State of New York
Court of Appeals

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Lisa LeCours
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

COURT OF APPEALS NEW FILINGS

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

April 7, 2023 through April 13, 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.

AUDTHAN v NICK & DUKE:
1st Dept. App. Div. order of 12/6/22; affirmance; leave to appeal granted by the Appellate Division, 3/16/23;
Landlord and Tenant—Whether the courts below properly dismissed tenant's claim for breach of contract premised on the theory of repudiation; whether section 33.09 of the lease operates to foreclose the tenant from seeking monetary damages for the landlord's refusal to enter into a cure agreement; whether the courts below properly held that tenant may not seek attorneys' fees as damages for the notices of termination the landlord allegedly served in bad faith; whether tenant sufficiently stated a cause of action for breach of the covenant of quiet enjoyment; whether the tenant's remedy for the landlord's refusal to enter into a cure agreement is limited to injunctive relief; whether tenant sufficiently stated a cause of action for the return

of its security deposit;
Supreme Court, New York County, granted in part and denied in part the motion of defendant landlord to dismiss the third amended complaint; App. Div., with Justices dissenting, affirmed.

CASTILLO (JAIRO), PEOPLE v:
1st Dept. App. Div order of 11/1/22; affirmance; leave to appeal granted by Wilson, Ch.J., 3/16/23;
Crimes—Justification—Whether defendant's request for a justification charge was properly denied; whether the trial court abused its discretion by curtailing the cross-examination of an alleged eyewitness and not declaring a detective a hostile witness; whether defendant's motion to dismiss the indictment on grounds of grand jury perjury was properly denied;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of murder in the second degree and criminal possession of a weapon in the second degree, and sentenced him to an aggregate term of 15 years to life; App. Div. affirmed.

DUNTON (COREY), PEOPLE v:
1st Dept. App. Div. order of 7/5/22; granted writ; leave to appeal granted by Wilson, Ch.J., 3/31/23;
Crimes—Right to be Present at Trial—Whether the Appellate Division erred in granting defendant's coram nobis application based on appellate counsel's failure to argue that the court's removal of defendant from the courtroom during the reading of the verdict on the last charge and jury polling, without first issuing a warning, violated defendant's constitutional right to be present;
Supreme Court, New York County, convicted defendant, following a jury trial, of attempted murder in the first degree, assault in the first degree (two counts), criminal possession of a weapon in the second degree (two counts), assault in the second degree and reckless endangerment in the first degree, and sentenced him to an aggregate term of 25 years; App. Div. granted application for writ of error coram nobis on the ground of ineffective assistance of counsel, reversed the judgment, and ordered a new trial.

MATTER OF IBM v TAX APPEALS TRIBUNAL:
3rd Dept. App. Div. order of 3/16/23; confirmed determination;
Taxation—Franchise Tax of a Business Corporation—Whether petitioner properly deducted royalty payments received from its foreign affiliates under Tax Law § 208; whether Tax Law § 208 violates the dormant Commerce Clause of the U.S. Constitution;
Tax Appeals Tribunal, State of New York, inter alia, sustained a notice of deficiency of corporate franchise tax imposed under Tax Law article 9-A; App. Div. confirmed the determination and dismissed the CPLR article 78 petition.

MATTER OF PLSNY v DOCCS:

3rd Dept. App. Div. order of 10/27/22; affirmance; leave to appeal granted by the Court of Appeals, 3/21/23;
Records—Freedom of Information Law—Whether the Appellate Division erred in declining to apply the mootness exception to reach the merits of the portion of the petition challenging the application of Freedom of Information Law exemptions to certain materials when respondent Department of Corrections and Community Supervision disclosed those materials during the pendency of the proceeding;
Supreme Court, Albany County, dismissed petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to review a determination of respondent denying petitioner's Freedom of Information Law requests; App. Div. affirmed.

WATTS (DARRYL), PEOPLE v:
1st Dept. App. Div. order of 11/29/22; affirmance;
Crimes—Sex Offenders—Whether defendant was denied due process when SORA hearing court denied request to hold a competency hearing prior to the risk level classification hearing;
Supreme Court, Bronx County, adjudicated defendant a risk level two sexually violent offender pursuant to the Sex Offender Registration Act; App. Div. affirmed.