

COURT OF APPEALS NEW FILINGS

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

June 22, 2012 through June 28, 2012

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.

ADELMAN, MATTER OF v GARY, &c.:

2ND Dept. App. Div. judgment of 5/1/12; dismissal of CPLR article 78 proceeding; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - WHETHER MANDAMUS LIES TO COMPEL RESPONDENT SUPREME COURT JUSTICE TO VACATE A SENTENCE IMPOSED AND TO RESENTENCE PETITIONER, OR TO RECONSIDER PETITIONER'S PRIOR MOTION PURSUANT TO CPL 440.20;

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

BARNES, MATTER OF v HARLING:

4TH Dept. App. Div. order of 6/8/12; confirmation of determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right and whether any jurisdictional basis exists to support appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DETERMINATION OF GUILT WITH RESPECT TO CHARGES THAT PETITIONER HAD VIOLATED VARIOUS JAIL RULES AND REGULATIONS; ALLEGED FAILURE TO COMPLY WITH PETITIONER'S DISCLOSURE REQUEST;

App. Div. confirmed determinations of respondent County Jail Superintendent finding that petitioner had violated various jail rules.

CHISHOLM (DEREK), PEOPLE v:

2ND Dept. App. Div. order of 11/9/11; affirmance; leave to appeal granted by Jones, J., 6/13/12;

CRIMES - ARREST - PROBABLE CAUSE - WHETHER SUPREME COURT ERRED BY FAILING (1) TO GRANT DEFENDANT'S REQUEST FOR A DARDEN HEARING OR (2) TO REVIEW TESTIMONY GIVEN BY CONFIDENTIAL INFORMANT BEFORE WARRANT-ISSUING COURT AND DETERMINE IF THERE WAS SUFFICIENT PROBABLE CAUSE TO ISSUE THE WARRANT AND COMPLIANCE WITH CPL 690.40(1);

Supreme Court, Queens County convicted defendant, after a nonjury trial, of two counts of criminal possession of a weapon in the second degree, three counts of criminal possession of a weapon in the third degree, criminally using drug paraphernalia in the second degree, and criminal possession of marijuana in the fifth degree; thereafter, the same court resentenced defendant; App. Div. affirmed.

W. (DASHAWN), MATTER OF:

1ST Dept. App. Div. order of 1/17/12; affirmance; leave to appeal granted by Court of Appeals, 6/5/12;

PARENT AND CHILD - ABUSED OR NEGLECTED CHILD - WHETHER THE AGENCY'S DUTY TO USE "DILIGENT EFFORTS" TO ENCOURAGE AND STRENGTHEN THE PARENTAL RELATIONSHIP WAS PROPERLY EXCUSED (SOCIAL SERVICES LAW § 384-b[8][a][iv]) - WHETHER THE RECORD CONTAINS SUFFICIENT EVIDENCE OF "DEPRAVED INDIFFERENCE TO HUMAN LIFE" (SOCIAL SERVICES LAW 384-b[8][a][i]) TO SUPPORT THE "SEVERE ABUSE" ADJUDICATION;

Family Court, New York County, upon a fact-finding determination that respondent father committed acts constituting severe abuse, found that petitioner Administration for Children's Services (ACS) is excused from making diligent efforts to reunite father with his son; App. Div. affirmed.

DELAKAS, MATTER OF v MINTZ, &c.:

1ST Dept. App. Div. order of 4/26/12; affirmance with dissents; Rule 500.11 review pending;

LICENSES - DENIAL OF APPLICATION FOR A LICENSE TO OPERATE AN EXISTING NEWSSTAND - PETITIONER HAS PAID LICENSEES A WEEKLY FEE TO OPERATE THE NEWSSTAND SINCE 1987 - WHETHER PETITIONER MEETS CRITERIA FOR ACCEPTANCE OF LICENSE APPLICATION UPON "DEATH OR DISABILITY OF LICENSEE" (6 RCNY 2-64[a][12]); Supreme Court, New York County denied the CPLR article 78 petition, and dismissed the proceeding to annul respondent's 1/6/11 determination denying petitioner's application to renew a license to operate an existing newsstand; App. Div. affirmed.

DUARTE, MATTER OF v CITY OF NEW YORK:

2ND Dept. App. Div. order of 1/17/12; affirmance; leave to appeal granted by Court of Appeals, 6/12/12;

PRISONS AND PRISONERS - CONDITIONS OF CONFINEMENT - WHETHER DECISION AS TO WHETHER NEWBORN CHILD MAY REMAIN WITH MOTHER IN CORRECTIONAL FACILITY MUST BE DECIDED BASED ON WELFARE OF CHILD ALONE, OR WHETHER AUTHORITIES MAY ALSO CONSIDER INTERESTS OF THE INSTITUTION, OTHER INMATES, AND OTHER INMATES' CHILDREN; PARENT AND CHILD;

Supreme Court, Queens County, among other things, granted petition to annul a 3/10/11 determination of the New York City Department of Correction denying petitioner's application for admission to Rikers Island nursery program upon the birth of her child; App. Div. affirmed.

