

COURT OF APPEALS NEW FILINGS

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

April 24, 2015 through April 30, 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.

BRANIC INTERNATIONAL REALTY CORP. v PITT:

1st Dept. App. Div. order of 1/6/15; reversal; leave to appeal granted by App. Div., 4/7/15; Rule 500.11 review pending;

APPEALS - WHETHER THE APPELLATE DIVISION VIOLATED THE TERMS OF THIS COURT'S REMITTITUR;

Civil Court, New York County, granted respondent tenant's motion for summary judgment dismissing the petition and denied petitioner landlord's motion for summary judgment on its claim for possession; App. Term reversed, denied respondent's motion and granted petitioner's motion; App. Div. reversed, granted respondent's motion and denied petitioner's motion; Court of Appeals reversed and remitted to the App.Div. with directions to dismiss the petition solely on the grounds of mootness; on remittal, App. Div. reversed the App. Term order, vacated that order and dismissed the proceeding as moot.

CLARKE (NNAMDI), PEOPLE v:

2ND Dept. App. Div. order of 11/12/14; reversal; leave to appeal granted by Lippman, Ch.J., 3/25/15;
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, Queens County, denied, without a hearing, defendant's motion pursuant to CPL 30.30 to dismiss the indictment on the ground that he was deprived of his statutory right to a speedy trial; thereafter, the same court convicted defendant, upon a jury verdict, of two counts of criminal possession of a weapon in the second degree, reckless endangerment in the first degree, and unlawful possession of marijuana, and imposed sentence; App. Div. reversed, vacated the order, granted defendant's motion to dismiss the indictment pursuant to CPL 30.30, and remitted the matter to Supreme Court for the purpose of entering an order in its discretion pursuant to CPL 160.50.

COUNTY OF CHAUTAUQUA, MATTER OF v SHAH:

4TH Dept. App. Div. order of 3/20/15; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PARTIES - CAPACITY TO SUE - PROCEEDING SEEKING REIMBURSEMENT FOR MEDICAID OVERBURDEN EXPENDITURES - WHETHER COUNTIES ARE PERSONS WITHIN THE MEANING OF THE STATE AND FEDERAL CONSTITUTIONS SO THAT THEY MAY RAISE DUE PROCESS CLAIMS AGAINST THE STATE; PETITIONER'S ENTITLEMENT TO RELIEF IN THE NATURE OF MANDAMUS, DIRECTING RESPONDENTS TO SEARCH THEIR RECORDS, LOCATE ALL UNREIMBURSED CLAIMS FOR OVERBURDEN EXPENDITURES MADE BY PETITIONERS AND REIMBURSE PETITIONERS FOR THOSE EXPENDITURES;
Supreme Court, Chautauqua County, in a CPLR article 78 proceeding and declaratory judgment action, among other things, annulled the determination of respondents-defendants and directed respondents-defendants to allow petitioner-plaintiff's claims for reimbursement of certain Medicaid expenditures; App. Div. modified the judgment by denying the petition-complaint in its entirety and granting judgment in favor of respondents-defendants as follows: It is ADJUDGED and DECLARED that section 61 of part D of chapter 56 of the Laws of 2012 has not been shown to be unconstitutional, and affirmed the judgment as modified.

COUNTY OF JEFFERSON, MATTER OF v SHAH:

4TH Dept. App. Div. order of 3/20/15; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PARTIES - CAPACITY TO SUE - PROCEEDING SEEKING REIMBURSEMENT FOR MEDICAID OVERBURDEN EXPENDITURES - WHETHER COUNTIES ARE PERSONS WITHIN THE MEANING OF THE STATE AND FEDERAL CONSTITUTIONS SO THAT THEY MAY RAISE DUE PROCESS CLAIMS AGAINST THE STATE; PETITIONER'S ENTITLEMENT TO RELIEF IN THE NATURE OF MANDAMUS, DIRECTING RESPONDENTS TO SEARCH THEIR RECORDS, LOCATE ALL UNREIMBURSED CLAIMS FOR OVERBURDEN EXPENDITURES MADE BY PETITIONERS AND REIMBURSE PETITIONERS FOR THOSE EXPENDITURES;

