

COURT OF APPEALS NEW FILINGS

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

January 2, 2015 through January 8, 2015

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.

DiPIPP0 (ANTHONY), PEOPLE v:

2ND Dept. App. Div. order of 5/28/14; affirmance; leave to appeal granted by Smith, J., 12/23/14;

CRIMES - EVIDENCE - WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING DEFENDANT'S MOTION TO ADMIT EVIDENCE OF ALLEGED THIRD-PARTY CULPABILITY, CONSISTING OF THE THIRD-PARTY'S ALLEGED DECLARATION AGAINST PENAL INTEREST, WHERE PROOF OF THE THIRD-PARTY'S PRIOR ACTS OF MISCONDUCT ARE PROFFERED UNDER A "REVERSE MOLINEUX" THEORY TO DEMONSTRATE THE RELIABILITY OF SUCH DECLARATION; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO REQUEST THAT (1) THE ALLEGEDLY CULPABLE THIRD PARTY BE GRANTED IMMUNITY UPON INVOKING HIS RIGHT AGAINST SELF-INCRIMINATION AND (2) A PARTICULAR WITNESS BE CHARGED TO THE JURY AS AN ACCOMPLICE IN FACT;

Supreme Court, Putnam County, convicted defendant of murder in the second degree and rape in the first degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

GORDON v CHUBB GROUP OF INSURANCE COMPANY, et al.;

1ST Dept. App. Div. orders of 2/11/14 and 11/18/14; affirmance (2/11/14 order) and denial of motion (11/18/14 order); sua sponte examination whether the orders appealed from finally determine the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

INTEREST - COMPUTATION - CLAIMED DUE PROCESS, SEPARATION OF POWERS, AND EQUAL PROTECTION VIOLATIONS;

Supreme Court, New York County, after a nonjury trial, awarded plaintiff damages for medical liens and out of pocket expenses and calculated interest from the commencement of the action at a simple rather than compound rate; App. Div. affirmed and thereafter; denied plaintiff's motion for reconsideration/reargument or for leave to appeal to the Court of Appeals.

ORTIZ (LUIS), PEOPLE v:

1ST Dept. App. Div. order of 2/4/14; modification; leave to appeal granted by Smith, J., 12/22/14;

CRIMES - COLLATERAL ESTOPPEL - WHETHER THE PEOPLE WERE BARRED FROM PRESENTING ON DEFENDANT'S RETRIAL EVIDENCE THAT DEFENDANT HELD A RAZOR BLADE TO THE VICTIM'S NECK - DEFENDANT WAS ACQUITTED OF BURGLARY IN THE FIRST DEGREE AT THE FIRST TRIAL BUT CONVICTED OF ROBBERY IN THE SECOND DEGREE, AND THE ONLY DIFFERENCE BETWEEN THE TWO OFFENSES WAS WHETHER DEFENDANT USED OR THREATENED USE OF A DANGEROUS INSTRUMENT - WHETHER CASE IS DISTINGUISHABLE FROM PEOPLE v O'TOOLE (22 NY3d 335 [2013]);

Supreme Court, Bronx County, convicted defendant, after a jury trial, of burglary in the second degree, and sentenced him, as a persistent violent felony offender, to a term of 23 years to life; App. Div. modified to the extent of vacating the sentence and remanding for resentencing, and otherwise affirmed.

PICKERING-GEORGE v WAMBUA:

1ST Dept. App. Div. judgment of 5/20/14 and Supreme Court, New York County order dated 10/27/14; confirmation of agency determination (App. Div. order) and denial of motion (Supreme Court order); sua sponte examination whether (1) the appeal from the May 20, 2014 App. Div. judgment was timely taken and, if so, a substantial constitutional question is directly involved to support an appeal as of right from the App. Div. judgment; and (2) the Supreme Court order dated October 22, 2014 finally determines the proceeding within the meaning of the Constitution;

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PUBLIC HOUSING - RENT SUBSIDY - TERMINATION - CHALLENGE TO APPELLATE DIVISION JUDGMENT CONFIRMING DETERMINATION TERMINATING PETITIONER'S SECTION 8 RENT SUBSIDY;

App. Div. confirmed determination of respondent Department Housing Preservation and Development, denied the CPLR article 78 petition and dismissed the proceeding; thereafter, Supreme Court, New York County, denied petitioner's motion for an order to restore the CPLR article 8 proceeding and for other relief.

