

COURT OF APPEALS NEW FILINGS

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

December 11, 2015 through December 17, 2015

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.

AVELLA, MATTER OF v CITY OF NEW YORK:

1st Dept. App. Div. order of 7/2/15; reversal; leave to appeal granted by Court of Appeals, 11/23/15;

PARKS AND PARKWAYS - PUBLIC TRUST DOCTRINE - DEVELOPMENT OF MUNICIPAL PARKLAND - LEGISLATIVE AUTHORITY REQUIRED - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT ADMINISTRATIVE CODE § 18-118 DID NOT AUTHORIZE USE OF FLUSHING MEADOWS-CORONA PARK FOR CONSTRUCTION OF ANY STRUCTURE THAT DID NOT HAVE A NATURAL CONNECTION TO SHEA STADIUM AND THAT CONSTRUCTION OF A RETAIL MALL VIOLATED THE PUBLIC TRUST DOCTRINE ABSENT AUTHORIZATION BY THE STATE LEGISLATURE;

Supreme Court, New York County, denied the petition for declaratory and injunctive relief in connection with the construction of Willets West, a retail entertainment center in Flushing Meadows-Corona Park, and dismissed the hybrid CPLR article 78 and declaratory judgment proceeding; App. Div. reversed, granted the petition to the extent of declaring that construction of Willets West on City parkland without the authorization of the state legislature violates the public trust doctrine, and enjoining any further steps toward its construction.

PEOPLE ex rel. BAEZ v SUPERINTENDENT, &c.:

2ND Dept. App. Div. order of 3/4/15; reversal; leave to appeal granted by Court of Appeals, 11/19/15;

CRIMES - SENTENCE - RESENTENCING UNDER DRUG LAW REFORM ACT - ELIGIBILITY - WHETHER PETITIONER IS ENTITLED TO EARLY TERMINATION OF HIS NON-DRUG-RELATED SENTENCE ON THE GROUND THAT IT MERGED, UNDER PENAL LAW § 70.30, WITH THE INDETERMINATE SENTENCE IMPOSED ON HIS DRUG-RELATED CONVICTIONS TERMINATED EARLY PURSUANT TO EXECUTIVE LAW FORMER § 259-j(3-a);

Supreme Court, Queens County, upon converting the habeas corpus proceeding into a proceeding pursuant to CPLR article 78, granted the petition to compel the New York State Department of Corrections and Community Supervision (DOCCS) to terminate the sentence imposed upon the petitioner's conviction of conspiracy in the second degree, and remitted the matter to DOCCS to administratively terminate that sentence as of 7/29/09, to vacate, with prejudice, the parole violation lodged against petitioner, and to vacate, with prejudice, the sentence imposed thereon; App. Div. reversed the amended judgment, denied the petition and dismissed the proceeding.

CAI v LAU:

1ST Dept. App. Div. order of 11/24/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other jurisdictional basis exists for an appeal as of right; HUSBAND AND WIFE - DIVORCE - EQUITABLE DISTRIBUTION - WHETHER TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING HUSBAND AN AWARD OF A PORTION OF WIFE'S ENHANCED EARNING CAPACITY STEMMING FROM HER U.S. MEDICAL LICENSE, AND AN AWARD OF MAINTENANCE; CLAIMED DUE PROCESS VIOLATIONS;

Supreme Court, New York County, after a trial, denied defendant husband any award for wife's enhanced earning capacity and maintenance; App. Div. affirmed.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. orders of 7/7/15 and 10/19/15; denial of motions; sua sponte examination whether the orders appealed from finally determine the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right, and whether any other jurisdictional basis exists for an appeal as of right;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDERS - MOTIONS TO "REVERSE" PRIOR APPELLATE DIVISION ORDERS;
App. Div. denied motions and/or renewed motions to "reverse" or to "reverse and vacate" a prior App. Div. order dated 6/4/14.

McMILLAN (EVERETT B.), PEOPLE v:

2ND Dept. App. Div. order of 7/1/15; affirmance; leave to appeal granted by Stein, J., 12/2/15;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - AFTER DEFENDANT WAS ARRESTED INSIDE A BUILDING ON A PAROLE WARRANT, HIS CAR WAS SEARCHED WITHOUT A WARRANT BASED ON A TIP RECEIVED EARLIER IN THE DAY ABOUT A GUN IN THE VEHICLE - WHETHER GUN SHOULD HAVE BEEN SUPPRESSED; RIGHTS OF PAROLEES; WHETHER TRIAL COURT MADE ERRONEOUS RULING ABOUT DEFENSE COUNSEL'S REASON FOR STRIKING A PROSPECTIVE JUROR;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, and unlawful possession of marijuana, and imposed sentence; App. Div. affirmed.

MORALES (CRISTIAN), PEOPLE v:

App. Term, 9th and 10th Judicial Districts order of 8/10/15; grant of motion to dismiss appeal; leave to appeal granted by Pigott, J., 11/30/15;

CRIMES - APPEAL - DISMISSAL OF APPEAL - INVOLUNTARILY DEPORTED DEFENDANT - WHETHER APPELLATE TERM ABUSED ITS DISCRETION OR VIOLATED THE RULE SET FORTH IN PEOPLE v VENTURA (17 NY3d 675 [2011]) BY DISMISSING DEFENDANT'S APPEAL FROM THE JUDGMENT OF CONVICTION ON THE GROUND, "AMONG OTHERS," THAT HE HAD BEEN DEPORTED AND WAS UNABLE TO OBEY THE MANDATE OF THE COURT;
District Court, Nassau County, convicted defendant of driving while intoxicated and other crimes, and imposed sentence; App. Term granted the People's motion to dismiss the defendant's appeal.