

COURT OF APPEALS NEW FILINGS

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

June 28 through July 4, 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.

BADJI (FREDERIC), PEOPLE v:

1ST Dept. App. Div. order of 4/9/19; affirmance; leave to appeal granted by Garcia, J., 6/19/19;

Crimes--Larceny--Whether a defendant may be convicted of grand larceny based on the theft of the victim's credit card where the People present proof that defendant used victim's credit card number to make purchases but did not possess the physical credit card; Crimes--Identification of Defendant--Whether the trial court properly admitted non-eyewitness testimony regarding identification of defendant; Crimes--Evidence--Whether best evidence rule applies to video stills where the People did not introduce video surveillance tape from which the video stills were taken;

Supreme Court, New York County, convicted defendant of attempted grand larceny in the fourth degree, criminal possession of stolen property in the fourth degree, and three counts of grand larceny in the fourth degree; App. Div. affirmed.

DEL ROSARIO (SERGIO), PEOPLE v:

2ND Dept. App. Div. order of 3/6/19; affirmance; leave to appeal granted by Court of Appeals, 6/13/19;

Crimes--Sex Offenders--Sex Offender Registration Act--Level Two Sex Offender--Upward Departure--Whether the courts below erred in concluding that defendant's familial relationship with the victim was an aggravating circumstance not adequately taken into account by the Risk Assessment Instrument and provided a basis to upwardly depart from the presumptive risk level;

Supreme Court, Westchester County, designated defendant a level 3 sex offender following a hearing; App. Div. affirmed.

LeCLAIR, MATTER OF v FERGUSON et al.; FERGUSON, MATTER OF v LeCLAIR et al.:

Family Court, Warren County orders of 6/7/19; sua sponte examination whether the orders appealed from finally determine the proceedings within the meaning of the Constitution and whether a direct appeal lies as of right pursuant to CPLR 5601(b)(2);

Parent, Family and Child--Visitation--Visitation Rights of Grandparents--alleged constitutional violations;

Family Court, inter alia, dismissed the petition for a violation of a prior visitation order and dismissed the separate petition to modify the visitation order; Family Court granted the petition to enforce a final order of visitation, held respondents in contempt of court, and imposed a 30-day suspended sentence of incarceration against respondents.

MANKO v LENOX HILL ANESTHESIOLOGY, PLLC, et al.:

2ND Dept. App. Div. order of 5/22/19; denial of motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Appealable Paper--Appellate Division order denying motion to vacate or, in the alternative, for leave to appeal;

App. Div. denied appellant's motion, inter alia, to recall and vacate so much of the decision and order on motion of the App. Div. dated 2/8/11, as dismissed an appeal from an order of the Supreme Court, Kings County, dated 7/8/09, for failure to timely perfect and to extend the time to perfect the appeal, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order on motion of the App. Div. dated 2/8/11.

PETTUS v BOARD OF DIRECTORS; PETTUS v MAZZOLA:

1ST Dept. App. Term orders of 6/7/19; denial leave to appeal; sua sponte examination whether the orders appealed from finally determine the actions within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Appealable Paper;

App. Term denied leave to appeal to the App. Div. (Index Nos. 2100/18, 2184/18 and 2390/19).