Pazner, Esq., Appellate Advocates, 111 John
Street, 9th Floor, New York, NY 10038 assigned as
counsel to the appellant on the appeal herein.