

COURT OF APPEALS NEW FILINGS

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

February 6, 2015 through February 12, 2015

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.

ALI v STATE OF NEW YORK:

3RD Dept. App. Div. order of 1/23/15; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING CLAIMANT'S MOTION FOR PERMISSION TO PROCEED AS A POOR PERSON AND MOTION FOR "DE NOVO, EN BANC CAUSIDICUS" AND FOR FURTHER RELIEF;

App. Div. denied claimant's motion for permission to proceed as a poor person and motion for "de novo, en banc causidicus" and for other relief.

DENNARD, MATTER OF v CITY OF BUFFALO EXAMINING BOARD OF PLUMBERS:
4TH Dept. App. Div. judgment of 1/2/15; confirmed agency determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

LICENSES - REVOCATION OF MASTER PLUMBER'S LICENSE - WHETHER PETITIONER WAS DENIED A FAIR HEARING BASED ON IMPROPER NOTICE OF THE HEARING, THE USE OF HEARSAY EVIDENCE AT THE HEARING, AND/OR AGENCY'S RELIANCE ON EXTRINSIC EVIDENCE - SUBSTANTIAL EVIDENCE; App. Div. confirmed respondent's determination revoking petitioner's master plumber's license, and dismissed the CPLR article 78 petition.

GRIGGS (PERRY C.), PEOPLE v:

4TH Dept. App. Div. order of 5/9/14; affirmance; leave to appeal granted by Pigott, J., 1/27/15;

CRIMES - ROBBERY - FORCIBLE STEALING - WHETHER LEGALLY SUFFICIENT EVIDENCE EXISTED TO ESTABLISH THAT DEFENDANT FORCIBLY STOLE PROPERTY FROM THE VICTIM WHILE USING A GUN; WHETHER DEFENDANT'S SENTENCE WAS PROPERLY THE SUBJECT OF A SENTENCING ENHANCEMENT PURSUANT TO PENAL LAW § 60.07; GRAND JURY - DEFECTIVE PROCEEDING - SHACKLED DEFENDANT - PROSECUTORIAL MISCONDUCT - WHETHER DEFENDANT'S APPEARANCE BEFORE THE GRAND JURY IN SHACKLES, THE PROSECUTOR'S CROSS-EXAMINATION OF DEFENDANT, OR THE PROSECUTOR'S FAILURE TO INFORM THE GRAND JURY OF A DEFENSE REQUEST TO HAVE ANOTHER WITNESS TESTIFY RENDERED THE PROCEEDING DEFECTIVE AND WARRANTED DISMISSAL OF THE INDICTMENT;

Supreme Court, Erie County, convicted defendant, upon a jury verdict, of robbery in the first degree and sentenced him, as a second violent felony offender, to a term of 20 years' incarceration and 5 years' post-release supervision; App. Div. affirmed.

MORRISHILL, MATTER OF v PRACK, &c.:

3RD Dept. App. Div. judgment of 9/11/14; leave to appeal granted by Court of Appeals, 1/20/15;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER PETITIONER WAS DEPRIVED OF DUE PROCESS RIGHTS DURING HIS DISCIPLINARY HEARING - RIGHT OF ACCESS TO OPERATION MANUAL FOR DRUG TESTING MACHINE;

App. Div. confirmed respondent's determination finding petitioner guilty of violating a prison disciplinary rule, and dismissed the petition.

WATSON (LAWRENCE), PEOPLE v:

1ST Dept. App. Div. order of 12/2/14; reversal; leave to appeal granted by Tom, J., 2/5/15;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE PRESENTATION - POTENTIAL CONFLICT OF INTEREST - REPRESENTATION OF DEFENDANT BY STAFF ATTORNEY OF AN INSTITUTIONAL DEFENDER WHERE POTENTIAL WITNESS IN

ATTORNEY IN A CASE ARISING OUT OF THE SAME INCIDENT UNDERLYING THE CHARGES AGAINST DEFENDANT - APPLICATION OF PEOPLE v WILKINS (28 NY2d 53) TO SMALLER-SCALE PUBLIC DEFENSE AGENCY - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT NO ACTUAL OR POTENTIAL CONFLICT OF INTEREST EXISTED - WHETHER THE TRIAL COURT VIOLATED DEFENDANT'S RIGHT TO COUNSEL OF HIS OWN CHOOSING BY DISQUALIFYING DEFENSE COUNSEL EVEN THOUGH DEFENDANT WAIVED ANY POTENTIAL CONFLICT;

Supreme Court, New York County, convicted defendant of two counts of criminal possession of a weapon in the second degree and one count of resisting arrest, and sentenced him, as a persistent felony offender, to an aggregate term of 20 years to life; App. Div. reversed and remanded the matter for a new trial.

WILLIAMS (CHRISTIAN), PEOPLE v:

1ST Dept. App. Div. order of 10/30/14; reversal; leave to appeal granted by Tom, J., 1/29/15;

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - ILLEGALITY OF AGREED UPON SENTENCE - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT DEFENDANT'S JUDGMENT OF CONVICTION, ENTERED UPON A GUILTY PLEA, MUST BE VACATED BECAUSE THE RECORD DISCLOSED THAT NEITHER THE COURT NOR THE PARTIES REALIZED THAT THE AGREED UPON SENTENCE, TO BE IMPOSED IF DEFENDANT COMPLIED WITH THE CONDITIONS OF THE PLEA, WAS ILLEGAL; CRIMES - APPEAL - PRESERVATION OF ISSUE FOR REVIEW - CONSTITUTIONAL CLAIM THAT GUILTY PLEA VIOLATED DUE PROCESS - WHETHER DEFENDANT WAS REQUIRED TO PRESERVE HIS CONSTITUTIONAL CLAIM BY MOVING TO WITHDRAW HIS PLEA;

Supreme Court, New York County, convicted defendant, upon his guilty plea, of criminal sale of a controlled substance in the third degree, and sentenced him, as a second felony drug offender previously convicted of a violent felony, to a term of six years; App. Div. reversed, vacated the plea, and remanded for further proceedings.