

COURT OF APPEALS NEW FILINGS

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

April 17, 2015 through April 23, 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.

BADALAMENTI (ANTHONY), PEOPLE v:

2ND Dept. App. Div. order of 1/14/15; affirmance; leave to appeal granted by Fahey, J., 3/31/15;

CRIMES - EVIDENCE - RECORDING OF TELEPHONE CONVERSATION WITHOUT CONSENT OF EITHER PARTY - WHETHER THE APPELLATE DIVISION CORRECTLY RECOGNIZED A "VICARIOUS CONSENT" EXEMPTION TO PENAL LAW § 250.05 WHERE A CHILD'S PARENT RECORDS A CONVERSATION BETWEEN THE CHILD AND A THIRD PARTY, UPON A SHOWING THAT THE PARENT HAD A GOOD FAITH, OBJECTIVELY REASONABLE BASIS TO BELIEVE THE RECORDING WAS NECESSARY FOR THE WELFARE OF THE CHILD; JURY CHARGE - VARIANCE BETWEEN JURY CHARGE AND ALLEGATIONS IN INDICTMENT -

HARMLESS ERROR; ARGUMENT AND CONDUCT OF COUNSEL - WHETHER PROSECUTOR'S QUESTIONS, COMMENTS AND ARGUMENTS DEPRIVED DEFENDANT OF A FAIR TRIAL; EVIDENCE - CHALLENGE TO ADMISSION OF TESTIMONY OF CHILD'S TEACHER; SENTENCE - ALLEGED IMPOSITION OF SENTENCE OF IMPRISONMENT AS RETRIBUTION FOR DEFENDANT'S DECISION TO PROCEED TO TRIAL;

Supreme Court, Nassau County, convicted defendant of three counts of assault in the second degree, two counts of criminal possession of a weapon in the fourth degree, and one count of endangering the welfare of a child, upon a jury verdict, and imposed sentence; App. Div. affirmed.

COUNTY OF CHEMUNG, MATTER OF v SHAH:

3RD Dept. App. Div. order of 1/8/15; modification; leave to appeal granted by Court of Appeals, 4/7/15;
HEALTH - MEDICAID REIMBURSEMENT PAYMENTS - REIMBURSEMENT OF OVERBURDEN EXPENDITURES - WHETHER THE 2012 AMENDMENT TO THE MEDICAID CAP STATUTE (L 2012, CH 56, PART D, § 61) EXTINGUISHES THE STATE'S OBLIGATION UNDER SOCIAL SERVICES LAW § 368-a(1)(h) TO REIMBURSE THE COUNTY FOR OVERBURDEN EXPENDITURES ACCRUED PRIOR TO JANUARY 1, 2006, BUT NOT SUBMITTED TO THE STATE FOR PAYMENT UNTIL ON OR AFTER THE AMENDMENT'S EFFECTIVE DATE OF APRIL 1, 2012 - NECESSITY FOR IMPOSITION OF SIX-MONTH GRACE PERIOD TO SATISFY DUE PROCESS; MANDAMUS - WHETHER THE COUNTY IS ENTITLED TO MANDAMUS RELIEF DIRECTING THE STATE TO IDENTIFY, CALCULATE AND PAY ALL PRE-2006 OVERBURDEN EXPENDITURES EVEN WITHOUT ANY CLAIMS BEING MADE FOR SUCH EXPENDITURES;

Supreme Court, Chemung County, granted petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to, among other things, annul a determination of respondents denying petitioner's claim for certain Medicaid reimbursements; App. Div. modified by reversing so much thereof as declared L 2012, ch 56, part D, § 61 to be unconstitutional; and declared that L 2012 ch 57 part D, § 61 is constitutional with a grace period of six months commencing November 26, 2014; and, as so modified, affirmed.

COUNTY OF ST. LAWRENCE, MATTER OF v SHAH:

3RD Dept. App. Div. order of 11/26/14; modification; leave to appeal granted by Court of Appeals, 4/7/15;
HEALTH - MEDICAID REIMBURSEMENT PAYMENTS - REIMBURSEMENT OF OVERBURDEN EXPENDITURES - WHETHER THE 2012 AMENDMENT TO THE MEDICAID CAP STATUTE (L 2012, CH 56, PART D, § 61) EXTINGUISHES THE STATE'S OBLIGATION UNDER SOCIAL SERVICES LAW § 368-a(1)(h) TO REIMBURSE THE COUNTY FOR OVERBURDEN EXPENDITURES ACCRUED PRIOR TO JANUARY 1, 2006, BUT NOT SUBMITTED TO THE STATE FOR PAYMENT UNTIL ON OR AFTER THE AMENDMENT'S EFFECTIVE DATE OF APRIL 1, 2012 - NECESSITY FOR IMPOSITION OF SIX-MONTH GRACE PERIOD TO SATISFY DUE PROCESS; MANDAMUS - WHETHER THE COUNTY IS ENTITLED TO MANDAMUS RELIEF DIRECTING THE STATE TO IDENTIFY, CALCULATE AND PAY ALL PRE-2006 OVERBURDEN EXPENDITURES EVEN WITHOUT ANY CLAIMS BEING MADE FOR SUCH EXPENDITURES;

