

COURT OF APPEALS NEW FILINGS

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

March 9, 2012 through March 15, 2012

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.

BELLIARD (RAFAEL), PEOPLE v:

4TH Dept. App. Div. order of 11/10/11; affirmance; leave to appeal granted by Read, J., 3/5/12;

CRIMES - PLEA OF GUILTY - WHETHER MANDATORY CONSECUTIVE SENTENCE (PENAL LAW § 70.25[2-a]) IS A DIRECT CONSEQUENCE OF THE GUILTY PLEA SO THAT THE TRIAL COURT'S FAILURE TO INFORM DEFENDANT THAT HIS SENTENCE WOULD RUN CONSECUTIVELY TO AN UNDISCHARGED, PREVIOUSLY-IMPOSED SENTENCE RENDERS DEFENDANT'S GUILTY PLEA NOT KNOWING, INTELLIGENT AND VOLUNTARY;

Supreme Court, Monroe County convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the first degree, criminal possession of a controlled substance in the third degree, and criminal possession of a weapon in the second degree; App. Div. affirmed.

BOYLAND (TOBIAS), PEOPLE v:

4TH Dept. App. Div. order of 12/30/10; affirmance; leave to appeal granted by Green, J., 10/21/11; Rule 500.11 review pending;

CRIMES - SUPPRESSION HEARING - FIREARMS SEIZED FROM SECOND FLOOR OF BUILDING WHEN SEARCH WARRANT COVERED "LOWER APARTMENT" AND BUILDING HAD BEEN CONVERTED FROM TWO-FAMILY DWELLING TO SINGLE FAMILY RESIDENCE; JURY INSTRUCTION REGARDING CONSTRUCTIVE POSSESSION; AMENDMENT TO INDICTMENT;

Supreme Court, Erie County convicted defendant, upon a jury verdict, of three counts of criminal possession of a weapon in the second degree and criminal possession of a weapon in the fourth degree; App. Div. affirmed.

HAMPTON (GRADY), PEOPLE v:

2ND Dept. App. Div. order of 6/21/11; affirmance; leave to appeal granted by Smith, J., 2/28/12;

JUDGES - RECUSAL - CASE ASSIGNED TO ANOTHER JUDGE AFTER TRIAL JUDGE WHO HEARD DEFENDANT'S MOTIONS FOR A TRIAL ORDER OF DISMISSAL RECUSED HIMSELF - WHETHER JUDICIARY LAW § 21 PROHIBITED THE SECOND JUDGE FROM DECIDING THE MOTIONS AND REQUIRED A MISTRIAL; SUFFICIENCY OF EVIDENCE TO SUPPORT MURDER CONVICTION; CRIMES - MURDER;

Supreme Court, Nassau County convicted defendant, upon a jury verdict, of murder in the second degree and two counts of criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

HANDY (DAYSHAWN P.), PEOPLE v:

4TH Dept. App. Div. order of 4/1/11; affirmance; leave to appeal granted by Lippman, Ch.J., 2/29/12;

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER TRIAL COURT ERRED IN REFUSING TO GIVE AN ADVERSE INFERENCE INSTRUCTION TO THE JURY, BASED ON THE PROSECUTION'S FAILURE TO PRESERVE A VIDEOTAPE RECORDING THAT CAPTURED PART OF THE INCIDENT AT ISSUE; SUFFICIENCY OF THE EVIDENCE OF INTENT TO CAUSE INJURY;

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

HEIDGEN (MARTIN), PEOPLE v:

2ND Dept. App. Div. order of 9/13/11; affirmance; leave to appeal granted by Graffeo, J., 12/12/11;

CRIMES - PLEA OF GUILTY - CHALLENGE TO ALFORD PLEA;

Nassau County Court convicted defendant, upon his guilty plea, of tampering with physical evidence, and imposed sentence; App. Div. affirmed.

K2 INVESTMENT GROUP, LLC, et al. v AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY:

1ST Dept. App. Div. order of 1/3/12; affirmance with dissents; INSURANCE - MALPRACTICE INSURANCE - ACTION AGAINST MALPRACTICE INSURER TO RECOVER AMOUNT OF DEFAULT JUDGMENT AGAINST ATTORNEY AFTER INSURER DISCLAIMED COVERAGE - PLAINTIFF LENDERS MADE LOANS TO COMPANY IN WHICH INSURED ATTORNEY WAS A PRINCIPAL, AND THE ATTORNEY FAILED TO RECORD MORTGAGES INTENDED TO SECURE THE LOANS - WHETHER INSURER PROPERLY EXCLUDED CLAIMS UNDER THE MALPRACTICE INSURANCE POLICY;

Supreme Court, New York County found in plaintiffs' favor against defendant on the causes of action to enforce a default judgment, and dismissed the causes of action alleging bad faith; App. Div. affirmed.

NORRIS (TYRELL), PEOPLE v:

2ND Dept. App. Div. order of 12/13/11; affirmance; leave to appeal granted by Graffeo, J., 2/29/12; CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER, UPON VACATING DEFENDANT'S ORIGINAL SENTENCE, SUPREME COURT HAD THE AUTHORITY TO RUN HIS NEW DETERMINATE PRISON TERMS CONCURRENTLY, DESPITE THEIR PREVIOUS CONSECUTIVE DESIGNATION - MULTIPLE DRUG OFFENSES BEFORE THE RESENTENCING COURT FOR POSSIBLE MODIFICATION PURSUANT TO THE 2004 DRUG LAW REFORM ACT;

Supreme Court, Kings County, after a hearing, among other things, granted defendant's motion for resentencing and specified that, upon re-sentencing, the court would impose upon him, as a second felony drug offender, on his class B felony drug sale convictions, a determinate prison term of seven years on each of the sale counts, followed by three years of post-release supervision, the terms to run consecutively to each other for an aggregate sentence of 21 years imprisonment, to run concurrently with defendant's indeterminate sentence on his conspiracy conviction; App. Div. affirmed.