

COURT OF APPEALS NEW FILINGS

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

**August 15, 2014 through August 21, 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.**

MATTER OF C., AN APPLICANT FOR ADMISSION TO THE BAR:

2<sup>ND</sup> Dept. App. Div. order of 7/9/14; denial of application; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - ADMISSION TO PRACTICE - WHETHER PETITIONER WAS DENIED DUE PROCESS OF LAW BY THE APPELLATE DIVISION'S SUMMARY DENIAL, WITHOUT A HEARING, OF HIS SECOND RENEWED APPLICATION FOR ADMISSION TO PRACTICE LAW;

App. Div. denied petitioner's second renewed application for admission to the Bar of the State of New York.

HARRIS (DAVON), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 3/19/14; affirmance; leave to appeal granted by Rivera, J., 8/4/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS TRIAL ATTORNEY FAILED TO RAISE A STATUTE OF LIMITATIONS DEFENSE THAT WOULD HAVE BARRED PROSECUTION ON ONE OF THE TWO INDICTED CRIMES; SUFFICIENCY OF EVIDENCE OF DEFENDANT'S INTENT TO STEAL PROPERTY WHEN HE ENTERED THE DWELLING; FAILURE OF TRIAL COURT TO GRANT DEFENDANT'S FOR-CAUSE CHALLENGE TO A JUROR; CLAIMED DUE PROCESS VIOLATIONS;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of burglary in the second degree and petit larceny, and imposed sentence; App. Div. affirmed.

HATTON (FRANKIE), PEOPLE v:

App. Term 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Judicial Districts; reversal; leave to appeal granted by Rivera, J. 8/4/14;

CRIMES - PLEA OF GUILTY - FORFEITURE OF RIGHT TO RAISE ISSUES ON APPEAL - JURISDICTIONAL SUFFICIENCY OF ACCUSATORY INSTRUMENT - WHETHER DEFENDANT WAIVED HIS RIGHT TO PROSECUTION BY INFORMATION BY A BLANKET WAIVER OF THE READING OF THAT RIGHT MADE BY HIS ATTORNEY IN THE CONTEXT OF AN UNRELATED CASE OUTSIDE OF DEFENDANT'S PRESENCE OR BY SUBSEQUENTLY PLEADING GUILTY; CRIMES - INFORMATION - INSUFFICIENT INFORMATION CHARGING FORCIBLE TOUCHING - WHETHER THE ACCUSATORY INSTRUMENT CONTAINED SUFFICIENT FACTUAL - ALLEGATIONS RELATED TO THE "PURPOSE" ELEMENT OF FORCIBLE TOUCHING;

Criminal Court of the City of New York convicted defendant, upon his guilty plea, of forcible touching; App. Term reversed and dismissed the accusatory instrument.

JORGENSEN (JENNIFER), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 1/22/14; affirmance; leave to appeal granted by Smith, J., 8/5/14;

CRIMES - EVIDENCE - SUFFICIENCY OF EVIDENCE - DEFENDANT, WHILE PREGNANT, CRASHED INTO ANOTHER CAR - DEFENDANT'S CHILD, BORN IN EMERGENCY C-SECTION, DIED DAYS AFTER THE ACCIDENT - WHETHER EVIDENCE WAS LEGALLY SUFFICIENT TO CONVICT DEFENDANT OF MANSLAUGHTER IN THE SECOND DEGREE CONCERNING THE CHILD; ADMISSION OF EVIDENCE - WHETHER THE TRIAL COURT ERRED IN PERMITTING ADMISSION OF EVIDENCE OF DRUGS TAKEN BY DEFENDANT DURING HER PREGNANCY; CLAIMED INFLAMMATORY COMMENTS BY PROSECUTOR DURING SUMMATION; CLAIMED DUE PROCESS VIOLATIONS;

Supreme Court, Suffolk County, upon a jury verdict, convicted defendant of manslaughter in the second degree, and imposed sentence; App. Div. affirmed.

LARABEE, et al. v GOVERNOR OF STATE OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 7/10/14; affirmance with a two-Justice dissent;

JUDGES - JUDICIAL SALARIES - SEPARATION OF POWERS - WHETHER PLAINTIFFS DEMONSTRATED THAT THE LEGISLATURE FAILED TO ABIDE BY THIS COURT'S RULING IN MATTER OF MARON v SILVER (14 NY3d 230 [2010]) BY ESTABLISHING A COMMISSION ON JUDICIAL COMPENSATION TO MAKE RECOMMENDATIONS FOR PROSPECTIVE-ONLY SALARY ADJUSTMENTS; WHETHER PLAINTIFF'S ARE ENTITLED TO DAMAGES FOR PAST CONSTITUTIONAL VIOLATIONS;

Supreme Court, New York County, upon renewal of plaintiff's motion for summary judgment, denied plaintiffs' request for an award of retroactive monetary damages; App. Div. affirmed.