Supreme Court, St. Lawrence County, partially granted petitioner's applications, in three combined proceedings pursuant to CPLR article 78 and action for declaratory judgment, to annul three determinations of respondent Commissioner of Health disallowing petitioner's claims for Medicaid reimbursements; App. Div. modified by reversing so much thereof as declared L 2012, ch 56, part D, § 61 to be unconstitutional; and declared that L. 2012, ch 56, part D, § 61 is constitutional with a grace period of six months from the date of the court's decision for social services districts to submit claims to respondent Department of Health for reimbursement of overburden expenditures incurred prior to 2006; and as so modified, affirmed.

PANTON (NADINE), PEOPLE v:

1ST Dept. App. Div. order of 2/6/14; modification, leave to appeal granted by Lippman, Ch.J., 4/8/15;

CRIMES - CONFESSION - CUSTODIAL INTERROGATION - WHETHER THE STATEMENTS MADE BY DEFENDANT AFTER RECEIVING MIRANDA WARNINGS SHOULD HAVE BEEN SUPPRESSED AS THE PRODUCT OF CUSTODIAL INTERROGATION BEFORE THE WARNINGS WERE ADMINISTERED; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BASED ON COUNSEL'S ALLEGED FAILURE TO RAISE THE MIRANDA CLAIM;

Supreme Court, Bronx County, convicted defendant of murder in the second degree and robbery in the second degree, and sentenced her to an aggregate term of 25 years to life; App. Div. modified to the extent of vacating the DNA databank fee and reducing the amounts of the mandatory surcharge and crime victim assistance fees from \$250 and \$20 to \$200 and \$10, respectively, and otherwise affirmed.

PLATINUM PLEASURES OF NY, INC., MATTER OF v NEW YORK STATE LIQUOR AUTHORITY:

1ST Dept. App. Div. order of 3/24/15; modification with a two-Justice dissent; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

INTOXICATING LIQUORS - LICENSES - WHETHER THE APPELLATE DIVISION ERRED IN RULING THAT PETITIONER'S VIOLATIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW AND THE RULES OF THE STATE LIQUOR AUTHORITY DID NOT WARRANT CANCELLATION OF PETITIONER'S LICENSE ABSENT A FINDING OF WILLFULNESS OR AN INTENT TO DECEIVE IN CONNECTION WITH THE VIOLATIONS;

App. Div. modified respondent's determination cancelling petitioner's on-premises liquor license and imposing a \$1,000 bond forfeiture, upon a finding of violations of Alcoholic Beverage Control Law and the Rules of the State Liquor Authority, to vacate the penalty of cancellation and remand the matter to respondent for the imposition of a lesser penalty, and otherwise disposed of the CPLR article 78 proceeding by confirming the remainder of the determination.

RANCO SAND AND STONE CORP., MATTER OF v VECCHIO:

2ND Dept. App. Div. order of 11/26/14; affirmance; leave to appeal granted by Court of Appeals, 3/31/15;
COURTS - RIPENESS DOCTRINE - PROCEEDING TO REVIEW DETERMINATION OF TOWN BOARD APPROVING RESOLUTION ISSUING POSITIVE DECLARATION PURSUANT TO STATE ENVIRONMENTAL QUALITY REVIEW ACT - WHETHER, UNDER MATTER OF GORDON v RUSH (100 NY2d 236 [2003]), THE TOWN BOARD'S POSITIVE DECLARATION IS RIPE FOR JUDICIAL REVIEW;
Supreme Court, Suffolk County, granted respondents' motion pursuant to CPLR 3211(a) and 7804(f) to dismiss the CPLR article 78 petition on the ground that the proceeding was not ripe for judicial review, and dismissed the proceeding; App. Div. affirmed.

SHEIKH, MATTER OF v NEW YORK CITY TAXI AND LIMOUSINE COMMISSION:

1ST Dept. App. Div. order of 11/14/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI; APPEAL AS OF RIGHT;
Supreme Court, New York County, denied the CPLR article 78 petition, granted the Commission's cross motion to dismiss the proceeding and dismissed the proceeding; App. Div. affirmed.