

COURT OF APPEALS NEW FILINGS

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

February 8 through February 14, 2019

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.

FORBES (JAMES), PEOPLE v:

1ST Dept. App. Div. order of 11/8/18; affirmance; leave to appeal granted by Wilson, J., 1/29/19;

Crimes--Evidence--Hearsay Evidence--“Identity” or “modus operandi” exception to the Molineux rule—defendant convicted of two separate theft incidents in one trial--whether his identity in both incidents was “conclusively established” for purposes of the Molineux identity exception to the hearsay rule for admission of evidence of prior bad acts; whether CPL 200.20 eliminates the discretionary analysis by the trial court as to whether the probative value of the evidence outweighs the potential for prejudice to the defendant;

Supreme Court, New York County, convicted defendant, upon a jury trial, of burglary in the third degree and four counts of grand larceny in the fourth degree, and sentenced him, as a persistent felony offender, to concurrent terms of 15 years to life; App. Div. affirmed.

LANG (STORM U.), a/k/a STORM U.J. LANG, a/k/a STORM LANG, PEOPLE v:
4TH Dept. App. Div. order of 10/5/18; affirmance; leave to appeal granted by DiFiore, Ch.J., 1/31/19;

**Crimes--Appeal--Whether defendant's waiver of the right to appeal was valid;
Crimes--Sentence--Youthful Offender--whether defendant waived or forfeited his
right to challenge sentencing court's denial of youthful offender status;**

County Court, Genesee County, convicted defendant of two counts of sexual abuse in the first degree and sexual abuse in the second degree; App. Div. affirmed.

MAFFEI (ROBERT), PEOPLE v:

2ND Dept. App. Div. order of 10/24/18; affirmance; leave to appeal granted by Rivera, J., 1/31/19;

**Crimes--Right to Counsel--Effective Representation--Whether counsel's failure to
challenge a juror who stated he was not certain he could be impartial deprived
defendant of the effective assistance of counsel; whether defendant raised a "mixed
claim" of ineffective assistance of counsel that should have been raised in a CPL
440.10 motion rather than on direct appeal;**

Supreme Court, Kings County, convicted defendant of murder in the second degree and imposed sentence; App. Div. affirmed.

MIDDLETON (DONNA), PEOPLE v:

County Court, Washington County order of 7/25/18; affirmance; leave to appeal granted by Feinman, J., 1/30/19;

**Crimes--Official Misconduct--Whether the information sufficiently established the
"intent to obtain a benefit" element of Penal Law § 195.00 (1)--whether the acts
charged fell outside defendant's "official duties"; prisons and prisoners;**

Fort Ann Town Court (6/1/16 transcript) convicted defendant, upon her guilty plea, of attempted official misconduct, and sentenced her to a fine and surcharge totaling \$450 and a conditional discharge requiring her to stay away from all jails or prisons as either an employee or visitor; County Court affirmed.

SUTTON 58 ASSOCIATES, LLC v PILEVSKY et al.:

1ST Dept. App. Div. order of 1/10/19; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

United States--Federal Preemption--Whether plaintiff's state law claims are preempted by federal law; sole damages sought by plaintiff were losses resulting from the delay of a real estate project due to bankruptcy filing of two nonparty entities;

Supreme Court, New York County, denied defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.