LOWE (FABRICE), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 1/3/14; affirmance; leave to appeal granted by Rivera, J., 8/4/14;

INFANTS - YOUTHFUL OFFENDERS - WHERE A YOUTH WHO IS INELIGIBLE FOR YOUTHFUL OFFENDER STATUS BECAUSE OF THE NATURE OF THE CRIME REQUESTS SUCH STATUS, WHETHER SENTENCING COURT IS REQUIRED TO MAKE PARTICULARIZED FINDING OF NO MITIGATING CIRCUMSTANCES UNDER PENAL LAW § 720.10(3) BEFORE REJECTING THE REQUEST - PEOPLE v RUDOLPH (21 NY3d 497 [2013]);

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

PEOPLE ex rel. MOORE v SUPERINTENDENT OF COXSACKIE CORRECTIONAL FACILITY:

3<sup>RD</sup> Dept. App. Div. order of 8/7/14; denial of application; sua sponte examination whether a constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - AVAILABILITY OF RELIEF - CPLR 7002(b);

App. Div., among other things, denied petitioner's application for a writ of habeas corpus.

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. &c., et al. v CITY OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/13/14; reversal with a two-Justice dissent; sua sponte examination whether the two-Justice dissent at the App. Div. is on a question of law;

INJUNCTIONS - PRELIMINARY INJUNCTION - WHETHER PETITIONERS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS OF THE CLAIM TO BE ARBITRATED - WHETHER ARBITRATION AWARD IN PETITIONERS' FAVOR WOULD BE RENDERED INEFFECTUAL WITHOUT PROVISIONAL RELIEF;

Supreme Court, New York County, granted the petition for a preliminary injunction enjoining respondents from denying or revoking "Release Time" to the individual petitioners, pending resolution of arbitration proceedings; App. Div. reversed, vacated the judgment, denied the petition and dismissed the proceeding.

SMALLS (DENNIS P.), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 4/8/14; affirmance; leave to appeal granted by Graffeo, J., 8/11/14;

CRIMES - ACCUSATORY INSTRUMENT - SUFFICIENCY - CRIMINAL POSSESSION OF CONTROLLED SUBSTANCE - WHETHER CONFIRMATORY SCIENTIFIC TESTING IS REQUIRED FOR AN INFORMATION TO ADEQUATELY ALLEGE THAT THE RESIDUE ON A CRACK PIPE CONTAINS COCAINE (PEOPLE v KALIN, 12 NY3d 225 [2009]);

Supreme Court, Bronx County, convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the seventh degree and sentenced him to a term of 30 days' incarceration; App. Div. affirmed.

VARENGA (NATANAEL SAGASTUMEAL), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 3/5/14; reversal; leave to appeal granted by Rivera, J., 8/6/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT A HEARING ON HIS MOTION TO VACATE HIS CONVICTION ON THE GROUND THAT HE WAS DEPRIVED OF HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL BY HIS ATTORNEY'S ALLEGED FAILURE TO ADVISE HIM OF THE IMMIGRATION CONSEQUENCES OF HIS GUILTY PLEA - FINALITY OF DEFENDANT'S CONVICTION IN RELATION TO TIMING OF U.S. SUPREME COURT DECISION IN PADILLA v KENTUCY (559 US 356); RETROACTIVE EFFECT OF PADILLA DECISION;

Supreme Court, Suffolk County, denied, without a hearing, defendant's motion pursuant to CPL 440.10 to vacate a 5/14/09 judgment convicting him, upon his guilty plea, of assault in the second degree and imposing sentence; App. Div. reversed and remitted the matter to Supreme Court for an evidentiary hearing on defendant's motion, and for a new determination of the motion.

WRAGG (WILLIE L.), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 3/28/14; affirmance; leave to appeal granted by Lippman, Ch.J., 8/7/14;

CRIMES - SENTENCE - SECOND CHILD SEXUAL ASSAULT FELONY OFFENDER - WHETHER THE PEOPLE ARE PERMITTED TO SEEK A SENTENCING ENHANCEMENT PURSUANT TO PENAL LAW § 70.07 BY FILING A CPL 400.19 SECOND CHILD SEXUAL ASSAULT FELONY OFFENDER STATEMENT AFTER THE COMMENCEMENT OF TRIAL; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN, AMONG OTHER THINGS, HIS ATTORNEY FAILED TO OBJECT TO THE TESTIMONY OF A POLICE OFFICER WHO REFERRED TO THE VICTIM'S PRE-ARREST IDENTIFICATION OF DEFENDANT;

County Court, Monroe County, convicted defendant, upon a jury verdict, of sexual abuse in the first degree and imposed sentence; App. Div. affirmed.