

COURT OF APPEALS NEW FILINGS

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

March 6, 2020 through May 14, 2020

Generally, each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. This combined list contains the recently filed appeals for the weeks identified above. 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.

Please note that this list does not include appeals for which a Preliminary Appeal Statement was filed after March 6, 2020, that were dismissed, withdrawn or decided before the publication of this list. Any questions about the status of an appeal may be directed to the Clerk's Office.

BARRY, &c. v LEE, et al.:

1ST Dept. App. Div. order of 12/26/19; reversal; leave to appeal granted by App. Div., on a certified question, 4/20/20; Rule 500.11 review pending;

Physicians and Surgeons--Malpractice--Summary Judgment;

Supreme Court, New York County, granted defendants' motion for summary judgment and dismissed the complaint; App. Div. reversed, denied the motion and reinstated the complaint.

BIASELLI (JOSHUA D.), PEOPLE v:

4TH Dept. App. Div. order of 1/31/20; affirmance, leave to appeal granted by Wilson, J., 4/9/20; Rule 500.11 review pending;

Crimes--Appeal--Whether defendant validly waived the right to appeal; whether the police lawfully stopped defendant;

County Court, Orleans County, convicted defendant of driving while intoxicated; App. Div. affirmed.

BROWN (GEORGE), PEOPLE v:

1ST Dept. App. Div. order of 11/26/19; affirmance; leave to appeal granted by Wilson, J., 2/20/20; Rule 500.11 review pending;

Crimes--Appeal--Whether defendant's waiver of appeal forecloses review of his claim that the sentencing court violated CPL 380.50(1) by failing to provide him with the opportunity to make a statement in his own behalf prior to sentencing;

Supreme Court, Bronx County, convicted defendant of attempted assault in the first degree; App. Div. affirmed.

DAVIS (DECEASED), MATTER OF:

2ND Dept. App. Div. order of 2/19/20; dismissal; sua sponte examination of whether the order appealed from finally determines the proceeding and whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeals--Dismissal--Mootness;

Surrogate's Court, Nassau County, entered decree on 9/6/16; App. Div. dismissed appeal from decree.

HARDIN (ZESTRA), PEOPLE v:

2ND Dep. App. Div. order of 11/27/19; affirmance; leave to appeal granted by Stein, J., 3/3/20; Rule 500.11 review pending;

Crimes--Appeal--Waiver of right to appeal--Whether defendant validly waived the right to appeal;

Supreme Court, Queens County, imposed sentence; App. Div. affirmed.

HALLOCK, MATTER OF:

2ND Dept. App. Div. order of 2/13/20; suspension of attorney; sua sponte examination of whether any basis exists for an appeal as of right;

Attorney and Client--Disciplinary Proceedings;

App. Div. suspended attorney from the practice of law for a period of one year.

HAYON (JOSEPH), PEOPLE v:

Supreme Court, Kings County, order of 2/14/20, denial of motion; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Crimes--Appeal;

Supreme Court, Kings County, denied defendant's motion to vacate judgment of conviction.

HAYON, People ex rel., v SMITH, &c.:

3RD Dept. App. Div. order of 2/13/20; denial of motions for various relief; sua sponte examination of whether the order appealed finally determines the proceeding and whether a substantial constitutional question is directly involved to support an appeal as of right;

Habeas Corpus--Motion denying poor person relief;

Supreme Court, Greene County, denied writ of habeas corpus and dismissed the proceeding; App. Div. denied motions for poor person relief, assignment of counsel, and immediate release.

STATE OF NEW YORK, MATTER OF v JESUS H.:

1ST Dept. App. Div. order of 10/31/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Sex Offenders--Civil Commitment or Supervision--Mental Abnormality--

Predisposition to Commit Sex Offense;

Supreme Court, New York County, determined that respondent is a detained sex offender who suffers from a mental abnormality requiring him to be subject to civil management under MHL article 10; App. Div. affirmed.

J.P. MORGAN SECURITIES, INC. et al. v VIGILANT INSURANCE

COMPANY, et al.:

1ST Dept. App. Div. order of 9/20/18; reversal; leave to appeal granted by Court of Appeals, 3/26/20;

Insurance--Business Insurance--Disgorgement payment to Securities and Exchange Commission not insurable loss;

Supreme Court, New York County, awarded plaintiff judgment against certain defendants; App. Div. reversed, denied plaintiffs' motion for summary judgment, granted defendants' motion for summary judgment declaring that plaintiffs are not entitled to coverage for the disgorgement payment, and so declared.

