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COURT OF APPEALS NEW FILINGS

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

December 29, 2017 through January 4, 2018

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.

ALLEN (DORAN), PEOPLE v:
1ST Dept. App. Div. order of 7/6/17; reversal; leave to appeal granted by Kahn, J., 12/21/17;
Grand Jury--Resubmission of Charges--Whether People improperly re-presented second-degree murder charge to grand jury without obtaining leave of the court pursuant to CPL 190.75(3); where defendant was ultimately acquitted of murder charge, whether presence of murder charge during trial and submission of that charge to the jury improperly influenced the verdict convicting defendant of manslaughter in the first degree; whether harmless error analysis applies;
Supreme Court, Bronx County, convicted defendant of manslaughter in the first degree and sentenced him to a term of 25 years; App. Div. reversed and remanded for a new trial.

MID-HUDSON VALLEY FEDERAL CREDIT UNION v QUARTARARO & LOIS, PLLC, et al.:
3RD Dept. App. Div. order of 11/9/17; modification with dissents; Rule 500.11 review pending;
Dismissal and Nonsuit--Dismissal of Complaint--Extent of particularization required in a complaint alleging legal malpractice, breach of contract and fraud, in the face of defendants' CPLR 3211(a)(7) pre-answer motion to dismiss the complaint; attorney and client--malpractice;
Supreme Court, Ulster County, granted defendants' motion pursuant to CPLR 3025(a) and 3211(a) to dismiss the complaint to the extent of dismissing the breach of contract cause of action, but denied the motion with regard to the legal malpractice and fraud causes of action; App. Div. modified by reversing so much of the order as denied defendant's motion to dismiss the legal malpractice and fraud causes of action, granted the motion to that extent and dismissed those causes of action, and, as so modified, affirmed.

THOMAS (MICHAEL), PEOPLE v:
2ND Dept. App. Div. order of 8/23/17; affirmance; leave to appeal granted by Rivera, J., 12/18/17;
Crimes--Sentence--Second Felony Offender--Whether a prior felony conviction may be used as a predicate felony conviction if the defendant is resentenced on the prior felony conviction after the commission of the instant felony;
Supreme Court, Kings County, granted defendant's CPL 440.10 motion to set aside a sentence of the same court, imposed 12/14/93, upon his conviction of robbery in the third degree, upon a jury verdict, and directed that he be resentenced; App. Div. affirmed.