

COURT OF APPEALS NEW FILINGS

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

September 8, 2017 through September 14, 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.

ADAMS, MATTER OF v NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION:

4TH Dept. App. Div. order of 6/9/17; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Prisons and Prisoners--Discipline of Inmates--Whether inmate was denied his right to call witnesses; whether alleged chain of custody violation required reversal; whether inmate was denied adequate employee assistance where employee assistant incorrectly informed inmate that requested document did not exist; whether misbehavior report was sufficiently specific to enable inmate to prepare a defense; alleged due process and equal protection violations;

Supreme Court, Erie County, dismissed the article 78 petition; App. Div. (1) modified by granting the petition in part and annulling that part of the determination finding that petitioner violated inmate rules 113.23 (7 NYCRR 270.2 [B][14][xiii]) and 114.10 (7 NYCRR 270.2 [B][15][i]) and, as so modified, affirmed the judgment and (2) directed respondent to expunge from petitioner's institutional record all references to the violation of the cited rules.

MORRISON-ALLEN v STATE OF NEW YORK:

2ND Dept. App. Div. order of 7/5/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; State--Claim Against State--Whether the Court of Claims properly dismissed claimant's claim for, among other things, damages for the wrongful termination of her parental rights; claimed due process violations; Court of Claims granted defendant's motion pursuant to CPLR 3211(a) and Court of Claims Act §§ 9 and 10 to dismiss the claim; App. Div. affirmed.

NEW YORK CIVIL LIBERTIES UNION, MATTER OF v NEW YORK CITY POLICE DEPARTMENT et al.:

1ST Dept. App. Div. order of 3/30/17; reversal; Records--Freedom of Information Law--Whether Civil Rights Law § 50-a exempts from disclosure written disciplinary decisions of the New York City Police Department, despite that the disciplinary trials are open to the public and redaction of identifying information is available; whether respondents' previous disclosure of other redacted records waives any objection to redacting the subject disciplinary decisions; application of Public Officers Law § 87, Matter of Short v Board of Mgrs of Nassau County Med. Ctr. (57 NY2d 399 [2001]), Karlin v McMahon (96 NY2d 842 [2001]); Supreme Court, New York County, adhering to orders of the same court (10/16/12, 7/29/14 and 10/2/14), granted, to a limited extent, the petition brought pursuant to CPLR article 78 seeking to compel respondents to disclose certain records pursuant to the Freedom of Information Law; App. Div. reversed, denied the petition and dismissed the proceeding.

REEVES (KEVIN), PEOPLE v:

4TH Dept. App. Div. order of 7/7/17; reversal; sua sponte examination whether the appeal has been rendered moot by virtue of defendant's guilty plea and sentencing; Crimes--Identification of Defendant--Whether unreliability of a undercover police officer's identification of defendant, absent any finding of suggestiveness, can serve as a basis to suppress the identification; whether the police officer's identification of defendant was reliable; application of CPL 710.20;

County Court, Onondaga County, convicted defendant, of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree; App. Div. reversed, granted that part of defendant's omnibus motion to suppress pretrial identification testimony, and granted a new trial.