

COURT OF APPEALS NEW FILINGS

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

May 30, 2014 through June 5, 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.

CONCEICAO (JOSEPH), PEOPLE v:

1st Dept. App. Term order of 10/26/11; affirmance; leave to appeal granted by Lippman, Ch.J., 5/21/14; Rule 500.11 review pending;

CRIMES - PLEA OF GUILTY - WHETHER THE GUILTY PLEA WAS VOLUNTARY, KNOWING AND INTELLIGENT WHERE DEFENDANT WAS NOT INFORMED OF THE RIGHTS HE WAS WAIVING PRIOR TO MAKING HIS GUILTY PLEA - WHETHER DEFENDANT WAS REQUIRED TO PRESERVE FOR APPELLATE REVIEW HIS CHALLENGE TO THE GUILTY PLEA;

Criminal Court of the City of New York, Bronx County, convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the seventh degree, and imposed sentence; App. Term affirmed.

GRAHAM (CLIFFORD), PEOPLE v.:

4TH Dept. App. Div. order of 6/7/13; affirmance; leave to appeal granted by Lippman, Ch.J., 5/28/14;

CRIMES - CONFESSION - WHETHER STATEMENTS DEFENDANT MADE TO POLICE SHOULD HAVE BEEN SUPPRESSED BECAUSE THEY WERE GIVEN DURING A CUSTODIAL INTERROGATION AND WITHOUT THE PRIOR ADMINISTRATION OF MIRANDA WARNINGS - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THOSE STATEMENTS WERE NOT SUBJECT TO SUPPRESSION BECAUSE THE POLICE COULD INFER FROM DEFENDANT'S CONDUCT AND HIS ATTORNEY'S ASSURANCES THAT DEFENDANT WAIVED HIS MIRANDA RIGHTS AND THAT SUCH WAIVER WAS MADE ON THE ADVICE OF COUNSEL;

Supreme Court, Onondaga County, convicted defendant, upon a jury verdict, of two counts of criminal possession of a forged instrument in the first degree and two counts of petit larceny; App. Div. affirmed.

HEATLEY (TODD R.), PEOPLE v.:

4TH Dept. App. Div. order of 2/14/14; modification; leave to appeal granted by Fahey, J., 5/12/14;

CRIMES - MURDER - INTENT TO KILL - WEIGHT OF EVIDENCE - ANALYSIS OF SUFFICIENCY OF EVIDENCE WITHIN CONTEXT OF WEIGHT OF THE EVIDENCE REVIEW - APPROPRIATE REMEDY - WHETHER APPELLATE DIVISION ERRED IN REDUCING CONVICTION OF MURDER IN THE FIRST DEGREE TO THE LESSER INCLUDED OFFENSE OF MANSLAUGHTER IN THE FIRST DEGREE; EVIDENCE - DEMONSTRATIVE EVIDENCE - PROSECUTORIAL MISCONDUCT; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

County Court, Erie County, convicted defendant, upon a jury verdict, of murder in the second degree; App. Div. modified as a matter of discretion in the interest of justice and on the law by reducing the conviction of murder in the second degree to manslaughter in the first degree and vacating the sentence, and remitted the matter to County Court for sentencing on the conviction of manslaughter in the first degree.

THE PRESERVE HOMEOWNERS' ASSOCIATION, INC., &c. v ZHAN et al.:

4TH Dept. App. Div. order of 5/2/14; reversal with a two-Justice dissent; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

ASSOCIATIONS - ACTION BY ASSOCIATION - HOMEOWNERS' ASSOCIATION - RESTRICTIVE COVENANTS - PERMANENT INJUNCTION - WHETHER ASSOCIATION'S BOARD OF DIRECTORS ACTED WITHIN ITS AUTHORITY WHEN IT DIRECTED DEFENDANTS TO REMOVE TWO CHICKENS FROM THEIR PROPERTY - WHETHER THE CHICKENS ARE "NORMAL HOUSEHOLD PETS" PERMITTED BY THE COVENANT;

Supreme Court, Onondaga County, denied plaintiff's motion for summary judgment, granted defendants' cross motion for summary judgment and dismissed the complaint; App. Div. reversed, denied defendants' cross motion for summary judgment, reinstated the complaint, and granted plaintiff's motion for summary judgment.