STATE OF NEW YORK, MATTER OF v ANTHONY N.:

4th Dept. App. Div. order of 8/8/14/ affirmance; leave to appeal granted by Court of Appeals, 12/17/14;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - MENTAL ABNORMALITY - DIAGNOSIS OF BORDERLINE PERSONALITY DISORDER (BPD) - WHETHER BPD CAN CONSTITUTE A MENTAL ABNORMALITY REQUIRING CIVIL COMMITMENT;

Supreme Court, Orleans County, determined that Anthony N. is a detained sex offender pursuant to Mental Hygiene Law article 10 and requires civil management in the form of strict and intensive supervision and treatment (SIST); thereafter, Supreme Court revoked Anthony N.'s SIST placement and committed him to a secure treatment facility upon a determination that he violated the conditions of SIST; App. Div. affirmed.

TAYLOR (RHIAN), PEOPLE v:

2ND Dept. App. Div. order of 8/28/14; affirmance; leave to appeal granted by Smith, J., 12/23/14;

CRIMES - JURORS - NOTICE OF SUBSTANTIVE JURY INQUIRY - WHERE THE PARTIES AGREED THAT THE COURT COULD PROVIDE THE JURY WITH ANY "REQUESTED EXHIBITS" WITHOUT CONSULTING COUNSEL, WHETHER THE TRIAL COURT COMMITTED AN ERROR UNDER PEOPLE v O'RAMA (78 NY2d 270), WHERE IT DID NOT CONSULT COUNSEL BEFORE RESPONDING TO A JURY NOTE ASKING "TO SEE THE BENEFITS OFFERED" TO THE PEOPLE'S TWO COOPERATING WITNESSES BY PROVIDING THE JURY WITH THE WRITTEN COOPERATION AGREEMENT AS TO ONE OF THE WITNESSES, WHICH WAS IN EVIDENCE, WHERE THE BENEFITS OFFERED TO THE OTHER WITNESS WERE REFLECTED ONLY IN TESTIMONY AND NOT IN ANY EXHIBIT;

IDENTIFICATION OF DEFENDANT - PHOTOGRAPHIC ARRAY - WHETHER DEFENDANT "OPENED THE DOOR" TO A WITNESS TESTIFYING TO AN EXTRAJUDICIAL IDENTIFICATION OF A PHOTOGRAPH OF DEFENDANT; WHETHER THE TRIAL COURT ERRED IN ALLOWING A DETECTIVE TO TESTIFY THAT DEFENSE COUNSEL WAS PRESENT AT A LINEUP OBSERVED BY A WITNESS;

Supreme Court, Queens County, convicted defendant of murder in the second degree, assault in the second degree, two counts of criminal possession of a weapon in the second degree, and reckless endangerment in the first degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

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THOMAS v NEW YORK CITY HOUSING AUTHORITY:

1ST Dept. App. Div. order of 8/7/14; modification; leave to

appeal granted by App. Div., 12/11/14; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - SUFFICIENT PARTICULARITY OF NOTICE - WHETHER PLAINTIFF'S NOTICE OF CLAIM ALLEGING A DEFECTIVE FLOOR LANDING GAVE SUFFICIENT NOTICE OF A CLAIM CONCERNING A DEFECTIVE HANDRAIL;

Supreme Court, Bronx County, granted defendant's motion to strike from the bill of particulars allegations concerning the handrail of the staircase where plaintiff allegedly fell, and denied plaintiff's cross motion for leave to amend the notice of claim; App. Div. modified to deny defendant's motion, and otherwise affirmed.