

## **CASE ISSUE STATEMENTS - SEPTEMBER 2024**

**The calendar is subject to change. Please contact the Clerk's Office for any updated information.**

**If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeal Public Access and Search System (Court-PASS), which is accessible from the home page on the Court's website.**

### ***TUESDAY, SEPTEMBER 10***

#### **Colt v New Jersey Transit (No. 72)**

APL-2023-00060

State—Sovereign Immunity—Whether defendants were immune from suit in New York under the doctrine of sovereign immunity.

#### **People v Anthony Blue (No. 73)**

APL-2022-00189

Crimes—Search Warrant—Whether text messages and other information obtained from defendant's cell phone were properly admitted when the forensic examination of the phone occurred more than 10 days after issuance of warrant (see CPL 690.30 [1]); Crimes—Right to Speedy Trial— Whether defendant's statutory speedy trial rights were violated; whether time ostensibly attributed to a co-defendant's motion practice under CPL 30.30 (4) (d) was erroneously excluded when defendant had not yet been arraigned on the indictment; Crimes—Right to Representation Pro Se—Whether defendant's constitutional right to counsel was violated because the trial court failed to warn him of the dangers of proceeding pro se.

#### **People v Kerbet Dixon (No. 74)**

APL-2023-00114

Crimes—Right to Representation Pro Se—Whether defendant's Sixth Amendment right to self-representation was violated by the People monitoring his trial-preparation calls from jail and using the communications for trial; whether defendant's decision to waive his right to counsel and proceed pro se was unequivocal, knowing, voluntary, and intelligent; whether defendant's pro se status should have been revoked at trial.

#### **Szypula v Szypula (No. 76)**

APL-2023-00143

Husband and Wife and Other Domestic Relationships—Equitable Distribution—Whether pension credits earned prior to the marriage, but acquired during the marriage with marital funds, are marital or separate property.

### ***WEDNESDAY, SEPTEMBER 11***

#### **People ex rel. Neville v Toulon (No. 79)**

APL-2023-00069

Habeas Corpus—When Remedy Available—Whether provision of Mental Hygiene Law § 10.11(d)(4) that directed Supreme Court to determine whether there was probable cause to believe that respondent was a dangerous sex offender requiring confinement based only upon the allegations of the petition for confinement and any accompanying papers, with no opportunity for him to be heard, was unconstitutional on its face and as applied to him.

**Orellana v Town of Carmel (No. 80)**

APL-2023-00089

Motor Vehicles—Collision—Whether defendant superintendent of highways for defendant town highway department was “actually engaged in work on a highway” at the time of the accident as contemplated by Vehicle and Traffic Law § 1103; whether defendant superintendent acted with reckless disregard for plaintiff’s safety.

**People v Randall K. McGovern (No. 81)**

APL-2023-00125

Crimes—Sentence—Whether defendant was improperly sentenced to consecutive terms of imprisonment for forgery in the second degree and grand larceny in the third degree when the act of forgery was the method by which the larceny was committed.

**Matter of O’Reilly v Board of Education (No. 77)**

APL-2023-00079

Arbitration—Award in Excess of Arbitrator’s Power—Whether petitioners, unvaccinated teachers placed on leave without pay, had standing to challenge Impact Arbitration Award; whether Impact Award violates public policy; whether petitioners were denied due process; Parties—Necessary Parties— Whether union representing petitioners was necessary party to the proceeding.

**Matter of Clarke v Board of Education (No. 78)**

APL-2023-00080

Arbitration—Award in Excess of Arbitrator’s Power—Whether petitioners, unvaccinated teachers placed on leave without pay, had standing to challenge Impact Arbitration Award; whether Impact Award violates public policy; whether petitioners were denied due process; Parties—Necessary Parties—Whether union representing petitioners was necessary party to the proceeding.

***THURSDAY, SEPTEMBER 12***

**Matter of Jeter v Poole (No. 82)**

APL-2023-00064

Social Service—Register of Child Abuse and Maltreatment—Whether petitioner was entitled to counsel at administrative hearing; whether amended Social Services Law § 422(8)(b)(ii)(B) applies to proceeding; whether administrative law judge abused discretion in excluding from evidence letter written by child recanting abuse allegation; whether substantial evidence supports the determination.

**People v Codie Hayward (No. 83)**

APL-2023-00094

Crimes—Preservation of Issue for Review—Whether defendant failed to preserve legal sufficiency claim; whether defendant failed to preserve claim that evidence should have been suppressed because search warrant did not contain no-knock provision and police entered residence without announcing their presence; Crimes—Proof of Other Crimes—Whether County Court improperly allowed confidential informant to testify about drug sale that preceded execution of search warrant and defendant’s arrest; Crimes—Right to Counsel—Whether defendant’s counsel was ineffective for failing to challenge execution of search warrant.

**People v Jorge Baque (No. 84)**

APL-2023-00029

Crimes—Evidence—Whether Appellate Division applied the proper standard in addressing defendant's claim that verdict of guilt was against the weight of the evidence; application of "moral certainty" standard.

**People v Eric D, Sharp (No. 85)**

APL-2023-00111

Crimes—Right to be Present at Trial—Whether defendant was denied his right to be present at a material stage of the trial when Supreme Court conducted an in-chambers and off-the-record conference in his absence at which there was a discussion on the People's *Sandoval* application; whether the loss of certain video exhibits admitted in evidence at trial deprived defendant of effective appellate review; whether the statutes under which defendant was convicted are unconstitutional in light of the United State Supreme Court's decision in *New York State Rifle & Pistol Assn., Inc. v Bruen* (2022); whether defendant's claim that the statutes under which he was convicted are unconstitutional is preserved.