

COURT OF APPEALS NEW FILINGS

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

**December 14, 2012 through December 20, 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.**

PEOPLE ex rel. FRANZA v SHEAHAN:

3<sup>RD</sup> Dept. App. Div. order of 11/29/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE - ARGUMENT THAT COULD HAVE BEEN RAISED UPON DIRECT APPEAL OR IN AN APPROPRIATE POSTJUDGMENT MOTION;

Supreme Court, Chemung County denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing; App. Div. affirmed.

MARTINEZ (CHRISTOPHER), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 5/22/12; affirmance; leave to appeal granted by Smith, J., 12/11/12;

CRIMES - DISCLOSURE - ROSARIO MATERIAL - DEFENDANT'S ENTITLEMENT TO AN ADVERSE INFERENCE CHARGE WHERE AN OFFICER'S HANDWRITTEN NOTES OF HIS INTERVIEW WITH THE COMPLAINANT WERE LOST; SUFFICIENCY OF THE EVIDENCE;

Supreme Court, Bronx County convicted defendant, after a jury trial, of attempted robbery in the third degree, and sentenced him to a term of one to three years; App. Div. affirmed.

PATEL (VINOD), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/11/12; grant of writ of error coram nobis; leave to appeal granted by Pigott, J., 11/27/12; APPEAL - EFFECTIVENESS OF APPELLATE COUNSEL - APPLICATION FOR WRIT OF ERROR CORAM NOBIS - CLAIMED FAILURE OF APPELLATE COUNSEL TO COMPLY WITH DEFENDANT'S TIMELY REQUEST TO FILE A NOTICE OF APPEAL - DEFENDANT HAD MOVED PRO SE FOR, AND HAD BEEN DENIED, PERMISSION TO FILE A LATE NOTICE OF APPEAL - APPLICATION OF PEOPLE v SYVILLE (15 NY3d 391 [2010]);

Supreme Court, Queens County convicted defendant, upon his guilty plea, of two counts of possession of a sexual performance by a child; App. Div. granted defendant's application for a writ of error coram nobis seeking leave to file a late notice of appeal, and deemed defendant's notice of appeal to have been timely filed.

RAGINS v HOSPITALS INSURANCE COMPANY, INC., et al.:

2<sup>ND</sup> Dept. App. Div. order of 6/13/12; reversal; leave to appeal granted by Court of Appeals, 12/11/12;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - OBLIGATION TO PAY INTEREST - WHETHER EXCESS CARRIER WAS RESPONSIBLE ONLY FOR PREJUDGMENT INTEREST ON THAT PORTION OF THE UNDERLYING JUDGMENT THAT IT WAS OBLIGATED TO PAY UNDER ITS POLICY, RATHER THAN FOR PREJUDGMENT AND POSTJUDGMENT INTEREST ON THE WHOLE AMOUNT OF THE UNDERLYING JUDGMENT;

Supreme Court, Westchester County denied those branches of defendants' motion which were pursuant to CPLR 3211(a)(1) and (5), in effect, to dismiss so much of the complaint as sought to recover damages for breach of the subject insurance policy and for judgment declaring that they are not obligated to indemnify the plaintiff for costs and the remaining amount of unpaid interest incurred in connection with the underlying action; App. Div. reversed, granted those branches of defendants' motion which were pursuant to CPLR 3211(a)(1) and (5), and remitted to Supreme Court for the entry of a judgment declaring that the defendants are not obligated to indemnify the plaintiff for costs and the remaining amount of unpaid interest incurred in connection with the underlying action.

MOHAMED SAAD-EL-DIN, MATTER OF v STEINER:

3<sup>RD</sup> Dept. App. Div. order of 10/25/12; confirmation of determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CHALLENGE TO DETERMINATION SUSTAINING A DECISION TO SUSPEND PETITIONER STUDENT WITH A DISABILITY AFTER PETITIONER STATED TO FELLOW STUDENTS AND A TEACHER THAT HE WAS "GOING TO JUST BLOW THIS PLACE UP" AND WARNED THEM NOT TO "COME TO SCHOOL ON FRIDAY";

App. Div. confirmed a determination of respondent Commissioner of Education that sustained the decision of respondents Board of Education and School District to suspend petitioner from school, and dismissed the CPLR article 78 petition.

SANTIAGO (CHERYL), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/11/12; modification; leave to appeal granted by Lippman, Ch. J., 11/26/12;

CRIMES - MANSLAUGHTER IN THE SECOND DEGREE - SUFFICIENCY OF THE EVIDENCE; CONFESSION - STATEMENTS TO LAW ENFORCEMENT OFFICIALS - LETTERS TO INMATE; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

Dutchess County Court convicted defendant, upon a jury verdict, of murder in the second degree, and imposed sentence; App. Div. modified by reducing defendant's conviction of murder in the second degree to manslaughter in the second degree and vacating the sentence imposed thereon, and remitted the matter to County Court for resentencing on the conviction of manslaughter in the second degree.