LASHLEY (SHARON), PEOPLE v:

1ST Dept. App. Div. order of 12/12/19; modification; leave to appeal granted by Rivera, J., 3/27/20;

Crimes--Sentence--Resentence--Filing of proper predicate felony statement;

Supreme Court, New York County, convicted defendant of criminal possession of a forged instrument in the second degree and sentenced defendant, as a second felony offender, to a term of 3 1/2 to 7 years; App. Div. modified by vacating the second felony offender adjudication and sentence and remanding for resentencing, and as so modified affirmed.

LAUNDERS, &c. v STEINBERG:

1ST Dept. App. Div. order of 2/6/20; affirmance; sua sponte examination of whether any basis exists for any appeal as of right;

Judgments--Supplementary Proceedings;

Supreme Court, New York County, granted judgment in favor of plaintiff in a set sum; App. Div. affirmed.

LAWS (RYAN), PEOPLE v

4TH Dept. App. Div. order of 11/15/19; reversal; leave to appeal granted by Garcia, J., 4/29/20;

Crimes--Accusatory Instrument--Whether defendant's waiver of indictment was jurisdictionally defective and reviewable on direct appeal, notwithstanding the defendant's guilty plea and waiver of the right to appeal; waiver of indictment omitted the "approximate time" of the charged offense, as required by CPL 195.20;

County Court, Wayne County, convicted defendant of robbery in the third degree and criminal possession of a forged instrument in the second degree; App Div. reversed, dismissed the superior court information, and remitted the matter to County Court for further proceedings.

MALERBA, MATTER OF:

2ND Dept. App. Div. order of 2/13/20; suspension of attorney; sua sponte examination of whether any basis exists for an appeal as of right;

Attorney and Client—Disciplinary Proceedings;

App. Div. suspended attorney from the practice of law for a period of six months.

MANKO, MATTER OF v LENOX HILL HOSPITAL (A.D. NO. 01851/11):

2ND Dept. App. Div. order of 1/15/20; denied motion; sua sponte examination of whether the order appealed from finally determines the proceeding and whether any basis exists for appeal as of right;

Appeals--Matters Appealable;

App. Div., inter alia, denied motion to vacate prior orders for failure to obtain leave of the court.

MANKO v LENOX HILL HOSPITAL (A.D. NO. 30972/04):

2ND Dept. App. Div. order of 7/29/13; dismissal; 2nd Dept. App. Div. order of 3/18/20; denial of motion; sua sponte examination of whether any basis exists for an appeal as of right from both orders;

Appeal--Appealable Paper;

Supreme Court, Kings County, denied motion for renewal and reargument; App. Div., dismissed the appeal from supreme court order; denied motion, among other things, to vacate 7/29/13 App. Div. order and, precluded appellant from making any further motions with the Court without prior leave.

MANKO, MATTER OF v MASTRO (A.D. NO. 526781/19):

2ND Dept. App. Div. order of 3/12/20; denial of application; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Proceeding Against Body or Officer--When Remedy Available;

Upon transfer from the App. Div., 2nd Dept, the App. Div., 1st Dept., denied the application pursuant to CPLR article 78 and dismissed the petition.

MILLER, (JOSHUA L.), PEOPLE v:

4TH Dept. App. Div. order of 11/15/19; affirmance; leave to appeal granted by Wilson, J., 2/20/20; Rule 500.11 review pending;

Crimes--Appeal--Whether defendant validly waived the right to appeal; whether Supreme Court properly denied defendant's motion to suppress evidence seized pursuant to a search warrant;

County Court, Orleans County, convicted defendant, upon his guilty plea, of second degree attempted criminal possession of a controlled substance; App. Div. affirmed.

MORALES (MANUEL), PEOPLE v:

2ND Dept. App. Div. order of 10/30/19; leave to appeal granted by Wilson, J., 4/9/20;

Crimes--Identification of defendant--first-time, in-court identification during trial;

Supreme Court, Queens County, convicted defendant of robbery in the first degree; App. Div. affirmed.

NUNEZ v NUNEZ, et al.:

1ST Dept. App. Div. order of 9/17/19; reversal; leave to appeal granted by Court of Appeals, 2/18/20; Rule 500.11 review pending;

Motor Vehicles--Collision--Whether a triable issue of fact exists as to the fault of defendant driver;

Supreme Court, New York County, denied the motion of defendants Danny Budden, Clark Road Transport, Inc. and Ryder Truck Rental Canada for summary judgment dismissing the complaint as against them; App. Div. reversed and granted the motion for summary judgment.

