

COURT OF APPEALS NEW FILINGS

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

**May 23, 2014 through May 29, 2014**

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.**

DURANT (EVERETT M.), PEOPLE v:  
4<sup>TH</sup> Dept. App. Div. order of 12/27/13; affirmance; leave to appeal granted by Pigott, J., 5/12/14;  
CRIMES - ROBBERY - JURY INSTRUCTIONS - WHETHER COUNTY COURT PROPERLY DENIED DEFENDANT'S REQUEST FOR AN ADVERSE INFERENCE CHARGE REQUESTED BECAUSE THE POLICE, ALTHOUGH CAPABLE OF DOING SO, FAILED TO VIDEOTAPE DEFENDANT'S CONFESSION;  
County Court, Monroe County, convicted defendant, upon a jury verdict, of robbery in the second degree; App. Div. affirmed.

EL-DEHDAN v EL-DEHDAN A/K/A REED:

2<sup>ND</sup> Dept. App. Div. order of 12/18/13; affirmance; leave to appeal granted by App. Div., 5/14/14;

CONTEMPT - CIVIL CONTEMPT - IN A MATRIMONIAL ACTION, WHETHER PLAINTIFF MET HER BURDEN OF PROOF REGARDING DEFENDANT'S VIOLATION OF AN ORDER DIRECTING HIM TO DEPOSIT WITH PLAINTIFF'S ATTORNEY THE PROCEEDS OF A CERTAIN REAL ESTATE TRANSACTION - WHETHER SUPREME COURT IMPROPERLY DREW AN ADVERSE INFERENCE AGAINST DEFENDANT FOR INVOKING HIS CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION - WHETHER WILLFULNESS IS AN ELEMENT OF CIVIL CONTEMPT;

Supreme Court, Kings County, granted plaintiff's motion to reject a referee's report dated 5/24/11, made after a hearing, and, in effect, granted that branch of plaintiff's separate motion which was to hold defendant in civil contempt of court for failing to comply with the terms of a 1/29/10 Supreme Court order; App. Div. affirmed.

ELG UTICA ALLOYS, INC., &c., MATTER OF v DEPARTMENT OF ENVIRONMENTAL CONSERVATION et al.:

3<sup>RD</sup> Dept. App. Div. judgment of 4/10/14; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ENVIRONMENTAL CONSERVATION - HAZARDOUS WASTE - APPLICATION TO HAVE CERTAIN PROPERTY ON THE REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES RECLASSIFIED FROM A CLASS 2 SITE TO A CLASS 3 SITE - CHALLENGE TO DETERMINATION DENYING PETITIONER'S APPLICATION UPON THE GROUND THAT PETITIONER FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE SITE DID NOT PRESENT A SIGNIFICANT THREAT TO THE ENVIRONMENT;

App. Div. confirmed a determination of respondent Commissioner of Environmental Conservation denying petitioner's application to reclassify certain of its property on the registry of inactive hazardous waste disposal sites, and dismissed the CPLR article 78 petition.

HENDERSON (WILLIAM), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 10/31/13; affirmance; leave to appeal granted by Smith, J., 5/12/14;

CRIMES - MURDER - FELONY MURDER - SUFFICIENCY OF THE EVIDENCE WHERE PREDICATE FELONY OF BURGLARY IS BASED UPON INTENT TO COMMIT ASSAULT OR MURDER AT TIME OF ENTRY; INSTRUCTIONS - DENIAL OF REQUEST TO CHARGE LESSER INCLUDED OFFENSE OF MANSLAUGHTER IN SECOND DEGREE - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE ONLY REASONABLE VIEW OF THE EVIDENCE WAS THAT DEFENDANT'S STABBING OF VICTIM WAS INTENTIONAL AND NOT RECKLESS;

County Court, Warren County, judgment, upon a verdict convicting defendant of murder in the second degree, manslaughter in the first degree, burglary in the first degree, assault in the second degree, and two counts of burglary in the second degree; App. Div. affirmed.

