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COURT OF APPEALS NEW FILINGS

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

January 4 through January 10, 2019

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.

DELORBE (JOSE), PEOPLE v:
1ST Dept. App. Div. order of 10/18/18; affirmance; leave to appeal granted by Fahey, J., 12/27/18;
Crimes--Plea of Guilty--Whether defendant was required to preserve Peque claim (see People v Peque, 22 NY3d 168 [2013]) where defendant was served with a notice of immigration consequences form at arraignment; crimes--vacatur of judgment of conviction--whether Supreme Court properly denied defendant's CPL 440.10 motion without a hearing;
Supreme Court, New York County, convicted defendant, upon a guilty plea, of attempted burglary in the second degree, and imposed sentence; Supreme Court thereafter denied defendant's CPL 440.10 motion to vacate the judgment; App. Div. affirmed.

GREGORY (KENDEL), PEOPLE v:
2ND Dept. App. Div. order of 7/18/18; affirmance; leave to appeal granted by Rivera, J., 12/13/18; Rule 500.11 review pending;
Crimes--Right to Representation Pro Se--Whether the trial court erred in denying defendant's application to proceed pro se; defendant sought to present defense theory that court lacked jurisdiction to prosecute him because he was a secured party creditor under the Uniform Commercial Code; suppression hearing--whether court properly denied suppression of knapsack defendant discarded during police pursuit;
Supreme Court, Queens County, convicted defendant of three counts of burglary in the second degree, attempted burglary in the second degree, two counts of criminal possession of stolen property in the fifth degree, and two counts of petit larceny, and imposed sentence; App. Div. affirmed.

LANG (DAVID R.), PEOPLE v:
3RD Dept. App. Div. order of 8/2/18; affirmance; leave to appeal granted by Rivera, J., 12/18/18;
Crimes--Disclosure--Whether defendant was entitled to a curative instruction where the police failed to conduct a timely blood alcohol level test; jurors--discharge of juror--whether the trial court engaged in reasonably thorough inquiry prior to discharging sworn juror; argument and conduct of counsel-- whether prosecutor's comments during summation deprived defendant of a fair trial;
County Court, Essex County, convicted defendant of the crimes of murder in the second degree and criminal possession of a weapon in the fourth degree, and imposed sentence; App. Div. affirmed.

MANKO v LENOX HILL HOSPITAL:
2ND Dept. App. Div. order of 10/23/18; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;
Appeal--Appellate Division--Denial of motion to vacate prior order;
App. Div. denied appellant's renewed motion, among other things, to recall and vacate an 8/16/11 App. Div. order dismissing an appeal from a 12/13/10 Supreme Court, Kings County, order.

LUIS S., MATTER OF v STATE OF NEW YORK, et al.:
4TH Dept. App. Div. order of 11/16/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Crimes--Sex Offenders--Proceeding pursuant to Mental Hygiene Law article 10 seeking an order discharging petitioner or releasing him to the community under a regimen of strict and intensive supervision and treatment after service of his sentence for a sex offense--claim by petitioner that reliance on a diagnosis of "Unspecified Paraphilic Disorder" to support a judicial finding of mental abnormality violated his due process rights; whether the finding of mental abnormality was against the weight of the evidence;
Supreme Court, Oneida County, among other things, adjudged that petitioner is subject to strict and intensive supervision and treatment; App. Div. affirmed.