

COURT OF APPEALS NEW FILINGS

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

March 11, 2016 through March 17, 2016

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.

HONGHIRUN (NIRUN), PEOPLE v:

2ND Dept. App. Div. order of 11/25/15; affirmance; leave to appeal granted by Fahey, J., 3/3/16;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO SEEK AN IN LIMINE RULING PRECLUDING DELAYED DISCLOSURE EVIDENCE, OR OBJECTING TO ITS ADMISSION INTO EVIDENCE UNDER THE PROMPT OUTCRY EXCEPTION TO THE HEARSAY RULE, AND ELICITING ON CROSS EXAMINATION DETAILS BOLSTERING COMPLAINANT'S CLAIMS;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of course of sexual conduct against a child in the first degree and imposed sentence; App. Div. affirmed.

MATSEN, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR
VEHICLES, et al:

3RD Dept. App. Div. order of 12/10/15; affirmance; leave to appeal granted by App. Div., 3/1/16;
ADMINISTRATIVE LAW - DELEGATION OF LEGISLATIVE POWER - VALIDITY OF REGULATION - REGULATION GOVERNING TREATMENT OF RELICENSING OF PERSONS WITH MULTIPLE ALCOHOL OR DRUG-RELATED DRIVING OFFENSES AND ONE OR MORE "SERIOUS DRIVING OFFENSES" (15 NYCRR 136.5) - WHETHER 15 NYCRR 136.5(a)(2) ARBITRARILY DESIGNATES A "CONVICTION OF TWO OR MORE VIOLATIONS FOR WHICH FIVE OR MORE POINTS ARE ASSESSED ON A VIOLATOR'S DRIVING RECORD" TO BE A SERIOUS DRIVING OFFENSE - CHALLENGE TO REGULATION AS VIOLATING THE SEPARATION OF POWERS DOCTRINE, ULTRA VIRES, CONFLICTING WITH EXISTING STATUTES, VIOLATING THE EX POST FACTO CLAUSE, ARBITRARY AND CAPRICIOUS, AND EFFECTING AN EXCESSIVE PENALTY AS APPLIED TO PETITIONER;
Supreme Court, Albany County, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, granted respondents' motion for summary judgment dismissing the petition/complaint; App. Div. affirmed.

PARKER (LAWRENCE), PEOPLE v:

1ST Dept. App. Div. order of 11/5/15; affirmance; leave to appeal granted by Manzanet-Daniels, J.; Rule 500.11 review pending;
CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE RECORD SUPPORTS THE CONCLUSION THAT DEFENDANT ACTIVELY FLED FROM POLICE, THUS ELEVATING THE LEVEL OF SUSPICION UNDER PEOPLE v DE BOUR (40 NY2d 210) TO REASONABLE SUSPICION;
Supreme Court, Bronx County, convicted defendant of robbery in the second degree, and sentenced him, as a persistent violent felony offender, to a term of 20 years to life; App. Div. affirmed.