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COURT OF APPEALS NEW FILINGS

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

December 3 through December 9, 2010

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.

ANONYMOUS, MATTER OF, AN APPLICANT FOR ADMISSION TO THE BAR:
3RD Dept. App. Div. order of 10/20/10; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - ADMISSION TO PRACTICE - CHALLENGE TO APPELLATE DIVISION ORDER REFERRING APPLICATION FOR ADMISSION TO THE BAR TO THREE MEMBERS OF THE COMMITTEE ON CHARACTER AND FITNESS;

App. Div. granted applicant's motion for an order vacating the 11/19/09 and 4/16/09 App. Div. orders denying his application for admission to the bar, and for reconsideration and admission to the bar, to the extent that the application is referred to three members of the Committee on Character and Fitness to investigate the application for admission, interview applicant, and render a report to the App. Div. as to whether applicant currently possesses the requisite character and general fitness for an attorney and counselor-at-law, and otherwise denied the motion.

ABREU, MATTER OF v VONCE, et al.:
3RD Dept. App. Div. order of 9/30/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
DISMISSAL AND NONSUIT - DISMISSAL OF PETITION BASED ON PETITIONER'S FAILURE TO SERVE PAPERS AS DIRECTED IN ORDER TO SHOW CAUSE - LACK OF PERSONAL JURISDICTION; PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CPLR ARTICLE 78 PROCEEDING CHALLENGING PETITIONER'S CONFINEMENT IN THE PRISON'S SPECIAL HOUSING UNIT;
Supreme Court, Albany County granted respondents' motion to dismiss the CPLR article 78 proceeding; App. Div. affirmed.

COUSINS, MATTER OF, AN ATTORNEY AND COUNSELOR-AT-LAW:
1ST Dept. App. Div. order of 10/19/10; sua sponte examination whether a substantial constitutional question is directly involved or any jurisdictional basis otherwise exists to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, DISBARRED ATTORNEY EFFECTIVE NOVEMBER 18, 2010;
App. Div., among other things, granted Departmental Disciplinary Committee's petition for an order confirming the determination and recommendation of the Hearing Panel, which confirmed the findings of fact, conclusions of law and recommendation of the Referee; confirmed the determination and recommendation of the Hearing Panel; and disbarred attorney effective November 18, 2010.

GAMBLE (COREY), PEOPLE v:
1ST Dept. App. Div. order of 4/22/10; modification; leave to appeal granted by Lippman, Ch.J., 11/29/10;
CRIMES - EVIDENCE - WHETHER TRIAL COURT ERRED IN PRECLUDING CERTAIN EVIDENCE ABOUT ONE OF THE MURDER VICTIMS; RIGHT TO COUNSEL - WHETHER DEFENDANT WAS DENIED HIS RIGHT TO COUNSEL WHEN COURT OFFICERS, FOR SECURITY REASONS, WERE SEATED BEHIND DEFENDANT'S CHAIR, WHERE THEY MIGHT HEAR DEFENSE COUNSEL'S CONVERSATION WITH DEFENDANT; ALLEGED MISCONDUCT OF PROSECUTOR DURING TRIAL;
Supreme Court, Bronx County convicted defendant of murder in the first and second degrees, and sentenced him to an aggregate term of life without parole and 25 years to life, respectively; App. Div. modified to the extent of vacating the DNA databank fee, and

otherwise affirmed.

HERRERA (ROLANDO), PEOPLE v:
1ST Dept. App. Div. order of 9/23/10/; reversal; leave to appeal granted by Catterson, J., 11/9/10; Rule 500.11 review pending;
CRIMES - SUPPRESSION HEARING - POLICE OFFICER PULLED OBJECT OUT OF DEFENDANT'S POCKET WITHOUT QUESTIONING OR FRISK - WHETHER POLICE OFFICER HAD A REASONABLE SUSPICION THAT DEFENDANT MIGHT BE CONCEALING A WEAPON; GRAVITY KNIFE;
Supreme Court, Bronx County granted defendant's motion to suppress physical evidence and a statement; App. Div. reversed, denied defendant's motion to suppress and reinstated the criminal complaint.

