

COURT OF APPEALS NEW FILINGS

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

June 23, 2017 through June 29, 2017

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.

ALLIANCE TO END CHICKENS AS KAPOROS, et al v NEW YORK CITY POLICE DEPARTMENT, et al.:

1ST Dept. App. Div. order of 6/6/17; affirmance with dissents; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution; Proceeding against Body or Officer--Mandamus--Whether plaintiffs have a right, via a writ of mandamus, to compel the municipal defendants to enforce certain laws related to preserving public health and preventing animal cruelty, which they allege are violated by Orthodox Jews who perform the religious practice of Kaporos--chickens killed in religious ritual; discretionary versus mandatory actions of municipal agents; animals; Supreme Court, New York County, upon converting the plenary action as against the City defendants to a CPLR article 78 proceeding, granted the City defendants' motion to dismiss the proceeding; App. Div. affirmed.

AMELIO, MATTER OF v HOFFMAN, et al.:

1ST Dept. App. Div. judgment of 4/20/17; dismissal of petition; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right, and whether any basis exists for an appeal as of right; Proceeding against Body or Officer--Mandamus--Prohibition--CPLR article 78 proceeding against judge and spouse with regard to underlying divorce action; App. Div. denied petitioner's CPLR article 78 application, dismissed the petition, and denied petitioner's motion for a preliminary injunction.

BEATTY, MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 3/2/17; reversal; leave to appeal granted by App. Div., 5/18/17; Rule 500.11 review pending; Schools--Teachers--Where teacher submitted time sheets falsely stating that she had provided instruction to a disabled student over a two-month period, whether the arbitrator's penalty of termination shocks the conscience; Supreme Court, New York County, granted respondents' cross motion to deny the petition seeking to vacate a penalty imposed in an arbitration award dated 6/30/14, and dismissed the proceeding brought pursuant to CPLR article 75; App. Div. reversed, granted the petition, and remanded the matter to respondent New York City Department of Education for imposition of a lesser penalty.

GONZALEZ, MATTER OF v ANNUCCI:

3RD Dept. App. Div. order of 3/23/17; modification; leave to appeal granted by Court of Appeals, 6/22/17; Prisons and Prisoners--Whether the Department of Corrections and Community Supervision wrongfully denied petitioner good time credit based on his failure to locate housing that complied with the Sexual Assault Reform Act (SARA); whether the Department of Corrections and Community Supervision failed to comply with its obligations under the Correction Law by placing petitioner at a residential treatment facility following the maximum expiration date of his prison sentence and by failing to provide him statutorily required privileges and programming; Supreme Court, Albany County, dismissed the article 78 petition; App. Div. modified by partially converting the matter into a declaratory judgment action, and declared that (1) when a person whose prison sentence has expired and who is subject to the mandatory condition set forth in Executive Law § 259-c(14) is placed in a residential treatment facility pursuant to Penal Law § 70.45(3) and Correction Law § 73(10), the Department of Corrections and Community Supervision has an affirmative obligation pursuant to Correction Law § 201(5) to provide substantial assistance to the person in locating appropriate

housing and (2) the services provided to petitioner by the Department of Corrections and Community Supervision in locating such appropriate housing during his placement in the residential treatment facility at the Woodbourne Correctional Facility between 9/30/14 and his subsequent release on 2/4/15 were not adequate to satisfy that duty; and, as so modified, affirmed.

GRAJKO, MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 5/25/17; reversal with dissents; Rule 500.11 review pending; Municipal Corporations--Notice of Claims--Late Notice--whether petitioner failed to establish the statutory factors warranting leave to serve a late notice of claim (General Municipal Law § 50-e)--injured bricklayer's alleged failure to realize the severity of his injuries within 90 days after his accident; Supreme Court, Bronx County, among other things, granted petitioner's motion for leave to serve a late notice of claim on respondents; App. Div. reversed, denied petitioner's motion and dismissed the petition.

SUAZO (SAYLOR), PEOPLE v:

1ST Dept. App. Div. order of 1/3/17; affirmance; leave to appeal granted by DiFiore, Ch.J., 6/15/17; Crimes--Right to Jury Trial--Whether defendant was entitled to a jury trial, despite that he was only being tried for class B misdemeanors carrying maximum sentences of 90 days, because he was subject to deportation if convicted of a crime of domestic violence; constitutionality of CPL § 340.40; Supreme Court, Bronx County, convicted defendant of attempted assault in the third degree, attempted criminal obstruction of breathing or blood circulation, menacing in the third degree and attempted criminal contempt in the second degree, and imposed sentence; App. Div. affirmed.

TORRES V CERGNUL, et al.:

1ST Dept. App. Div. order of 1/12/17; reversal; Rule 500.11 review pending; Physicians and Surgeons--Malpractice--Whether plaintiff raised a triable issue of fact as to whether defendants departed from the standard of medical care in diagnosing and treating plaintiff; proximate cause; expert opinion; Supreme Court, Bronx County, granted the motion of defendants Irene G. Cernul, M.D. and Bronx-Lebanon Hospital Center for summary judgment dismissing the complaint as against them; App. Div. reversed and denied the motion.

WILLIAMS, MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 9/27/16; reversal; leave to appeal granted by Court of Appeals, 6/1/17; Rule 500.11 review pending; Schools--Teachers--Where a teacher discussed potential romantic interest in students' female relatives, whether the arbitrator's penalty of termination shocks the conscience; Supreme Court, New York County, denied the petition to vacate the part of an arbitration award that terminated petitioner's employment as a tenured school teacher, and dismissed the proceeding; App. Div. reversed, granted the petition and remanded the matter to respondents for imposition of a lesser penalty.

WILSON (THEODORE), PEOPLE v:

2ND Dept. App. Div. order of 2/1/17; affirmance; leave to appeal granted by Rivera, J., 6/20/17; Crimes--Assault--Whether legally sufficient evidence supports defendant's conviction for depraved indifference assault; claimed due process violation regarding court's response to a jury note; Supreme Court, Queens County, convicted defendant of assault in the first degree and assault in the second degree, and imposed sentence; App. Div. affirmed.