HASTINGS, et al. v SAUVE, et al.:

3RD Dept. App. Div. order of 4/5/12; modification; leave to appeal granted by App. Div., 6/6/12; Rule 500.11 review pending; JUDGMENTS - SUMMARY JUDGMENT - CLAIM INVOLVING INJURY INFLICTED BY DOMESTIC ANIMAL - STRICT LIABILITY VERSUS COMMON LAW NEGLIGENCE;

Supreme Court, Franklin County granted motions by defendants Sauve and Delarm for summary judgment dismissing the complaint as against them; App. Div. modified by granting summary judgment dismissing the complaint against defendant Williams.

JONES (LESTER), PEOPLE v:

1ST Dept. App. Div. order of 6/23/11; affirmance; leave to appeal granted by Lippman, Ch.J., 6/8/12;

CRIMES - SUPPRESSION HEARING - "INTERVENING PROBABLE CAUSE" WHERE POLICE DID NOT HAVE PROBABLE CAUSE WHEN THEY ARRESTED DEFENDANT, BUT SOON AFTER ARREST THE ARRESTING OFFICER OBTAINED SUFFICIENT EVIDENCE TO CONSTITUTE PROBABLE CAUSE FROM ANOTHER POLICE OFFICER - WHETHER LINEUP, CONDUCTED AFTER DEFENDANT HAD BEEN IN CUSTODY FOR EIGHT HOURS, WAS ATTENUATED FROM THE ILLEGAL ARREST - POSSIBLE LAFONTAINE ISSUE WHERE APPELLATE DIVISION AFFIRMED IN PART BASED ON "FELLOW OFFICER" RULE;

Supreme Court, New York County convicted defendant, after a jury trial, of burglary in the first degree and robbery in the second degree, and imposed sentence; App. Div. affirmed.

MOORE v FEDERATED DEPARTMENT STORES, INC., et al.:

1ST Dept. App. Div. order of 4/24/12; dismissal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEALS; DISCOVERY ISSUES; SANCTIONS; ALLEGED CIVIL RIGHTS VIOLATIONS; Supreme Court, New York County, among other things, denied plaintiff's motions to strike defendants' answer and to compel responses to discovery and granted defendants' cross motions for sanctions to the extent of directing plaintiff's counsel to, among other things, pay \$2,000 to the Lawyers' Fund for Client Protection (7/16/10 order); thereafter the same court granted defendant Macy's motion to compel plaintiff's compliance with discovery, and denied plaintiff's motion to stay the 7/16/10 order pending appeal; App. Div. dismissed the appeal from both Supreme Court orders.

PALLAGI, (SASHALEE N. and TATIANA S.), PEOPLE v:

4TH Dept. App. Div. orders of 1/31/12; reversal; leave to appeal granted by Scudder, P. J., 4/3/12; Rule 500.11 review pending; CRIMES - LARCENY - PROOF OF VALUE - SHOPLIFTING - SUFFICIENCY OF THE EVIDENCE THAT THE VALUE OF THE STOLEN PROPERTY EXCEEDED \$1,000; DISCLOSURE - NOTICE OF INTENTION TO OFFER EVIDENCE - ADEQUACY OF CPL 710.30 NOTICE CONCERNING THE SUBSTANCE OF A STATEMENT BY ONE OF THE DEFENDANTS TO BE PRESENTED AT TRIAL - TRIAL COURT'S DENIAL OF MOTION TO STRIKE TESTIMONY REGARDING THAT STATEMENT;

Ontario County Court convicted defendants Sashalee N. Pallagi and Tatiana S. Pallagi, upon a jury verdict, of grand larceny in the fourth degree; App. Div. reversed the judgments and dismissed the indictment against defendants without prejudice to the People to the file any appropriate charge.

PRESCOTT (TYRONE), PEOPLE v:

4TH Dept. App. Div. order of 9/30/11; denial of writ of error coram nobis; leave to appeal granted by Smith, J., 5/15/12; APPEAL - EFFECTIVENESS OF APPELLATE COUNSEL - APPLICATION FOR WRIT OF ERROR CORAM NOBIS - CLAIMED CONFLICT OF INTEREST OF APPELLATE COUNSEL WHO ALSO REPRESENTED CO-DEFENDANT WHO PLEADED GUILTY AND TESTIFIED AGAINST DEFENDANT; DUE PROCESS; App. Div. denied application for writ of error coram nobis.

