

COURT OF APPEALS NEW FILINGS

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

**August 17, 2012 through August 23, 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.**

ABREU (CARLOS), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 11/1/11; affirmance; leave to appeal granted by Ciparick, J., Rule 500.11 review pending;

CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER CONSECUTIVE SENTENCES WERE IMPROPERLY IMPOSED FOR MURDER OCCURRING DURING ARMED HOME INVASION BURGLARY/ROBBERY; ADMISSION OF HEARSAY STATEMENT BY NON-TESTIFYING CO-CONSPIRATOR; ADMISSION OF ACCOMPLICE'S PRIOR INCONSISTENT STATEMENTS;

Supreme Court, New York County convicted defendant, upon a jury verdict, of murder in the first degree, robbery in the first degree, burglary in the first degree, and criminal possession of a weapon in the second and third degrees, and sentenced him to an aggregate term of 35 years to life; App. Div. affirmed.

ABREU, MATTER OF v FISCHER:

3<sup>RD</sup> Dept. App. Div. order of 7/5/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right or whether any other jurisdictional basis exists to support an appeal as of right;

PRISONS AND PRISONERS - CONDITIONS OF CONFINEMENT - LIMITATION ON AMOUNT OF PERSONAL PROPERTY PRISONERS ARE PERMITTED TO POSSESS - DENIAL OF GRIEVANCE BY PRISONER WHO HAD A TOTAL OF SIX TO EIGHT BAGS OF PERSONAL PROPERTY, INCLUDING THREE TO FOUR BAGS OF LEGAL PAPERS RELATED TO 20 PENDING LAWSUITS, BUT WAS ONLY ALLOWED TO HAVE A TOTAL OF FIVE BAGS OF PERSONAL PROPERTY, INCLUDING LEGAL MATERIALS, PURSUANT TO DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION DIRECTIVE;

Supreme Court, Albany County dismissed petitioner's application, in a CPLR article 78 proceeding, to review a determination of respondent Central Office Review Committee denying his grievance; App. Div. affirmed.

BELLAMY, MATTER OF v NEW YORK CITY POLICE DEPARTMENT:

1<sup>ST</sup> Dept. App. Div. order of 9/8/11; reversal; leave to appeal granted by App. Div., 7/17/12; Rule 500.11 review pending; RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - DENIAL OF FOIL REQUEST SEEKING UNREDACTED VERSIONS OF POLICE REPORTS BASED UPON PUBLIC SAFETY EXEMPTION (PUBLIC OFFICERS LAW § 87 [2][f]) AND PRIVACY EXEMPTION (PUBLIC OFFICERS LAW § 87 [2][b]);

Supreme Court, New York County granted a petition to compel respondent to disclose police reports containing the names and statements of witnesses who did not testify at petitioner's trial; thereafter, the same court denied respondent's motion to renew and granted respondent's motion for reargument only to the extent of clarifying the scope of redaction of the documents; App. Div. reversed and denied the petition.

MARRA (ISIDORO), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 6/15/12; modification; leave to appeal granted by Pigott, J., 8/14/12; CRIMES - EVIDENCE - WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE PHOTOGRAPHS OF RAPE VICTIM TAKEN AT THE HOSPITAL THAT DEPICTED MARKS AND BRUISES; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; ALLEGED PROSECUTORIAL MISCONDUCT DURING SUMMATION; Herkimer County Court convicted defendant, upon a jury verdict, of rape in the first degree; App. Div. modified to reduce the sentence and otherwise affirmed.

PERRINGTON (DONALD), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 11/15/11; affirmance; leave to

CRIMES - UNLAWFUL SEARCH AND SEIZURE - AUTOMOBILE PRESUMPTION (PENAL LAW § 265.15 [3]) - CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE - WHETHER THE TRIAL COURT ERRED IN RULING THAT A CO-DEFENDANT'S STATEMENT ADMITTING OWNERSHIP OF THE GUN WAS INSUFFICIENTLY RELIABLE TO PERMIT ITS INTRODUCTION AS A DECLARATION AGAINST PENAL INTEREST;

Supreme Court, New York County convicted defendant, after a jury trial, of criminal possession of a weapon in the second degree, and sentenced him, as a second violent felony offender, to a term of 8 years; App. Div. affirmed.