OGANDO (NOLIS), PEOPLE v:

2ND Dept. App. Div. order of 12/18/19; affirmance; leave to appeal granted by Fahey, J. 4/1/20; Rule 500.11 review pending;

Crimes--Appeal--Waiver of Right to Appeal--Whether defendant validly waived the right to appeal;

Supreme Court, Queens County, imposed sentence on 9/22/16; App. Div. affirmed.

OSBORNE, MATTER OF:

1ST Dept. App. Div. order of 3/10/20; denial of motion; sua sponte examination of whether the order appealed from finally determines the proceeding and whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client--Reinstatement;

App. Div. denied the (1) motion for reinstatement as an attorney and counselor-at-law or for a hearing on reinstatement; and (2) motion for an order transferring motion for reinstatement to Third Department and staying determination of that motion until the transfer motion is decided.

PETTUS, et al. v BOARD OF DIRECTORS, et al.:

1ST Dept. App. Div. order of 11/26/19; denied motion; sua sponte examination of whether any basis exists for an appeal as of right;

Motions and orders;

App. Div. denied the motion.

PEREZ (ALEX), PEOPLE v:

3RD Dept. App. Div. order of 5/7/20; affirmance; Rule 500.11 review pending;

Crimes--Harmless and Prejudicial Error--Whether error in denying defendant's motion to suppress defendant's cell phone location data and admitting such data at trial was harmless;

Supreme Court, Albany County, convicted defendant of the crimes of attempted assault in the first degree and assault in the second degree; App. Div. affirmed.

REDDY v WSyr NEWSCHANNEL 9, et al.:

4TH Dept. App. Div. order of 3/20/20; affirmance; sua sponte examination of whether the order appealed from finally determines the action and whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeal--Matters Appealable;

Supreme Court, Onondaga County, denied plaintiff's motion to, inter alia, vacate a prior order of that court and denied defendants' cross motion for litigation injunction and sanctions; App. Div. affirmed.

REDDY v ABITBOL:

4TH Dept. App. Div. order of 4/24/20; affirmance; sua sponte examination of whether the order appealed from finally determines the action and whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeal--Matters Appealable;

Supreme Court, Onondaga County, denied plaintiff's motion to vacate an order dated 12/7/18; App. Div. affirmed.

REXFORD &c., MATTER OF v GOULD ERECTORS & RIGGERS, INC., et al.:

3RD Dept. App. Div. order of 7/3/19; reversal; leave to appeal granted by Court of Appeals, 3/24/20;

Workers' Compensation--Reopened cases--Workers' Compensation Law 25-a(1-a);

App. Div. reversed a decision of the Workers' Compensation Board and remitted to the Board for further proceedings.

ROBINSON (DAVID), PEOPLE v:

2ND Dept. App. Div. order of 10/9/19; affirmance; leave to appeal granted by Stein, J., 3/3/20; Rule 500.11 review pending;

Crimes--Appeal--Waiver of Right to Appeal--Whether defendant validly waived the right to appeal;

Supreme Court, Queens County, imposed sentence; App. Div. affirmed.

RODRIGUEZ (LANCE), PEOPLE v:

2ND Dept. App. Div. order of 10/23/19; affirmance; leave to appeal granted by Fahey, J., 2/27/20; Rule 500.11 review pending;

Crimes--Appeal--Waiver of right to appeal--Whether defendant validly waived the right to appeal; whether the police lawfully stopped defendant;

Supreme Court, Queens County, imposed sentence; App. Div. affirmed.

SASSI v MOBILE LIFE SUPPORT SERVICES, INC.:

2ND Dept. App. Div. order of 10/9/19; affirmance; leave to appeal granted by Court of Appeals, 3/26/20;

**New York State Human Rights Law (Executive Law 296)--Employment
Discrimination--Pleading--Sufficiency of Pleading;**

Supreme Court, Dutchess County, granted defendant's motion to dismiss the complaint; App. Div. affirmed.

SMITH &c. v LAMANNA &c., PEOPLE ex Rel.:

2ND Dept. App. Div. order of 4/20/20; denial of application; sua sponte examination of whether an appeal lies of right from the paper dated 4/20/20;

Appeal--Matters Appealable;

App. Div. denied petitioner's application pursuant to CPLR 5704(a) to execute an order to show cause, which Supreme Court, Westchester County, declined to sign on April 17, 2020.

SMITH (RUSSELL), PEOPLE v:

1ST Dept. App. Div. order of 12/12/19; affirmance; leave to appeal granted by Ch.J. DiFiore, 4/30/20; Rule 500.11 review pending;

Crimes--Jurors--Whether Supreme Court erred in denying, without a hearing, defendant's motion pursuant to CPL 330.30 to set aside the verdict based on juror misconduct; juror allegedly told another juror that the juror observed defendant commit a crime during the pendency of the proceedings;

Supreme Court, Bronx County, convicted defendant of first-degree rape; App. Div. affirmed.

