

COURT OF APPEALS NEW FILINGS

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

May 3 through May 9, 2019

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.

ALLENDE (MARCELINO), PEOPLE v:

1ST Dept. App. Div. order of 1/10/19; modification; sua sponte examination whether the Appellate Division order of modification was "on the law alone or upon the law and such facts which, but for the determination of law, would not have led to ... modification (see CPL 450.90[2][a])";

Crimes--Robbery--Whether defendant may be convicted of first-degree robbery under Penal Law § 160.15(4) where a witness to the crime, but not the victim, observes defendant display what appears to be a firearm;

Supreme Court, New York County, convicted defendant of robbery in the first degree and two counts of robbery in the second degree, and imposed sentence; App. Div. modified to the extent of vacating the first degree robbery conviction and dismissing that count, and otherwise affirmed.

BROWN, PEOPLE ex rel. v CAPRA:

2ND Dept. App. Div. order of 3/6/19; denial of application; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Habeas Corpus--Denial of application for writ of habeas corpus;

App. Div., inter alia, denied the application for a writ of habeas corpus.

MID ISLAND THERAPY ASSOCIATES LLC, &c., MATTER OF v DiNAPOLI, &c., et al.:

3RD Dept. App. Div. order of 3/28/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

State--Comptroller--Whether State Comptroller lacked constitutional authority to audit expenses reported to State Education Department by petitioner, provider of special education services for preschool children with disabilities; whether Education Law § 4410-c (1) constitutes an unconstitutional delegation of State Education Department's administrative duties to the Comptroller; whether Comptroller's determinations lacked a rational basis, or were arbitrary and capricious;

Supreme Court, Albany County, dismissed petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to, among other things, set aside respondent Comptroller's audit of petitioner's consolidated fiscal reports for certain school years; App. Div. affirmed.

MONFORTE (JONATHAN), PEOPLE v:

3RD Dept. App. Div. order of 11/15/18; affirmance; leave to appeal granted by DiFiore, Ch.J., 4/26/19; Rule 500.11 review pending;

Crimes--Indictment--Whether defendant's prosecution by superior court information was jurisdictionally defective; defendant, who was charged by felony complaint with murder in the second degree, consented to being prosecuted by superior court information charging manslaughter in the first degree; Right to Counsel--Effective Representation--whether defendant was denied the effective assistance of counsel;

County Court, Schenectady County, convicted defendant upon his plea of guilty of the crime of manslaughter in the first degree; App. Div. affirmed.

POWELL (HOWARD), PEOPLE:

2ND Dept. App. Div. order of 11/7/18; affirmance; leave to appeal granted by Rivera, J., 4/26/19;

Crimes--Witnesses--Whether Supreme Court erred in denying, after a hearing, defendant's motion to present expert testimony on the topic of false confessions; Supreme Court, Queens County, respectively, convicted defendant of robbery in the first degree, upon a jury verdict, and robbery in the first degree, upon a guilty plea, and imposed sentence; App. Div. affirmed.

SUN v JING:

1ST Dept. App. Div. order of 4/9/19; motion to dismiss; sua sponte examination of whether on any basis exists for an appeal as of right;

Appeal--Dismissal;

Supreme Court, New York County, granted defendant's motion to dismiss the complaint; App. Div. dismissed the appeal.

WINKLEVOSS, &c., et al. v STEINBERG, &c.:

1ST Dept. App. Div. order of 3/28/19; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Libel and Slander--Public Figure--Whether plaintiffs, potential investors in defendant's shares in startup company, are limited public purpose figures or general purpose public figures and thus are required to prove that defendant published alleged defamatory statements with actual malice; whether defendant's statements were protected by the fair report privilege (Civil Rights Law § 74); alleged First Amendment violation;

Supreme Court, New York County, granted defendant's motion to dismiss the defamation claim; App. Div. affirmed.