

COURT OF APPEALS NEW FILINGS

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

January 9, 2015 through January 15, 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.

AETNA HEALTH PLANS, &c. v HANOVER INSURANCE COMPANY:

1ST Dept. App. Div. order of 4/15/14; affirmance; leave to appeal granted by Court of Appeals, 1/8/15;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - WHETHER A HEALTH CARE INSURER THAT PAID FOR THE MEDICAL TREATMENT OF AN INDIVIDUAL HURT IN A CAR ACCIDENT WHILE DRIVING A CAR COVERED BY NO-FAULT AUTOMOBILE INSURANCE MAY MAINTAIN A REIMBURSEMENT CLAIM AGAINST THE NO-FAULT INSURANCE CARRIER UNDER PRINCIPLES OF SUBROGATION - 11 NYCRR 65-3.11(a); NECESSITY FOR PRIVITY OF CONTRACT; WHETHER THE COMPLAINT SHOULD HAVE BEEN DISMISSED FOR LACK OF STANDING - ESTOPPEL - UNTIMELY DISCLAIMER;

Supreme Court, Bronx County, granted defendant's cross motion to dismiss the complaint and denied plaintiff's motion for summary judgment on the issue of liability; App. Div. affirmed.

HARRISON (ANDRE), PEOPLE v:

2ND Dept. App. Div. order of 3/26/14; dismissal of appeal; leave to appeal granted by Lippman, Ch.J., 12/29/14;
CRIMES - APPEAL - ABSENCE OF DEFENDANT - INVOLUNTARY DEPORTATION - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING DEFENDANT'S APPEAL ON THE GROUND THAT HE HAD BEEN DEPORTED AND WAS NO LONGER AVAILABLE TO OBEY THE MANDATE OF THE COURT;
Supreme Court, Queens County, among other things, denied that branch of defendant's motion which was pursuant to CPL 440.10 to vacate a 6/8/08 judgment of conviction; App. Div. granted respondent's motion to dismiss the appeal on the ground that the appellant has been deported and is unavailable to obey the mandate of the court, and dismissed the appeal without prejudice to a motion to reinstate the appeal should he return to the court's jurisdiction.

JOSEPH (JOEL), PEOPLE v:

1ST Dept. App. Div. order of 10/7/14; affirmance; leave to appeal granted by Lippman, Ch.J., 12/31/14;
CRIMES - ARREST - PROBABLE CAUSE - DRUG TRANSACTION - CIRCUMSTANTIAL EVIDENCE OF ONGOING DRUG ACTIVITY - WHETHER THE POLICE HAD PROBABLE CAUSE TO ARREST DEFENDANT WHEN SOME OF THE INFORMATION UPON WHICH THE POLICE RELIED CAME FROM A CONFIDENTIAL INFORMANT SEVERAL MONTHS EARLIER;
Supreme Court, New York County, convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the third degree and sentenced him, as a second drug felony offender, to a term of six years; App. Div. affirmed.

PELLEGRINO (STEPHEN), PEOPLE v:

App. Term, 1ST Dept. order of 6/9/14; affirmance; leave to appeal granted by Lippman, Ch.J., 12/31/14; Rule 500.11 review pending;
CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WAIVER OF CONSTITUTIONAL RIGHTS - WHETHER DEFENDANT'S COLLOQUY AT CRIMINAL COURT WAS SUFFICIENT UNDER BOYKIN v ALABAMA (395 US 238 [1969]) AND PEOPLE v TYRELL (22 NY3d 359 [2013]) WHERE IT CONTAINED NO DISCUSSION OF THE RIGHTS DEFENDANT WAS WAIVING BY ENTERING THE PLEA, PURSUANT TO WHICH HE PLEADED GUILTY TO A MISDEMEANOR IN RETURN FOR A NEGOTIATED SENTENCE OF A \$250 FINE;
Criminal Court of the City of New York, New York County, convicted defendant, upon his guilty plea, of promoting prostitution in the fourth degree, and imposed sentence; App. Term affirmed.

SANDERS (OSCAR), PEOPLE v:

2ND Dept. App. Div. order of 7/23/14; affirmance; leave to appeal granted by Lippman, Ch.J., 12/30/14;

CRIMES - SUPPRESSION HEARING - SEARCH AND SEIZURE OF DEFENDANT'S CLOTHING LYING ON THE FLOOR OF A HOSPITAL ROOM IN A CLEAR PLASTIC BAG, AS POSSIBLE EVIDENCE OF A CRIME IN WHICH POLICE BELIEVED DEFENDANT WAS THE VICTIM - AFTER SEARCH OF BAG, OFFICER CONCLUDED DEFENDANT'S WOUNDS WERE SELF-INFLICTED AND ARRESTED DEFENDANT FOR CRIMINAL POSSESSION OF A WEAPON; WHETHER TRIAL COURT ERRED IN CONDUCTING AN OFF-THE-RECORD SANDOVAL HEARING OUTSIDE OF DEFENDANT'S PRESENCE; CLAIMED VIOLATIONS OF CONSTITUTIONAL RIGHTS;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second and third degrees, and imposed sentence; App. Div. affirmed.