SMYTHE v MILLER &c., PEOPLE ex rel.:

3RD Dept. App. Div. order of 4/23/20; affirmance; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Habeas Corpus--When Remedy Available--Whether habeas corpus relief is available to address petitioner's claim that the indictment underlying his criminal conviction was jurisdictionally defective;

Supreme Court, Washington County, denied petitioner's application for a writ of habeas corpus without a hearing; App. Div. affirmed.

AUDREY T., MATTER OF:

2ND Dept. App. Div. order of 12/18/19; denial of motion; sua sponte examination of whether the order appealed from finally determines the proceeding and whether a substantial constitutional question is directly involved to support an appeal as of right
Attorney and Client--Disciplinary Proceedings;
App. Div. denied respondent attorney's request to hold in abeyance a disciplinary proceeding against her.

TAX EQUITY NOW NEW YORK LLC v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 2/27/20; modification; sua sponte examination of whether a substantial constitutional question is directly involved in the Appellate Division order;
Taxation--Real Property Tax--Whether various sections of the Real Property Tax Law pertaining to the taxation of four statutory classes of properties in New York City violate the Federal and State Equal Protection Clauses; whether the taxation scheme violates article XVI, § 2 of the New York State Constitution; whether defendants violated the Fair Housing Act; alleged due process violations;
Supreme Court, New York County, denied the motion of defendants City of New York and New York City Department of Finance to dismiss the complaint as against them, and granted in part and denied in part the motion of defendants State of New York and New York Office of Real Property Tax Services to dismiss the complaint as against them; App. Div. modified to dismiss the remaining causes of action against the State defendants and to grant the City defendants' motion to dismiss the complaint against them, and otherwise affirmed.

VERNEAU, MATTER OF v CONSOLIDATED EDISON CO. OF NEW YORK, INC., et al.:

3RD Dep. App. Div. order of 7/3/19; reversal; leave to appeal granted by Court of Appeals, 3/24/20;
Workers' Compensation--Reopened cases--Workers' Compensation Law 25-a(1-a);
App. Div. reversed a decision of the Workers' Compensation Board and remitted to the Board for further proceedings.

VIGNONE (PEREGRINE ENTERPRISES), MATTER OF v:

3RD Dept. App. Div. order of 4/23/20; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Unemployment Insurance--Dismissal of Appeal--Whether the Appellate Division properly dismissed employer's appeals based on employer's failure, under Labor Law § 625, to either deposit the sum due or file an undertaking sufficient to cover the sum due; alleged due process and equal protection violations;

Workers' Compensation Board ruled, in two decisions, that employer was liable for additional unemployment insurance contributions on remuneration paid to claimant and others similarly situated; App. Div. dismissed the appeals from the Workers' Compensation Board decisions.

WALLEY (ZAQUAN), PEOPLE v:

3RD Dept. App. Div. order of 10/31/19; reversal; leave to appeal granted by Garcia, J., 4/29/20;

Crimes--Accusatory Instrument--Whether defendant's waiver of indictment was jurisdictionally defective and reviewable on direct appeal, notwithstanding the defendant's guilty plea and waiver of the right to appeal; waiver of indictment omitted the "approximate time" of the charged offense, as required by CPL 195.20;

County Court, Schenectady County, convicted defendant of criminal possession of a weapon in the second degree and imposed sentence; App. Div. reversed, dismissed the superior court information, and remitted the matter to County Court for further proceedings.

WILLIAMS (DAVID), A/K/A MELVIN WILLIAMS, PEOPLE ex rel. v STATE OF NEW YORK:

4TH Dept. App. Div. order of 1/21/20; denial of application for a writ of habeas corpus; sua sponte examination of whether any basis exists for an appeal as of right;

Appeal--appealable order;

App. Div., among other things, denied application for a writ of habeas corpus and dismissed the petition.

ZIELINSKI, MATTER OF v VENETTOZZI:

3RD Dept. App. Div. order of 11/7/19; confirmation of determination; leave to appeal granted by Court of Appeals 4/2/20; Rule 500.11 review pending;

Prisons and Prisoners--Discipline of Inmates--Whether substantial evidence supports determination finding petitioner guilty of violating a prison disciplinary rule;

App. Div., upon transfer, confirmed the determination finding petitioner guilty of violating a prison disciplinary rule and dismissed the petition.