

COURT OF APPEALS NEW FILINGS

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

December 4, 2015 through December 10, 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.

CANGRO v MARANGOS:

1ST Dept. App. Div. order of 10/22/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT - WHETHER THE COMPLAINT WAS PROPERLY DISMISSED - ACTION ARISING OUT OF DIVORCE JUDGMENT;
Supreme Court, New York County, denied plaintiff's motion to compel the production of discovery and dismissed the action; App. Div. affirmed.

CITY OF NEW YORK v GOUNDEN:

2ND Dept. App. Div. orders of 3/5/15 and 8/19/15; denial of motion to intervene and affirmance; sua sponte examination whether the 3/5/15 order finally determines the action within the meaning of the Constitution; whether Posr A. Posr is aggrieved by the 8/19/15 order; and whether any jurisdictional basis for an appeal as of right lies in this matter;

PARTIES - INTERVENTION - MOTION, BY PERSON CLAIMING TO HAVE BEEN FALSELY ARRESTED FOR BLOCKING THE STREET AT ISSUE, TO INTERVENE IN AN ACTION PURSUANT TO SECTION 871 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW BROUGHT BY PLAINTIFF CITY OF NEW YORK AGAINST A LANDOWNER WHO ERECTED A FENCE AND PLACED A BOULDER BLOCKING USE OF AN UNMAPPED STREET EXTENDING DOWN THE MIDDLE OF A SMALL PENINSULA OF LAND; AGGRIEVEMENT;

Supreme Court, Queens County, among other things, denied that branch of plaintiff City's motion which was for summary judgment on the complaint and, upon searching the record, awarded summary judgment to defendant dismissing the complaint; App. Div. denied the motion by Posr A. Posr for, among other things, leave to intervene as a respondent on the appeal and cross appeal, and, thereafter, affirmed.

LOEHR et al., MATTER OF v ADMINISTRATIVE BOARD OF THE COURTS OF THE STATE OF NEW YORK:

3RD Dept. App. Div. order of 6/18/15; reversal;

JUDGES - CERTIFICATION OF JUSTICE FOR JUDICIAL SERVICE BEYOND THE MANDATORY RETIREMENT AGE OF 70 - WHETHER POLICY OF ADMINISTRATIVE BOARD OF THE COURTS OF THE STATE OF NEW YORK THAT "NO JUDGE HENCEFORTH CERTIFICATED FOR SERVICE AS A JUSTICE OF THE SUPREME COURT PURSUANT TO JUDICIARY LAW § 115 MAY RECEIVE, CONCURRENT WITH RECEIPT OF A SALARY FOR SUCH SERVICE, A RETIREMENT ALLOWANCE FOR PRIOR JUDICIAL SERVICE WITHIN THE UNIFIED COURT SYSTEM" VIOLATES NY CONSTITUTION, ARTICLE V, § 7, JUDICIARY LAW § 115(3) AND RETIREMENT AND SOCIAL SECURITY LAW § 212;

Supreme Court, Albany County, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, granted defendant-respondent's motion to dismiss the amended petition/complaint; App. Div. reversed, denied the motion, granted the amended petition, and declared that defendant-respondent's policy that certificated justices of the Supreme Court not receive pension benefits during such employment violates NY Constitution, article V, § 7, Judiciary Law § 115(3) and Retirement and Social Security Law § 212.

SCHULZ, et al. v STATE OF NEW YORK EXECUTIVE, et al.:

3RD Dept. App. Div. order of 10/22/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER THE NEW YORK SECURE AMMUNITION AND FIREARMS ENFORCEMENT (SAFE) ACT (L 2013, CH 1) VIOLATES ARTICLE III, § 14 OF THE NEW YORK CONSTITUTION, ARTICLE XII OF THE NEW YORK CONSTITUTION, THE SECOND AMENDMENT TO THE FEDERAL CONSTITUTION, OR CIVIL RIGHTS LAW § 4; Supreme Court, Albany County, granted defendants' motion for summary judgment and declared that the SAFE Act (L 2013, ch 1) does not violate article III, § 14 of the New York Constitution, article XII of the New York Constitution, the Second Amendment to the Federal Constitution, and Civil Rights Law § 4; App. Div. affirmed.

WHITEHEAD, JR. (NORMAN), PEOPLE v:

3RD Dept. App. Div. order of 7/9/15; modification; leave to appeal granted by Pigott, J., 11/24/15; CRIMES - SUFFICIENCY OF THE EVIDENCE - CONTROLLED SUBSTANCES - WHETHER THE EVIDENCE WAS SUFFICIENT TO ESTABLISH DEFENDANT'S POSSESSION AND SALE OF COCAINE WHERE NONE OF THE SUBSTANCE WAS AVAILABLE FOR TESTING AND THE EVIDENCE ESTABLISHING THE NATURE OF THE SUBSTANCE POSSESSED AND SOLD BY DEFENDANT WAS TESTIMONY BY A CO-CONSPIRATOR'S CLIENT ABOUT THE EFFECTS OF THE SUBSTANCE; CONSPIRACY - CRIMINAL SALE OF CONTROLLED SUBSTANCE - ALLEGED DUPLICITOUS COUNTS; WHETHER DEFENDANT WAS DEPRIVED OF A FAIR HEARING BY THE PEOPLE'S COMMENTS AT OPENING AND SUMMATION; JURY INSTRUCTIONS - WHETHER THE TRIAL COURT ERRED IN REFUSING TO GIVE A CIRCUMSTANTIAL EVIDENCE CHARGE TO THE JURY; Supreme Court, Albany County, convicted defendant, upon a jury verdict, of nine counts of a 278-count indictment against him and several alleged co-conspirators, including conspiracy in the second degree and two counts of criminal possession of a controlled substance in the third degree, and imposed sentence; App. Div. modified by reversing defendant's convictions of criminal sale of a controlled substance in the third degree under counts 244 and 245 of the indictment, dismissing those counts, and vacating the sentences imposed thereon.

WHITE (MORRIS H.), PEOPLE v:

4TH Dept. App. Div. order of 6/19/15; affirmance; leave to appeal granted by Pigott, J., 12/2/15; CRIMES - TRIAL - MISTRIAL - WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AS A MATTER OF LAW BY DENYING DEFENDANT'S MOTION FOR A MISTRIAL - COMMENTS LINKING DEFENDANT'S SISTER WITH THE LOCAL DRUG SUBCULTURE MADE BY PROSPECTIVE JUROR ULTIMATELY EXCUSED FOR CAUSE - TESTIFYING POLICE OFFICER'S IDENTIFICATION OF DEFENDANT'S SISTER IN THE COURTROOM DURING THE TRIAL - STATEMENT VOLUNTEERED BY POLICE WITNESS THAT, UPON HIS ARREST, DEFENDANT ASKED TO WORK AS A POLICE INFORMANT; ALLEGED PROSECUTORIAL MISCONDUCT; REMITTAL TO APPELLATE DIVISION FOR CONSIDERATION WHETHER SENTENCE WAS HARSH AND SEVERE; County Court, Ontario County, convicted defendant, upon a jury verdict, of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree; App. Div. affirmed.