

COURT OF APPEALS NEW FILINGS

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

August 10, 2018 through August 16, 2018

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.

BERRY v NEW YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, et al.:

1ST Dept. App. Div. order of 6/28/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Motor Vehicles--Operator's License--Whether Tax Law § 171-v, which allows for the suspension of a driver's license for failure to pay outstanding taxes, violates the equal protection or due process clauses of the New York State or United States Constitutions;**

Supreme Court, New York County, dismissed plaintiff's complaint and declared Tax Law § 171-v constitutional; App. Div. affirmed.

McCULLUM (RAMEE), PEOPLE v:

2ND Dept. App. Div. order of 1/31/18; affirmance; leave to appeal granted by Rivera, J., 7/24/18;

Crimes--Possession of Weapon--Whether a defendant maintains a reasonable expectation of privacy in goods bailed as the result of a landlord's "legal possession" of an apartment, sufficient to establish standing to challenge a search under the Fourth Amendment of the United States Constitution—whether, where the People and the court both commit an error of fact, the defendant is justified in relying on that error for purposes of preservation of an argument;

Supreme Court, Kings County, convicted defendant, on a jury verdict, of criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

THIAM (MOUHAMED), PEOPLE v:

1ST Dept. App. Term order of 3/16/18; reversal; leave to appeal granted by Stein, J., 7/25/18;

Crimes--Accusatory Instrument--Where a defendant is charged only with misdemeanors or lesser charges in a multi-count accusatory instrument and at least one misdemeanor count is facially sufficient, does the trial court have jurisdiction over the defendant such that it may accept a plea to any count in the accusatory instrument, even those that are facially insufficient--whether a defendant may plead to a misdemeanor that is of an equal or higher grade than the misdemeanor charge that is facially sufficient;

Criminal Court of the City of New York, New York County, convicted defendant, on his guilty plea, of criminal possession of a controlled substance in the seventh degree, and imposed sentence; App. Term reversed and dismissed the accusatory instrument.