

COURT OF APPEALS NEW FILINGS

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

May 14, 2021 through May 20, 2021

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.

BRENNAN, MATTER OF v HOBBS, &c., et al.:

2ND Dept. App. Div. order of 4/7/21; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Proceeding Against Body or Officer--CPLR article 78 proceeding to review determination of Zoning Board of Appeals denying application for use variance;** Supreme Court, Rockland County, denied the petition and dismissed the CPLR article 78 proceeding; App. Div. affirmed.

CUENCAS (TRAMEL), PEOPLE v:

2ND Dept. App. Div. order of 12/30/20; affirmance; leave to appeal granted by Chambers, J., 5/7/21;

Crimes--Unlawful Search and Seizure--Whether warrantless of arrest of defendant at home, absent exigent circumstances, violated defendant's right to counsel under the New York State Constitution; Supreme Court found that no Payton violation occurred (see Payton v New York, 445 US 573 [1980]), where resident of second floor apartment of two-family residence tacitly consented to police entry into residence and defendant was arrested without warrant in first-floor apartment; Supreme Court, Kings County, convicted defendant of two counts of murder in the second degree and robbery in the second degree; App. Div. affirmed.

DIEFFENBACHER, MATTER OF v JACKSON, &c, et al.:

1ST Dept. App. Div. order of 12/29/20; denial of petition; leave to appeal granted by Court of Appeals, 5/6/21;

Crimes--Double Jeopardy--Whether petitioner's guilty plea in satisfaction of the 2018 indictment bars on statutory double jeopardy grounds his subsequent prosecution for similar alleged crimes arising out of the same investigation (CPL 40.40; CPL 40.10 [2] [b]);

App. Div. denied petition pursuant to CPLR article 78 for a writ of prohibition barring petitioner's prosecution under indictment number 2278/19, and dismissed the proceeding.

CITY OF LONG BEACH, MATTER OF v NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD:

2ND Dept. App. Div. order of 10/7/20; reversal; leave to appeal granted by Court of Appeals, 4/29/21;

Civil Service--Collective Bargaining--Whether procedures implemented by a public employer for terminating a public employee under Civil Service Law § 71 are subject to mandatory negotiation under the Public Employees' Fair Employment Act (Taylor Law);

Supreme Court, Nassau County, in a proceeding pursuant to CPLR article 78 to review an 11/6/17 determination of the New York State Public Employment Relations Board (PERB), which determined that petitioner violated Civil Service Law § 209-a(1)(d), granted the motion of respondent PERB to dismiss the petition, and, in effect, denied the petition and dismissed the proceeding; App. Div. reversed, denied the motion of PERB to dismiss the petition, granted the petition, declared the 11/6/17 determination null and void, and dismissed with prejudice the improper practice charge filed by the Long Beach Professional Firefighters Association, IAFF, Local 287, against petitioner.

MANKO v MANNOR, et al.:

1ST Dept. App. Div. order of 3/18/21; denial of motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Motions and Orders--Motion to vacate and reconsider;

App. Div. denied the motion to vacate and reconsider decisions and orders of the court entered 10/28/08 (Appeal No. 4425) and 12/10/09 (Appeal Nos. 1720-1721), and the orders of the court entered 11/19/19 (M-7525) and 9/15/09 (Ms-4032/4042).

NONHUMAN RIGHTS PROJECT, INC., &c, MATTER OF v BREHENY, &c., et al.:

1ST Dept. App. Div. order of 12/17/20; affirmance; leave to appeal granted by Court of Appeals, 5/4/21;

Habeas Corpus--When Remedy Available--Whether the common-law writ of habeas corpus lies on behalf of elephant;

Supreme Court, Bronx County, granted respondent's motion to dismiss the petition for a writ of habeas corpus; App. Div. affirmed.

WORD, MATTER OF v RENWICK, &c, et al.:

2ND Dept. App. Div. judgment of 5/5/21; denial of petition; sua sponte examination of whether any jurisdiction basis exists for an appeal as of right;

Proceeding Against body or Officer--Mandamus--Whether petitioner demonstrated a clear legal right to the relief sought;

App. Div. denied the petition and dismissed the CPLR article 78 petition.