McKANIC v AMIGOS DEL MUSEO DEL BARRIO:
1ST Dept. App. Div. order of 6/22/10; dismissal of appeal from nonappealable paper and affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
DISMISSAL AND NONSUIT - FAILURE TO COMPLY WITH ORDER DIRECTING DISCLOSURE - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, AFFIRMED A SUPREME COURT ORDER DISMISSING THE COMPLAINT UPON PLAINTIFF'S FAILURE TO EXECUTE AUTHORIZATIONS FOR RELEASE OF FEDERAL TAX RETURNS;
Supreme Court, New York County (1) directed plaintiff to execute authorizations for the release of certain federal tax returns or the action "will be dismissed upon defendant's submission of an affirmation of default and a proposed dismissal order"; (2) declined to sign plaintiff's order to show cause; (3) dismissed the complaint upon plaintiff's failure to comply with the order directing her to execute authorizations for the release of certain federal tax returns; and (4) denied as moot plaintiff's motion for a protective order; App. Div. dismissed the appeal from the order declining to sign an order to show cause and affirmed the remaining three orders.

PAIGE (TIRAY M.), PEOPLE v:
3RD Dept. App. Div. order of 10/28/10; affirmance; leave to appeal granted by McCarthy, J., 11/17/10; Rule 500.11 review pending;
CRIMES - UNLAWFUL SEARCH AND SEIZURE - DEFENDANT REFUSED ENTRY TO STATE TROOPERS SEEKING TO EXECUTE AN ARREST WARRANT FOR ANOTHER RESIDENT WHOM DEFENDANT SAID WAS NOT HOME - TROOPERS KICKED DOOR OPEN AND ARRESTED DEFENDANT - REASONABLENESS OF TROOPER'S BELIEF THAT PERSON SUBJECT TO WARRANT WAS INSIDE THE RESIDENCE;
Supreme Court, Franklin County convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the third degree and obstructing governmental administration in the

second degree, and imposed sentence; App. Div. affirmed.

SCOTT v ROCKAWAY PRATT, LLC:
1ST Dept. App. Div. order of 7/27/10; modification; leave to appeal granted by App. Div., 10/28/10; Rule 500.11 review pending;
LANDLORD AND TENANT - RENT - ACTION TO RECOVER RENT OVERCHARGES PAID UNDER LEASES SUBJECT TO THE RENT STABILIZATION LAW OF 1969 - WHETHER THE PROPER BASE DATE FOR DETERMINING AN OVERCHARGE IS DEEMED TO BE FOUR YEARS BEFORE THE FILING OF THE OVERCHARGE COMPLAINT - CPLR 213-a - RENT STABILIZATION CODE (9 NYCRR) § 2520.6(f);
Supreme Court, New York County denied the motion of defendant Rockaway Pratt, LLC for summary judgment dismissing the complaint; App. Div. modified by vacating the base rent finding and substituting therefor a finding that the base rent is the rent charged four years before the filing of the overcharge complaint, and otherwise affirmed.

SHARLOW (DARRYL), PEOPLE v:
2ND Dept. App. Div. order of 7/13/10; reversal; leave to appeal granted by Pigott, J, 11/18/10; Rule 500.11 review pending;
CRIMES - SENTENCE - POST-RELEASE SUPERVISION (PRS) - PRS IMPOSED IN RESENTENCE AFTER DEFENDANT'S CONDITIONAL RELEASE FROM PRISON BUT BEFORE THE MAXIMUM EXPIRATION DATE OF THE ORIGINAL SENTENCE TERM; ALLEGED VIOLATION OF DOUBLE JEOPARDY PRINCIPLES;
Supreme Court, Kings County resentence that, upon defendant's conviction of burglary in the second degree and petit larceny (upon his plea of guilty), imposed a period of postrelease supervision in addition to the determinate term of imprisonment previously imposed on 11/1/02; App. Div. reversed, vacated the term of postrelease supervision, and reinstated the original sentence imposed on 11/1/02.