

COURT OF APPEALS NEW FILINGS

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

April 15 through April 21, 2011

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.

ABREU, MATTER OF v BEZIO:

3RD Dept. App. Div. orders of 11/10/10 and 2/14/11; confirmation of determination (11/10/10 order) and denial of motion for leave to appeal to the Court of Appeals (2/14/11 order); sua sponte examination whether the 2/14/11 order appealed from finally determines the proceeding within the meaning of the Constitution and whether, with regard to the 11/10/10 order appealed from, a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DETERMINATION OF GUILT WITH RESPECT TO LEWD EXPOSURE AND REFUSING A DIRECT ORDER; CLAIMED VIOLATION OF PRISONER'S DUE PROCESS RIGHTS;

App. Div. confirmed determination of Commissioner of Correctional Services which found petitioner guilty of violating certain prison disciplinary rules, and dismissed the petition; thereafter, the same Court denied petitioner's motion for leave to appeal to the Court of Appeals.

DIEDERICH, JR, &c., MATTER OF v ST. LAWERENCE et al.:

3RD Dept. App. Div. orders of 11/4/10 and 3/4/11; affirmance (11/4/10 order) and denial of reargument or leave to appeal to the Court of Appeals (3/4/11 order); sua sponte examination whether the 3/4/11 order finally determines the proceeding within the meaning of the Constitution and, with respect to the 11/4/10 order, whether a substantial constitutional question is directly involved to support an appeal as of right;

PARTIES - STANDING - COMMON-LAW TAXPAYER STANDING - STANDING UNDER FINANCE LAW § 123-b - ALLEGED DENIAL OF PLAINTIFF-PETITIONER'S RIGHT TO PETITION THE GOVERNMENT UNDER THE FEDERAL AND STATE CONSTITUTIONS;

Supreme Court, Albany County judgment which, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, granted the motion by respondents Holland & Knight and the Rockland County Solid Waste Management Authority for summary judgment dismissing the petition/complaint; App. Div. affirmed and, thereafter, denied reargument or leave to appeal to the Court of Appeals.

EXTALE (JAMES), PEOPLE v:

4TH Dept. App. Div. order of 11/12/10; affirmance; leave to appeal granted by Graffeo, J., 3/11/11;

CRIMES - ASSAULT - WHETHER COUNTY COURT ERRED IN ALLOWING THE PROSECUTION TO WITHDRAW THE INDICTMENT COUNT CHARGING DEFENDANT WITH VEHICULAR ASSAULT IN THE FIRST DEGREE;

Monroe County Court, upon a jury verdict, convicted defendant of assault in the second degree; App. Div. affirmed.

GRANDY v MCKAY et al. (AND ANOTHER ACTION):

3RD Dept. App. Div. order of 3/24/11; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the actions within the meaning of the Constitution; STIPULATIONS - ENFORCEMENT - INTERPRETATION OF STIPULATION OF SETTLEMENT ENTERED IN OPEN COURT REGARDING RIGHTS OF WAY OVER DEFENDANTS' PROPERTY;

Supreme Court, Columbia County, among other things, partially granted plaintiffs' motion to enforce a stipulation of settlement; App. Div. affirmed.

KHAN (SALEEM), PEOPLE v:

1ST Dept. App. Div. order of 1/20/11; affirmance; leave to appeal granted by Ciparick, J., 4/8/11;

CRIMES - LARCENY - HEALTH CARE FRAUD - INTERPRETATION OF TERMS "MATERIAL" AND "PERSON" IN HEALTH CARE FRAUD STATUTE (PENAL LAW § 177.00 et seq.) - PRESCRIPTIONS FILLED BY PHARMACY FOR SPOUSE OF PERSON SUBMITTING PRESCRIPTION - SUFFICIENCY OF EVIDENCE FOR CONVICTION UNDER HEALTH CARE FRAUD STATUTE; RIGHT TO SPEEDY TRIAL;

Supreme Court, New York County convicted defendant of grand larceny in the third degree and health care fraud in the fourth degree, and sentenced him, as a second felony offender, to an aggregate term of 2/ 1/4 to 4 1/2 years; App. Div. affirmed.

1091 RIVER AVENUE LLC, et al. v PLATINUM CAPITAL PARTNERS, INC.:

1ST Dept. App. Div. order 3/1/11; affirmance; sua sponte examination whether so much of the App. Div. order as affirmed that portion of Supreme Court's order that denied a preliminary injunction and vacated a temporary stay finally determines the proceeding within the meaning of the Constitution and, with respect to the rest of the App. Div. order, whether a substantial constitutional question is directly involved to support an appeal as of right;

JUDGMENTS - CONFESSION OF JUDGMENT - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT SUPREME COURT WAS REQUIRED TO MAKE A SUMMARY DETERMINATION IN A CPLR ARTICLE 4 SPECIAL PROCEEDING TO VACATE TWO CONFESSIONS OF JUDGMENT BECAUSE PETITIONERS FAILED TO RAISE AN ISSUE OF FACT AS TO "WHETHER THE JUDGMENTS WERE IMPROPERLY ENTERED OR WHETHER THE UNDERLYING LOAN AGREEMENTS WERE ILLEGALLY PROCURED OR WHETHER THEY WERE OTHERWISE DEFECTIVE" - CPLR 409(b) - ALLEGED VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS;

Supreme Court, New York County, among other things, dismissed the petition to vacate two confessions of judgment and vacated a temporary stay of enforcement of the judgments; App. Div. affirmed.