

COURT OF APPEALS NEW FILINGS

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

April 12, 2013 through April 18, 2013

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.

DOCKERY (ALEXANDER), a/k/a HARRIS (JOHN), PEOPLE v:

1ST Dept. App. Div. order of 6/21/12; leave to appeal granted by Pigott, J., 4/10/13;

CRIMES - RIGHT TO COUNSEL - DISMISSAL OF APPEAL FOR FAILURE TO PROSECUTE - WHETHER DEFENDANT, WHO WAS 16 YEARS OLD AT THE TIME OF CONVICTION, WAS ENTITLED TO THE ASSISTANCE OF COUNSEL IN APPLYING FOR POOR PERSON RELIEF AND ASSIGNMENT OF COUNSEL - TWENTY YEAR DELAY BETWEEN FILING OF THE NOTICE OF APPEAL BY TRIAL COUNSEL AND DEFENDANT'S ATTEMPT TO PURSUE THE APPEAL;

Supreme Court, New York County convicted defendant of robbery in the first and second degrees and sentenced him to 2 to 6 years; App. Div. granted the People's motion for an order dismissing the appeal and dismissed the appeal.

GALINDO (OLIVERIO), PEOPLE v:

1ST Dept. App. Div. order of 12/4/12; affirmance; leave to appeal granted by Pigott, J. 4/5/13;

CRIMES - POSSESSION OF WEAPON - WHETHER STATUTORY PRESUMPTION OF INTENT TO USE WEAPON UNLAWFULLY AGAINST ANOTHER IN PENAL LAW § 265.15(4) APPLIES TO CHARGE OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE (PENAL LAW § 265.03[1][b][3]) WHERE DEFENDANT ACCIDENTALLY SHOT HIS COUSIN IN THE LEG; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL;

Supreme Court, New York County convicted defendant of two counts of criminal possession of a weapon in the second degree, and sentenced him to concurrent terms of 4 years; App. Div. affirmed.

OBE INSURANCE CORP. v JINX-PROOF, INC., &c.:

1ST Dept. App. Div. order of 1/17/13; modification; leave to appeal granted by App. Div., 4/11/13;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - COMMERCIAL GENERAL LIABILITY POLICY CONTAINING AN ASSAULT AND BATTERY EXCLUSION - WHETHER LETTERS FROM INSURER THAT CONTAINED "RESERVATION OF RIGHTS" LANGUAGE CONSTITUTED VALID NOTICE OF DISCLAIMER OF COVERAGE WITH RESPECT TO THE ASSAULT AND BATTERY EXCLUSION - WHETHER INSURER WAS ESTOPPED FROM DISCLAIMING COVERAGE;

Supreme Court, New York County granted plaintiff's motion for summary judgment declaring that it is not obligated to defend defendant Jinx-Proof, Inc. in the underlying action, and denied Jinx-Proof's motion for summary judgment dismissing the complaint against it; App. Div. modified to declare that plaintiff is not obligated to defend Jinx-Proof in the underlying action, and otherwise affirmed.

SAGE (MERLIN G.), PEOPLE v:

4TH Dept. App. Div. order of 9/28/12; affirmance; leave to appeal granted by Smith, J., 4/10/13;

CRIMES - INSTRUCTIONS - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A CHARGE TO THE JURY THAT THE PEOPLE'S KEY WITNESS WAS AN ACCOMPLICE;

Monroe County Court convicted defendant, upon a jury verdict, of manslaughter in the first degree; App. Div. affirmed.

SATO et al. v IPPUDO NY, et al:

1ST Dept. App. Div. order of 3/7/13; reversal with two-Justice dissent; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - PROXIMATE CAUSE - ALLEGED DEFECTIVE CONDITION OF STAIRWAY - PLAINTIFF FELL DOWN A FLIGHT OF STAIRS IN DEFENDANT'S RESTAURANT - WHETHER THE APPELLATE DIVISION ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE COMPLAINT;

Supreme Court, New York County denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, granted the motion, dismissed the complaint and directed the Clerk to enter judgment accordingly.

