

COURT OF APPEALS NEW FILINGS

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

April 3, 2015 through April 9, 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.

CHANKO, &c., et al. v AMERICAN BROADCASTING
COMPANIES, INC., et al.:

1ST Dept. App. Div. order of 11/18/14; reversal; leave to appeal granted by App. Div., 3/24/15;

TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - EXTREME AND OUTRAGEOUS CONDUCT - WHETHER DEFENDANTS' CONDUCT IN PRODUCING AND TELEVISIONING A SHOW DEPICTING MEDICAL CARE PROVIDED AT DEFENDANT HOSPITAL, WHICH INCLUDED PIXILATED IMAGE OF PLAINTIFFS' DECEDENT, CONSTITUTED EXTREME AND OUTRAGEOUS CONDUCT SUPPORTING A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; TORTS - WRONGFUL DISCLOSURE OF CONFIDENTIAL INFORMATION - WHETHER PLAINTIFFS STATED A CLAIM FOR BREACH OF THE DUTY NOT TO DISCLOSE PERSONAL MEDICAL INFORMATION;

Supreme Court, New York County, (1) denied so much of motions by ABC, Inc. and New York & Presbyterian Hospital, and Sebastian Schubl, M.D., to dismiss plaintiffs' fifth cause of action for intentional infliction of emotional distress; (2) denied so much of the hospital and doctor defendants' motion which was to dismiss the fourth cause of action for violation of physician-patient confidentiality; and (3) otherwise granted defendants' separate motions to dismiss the complaint insofar as asserted against them; App. Div. reversed, granted defendants' motions to dismiss plaintiffs' fourth and fifth causes of action, and directed the Clerk to enter judgment dismissing the complaint.

COWARD, MATTER OF v NEW YORK STATE BOARD OF PAROLE:

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;
PAROLE - JUDICIAL REVIEW - DISMISSAL OF CPLR ARTICLE 78 PETITION FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES;
Supreme Court, Columbia County, dismissed the petition; App. Div. affirmed.

HENDERSON (STEVEN), PEOPLE v:

2ND Dept. App. Div. order of 9/10/14; affirmance; leave to appeal granted by Lippman, Ch.J., 3/25/15;
CRIMES - APPEAL - PRESERVATION OF ISSUE FOR REVIEW - RIGHT TO SPEEDY TRIAL; CRIMES - RIGHT TO SPEEDY TRIAL - WHETHER THE PROSECUTION'S DELAY IN SEEKING THE TESTING OF DNA IS AN EXCEPTIONAL CIRCUMSTANCE EXCLUDABLE FROM SPEEDY TRIAL COMPUTATION UNDER CPL 30.30;
Supreme Court, Kings County, convicted defendant, upon a jury verdict, of rape in the first degree and two counts of criminal sexual act in the first degree; App. Div. affirmed.

HULL (GLENFORD C.), PEOPLE v:

3RD Dept. App. Div. order of 2/19/15; affirmance with dissents; leave to appeal granted by Lynch, J., 3/26/15;
CRIMES - LESSER INCLUDED OFFENSE - FIRST-DEGREE MANSLAUGHTER AS LESSER INCLUDED OFFENSE OF SECOND-DEGREE MURDER - WHETHER THE EVIDENCE COULD REASONABLY SUPPORT A FINDING THAT DEFENDANT INTENDED TO SERIOUSLY INJURE RATHER THAN KILL THE VICTIM; WHETHER THE VERDICT WAS SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE; WHETHER THE TRIAL COURT CONDUCTED AN INSUFFICIENT INQUIRY INTO ALLEGED JUROR MISCONDUCT; WHETHER THE TRIAL COURT IMPROPERLY PERMITTED THE PEOPLE TO USE A WITNESS'S PRIOR TESTIMONY FOR IMPEACHMENT PURPOSES; WHETHER THE TRIAL COURT ERRED IN REFUSING TO GIVE A CIRCUMSTANTIAL EVIDENCE CHARGE;
Supreme Court, Delaware County, convicted defendant, upon a jury verdict, of manslaughter in the first degree; App. Div. affirmed.

