

COURT OF APPEALS NEW FILINGS

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

March 27, 2015 through April 2, 2015

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.

BOTTOM, MATTER OF v ANNUCCI:

3RD Dept. App. Div. order of 2/11/15; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - CONDITIONS OF CONFINEMENT - CORRECTIONAL FACILITY THAT PERMITS INMATES TO OWN AND USE PERSONAL TELEVISIONS WHILE RESTRICTING PACKAGES THAT INMATES MAY RECEIVE - WHETHER RESPONDENTS' DENIAL OF INMATE GRIEVANCE PERTAINING TO ACCESS TO PREMIUM TELEVISION CHANNELS WAS ARBITRARY AND CAPRICIOUS, IRRATIONAL OR AFFECTED BY AN ERROR OF LAW, WHERE A DEPARTMENTAL DIRECTIVE ALLOWS SUCH ACCESS IF THE INMATE LIAISON COMMITTEE (ILC) DETERMINES THAT THE INMATE POPULATION IS IN FAVOR OF THAT ADDITIONAL SERVICE, AND RESPONDENT SUPERINTENDENT DIRECTED

PETITIONER TO ADDRESS HIS CONCERNS TO THE ILC IN ACCORDANCE WITH THAT DIRECTIVE; WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT PETITIONER FAILED TO ESTABLISH A CLEAR LEGAL RIGHT TO RELIEF IN THE NATURE OF MANDAMUS TO COMPEL RESPONDENTS TO CONDUCT A VOTE ON THE USE OF PERSONAL TELEVISIONS AND TO PERMIT PETITIONER TO RECEIVE UNRESTRICTED MONTHLY PACKAGES, OR THAT THE FACILITY'S DESIGNATION AS A "TV FACILITY" AND CONCOMITANT RESTRICTION OF PACKAGES WAS ARBITRARY AND CAPRICIOUS OR AN ABUSE OF DISCRETION; Supreme Court, Albany County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to, among other things, review a determination of the Central Office Review Committee denying petitioner's grievance pertaining to the lack of access to premium television channels at Attica Correctional Facility; App. Div. affirmed.

JABLONSKI, MATTER OF; COMMISSIONER OF LABOR:

3RD Dept. App. Div. order of 3/19/15; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; UNEMPLOYMENT INSURANCE - BENEFITS - REQUIREMENTS FOR FILING VALID ORIGINAL CLAIM (LABOR LAW § 527[1] AND [2]) - BASE PERIOD OF CALENDAR QUARTERS PRECEDING FILING OF THE CLAIM; ALLEGED DUE PROCESS VIOLATIONS IN HEARING PROCESS; App. Div. affirmed an April 9, 2014 decision of the Unemployment Insurance Appeal Board which ruled that claimant was ineligible to receive unemployment insurance benefits because she was unable to file a valid original claim.

JOHNSON (MARCELLUS), PEOPLE v:

1ST Dept. App. Div. order of 9/30/14; affirmance; leave to appeal granted by Pigott, J., 3/19/15; CRIMES - EVIDENCE - TAPE RECORDINGS - TELEPHONE CALLS MADE BY DEFENDANT FROM CORRECTION FACILITY - WHETHER SUPREME COURT ERRED IN ADMITTING INTO EVIDENCE PORTIONS OF TELEPHONE CALLS MADE BY DEFENDANT FROM RIKERS ISLAND THAT WERE ROUTINELY RECORDED BY THE DEPARTMENT OF CORRECTION; Supreme Court, New York County, convicted defendant, after a jury trial, of two counts of robbery in the third degree, three counts of grand larceny in the fourth degree, and criminal possession of stolen property in the fourth degree, and sentenced him, as a second felony offender, to an aggregate term of 3 1/2 to 7 years; App. Div. affirmed.