

COURT OF APPEALS NEW FILINGS

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

January 3, 2014 through January 9, 2014

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.

BRUMFIELD (MICHAEL S.), PEOPLE v:

4TH Dept. App. Div. order of 9/27/13; reversal; leave to appeal granted by Lippman, Ch. J., 12/12/13;

GRAND JURY - RIGHT TO APPEAR BEFORE GRAND JURY - REFUSAL TO SIGN WAIVER OF IMMUNITY FORM WITHOUT DELETIONS - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT DEFENDANT WAS ENTITLED TO TESTIFY BEFORE THE GRAND JURY AFTER HE MADE DELETIONS TO, AND SIGNED, A WAIVER OF IMMUNITY FORM BECAUSE, AS DELETED, THE FORM COMPLIED WITH THE REQUIREMENTS OF CPL 190.45(1);

County Court, Monroe County, convicted defendant, upon a jury verdict, of attempted criminal possession of a weapon in the second degree, attempted criminal possession of a weapon in the third degree, obstructing governmental administration in the second degree and resisting arrest; App. Div. reversed, granted the motion to dismiss the indictment pursuant to CPL 210.20(1)(c), and dismissed the indictment without prejudice to the People to re-present any appropriate charges under counts two through five of the indictment to another grand jury.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. orders of 10/9/13, 7/29/13, 7/5/13, 3/27/13 and 11/23/12; sua sponte examination whether the orders appealed from finally determine the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - CHALLENGE TO VARIOUS APPELLATE DIVISION ORDERS, INCLUDING TWO ORDERS THAT, AMONG OTHER THINGS, DISMISSED APPEALS FOR APPELLANT'S FAILURE TO TIMELY PERFECT;

App. Div., among other things, denied appellant's motion to recall and vacate so much of a 7/29/13 App. Div. order as dismissed an appeal from a Supreme Court order dated 5/18/12, for failure to timely perfect, to reinstate the appeal, and for poor person relief (10/9/13 order); denied appellant's motion to enlarge the time to perfect an appeal from a Supreme Court order dated 5/18/12, and for other relief, and, on the court's own motion, dismissed appellant's appeal for failure to timely perfect (7/29/13 order); denied appellant's motion to recall and vacate a 3/27/13 App. Div. order that, among other things, dismissed an appeal from a Supreme Court order dated 10/7/11, for failure to timely perfect (7/5/13 order); denied appellant's motion to enlarge the time to perfect an appeal from a Supreme Court order dated 10/7/11, and for other relief, and, on the court's own motion, dismissed the appeal for failure to timely perfect (3/27/13 order); and, granted appellant's motion to the extent it sought an enlargement of time to perfect the appeal from the 10/7/11 order, enlarged the time to perfect the appeal until 1/25/13, and directed that no further enlargement of time shall be granted (11/23/12 order).

REPANTI (STEVEN), PEOPLE v:

App. Term, 9th and 10th Judicial Districts order of 7/8/13; affirmance; leave to appeal granted by Lippman, Ch. J., 12/12/13;

CRIMES - LESSER INCLUDED OFFENSES - WHETHER HARASSMENT IN THE SECOND DEGREE IS A LESSER INCLUDED OFFENSE OF ATTEMPTED ASSAULT IN THE THIRD DEGREE, WHERE THE FACTUAL ALLEGATIONS UNDERLYING BOTH CHARGES ARE IDENTICAL EXCEPT FOR THE MENS REA ELEMENT - WHETHER THE INTENT TO CAUSE PHYSICAL INJURY INCLUDES BY NECESSARY IMPLICATION THE INTENT TO HARASS, ALARM OR ANNOY THE PERSON SOUGHT TO BE INJURED - PEOPLE v MOYER (27 NY2d 252 [1970]); Justice Court of the Town of Ramapo, Rockland County, convicted defendant, after a non-jury trial, of attempted assault in the third degree and harassment in the second degree; App. Term affirmed.

RIGANO &c., MATTER OF v VIBAR CONSTRUCTION, INC. (AND ANOTHER PROCEEDING):

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

LIENS - MECHANIC'S LIEN - PROCEEDINGS TO DISCHARGE A MECHANIC'S LIEN AND TO AMEND THE NOTICE OF LIEN TO CORRECT THE NAME OF THE OWNER OF THE REAL PROPERTY - WHETHER MISIDENTIFICATION OF THE TRUE OWNER OF THE PROPERTY IN THE NOTICE OF LIEN IS A JURISDICTIONAL DEFECT WHICH CANNOT BE CURED BY AMENDMENT NUNC PRO TUNC;

Supreme Court, Westchester County, in Proceeding No. 1, granted that branch of petitioner's motion which was for leave to reargue the petition and, upon reargument, among other things, granted the petition and discharged the mechanic's lien; and, in Proceeding No. 2, granted that branch of the motion of Fawn Builders, Inc. and Delilah Rigano which was for leave to reargue the petition and, upon reargument, denied the petition to amend; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v TIMOTHY BB.:

3RD Dept. App. Div. order of 11/21/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

MENTAL HEALTH - PROCEEDING BY STATE OF NEW YORK SEEKING AN ORDER AUTHORIZING RESPONDENT'S CIVIL MANAGEMENT PURSUANT TO MENTAL HYGIENE LAW (MHL) ARTICLE 10; RIGHT TO COUNSEL - EFFECTIVE ASSISTANCE OF COUNSEL - TRIAL COUNSEL RETAINED UNLICENSED PSYCHOLOGIST DURING DISPOSITIONAL PHASE OF CIVIL CONFINEMENT PROCEEDING - TRIAL COURT DENIED RESPONDENT'S REQUEST FOR SUBSTITUTE COUNSEL TO ADDRESS ISSUE OF USE OF UNLICENSED PSYCHOLOGIST;

Supreme Court, Warren County, in a proceeding pursuant to MHL article 10, granted petitioner's application to find respondent to be a dangerous sex offender and confined him to a secure treatment facility; App. Div. affirmed.