COURT OF APPEALS NEW FILINGS

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

April 1, 2016 through April 7, 2016

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.

EXCESS LINE ASSOCIATION OF NEW YORK (ELANY) v WALDORF & ASSOCIATES, et al.:
2ND Dept. App. Div. order of 7/1/15; affirmance; leave to appeal granted by Court of Appeals, 3/29/16;
PARTIES - CAPACITY TO SUE - GOVERNMENTAL ENTITIES - WHETHER PLAINTIFF ASSOCIATION HAS CAPACITY AND STANDING TO SUE ONE OF ITS MEMBERS TO COMPEL COMPLIANCE WITH ITS PLAN OF OPERATION OR TO RECOVER STAMPING FEES;
Supreme Court, Suffolk County, granted defendants' motions to dismiss the complaint; App. Div. affirmed.

KALAMARAS, PEOPLE &c., ex rel. v SPOSATO &c.:
2ND Dept. App. Div. order of 3/4/16; denied application; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether CPLR 7011 provides an independent basis for an appeal as of right;
HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, DENIED PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS;
App. Div., as relevant here, denied that branch of petitioners' application that was for a writ of habeas corpus.

ROSHIA, JR. (JAMES M.), PEOPLE v:
3RD Dept. App. Div. order of 11/19/15; affirmance; Rule 500.11 review pending;
CRIMES - EVIDENCE - DNA IDENTIFICATION TESTS - WHETHER COUNTY COURT ERRED IN DIRECTING DEFENDANT TO PROVIDE A BUCCAL SWAB - WHETHER GRAND JURY INDICTMENT PROVIDED THE REQUISITE PROBABLE CAUSE AND STATUTORY AUTHORITY FOR THE DIRECTION (CPL 240.40[2][b][v]); CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON INADEQUATE INVESTIGATION OF CASE, UNRESPONSIVENESS AND FAILURE TO KEEP DEFENDANT APPRISED OF CASE DEVELOPMENTS; WHETHER COUNTY COURT IMPROPERLY ORDERED DEFENDANT TO PAY RESTITUTION WITHOUT A HEARING;
County Court, St. Lawrence County, convicted defendant, upon his guilty plea, of criminal sexual act in the first degree, and sentenced him to a term of 10 years, plus 10 years of postrelease supervision and payment of restitution in the amount of $11,253.09; App. Div. affirmed.

SOSA (WILLIAM), PEOPLE v:
1ST Dept. App. Div. order of 5/7/15; reversal; leave to appeal granted by Pigott, J., 3/16/16; Rule 500.11 review pending;
CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WHETHER THE GUILTY PLEA WAS KNOWING, INTELLIGENT, AND VOLUNTARY UNDER PEOPLE v TYRELL (22 NY3d 359 [2013]) AND PEOPLE v CONCEICAO (26 NY3d 375 [2015]) WHERE THE DEFENDANT'S BOYKIN RIGHTS WERE NOT RECITED DURING THE PLEA COLLOQUY;
Supreme Court, Bronx County, convicted defendant, upon his plea of guilty, of operating a motor vehicle while ability impaired, and sentenced him to a $300 fine; App. Div. reversed, vacated the guilty plea, and dismissed the accusatory instrument in the interest of justice.

STATE OF NEW YORK, MATTER OF v FLOYD Y.:
1ST Dept. App. Div. order of 11/10/15; reversal; leave to appeal granted by Court of Appeals, 3/29/16;
CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - MENTAL ABNORMALITY - WHETHER LEGALLY SUFFICIENT EVIDENCE SUPPORTED THE JURY'S FINDING THAT RESPONDENT HAS SERIOUS DIFFICULTY CONTROLLING HIS SEXUAL MISCONDUCT UNDER MATTER OF STATE OF NEW YORK v DONALD DD. (24 NY3d 174 [2014]);

Supreme Court, New York County, after a jury verdict that respondent suffers from a mental abnormality requiring civil management under article 10 of the Mental Hygiene Law, granted respondent's motion to set aside the verdict and dismissed the petition for sex offender civil management; App. Div. reversed and reinstated the verdict and petition; Supreme Court then directed that respondent be placed on strict and intensive supervision and treatment (SIST), in accordance with the Appellate Division order reinstating the verdict and petition, and the 8/18/15 conditional order of Supreme Court, entered after a dispositional hearing, determining that respondent was not a dangerous sex offender requiring confinement.