MONTANE, MATTER OF v EVANS:

3<sup>RD</sup> Dept. App. Div. order of 3/13/14; reversal; leave to appeal granted by Court of Appeals, 5/13/14;  
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78  
PROCEEDING TO ANNUL A BOARD OF PAROLE DETERMINATION DENYING  
PAROLE RELEASE - WHETHER THE PAROLE BOARD WAS REQUIRED TO  
PROMULGATE REGULATIONS PURSUANT TO EXECUTIVE LAW § 259-c(4) -  
WHETHER THE INTERNAL MEMORANDUM CIRCULATED BY THE BOARD SATISFIED  
THE REQUIREMENTS OF EXECUTIVE LAW § 259-c(4);  
Supreme Court, Albany County, granted petitioner's CPLR article  
78 application to annul a determination of the Board of Parole  
denying petitioner's request for parole release, and remanded the  
matter to the Parole Board for a new parole hearing; App. Div.  
reversed and dismissed the petition.

SCHULZ v NEW YORK STATE EXECUTIVE:

Supreme Court, Albany County, judgment of 4/21/14; sua sponte  
examination whether the only question involved on the appeal is  
the validity of a statutory provision under the State or Federal  
Constitution;  
CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER THE NEW YORK  
SECURE AMMUNITION AND FIREARMS ENFORCEMENT ACT (L. 2013, ch. 1)  
VIOLATES ARTICLE III, § 14 OF THE NEW YORK CONSTITUTION, ARTICLE  
XII OF THE NEW YORK CONSTITUTION, THE SECOND AMENDMENT TO THE  
FEDERAL CONSTITUTION, OR CIVIL RIGHTS LAW § 4;  
Supreme Court, Albany County, judgment declaring that the New  
York Secure Ammunition and Firearms Enforcement Act (NY SAFE Act)  
(L. 2013, ch. 1) does not violate article III, § 14 of the New  
York Constitution, article XII of the New York Constitution, the  
Second Amendment to the Federal Constitution, and Civil Rights  
Law § 4.

SCHULZ v STATE OF NEW YORK EXECUTIVE:

Supreme Court, Albany County, judgment of 5/7/14; sua sponte  
examination whether the only question involved on the appeal is  
the validity of a statutory provision under the State or Federal  
Constitution;  
CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER THE START-UP  
NEW YORK PROGRAM (L. 2013, ch. 68) VIOLATES NEW YORK CONSTITUTION  
ARTICLE III, §§ 14 AND 17, ARTICLE VII, § 8(1), ARTICLE VIII,  
§ 1, AND ARTICLE IX, § 2; WHETHER THE UPSTATE NEW YORK GAMING  
ECONOMIC DEVELOPMENT ACT (L. 2013, ch 174) VIOLATES NEW YORK  
CONSTITUTION ARTICLE III, § 14;  
Supreme Court, Albany County, amended judgment that, among other  
things, declared that the START-UP NY program (L. 2013, ch. 68)  
does not violate New York Constitution article III, §§ 14 and 17,  
article VII, § 8(1), article VIII, § 1, and article IX, § 2, and  
that the Upstate New York Gaming Economic Development Act  
(L. 2013, ch. 174) does not violate New York Constitution article  
III, § 14; and ordered that, with respect to plaintiff's  
challenges regarding the constitutionality of separate agreements

between the State of New York and the Oneida Indian Nation, the Seneca Nation of Indians, and the St. Regis Mohawk Tribe, plaintiff serve the County of Madison, the County of Oneida, the Oneida Indian Nation, the Seneca Nation of Indians and the St. Regis Mohawk Tribe with all the pleadings and supporting papers and a copy of the judgment within 30 days after the date of the judgment.

SCHULZ v SILVER:

Supreme Court, Albany County, order of 5/13/14; sua sponte examination whether the only question involved on the appeal is the validity of a statutory provision under the State or Federal Constitution;

STATE - STANDING - WHETHER SUPREME COURT ERRED IN HOLDING THAT PLAINTIFF DID NOT HAVE STANDING AS A CITIZEN-TAXPAYER TO BRING CERTAIN CLAIMS REGARDING NONFISCAL ACTIVITIES ARISING FROM DEFENDANT'S HANDLING OF SEXUAL HARASSMENT AND DISCRIMINATION CLAIMS BY TWO STAFF MEMBERS OF A FORMER ASSEMBLY MEMBER;

GOVERNMENTAL IMMUNITY - WHETHER SUPREME COURT ERRED IN HOLDING THAT DEFENDANT'S APPROVAL OF THE EXPENDITURE OF STATE FUNDS FOR THE SETTLEMENT OF SEXUAL HARASSMENT AND DISCRIMINATION CLAIMS WAS DISCRETIONARY IN NATURE;

Supreme Court, Albany County, granted defendant's motion to dismiss the complaint, and dismissed the complaint.