

COURT OF APPEALS NEW FILINGS

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

August 12 through August 18, 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.

MONK (TERRANCE), PEOPLE v:

2ND Dept. App. Div. order of 3/15/11; affirmance; leave to appeal granted by Read, J., 8/5/11;

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - WHETHER A COURT MUST ADVISE DEFENDANT ABOUT POTENTIAL CONSEQUENCES OF VIOLATING CONDITIONS OF POST-RELEASE SUPERVISION FOR A GUILTY PLEA TO BE KNOWING, VOLUNTARY AND INTELLIGENT; MOTION TO WITHDRAW PLEA - MEANINGFUL OPPORTUNITY TO BE HEARD;

Westchester County Court convicted defendant of attempted robbery in the first degree, upon his guilty plea, and imposed sentence; App. Div. affirmed.

RAMOS (GILBERTO), PEOPLE v:

1ST Dept. App. Div. order of 1/27/11; affirmance; leave to appeal granted by Read, J., 8/4/11;

CRIMES - SENTENCE - SECOND FELONY OFFENDER - WHETHER A FEDERAL CONSPIRACY CONVICTION MAY SERVE AS A PREDICATE FELONY WITHIN THE MEANING OF PENAL LAW § 70.06;

Supreme Court, New York County convicted defendant, upon his guilty plea, of robbery in the third degree, and sentenced him, as a second felony offender, to a term of 2 to 4 years; App. Div. affirmed.

SINHA (LINA), PEOPLE v:

1ST Dept. App. Div. order of 4/7/11; modification; leave to appeal granted by Pigott, J., 8/3/11;

CRIMES - SODOMY - DUPLICITOUS COUNTS - JURY INSTRUCTIONS; EVIDENCE - DISCLOSURE - WHETHER CPL 240.20 REQUIRES THE PEOPLE TO DISCLOSE TO THE DEFENSE BEFORE TRIAL DOCUMENTS THEIR FORENSIC COMPUTER EXPERTS DOWNLOADED FROM DEFENDANT'S COMPUTER HARD-DRIVE; WHETHER, CONSISTENT WITH PEOPLE v COLON (13 NY3d 343), THE SODOMY AND MISDEMEANOR COUNTS OF THE CONVICTION MUST BE REVERSED BECAUSE OF THE PEOPLE'S BRADY VIOLATIONS AND ALLEGED RELIANCE ON FALSE OR MISLEADING TESTIMONY AND ARGUMENT; BRIBING A WITNESS - CORROBORATION OF ACCOMPLICE TESTIMONY - PEOPLE v MULLENS (292 NY 408); HARMLESS AND PREJUDICIAL ERROR - WHETHER TRIAL COURT CORRECTLY DENIED DEFENDANT'S MOTION FOR MISTRIAL BASED UPON DELIBERATING JURY'S ACCIDENTAL RECEIPT OF UNREDACTED TAPE RECORDING CONTAINING EXCLUDED EVIDENCE; CHALLENGE TO PEOPLE'S USE ON REBUTTAL AND SUMMATION OF VOLUNTARY STATEMENT DEFENDANT GAVE TO THE PROSECUTION WHERE THE PEOPLE DID NOT PREVIOUSLY DISCLOSE THE STATEMENT TO DEFENDANT; WHETHER MATTER SHOULD BE REMANDED TO A DIFFERENT JUDGE FOR RESENTENCING;

Supreme Court, New York County convicted defendant, after a jury trial, of sodomy in the second and third degrees, bribing a witness and four counts each of criminal impersonation in the second degree and falsely reporting an incident in the third degree, sentenced her to an aggregate term of 4 2/3 to 14 years, and denied her CPL 440.10 motion to vacate the judgment; App. Div. (1) modified the judgment, in the interest of justice, to the extent of vacating the conviction of bribing a witness, remanded the matter for a new trial on that charge, and otherwise affirmed, and remanded for further proceedings pursuant to CPL 460.50; and (2) modified the order denying defendant's CPL 440.10 motion to vacate the judgment, in the interest of justice, to the extent of vacating the conviction of bribing a witness, remanded the matter for a new trial on that charge, and otherwise affirmed.

STANLEY (DONALD), PEOPLE v:

2ND Dept. App. Div. order of 4/19/11; affirmance; leave to appeal granted by Smith, J., 8/11/11;

CRIMES - SENTENCE - RESENTENCE AFTER ENACTMENT OF 2009 DRUG LAW REFORM ACT - WHETHER DEFENDANT MAY RAISE ISSUES REGARDING HIS PREDICATE FELON STATUS AT THE RESENTENCING PROCEEDING WHEN HE DID NOT CHALLENGE HIS SENTENCING AS A SECOND FELONY OFFENDER AT THE ORIGINAL SENTENCING PROCEEDING - CLAIM THAT FLORIDA FELONY CONVICTIONS ARE NOT THE EQUIVALENT OF ANY NEW YORK FELONY AND ARE TOO DISTANT IN TIME TO BE CONSIDERED;

Supreme Court, Queens County resentenced defendant, after a hearing pursuant to CPL 440.46, upon his conviction of criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the fifth degree; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v JOHN P. (ANONYMOUS):

2ND Dept. App. Div. order of 6/28/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - MENTAL ABNORMALITY - WHETHER PSYCHIATRIC EVALUATION OF SEX OFFENDER WAS CONDUCTED IN VIOLATION OF SEX OFFENDER'S RIGHT TO COUNSEL - DENIAL OF REQUEST TO PRECLUDE TESTIMONY AND EVIDENCE FROM PSYCHOLOGIST WHO CONDUCTED EVALUATION;

Supreme Court, Suffolk County, upon a finding, made after a jury trial, that John P. suffers from a mental abnormality as defined in Mental Hygiene Law § 10.03(1), and upon a determination, made after a dispositional hearing, that he currently is a dangerous sex offender requiring civil confinement, granted a petition seeking civil management and directed that John P. be committed to a secure treatment facility for care, treatment and control until such time he no longer requires confinement; App. Div. affirmed.