SAGAL-COTLER, MATTER OF v BOARD OF EDUCATION OF CITY SCHOOL DISTRICT OF CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 6/5/12; reversal;

SCHOOLS - BOARD OF EDUCATION - LEGAL REPRESENTATION OF BOARD OF EDUCATION EMPLOYEE REGARDING DISCIPLINARY ACTION TAKEN AGAINST STUDENTS - WHETHER EDUCATION LAW § 2560, WHICH INCORPORATES BY REFERENCE GENERAL MUNICIPAL LAW § 50-k, AND EDUCATION LAW § 3028 CONFLICT OR SHOULD BE READ AND APPLIED TOGETHER; Supreme Court, New York County, among other things, granted a CPLR article 78 petition seeking a judgment declaring that respondents' denial of legal representation and indemnification of expenses petitioner incurred in defense of a civil action was arbitrary and capricious and contrary to law, and directed respondents to provide petitioner with legal representation and reimburse her for all reasonable legal fees incurred in defense of the action; App. Div. reversed, denied the petition and dismissed the proceeding.

SANCHEZ (NICHOLAS), PEOPLE v:

1ST Dept. App. Div. order of 4/10/12; affirmance; leave to appeal granted by Freedman, J., 6/12/12;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - DEFENSE COUNSEL'S REPRESENTATION OF INDIVIDUAL WHO HAD CONNECTIONS TO THIS CASE; IDENTIFICATION OF DEFENDANT - IMPROPER BOLSTERING OF IDENTIFICATION EVIDENCE;

Supreme Court, Bronx County convicted defendant, after a jury trial, of robbery in the first degree and imposed sentence; App. Div. affirmed.

STORMAN, MATTER OF v NEW YORK CITY DEPARTMENT OF EDUCATION:

1ST Dept. App. Div. order of 5/31/12; affirmance of judgment and reversal of order; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right (regarding the CPLR article 78 proceeding) and whether the order finally determines the proceeding within the meaning of the Constitution (regarding the contempt application);

PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - "STIGMA PLUS" DUE PROCESS CLAIM - WHETHER "ARBITRARY AND CAPRICIOUS ABUSE OF DISCRETION" STANDARD OF REVIEW APPLIES TO REVIEW OF AN

"UNSATISFACTORY" TEACHER RATING; SCHOOLS - TEACHERS; CONTEMPT;

Supreme Court, New York County, in a 11/29/10 order, among other things, granted petitioner's motion to hold respondent Department of Education in contempt for its alleged failure to comply with a 5/19/09 judgment; Supreme Court, in a 9/9/11 judgment, denied the petition to annul a 10/29/10 determination of respondent Department of Education which sustained petitioner's unsatisfactory rating for the 2007-2008 school year, and dismissed the CPLR article 78 proceeding; App. Div. affirmed the 9/9/11 judgment, reversed the 5/19/09 order and denied petitioner's contempt motion.

THOMAS, MATTER OF v NEW YORK CITY DEPARTMENT OF EDUCATION, et al.:

1ST Dept. App. Div. order of 6/5/12; affirmance;
SCHOOLS - BOARD OF EDUCATION - LEGAL REPRESENTATION OF SCHOOL
BOARD EMPLOYEES REGARDING DISCIPLINARY ACTION TAKEN AGAINST A
STUDENT - WHETHER EDUCATION LAW § 2560, WHICH INCORPORATES BY
REFERENCE GENERAL MUNICIPAL LAW § 50-k, AND EDUCATION LAW § 3028
CONFLICT OR SHOULD BE READ AND APPLIED TOGETHER;
Supreme Court, New York County denied a CPLR article 78 petition
seeking judgment directing respondents to provide legal
representation and reimbursement of legal fees and expenses
incurred in defense of a civil action, and dismissed the
proceeding; App. Div. affirmed.

WEST, et al. v HOGAN, et al. (AND A THIRD-PARTY ACTION):

4TH Dept. App. Div. order of 10/7/11; modification with dissents;
Rule 500.11 review pending;
DAMAGES - PUNITIVE DAMAGES - REAL PROPERTY CLAIMED BY ADVERSE
POSSESSION - WHETHER PUNITIVE DAMAGES ARE APPROPRIATE WHERE
WRONGDOER DISPUTED OWNERSHIP RIGHTS TO PROPERTY WHERE MALICIOUS
ACTS OCCURRED;
Supreme Court, Lewis County, among other things, after a jury
verdict, declared that plaintiffs are the absolute fee titled
owners of the disputed parcel of real property, and awarded to
plaintiffs compensatory damages of \$1,500 and punitive damages of
\$200,000 from defendant Mark Hogan; App. Div. modified by vacating
the award of punitive damages, and granted a new trial on punitive
damages only unless plaintiffs stipulated to reduce the award of
punitive damages to \$15,000, in which event the order and judgment
is modified accordingly and affirmed as so modified; thereafter,
plaintiffs stipulated to reduce the award of punitive damages to
\$15,000.