Vol. 37 - No. 12
3/24/17

COURT OF APPEALS NEW FILINGS

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

March 17, 2017 through March 23, 2017

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.

CRESPO (RAYMOND), PEOPLE v:
1ST Dept. App. Div. order of 11/10/16; reversal; leave to appeal granted by Stein, J., 3/6/17;
Crimes--Right to Representation Pro Se--Whether defendant's requests to proceed pro se, made during jury selection, were timely asserted;
Supreme Court, New York County, convicted defendant of assault in the first degree and criminal possession of a weapon in the third degree, and imposed sentence; App. Div. reversed and remanded the matter for a new trial.

GURNETT, MATTER OF v BARGNESI:
4TH Dept. App. Div. judgment of 2/3/17; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
Licenses--Firearms--Whether the revocation of petitioner's pistol permit without a hearing denied petitioner due process; whether the revocation of the pistol permit was arbitrary and capricious, or an abuse of discretion; claimed Second Amendment violations; App. Div. confirmed the determination of respondent Acting County Court Judge revoking petitioner's pistol permit, and dismissed the CPLR article 78 petition to annul the determination.

MANKO v GABAY, et al.:
2ND Dept. App. Div. order of 1/6/17; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Appeal--Appellate Division--Denial of motion to reinstate appeals;
App. Div., among other things, denied appellant's motion to reinstate appeals from a 2/23/15 order and 7/29/15 judgment of Supreme Court, Kings County, which appeals were dismissed by 10/11/16 Appellate Division order.

WALKER, MATTER OF v LIPPMAN, et al:
3RD Dept. App. Div. order of 12/22/16; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Appeal--Timeliness--Whether Supreme Court properly denied appellant's motion for an extension of time to appeal -- claimed due process and equal protection violations -- alleged unconstitutionality of CPL 450.90 and certain Court of Appeals Rules of Practice;
Supreme Court, Albany County, denied petitioner's motion to reargue and/or renew; App. Div. affirmed.

WELLS FARGO BANK, N.A., &c. v EITANI, et al.:
2ND Dept. App. Div. order of 2/8/17; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
Limitation of Actions--Commencement of Action after Termination of Prior Action--Whether CPLR 205(a) applies when the party seeking to recommence a prior action is not the original plaintiff, but is plaintiff's successor-in-interest who was not a party to the prior action; mortgages--foreclosure;
Supreme Court, Kings County, denied defendant Cohan's motion pursuant to CPLR 3211(a)(5) to dismiss the complaint as asserted against him as time-barred; App. Div. affirmed.

WORD, PEOPLE ex rel. v STATE OF NEW YORK, et al.:
4TH Dept. App. Div. order of 3/1/17; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Appeal--Appellate Division--Denial of motion for renewal;
App. Div. denied petitioner's motion to renew a 4/20/15 order of Hon. Nancy E. Smith on the ground that petitioner seeks a panel of Justices on the order of the Appellate Division as opposed to a single Justice order.