PHILADELPHIA INSURANCE COMPANY, MATTER OF (UTICA NATIONAL INSURANCE COMPANY):

4<sup>TH</sup> Dept. App. Div. order of 7/6/12; reversal with dissents; ARBITRATION - AWARD - CONFIRMING OR VACATING AWARD - WAIVER OF CONTENTION THAT CLAIM FOR REIMBURSEMENT OF FIRST-PARTY INSURANCE BENEFITS IS NOT ARBITRABLE UNDER INSURANCE LAW § 5105; WHETHER ARBITRATION PANEL EXCEEDED ITS POWER IN FINDING THAT THE MOTOR VEHICLE INSURED BY RESPONDENT WAS USED "FOR HIRE"; AUTOMOBILE INSURANCE;

Supreme Court, Erie County granted the petition to vacate an arbitration award and denied the cross motion to confirm the award; App. Div. reversed, denied the petition, granted the cross motion, and confirmed the arbitration award.

RODRIGUEZ (REYES), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 2/23/12; affirmance; leave to appeal granted by Pigott, J., 8/13/12;

CRIMES - RIGHT OF CONFRONTATION - WHETHER DEFENDANT'S RIGHT OF CONFRONTATION WAS VIOLATED BY POLICE OFFICER'S TESTIMONY REGARDING WHAT HE WAS TOLD BY A NON-TESTIFYING COOPERATOR REGARDING DEFENDANT'S NICKNAME; WHETHER DEFENSE COUNSEL PRESERVED A CONFRONTATION CLAUSE CHALLENGE TO A NONTESTIFYING CO-DEFENDANT'S STATEMENT TO AN ACCOMPLICE WITNESS AND, IF SO, WHETHER TESTIMONY CONCERNING THE STATEMENT VIOLATED DEFENDANT'S RIGHT OF CONFRONTATION; WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT SUFFICIENT NONACCOMPLICE TESTIMONY EXISTED TO SATISFY THE ACCOMPLICE CORROBORATION REQUIREMENT IN CPL 60.22; ALLEGED DISCOVERY AND ROSARIO VIOLATIONS;

Supreme Court, New York County convicted defendant, after a jury trial, of robbery in the first degree and conspiracy in the second and fourth degrees, and sentenced him to concurrent terms of 12 years, 6 to 18 years, and 1 and 1/3 to 4 years, respectively; App. Div. affirmed.

SHABAZZ (OMAR), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 11/15/11; affirmance; leave to

CRIMES - UNLAWFUL SEARCH AND SEIZURE - AUTOMOBILE PRESUMPTION (PENAL LAW § 265.15[3]) - CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE - WHETHER THE TRIAL COURT ERRED IN RULING THAT A CO-DEFENDANT'S STATEMENT ADMITTING OWNERSHIP OF THE GUN WAS INSUFFICIENTLY RELIABLE TO PERMIT ITS INTRODUCTION AS A DECLARATION AGAINST PENAL INTEREST - WHETHER PEOPLE v CONCEPCION (17 NY3d 192 [2011]) AND CPL 470.15 PRECLUDED THE APPELLATE DIVISION FROM RULING THAT DEFENDANT ALSO FAILED TO ESTABLISH THE DECLARANT'S UNAVAILABILITY; SUFFICIENCY OF THE EVIDENCE; ALLEGED PROSECUTORIAL MISCONDUCT - DENIAL OF MISTRIAL MOTION; Supreme Court, New York County convicted defendant, after a jury trial, of criminal possession of a weapon in the second degree, and sentenced him, as a second violent felony offender, to a term of 8 years; App. Div. affirmed.