

COURT OF APPEALS NEW FILINGS

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

July 25, 2014 through July 31, 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.

DENSON (RAYMOND), PEOPLE v:

1ST Dept. App. Div. order of 2/18/14; affirmance; leave to appeal granted by Saxe, J., 7/24/14;

CRIMES - KIDNAPPING - ATTEMPT - RESTRAINT OF CHILD LESS THAN 16 YEARS OLD - WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO ESTABLISH THAT DEFENDANT COMMITTED ATTEMPTED KIDNAPPING IN THE SECOND DEGREE; PROOF OF PRIOR CONVICTIONS - WHETHER THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN PERMITTING TESTIMONY REGARDING DEFENDANT'S PRIOR CONVICTION OF SEX CRIME COMMITTED AGAINST A CHILD OVER TWENTY YEARS AGO, AND THE FACTS UNDERLYING THAT CONVICTION, ON THE ISSUE OF DEFENDANT'S INTENT; WHETHER THE ATTEMPTED KIDNAPPING CHARGE SHOULD HAVE BEEN DISMISSED UNDER THE

MERGER DOCTRINE; CONFESSION - WHETHER DEFENDANT'S STATEMENTS TO POLICE WERE ADMISSIBLE AS NONCUSTODIAL STATEMENTS AND POST-MIRANDA STATEMENTS; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN ALLOWING THE DEFENSE EXPERT TO TESTIFY UNDER THE PREMISE THAT DEFENDANT WAS A PEDOPHILE AND IN FAILING TO OBJECT WHEN THE PROSECUTION'S EXPERT BASED HER CONCLUSIONS ON THAT PREMISE;

Supreme Court, New York County, convicted defendant, after a nonjury trial, of attempted kidnapping in the second degree and endangering the welfare of a child, and sentenced him to an aggregate term of 10 years; App. Div. affirmed.

GARCIA v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 3/6/14; affirmance; leave to appeal granted by Court of Appeals, 6/26/14;

TORTS - FALSE IMPRISONMENT - FALSE ARREST - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT PLAINTIFF FAILED TO REBUT THE PRESUMPTION OF PROBABLE CAUSE RAISED BY A GRAND JURY INDICTMENT - ALLEGED POLICE COERCION AND PERJURED TESTIMONY; CIVIL RIGHTS - FEDERAL CIVIL RIGHTS CLAIM - WHETHER PLAINTIFF ESTABLISHED THE EXISTENCE OF A TRIABLE ISSUE OF FACT TO SUPPORT A CLAIM OF MUNICIPAL LIABILITY UNDER 42 USC § 1983;

Supreme Court, Bronx County, granted the motion of defendants City of New York, Police Officer John Florio and Detective Joseph Dietrich for summary judgment dismissing the complaint in its entirety, and denied plaintiff's cross motion for partial summary judgment on the issue of liability; App. Div. affirmed.

MACK (TERRANCE L.), PEOPLE v:

4TH Dept. App. Div. order of 5/2/14; reversal; leave to appeal granted by Lindley, J., 6/30/14;

CRIMES - JURORS - WHETHER COUNTY COURT COMMITTED REVERSIBLE ERROR BY ACCEPTING THE JURY VERDICT WITHOUT FIRST RESPONDING TO THREE NOTES FROM THE JURY;

County Court, Monroe County, convicted defendant, upon a jury verdict, of gang assault in the first degree, App. Div. reversed and granted a new trial.

MARGARY, MATTER OF v MARTINEZ:

2ND Dept. App. Div. order of 6/25/14; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CRIMES - FAMILY OFFENSE - DETERMINATION THAT RESPONDENT COMMITTED THE FAMILY OFFENSE OF MENACING IN THE SECOND DEGREE - ORDER OF PROTECTION;

Family Court, Kings County, after a hearing in a family offense proceeding pursuant to Family Court Act article 8, directed the issuance of an order of protection in favor of petitioner and against respondent for a period of six months and issued a separate order of protection covering a period up to and including 11/29/13; App. Div. modified, (1) the 5/31/13 Family

Court order of fact-finding and disposition, (a) by deleting from the second decretal paragraph thereof the words "six months" and substituting therefor the words "five years," and (b) by adding thereto a decretal paragraph finding that aggravating circumstances exist, including the use of a dangerous instrument by the respondent against the petitioner; (2) modified the 5/31/13 Family Court order of protection, (a) by deleting the provision thereof directing that the order of protection shall remain in force until and including 11/29/13, and substituting therefor a provision directing that the order of protection shall remain in effect until and including 5/31/18, and (b) by adding thereto a provision directing the respondent to stay away from the petitioner's home, school, business, and place of employment up to and including 5/31/18.

PELLETIER v LAHM:

2ND Dept. App. Div. order of 11/20/13; affirmance; leave to appeal granted by App. Div., 7/11/14; Rule 500.11 review pending; NEGLIGENCE - EMERGENCY DOCTRINE - WHETHER THE TRIAL COURT ERRED IN GIVING AN EMERGENCY DOCTRINE CHARGE TO THE JURY AND DENYING PLAINTIFF'S CPLR 4404(a) MOTION; Supreme Court, Rockland County, upon a jury verdict in favor of defendants and against plaintiff on the issue of liability, and upon an order of the same court dated 6/14/11 denying his motion pursuant to CPLR 4404(a) to set aside the verdict and for judgment as a matter of law on the issue of liability or, in the alternative, to set aside the verdict as contrary to the weight of the evidence and for a new trial, awarded judgment in favor of defendants and against plaintiff, dismissing the complaint; App. Div. affirmed.

RODRIGUEZ, MATTER OF v ZAMBELLI, &c.:

2ND Dept. App. Div. order of 7/9/14; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - WHETHER MANDAMUS LIES TO COMPEL RESPONDENT COUNTY COURT JUDGE TO ISSUE A CERTIFICATE OF CONVICTION SPECIFYING THAT THE COMMENCEMENT DATE OF A RESENTENCE IMPOSED ON PETITIONER IN 2007 IS MARCH 23, 1999; App. Div., among other things, denied the petition and dismissed the proceeding on the merits.

WASHINGTON, MATTER OF, A SUSPENDED ATTORNEY:

2ND Dept. App. Div. order of 6/9/14; denial of application; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ATTORNEY AND CLIENT - REINSTATEMENT - SUSPENDED ATTORNEY DENIED REINSTATEMENT CLAIMS DUE PROCESS AND EQUAL PROTECTION VIOLATIONS; App. Div. denied attorney's application for reinstatement to the Bar as an attorney and counselor-at-law.