

COURT OF APPEALS NEW FILINGS

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

January 29, 2016 through February 4, 2016

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.

BUSHEY (ANDREW R.), PEOPLE v:

County Court, Erie County, order of 10/15/15; reversal; leave to appeal granted by Pigott, J., 1/25/16;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER COUNTY COURT ERRED IN DETERMINING THAT THE PLATE CHECK OF DEFENDANT'S VEHICLE AND THE ENSUING STOP WERE LAWFUL;

Buffalo City Court granted defendant's motion to suppress and dismissed the accusatory instrument; County Court reversed, denied the motion to suppress, and remitted the case to City Court for further proceedings.

CAMPBELL (ROSS), PEOPLE v:

1ST Dept. App. Div. order of 9/29/15; modification; leave to appeal granted by Fahey, J., 1/26/16;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER, IN A CASE INVOLVING SEX CRIMES, DEFENSE COUNSEL WAS INEFFECTIVE IN FAILING TO CHALLENGE A PROSPECTIVE JUROR WHO EXPRESSED DIFFICULTY IN SERVING AS A JUROR BECAUSE SHE HAD BEEN SUBJECTED TO SEXUAL VIOLENCE;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of sex trafficking, promoting prostitution in the second degree, rape in the first degree, criminal sexual act in the first degree, and kidnaping in the second degree, and sentenced him to an aggregate term of 25 years and a \$2500 fine; App. Div. modified to reduce the crime victim assistance fee from \$25 to \$20 and otherwise affirmed.

CARR (JAMES L.), PEOPLE v:

4TH Dept. App. Div. order of 5/1/15; affirmance; leave to appeal granted by Lippman, Ch.J., 12/28/15;

GRAND JURY - RESUBMISSION OF CHARGES - WHETHER SUPREME COURT ERRED IN DENYING DEFENDANT'S CPL 440.10 MOTION TO VACATE THE JUDGMENT CONVICTING HIM OF TWO COUNTS OF MURDER IN THE SECOND DEGREE ON THE GROUND THAT THE PEOPLE FAILED TO SEEK LEAVE TO REPRESENT THE MURDER CHARGES TO A SECOND GRAND JURY, IN VIOLATION OF CPL 190.75(3);

Supreme Court, Erie County, denied defendant's CPL 440.10 motion to vacate the judgment convicting him of two counts of murder in the second degree; App. Div. affirmed.

SCHULZ v SILVER:

3RD Dept. App. Div. order of 12/24/15; affirmance (5/13/14 order) and dismissal (10/21/14 order); sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CONSTITUTIONAL LAW - APPROPRIATIONS - ACTION SEEKING DECLARATION THAT DEFENDANT'S USE OF PUBLIC FUNDS TO SETTLE VICTIM'S COMPLAINTS OF SEXUAL HARASSMENT BY A MEMBER OF THE STATE ASSEMBLY VIOLATED THE NEW YORK CONSTITUTION, ARTICLE VII, § 8(1);

STANDING; GOVERNMENTAL IMMUNITY FOR DISCRETIONARY ACTS;

Supreme Court, Albany County, granted defendant's motion to dismiss the complaint (5/13/14 order), and denied plaintiff's motion for reargument (10/21/14 order); App. Div. affirmed and denied plaintiff's motion for reargument.