

COURT OF APPEALS NEW FILINGS

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

**December 11, 2020 through December 17, 2020**

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.**

HAYON, MATTER OF v NEW YORK STATE DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION et al.:

3<sup>RD</sup> Dept. App. Div. order of 11/5/20; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved in the Appellate Division order to support an appeal as of right;

**Proceeding Against Body or Officer--CPLR article 78 proceeding seeking to challenge prison disciplinary determination;**

Supreme Court, Albany County, granted respondents' motion to dismiss the petition; App. Div. affirmed.

HSBC BANK, N.A., &c. v BYTHEWOOD:

2<sup>ND</sup> Dept. App. Div. order of 10/28/20; reversal; 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;

**Dismissal and Nonsuit--Want of Prosecution--Whether the Appellate Division erred in concluding that the action was not properly dismissed pursuant to CPLR 3216, such that Supreme Court should have granted plaintiff's motion to vacate the certification order, to restore the action to the court's calendar, and to reinstate the notice of pendency;**

Supreme Court, Nassau County, denied plaintiff's motion to vacate an order of the same court dated November 20, 2012, conditionally directed dismissal of the complaint pursuant to CPLR 3216, to restore the action to the active calendar, and to reinstate the notice of pendency; App. Div. reversed 12/21/17 order, and granted plaintiff's motion to vacate the 11/20/12 order, to restore the action to the active calendar, and to reinstate the notice of pendency.

MITCHELL v CIGNA CORPORATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 11/12/20; 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;

**Motions and Orders;**

App. Div. denied motion for reargument of prior order of the court, entered August 27, 2020, which, among other things, dismissed plaintiff's appeal.

ROMUALDO (FERNANDO), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 11/12/20; reversal; leave to appeal granted by Roman, J., 12/9/20; motion to dismiss appeal pending;

**Crimes--Verdict--Sufficiency of the Evidence--Whether the verdict convicting defendant of murder in the second degree was supported by legally sufficient evidence; whether the verdict was against the weight of the evidence;**

County Court, Suffolk County, convicted defendant of murder in the second degree and imposed sentence; App. Div. reversed, dismissed the indictment and remitted the matter to Supreme Court for further proceedings consistent with CPL 160.50.

SEGAL v OFFICE OF COURT ADMINISTRATION et al. (5/21/20 order):

Justice of the 1<sup>ST</sup> Dept. App. Div. order of 5/21/20; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Motions and Orders;**

App. Div. denied application for permission to file motions.

SEGAL v OFFICE OF COURT ADMINISTRATION et al. (9/30/20 order):

Justice of the 1<sup>ST</sup> Dept. App. Div. order of 9/30/20; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Motions and Orders;**

App. Div. denied application for reinstatement and other relief.

SEGAL v OFFICE OF COURT ADMINISTRATION et al. (10/28/20 order):

Justice of the 1<sup>ST</sup> Dept. App. Div. order of 10/28/20; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Motions and Orders;**

App. Div. denied application for interim relief, and adjudged that movant failed to adhere to the Court's prior orders that he seek and obtain permission of the Court before filing any additional motions, and that future violations of the directive will result in the imposition of costs.

VASQUEZ (LUIS), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 4/9/20; affirmance; leave to appeal granted by Manzanet-Daniels, J., 10/22/20; Rule 500.11 review pending;

**Crimes--Fitness to Proceed to Trial--Whether Supreme Court erred in dispensing with a previously granted CPL article 730 exam; Crimes--Harmless and Prejudicial Error--Whether Supreme Court erred in denying defense counsel's request to speak to defense witness, who was incarcerated, before he was called to the stand; whether prosecutor's improper cross-examination of a defense witness about prior crimes deprived defendant of a fair trial;**

Supreme Court, Bronx County, convicted defendant of two counts of robbery in the first degree and assault in the first degree, and sentenced defendant, as a second felony offender, to an aggregate term of 25 years to life; App. Div. affirmed.