

COURT OF APPEALS NEW FILINGS

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

October 10, 2014 through October 16, 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.

COOKE (ROBERT J.), PEOPLE v:

4TH Dept. App. Div. order of 7/11/14; modification; leave to appeal granted by Fahey, J., 9/18/14; Rule 500.11 review pending; TRIAL - PHYSICALLY RESTRAINED DEFENDANT - STUN BELT - WHETHER THE TRIAL COURT MADE A MODE OF PROCEEDINGS ERROR IN FAILING TO MAKE A FINDING THAT THE APPLICATION OF A STUN BELT TO DEFENDANT DURING TRIAL WAS NECESSARY; WHETHER DEFENDANT KNOWINGLY WAIVED HIS RIGHT TO OBJECT TO THE STUN BELT; WHETHER COUNT FIVE OF INDICTMENT WAS RENDERED DUPLICITOUS BY EVIDENCE AT TRIAL; WHETHER IT WAS ERROR TO ADMIT A PARTIALLY INAUDIBLE AUDIOTAPE;

County Court, Steuben County, convicted defendant, upon a jury verdict, of criminal sexual act in the first degree, sexual abuse in the first degree and two counts of endangering the welfare of a child; App. Div. modified by reversing that part of the judgment convicting defendant of endangering the welfare of a child under count eight of the indictment, dismissing that count, and vacating the sentence imposed on that count, and by vacating that part of the order of protection in favor of defendant's elder daughter.

DIXON, MATTER OF v FISCHER:

3RD Dept. App. Div. judgment of 9/25/14; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER THE APPELLATE DIVISION PROPERLY DISMISSED THE PETITION AS MOOT ON THE BASIS THAT PETITIONER RECEIVED ALL THE RELIEF TO WHICH HE WAS ENTITLED IN AN ADMINISTRATIVE REVERSAL OF A DISCIPLINARY DETERMINATION;

App. Div. dismissed the petition as moot.

POLEUN (JAMES R.), PEOPLE v:

4TH Dept. App. Div. order of 7/3/14; affirmance; leave to appeal granted by Court of Appeals, 9/23/14;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) (CORRECTION LAW ART. 6-C) - WHETHER DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE HEARING COURT ACCEPTED HIS WAIVER OF APPEARANCE AND HELD A HEARING TO ASSESS HIS RISK LEVEL IN HIS ABSENCE, ALTHOUGH HE EXPRESSED HIS DESIRE TO BE PRESENT AT THE HEARING AND PROFFERED AN EXCUSE FOR HIS INABILITY TO ATTEND; County Court, Niagara County, determined that defendant is a level three risk pursuant to SORA; App. Div. affirmed.