SMART (FLOYD L.), PEOPLE v:

4TH Dept. App. Div. order of 11/16/12; modification; leave to appeal granted by Pigott, J., 4/4/13;
CRIMES - RIGHT OF CONFRONTATION - WHETHER THE TRIAL COURT ERRED IN PERMITTING ADMISSION INTO EVIDENCE OF WITNESS'S GRAND JURY TESTIMONY ON THE BASIS THAT THE WITNESS WAS UNAVAILABLE DUE TO MISCONDUCT OF THE DEFENDANT - WITNESS APPEARED IN COURT AND ASSERTED HER FIFTH AMENDMENT RIGHT AGAINST SELF INCRIMINATION; ALLEGED IMPROPER HANDLING OF JUROR QUESTIONS DURING DELIBERATIONS;

Monroe County Court convicted defendant, after a jury trial, of burglary in the second degree; App. Div. modified by reducing the sentence imposed to an indeterminate term of 15 years to life, and affirmed as modified.

STATE OF NEW YORK, MATTER OF v JOHN S.:

1ST Dept. App. Div. order of 3/14/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - ALLEGED DUE PROCESS VIOLATION BY INTRODUCTION OF EVIDENCE REGARDING SEXUAL OFFENSE ALLEGATIONS FROM THIRTY TO FORTY YEARS AGO AND EXPERT WITNESS TESTIMONY BASED ON SUCH EVIDENCE - RELEASE OF RECORDS PREVIOUSLY SEALED; SUFFICIENCY OF THE EVIDENCE; Supreme Court, New York County, upon a jury verdict that respondent suffers from a mental abnormality, determined that respondent is a dangerous sex offender requiring confinement; App. Div. affirmed.

STENROOS v MAECKER:

Chautauqua County Court order of 4/3/13; affirmance; sua sponte examination whether an appeal as of right may be taken to the Court of Appeals, pursuant to CPLR 5601(b), from an order of County Court sitting as an appellate court;
LANDLORD AND TENANT - EVICTION - DEFENDANT WITH RIGHT OF POSSESSION OF REAL PROPERTY UNLESS THERE WAS A DEFAULT IN MAKING MORTGAGE PAYMENTS; ALLEGED DUE PROCESS AND JUDICIAL BIAS ISSUES; Silver Creek Village Court judgment in favor of plaintiff in the principal sum of \$10,214.28, with warrant of eviction against defendant for nonpayment; County Court affirmed.

WELLS (DIANE), PEOPLE v:

App. Term, 1ST Dept. order of 8/14/12; reversal; leave to appeal granted by Smith, J., 4/13/13;
CRIMES - RIGHT TO SPEEDY TRIAL - EXCLUDABLE TIME PERIODS - TIME RESULTING FROM AN APPEAL (CPL 30.30 [4][a]) - WHETHER THE EXCLUDABLE TIME RESULTING FROM AN APPEAL ENDED WHEN THE COURT OF APPEALS DENIED THE PEOPLE'S APPLICATION FOR LEAVE TO APPEAL, OR WHETHER IT ENDED ON THE LATER DATE TO WHICH THE TRIAL COURT HAD ORDERED A ROUTINE ADJOURNMENT PENDING THE DECISION ON THE PEOPLE'S APPLICATION FOR LEAVE TO APPEAL;

Criminal Court of the City of New York granted defendant's motion to dismiss the accusatory instrument pursuant to CPL 30.30 (10/7/10 order); upon reconsideration, the same court adhered to the original determination (2/22/11 order); thereafter, the same court corrected a factual error in the 2/22/11 order and adhered to the determination therein (3/22/11 order); App. Term reversed the 10/7/10 order, denied defendant's motion to dismiss the accusatory instrument, reinstated the accusatory instrument, and dismissed as academic the appeals from the 2/22/11 and 3/22/11 orders.