

COURT OF APPEALS NEW FILINGS

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

July 27, 2012 through August 2, 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.

LASTRA v BARNES AND NOBLE, et al.:

1ST Dept. App. Div. order of 5/31/12; dismissal of appeal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING PLAINTIFF'S APPEAL SUA SPONTE ON THE GROUND THAT NO APPEAL LIES FROM THE ORDER APPEALED FROM, AND OTHERWISE DENYING PLAINTIFF'S MOTION FOR AN ENLARGEMENT OF TIME IN WHICH TO PERFECT THE APPEAL FROM THAT SUPREME COURT ORDER;

App. Div. dismissed plaintiff's appeal sua sponte on the ground that no appeal lies from a 5/27/11 Supreme Court, Bronx County order dismissing the complaint, and otherwise denied as academic plaintiff's motion for an enlargement of time in which to perfect the appeal from that order.

McPHERSON (FRANKLIN), PEOPLE v:

2ND Dept. App. Div. order of 11/1/11; affirmance; leave to appeal granted by Belen, J., 6/20/12;

CRIMES - MURDER - DEPRAVED INDIFFERENCE MURDER - INTOXICATED DEFENDANT TRAVELING WRONG WAY ON PARKWAY - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

Nassau County Court convicted defendant, upon a jury verdict, of murder in the second degree, vehicular manslaughter in the first degree, aggravated driving while intoxicated, operating a motor vehicle while under the influence of alcohol, criminal possession of a weapon in the second degree, and criminal possession of a controlled substance in the seventh degree, and imposed sentence.

OYAGUE v INCORPORATED VILLAGE OF MALVERNE:

Supreme Court, Nassau County order of 6/13/12; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution, whether appellant is an aggrieved party within the meaning of CPLR 5511, and whether any basis otherwise exists for a direct appeal pursuant to CPLR 5601(b)(2);

MOTIONS AND ORDERS - CHALLENGE TO SUPREME COURT ORDER DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S ACTION DUE TO HIS FAILURE TO PROCEED TO TRIAL;

Supreme Court denied defendants' motion to dismiss plaintiff's action due to his failure to proceed to trial.

VELEZ (JULIO), PEOPLE v:

2ND Dept. App. Div. order of 11/9/10; affirmance; leave to appeal granted by Jones, J., 6/21/12;

CRIMES - RIGHT TO SPEEDY TRIAL - PRE-INDICTMENT DELAY - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT THE PROSECUTION ESTABLISHED GOOD CAUSE FOR THE DELAY BETWEEN THE CRIME AND DEFENDANT'S INDICTMENT; SUFFICIENCY OF THE EVIDENCE;

Westchester County Court convicted defendant, upon a jury verdict, of burglary in the second degree, criminal mischief in the third degree, and petit larceny, and imposed sentence; App. Div. affirmed.