



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

March 10, 2023 through March 16, 2023

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.

MATTER OF BRIGHTONIAN NURSING HOME v ZUCKER:

3rd Dept. App. Div. order of 1/5/23; affirmance; sua sponte examination of whether a substantial constitutional question is involved to support an appeal as of right;

Administrative Law--Whether respondent's issuance of guidance on the interpretation of Public Health Law § 2805(5)(c) violated the State Constitution and the State Administrative Procedure Act; whether the policy set forth in the guidance violates appellants' equal protection and due process rights;

Supreme Court, Albany County, in two combined proceedings pursuant to CPLR article 78 and actions for, among other things, declaratory judgment, granted respondent's cross motion for summary judgment dismissing the petitions/complaints; App. Div. affirmed.

MATTER OF CALL-A-HEAD v NYS DEC:

2nd Dept. App. Div. order of 2/15/23; confirmation of determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Dismissal of Petition—Whether substantial evidence supports determination; whether petitioners stated a claim for selective enforcement; alleged constitutional violations;

App. Div., upon transfer from Supreme Court, Queens County, confirmed the determination insofar as reviewed, denied the CPLR article 78 petition, and dismissed the proceeding.

DAVID (CARLOS L.), PEOPLE v:

4th Dept. App. Div. order of 10/7/22; affirmance; leave to appeal granted by Cannataro, ACJ., 2/23/23;

Crimes—Possession of Weapon—Whether Penal Law 265.05, which criminalizes possession of a loaded firearm outside one's home or business, violates due process in light of the United States Supreme Court holding in *New York State Rifle & Pistol Assoc. v Bruen* (597 US—, 142 S Ct 2111 [2022]); Crimes—Search and Seizure—Whether inventory search was invalid;

Supreme Court, Monroe County, convicted defendant upon a jury verdict of two counts of criminal possession of a weapon in the second degree; App. Div. affirmed.

ESTWICK (DWANE), PEOPLE v:

2nd Dept. App. Div. order of 8/24/22; affirmance; leave to appeal granted by Cannataro, ACJ., 2/23/23;

Crimes—Jurors—Selection of Jury—Whether Supreme Court properly denied defendant's Batson challenges; Crimes—Robbery—Whether the evidence was legally insufficient to establish defendant's guilt for robbery in the first degree; Supreme Court, Queens County, convicted defendant of robbery in the first degree and robbery in the second degree, and imposed sentence; App. Div. affirmed.

LOVETT (NIKOLAS), PEOPLE v:

Washington County Court order of 9/20/22; affirmance; leave to appeal granted by Cannataro, ACJ., 3/1/23; Rule 500.11 review pending;

Crimes—Right to Speedy Trial-- Whether the courts below erred in granting defendant's CPL 30.30 motion to dismiss the simplified traffic information charging defendant with a single traffic infraction;

Town Court, Town of Kingsbury, granted defense motion to dismiss a Vehicle and Traffic Law § 1146 charge for non-compliance with CPL 30.30; County Court, Washington County, affirmed.

MEDINA (VICTOR), PEOPLE v:

3rd Dept. App. Div. order of 10/6/22; affirmance; leave to appeal granted by Wilson, J.,

2/28/23; Rule 500.11 review pending;

Crimes—Unlawful Search and Seizure—Whether request to search vehicle was supported by founded suspicion of criminality;

County Court, Sullivan County convicted defendant upon a plea of guilty of criminal possession of a weapon in the second degree; App. Div. affirmed.

SIMS (YASIF), PEOPLE v:

3rd Dept. App. Div. order of 7/14/22; affirmance; leave to appeal granted by Wilson, J., 2/7/23; Rule 500.11 review pending;

Crimes—Sentence—Whether County Court failed to conduct a sufficient inquiry into whether defendant violated the terms of the plea agreement prior to imposing an enhanced sentence; whether the court was required to conduct a hearing under *People v Outley* (80 NY2d 702 [1993]); whether the court improperly imposed an enhanced sentence; whether the sentence was improperly based upon hearsay; whether defendant was denied effective assistance of counsel;

County Court, St. Lawrence County, convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the second degree; App. Div. affirmed.