MAZELLA, &c. v BEALS:

4TH Dept. App. Div. order of 11/21/14; affirmance; leave to appeal granted by Court of Appeals, 3/31/15;
PHYSICIANS AND SURGEONS - MALPRACTICE - WHETHER THE JURY VERDICT SHOULD HAVE BEEN SET ASIDE UPON THE GROUND THAT PLAINTIFF'S PROOF ON PROXIMATE CAUSE WAS LEGALLY INSUFFICIENT; EVIDENCE - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT, EVEN IF THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE A CONSENT AGREEMENT IN WHICH DEFENDANT ADMITTED CERTAIN CHARGES BROUGHT AGAINST DEFENDANT BY THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, SUCH ERROR WAS HARMLESS; TRIAL - VERDICT - WHETHER THE TRIAL COURT'S FAILURE TO SUBMIT A SPECIAL VERDICT SHEET TO THE JURY WAS PREJUDICIAL AND REQUIRES A NEW TRIAL;
Supreme Court, Onondaga County, as relevant here, awarded plaintiff money damages upon a jury verdict; App. Div. affirmed.

NELSON (JOEL), PEOPLE v:

2ND Dept. App. Div. order of 12/24/14; affirmance with dissents; leave to appeal granted by Dickerson, J., 3/27/15;
CRIMES - FAIR TRIAL - PHOTO OF DECEASED VICTIM DEPICTED ON FAMILY MEMBERS' T-SHIRTS DURING TRIAL - WHETHER DEFENDANT WAS DEPRIVED OF A FAIR TRIAL DUE TO THE ALLEGEDLY PREJUDICIAL CONDUCT BY SPECTATORS IN THE COURTROOM; WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL; WHETHER THE SENTENCING COURT VIOLATED DEFENDANT'S DUE PROCESS RIGHTS;
Supreme Court, Kings County, convicted defendant of murder in the second degree and assault in the first degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

SERRANO (MARINO), PEOPLE v:

App. Term, 2ND Dept., 2ND, 11TH and 13TH Judicial Districts order of 9/29/14; leave to appeal granted by Lippman, Ch.J., 3/27/15;
CRIMES - APPEALS - ABSENCE OF DEFENDANT - INVOLUNTARY DEPORTATION - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING DEFENDANT'S APPEAL ON THE GROUND THAT HE HAD BEEN DEPORTED AND WAS NO LONGER AVAILABLE TO OBEY THE MANDATE OF THE COURT;
Criminal Court of the City of New York, convicted defendant, upon his guilty plea, of driving while intoxicated and driving while ability impaired; App. Term granted the People's motion to dismiss defendant's appeal.

SOUBBOTIN, MATTER OF v COMMISSIONER OF LABOR:

3RD Dept. App. Div. order of 12/4/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
UNEMPLOYMENT INSURANCE - BENEFITS - TIMELINESS OF REQUEST FOR HEARING;
App. Div. affirmed a decision of the Unemployment Insurance Appeal Board, which ruled that claimant's request for a hearing was untimely.

SPRINGER, MATTER OF v BOARD OF EDUCATION et al.:

1ST Dept. App. Div. order of 10/9/14; affirmance; leave to appeal granted by App. Div., 3/24/15;

SCHOOLS - TEACHERS - WITHDRAWAL OF RESIGNATION BY TENURED STAFF - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PETITIONER FAILED TO COMPLY WITH THE PROCEDURE FOR WITHDRAWING HIS RESIGNATION AS A TENURED TEACHER, WHERE HE APPLIED AND WAS HIRED FOR A TEACHING POSITION UNDER HIS PRIOR LICENSE NUMBER AND AT THE SAME SALARY HE WAS PAID WHEN HE RESIGNED SEVERAL MONTHS EARLIER; ENTITLEMENT TO HEARING PURSUANT TO EDUCATION LAW § 3020-a; Supreme Court, New York County, denied the CPLR article 78 petition challenging respondent's termination of his employment as a teacher, and dismissed the proceeding; App. Div. affirmed.