

COURT OF APPEALS NEW FILINGS

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

April 15, 2016 through April 21, 2016

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.

BAUTISTA (VILMA), PEOPLE v:

1ST Dept. App. Div. order of 10/20/15; modification; leave to appeal granted by Pigott, J., 4/5/16;

CRIMES - ARGUMENT AND CONDUCT OF COUNSEL - PROSECUTOR'S ARGUMENT ON SUMMATION - WHETHER DEFENDANT WAS DEPRIVED OF A FAIR TRIAL BY THE PROSECUTOR'S ALLEGED MISSTATEMENT OF THE EVIDENCE; DISCLOSURE - FAILURE TO DISCLOSE EXCULPATORY MATERIAL - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT AN INVESTIGATOR'S NOTES FROM AN INTERVIEW WITH A COCONSPIRATOR DID NOT CONSTITUTE BRADY MATERIAL; EVIDENCE - JUDICIAL NOTICE - FACT FINDINGS OF FOREIGN COUNTRY COURT IMPROPERLY READ TO JURY - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE TRIAL COURT'S ERROR IN READING THE FACT FINDINGS OF A FOREIGN COUNTRY COURT TO THE JURY WAS HARMLESS AS TO THE TAX COUNTS;

Supreme Court, New York County, convicted defendant, after a jury trial, of criminal tax fraud in the first degree, offering a false instrument for filing in the first degree, and conspiracy in the fourth degree, and sentenced her to concurrent terms of 2 to 6 years, 1 to 3 years, and 1 year, respectively, and restitution in the amount of \$3,557,620; App. Div. modified to the extent of vacating the conspiracy conviction and remanding for a new trial on that count if the People be so advised, and for further proceedings pursuant to CPL 460.50(5) as to the remaining convictions, and otherwise affirmed.

FRIEDMAN, MATTER OF v RICE:

2ND Dept. App. Div. order of 12/9/15; reversal; leave to appeal granted by Court of Appeals, 4/5/16;

RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - EXEMPTIONS - STATEMENTS OF NONTESTIFYING WITNESSES - WHETHER THE APPELLATE DIVISION PROPERLY DETERMINED THAT DOCUMENTS SOUGHT BY PETITIONER WERE EXEMPT FROM DISCLOSURE PURSUANT TO PUBLIC OFFICERS LAW § 87(2)(e)(iii); GRAND JURY - INSPECTION OF GRAND JURY MINUTES - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT PETITIONER FAILED TO ESTABLISH A COMPELLING AND PARTICULARIZED NEED FOR DISCLOSURE OF GRAND JURY MATERIALS PURSUANT TO CPL 190.25(4); Supreme Court, Nassau County, in a CPLR article 78 proceeding to compel production of certain documents pursuant to the Freedom of Information Law (FOIL) and CPL 190.25(4), granted the petition and directed the Nassau County District Attorney to disclose the subject documents, with certain redactions; App. Div. reversed, denied the petition and dismissed the CPLR article 78 proceeding.

KELLY, MATTER OF v DiNAPOLI:

3RD Dept. App. Div. judgment of 3/24/16; confirmation of determination and dismissal of petition; Rule 500.11 review pending;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - ACCIDENTAL DISABILITY RETIREMENT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT SUBSTANTIAL EVIDENCE SUPPORTS THE COMPTROLLER'S DETERMINATION THAT PETITIONER'S INJURY DID NOT RESULT FROM AN "ACCIDENT" WITH THE MEANING OF RETIREMENT AND SOCIAL SECURITY LAW § 363 AND, THEREFORE, PETITIONER WAS NOT ENTITLED TO ACCIDENTAL DISABILITY RETIREMENT BENEFITS;

App. Div. confirmed respondent's determination denying petitioner's application for accidental disability retirement benefits, and dismissed the petition.

MINEMIER (KEVIN M.), PEOPLE v:

4TH Dept. App. Div. order of 12/31/15; affirmance; leave to appeal granted by Stein, J. 4/12/16;

CRIMES - SENTENCE - YOUTHFUL OFFENDER - DENIAL OF YOUTHFUL OFFENDER STATUS - COURT'S FAILURE TO STATE REASONS FOR DENIAL OR TO DISCLOSE CONFIDENTIAL INFORMATION - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT, UNDER PEOPLE v RUDOLPH (21 NY3d 497 [2013]), CPL 720.20(1) DOES NOT REQUIRE THE SENTENCING COURT TO STATE ITS REASONS FOR DENYING YOUTHFUL OFFENDER STATUS TO A DEFENDANT; WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT, UNDER CPL 390.50, DEFENDANT WAS NOT ENTITLED TO DISCLOSURE OF ANY INFORMATION IN A DOCUMENT INCLUDED WITH THE PRE-SENTENCE REPORT ON THE BASIS THAT THE SOURCE OF THE INFORMATION WAS PROMISED CONFIDENTIALITY;

County Court, Monroe County, convicted defendant, upon his plea of guilty, of attempted murder in the second degree, two counts of assault in the first degree, and assault in the second degree; App. Div. affirmed.

NERONI v FOLLENDER et al.:

3RD Dept. App. Div. order of 3/3/16; 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 - COMPLAINT IN FRAUD ACTION - WHETHER SUPREME COURT ERRED IN DISMISSING PLAINTIFF'S ACTION, SANCTIONING PLAINTIFF ATTORNEY FOR FRIVOLOUS CONDUCT AND ENJOINING PLAINTIFF FROM BRINGING FURTHER LITIGATION AGAINST DEFENDANTS;

Supreme Court, Delaware County, among other things, granted defendants' motion to dismiss the complaint; in a separate order, Supreme Court, among other things, partially granted defendants' cross motion and directed plaintiff to pay costs and counsel fees; App. Div. affirmed both orders.