Supreme Court, Jefferson County, in a CPLR article 78 proceeding and declaratory judgment action, among other things, annulled the determination of respondents-defendants and directed respondents-defendants to allow petitioner-plaintiff's claims for reimbursement of certain Medicaid expenditures; App. Div. modified the judgment by denying the petition-complaint in its entirety and granting judgment in favor of respondents-defendants as follows: It is ADJUDGED and DECLARED that section 61 of part D of chapter 56 of the Laws of 2012 has not been shown to be unconstitutional, and affirmed the judgment as modified.

GRIFFIN, MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 4/2/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CIVIL SERVICE - APPOINTMENT AND PROMOTION - WHETHER DETERMINATION THAT PETITIONER IS NOT PSYCHOLOGICALLY QUALIFIED FOR THE POSITION OF PROBATION OFFICER HAS A RATIONAL BASIS IN THE RECORD AND IS NOT ARBITRARY AND CAPRICIOUS; WHETHER PETITIONER WAS GIVEN PROCEDURAL DUE PROCESS;

Supreme Court, New York County, denied a CPLR article 78 petition to annul the determination of respondent New York City Civil Service Commission, which affirmed petitioner's disqualification by the New York City Department of Correction for the position of probation officer on the ground that he was not psychologically suited for the position, and dismissed the CPLR article 78 proceeding; App. Div. affirmed.

JONES, MATTER OF v HICKEY, &c.:

3RD Dept. App. Div. order of 3/26/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - WHEN REMEDY AVAILABLE - WHETHER CPLR ARTICLE 78 PROCEEDING BROUGHT TO REVISIT DENIAL OF PRIOR APPLICATION FOR A WRIT OF HABEAS CORPUS SEEKS RELIEF OUTSIDE THE SCOPE OF AN ARTICLE 78 PROCEEDING;

Supreme Court, Greene County, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition; App. Div. affirmed.

JOSEPH (RONEL), PEOPLE v:

1ST Dept. App. Div. order of 1/13/15; affirmance with a two-Justice dissent; leave to appeal granted by Manzanet-Daniels, J., 4/21/15; Rule 500.11 review pending;

CRIMES - BURGLARY - BURGLARY OF A DWELLING - INTRUSION INTO NONRESIDENTIAL PART OF APARTMENT BUILDING - WHETHER, UNDER PEOPLE v McCRAY (23 NY3d 621 [2014]), DEFENDANT WAS PROPERLY CONVICTED OF SECOND-DEGREE BURGLARY, WHICH REQUIRES ENTRY INTO A "DWELLING," BASED ON HIS ENTRY INTO THE BASEMENT OF A STORE ON THE GROUND FLOOR OF A SEVEN-FLOOR APARTMENT BUILDING; WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO ESTABLISH DEFENDANT'S ENTRY WITH THE INTENT TO COMMIT A CRIME;

Supreme Court, New York County, convicted defendant, after a jury trial, of burglary in the second and third degrees, attempted escape in the second degree and resisting arrest, and sentenced him, as a second violent felony offender, to an aggregate term of seven years; App. Div. affirmed.

McCUMMINGS (DAVIEL), PEOPLE v:

1ST Dept. App. Div. order of 1/22/15; reversal; leave to appeal granted by Saxe, J., 4/23/15;

CRIMES - RIGHT TO COUNSEL - SUBSTITUTION OF ASSIGNED COUNSEL - WHETHER THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT DEFENDANT WAS ENTITLED TO A NEW TRIAL BECAUSE, WHEN DEFENDANT ASKED TO SPEAK TO THE JUDGE ON THE FOURTH DAY OF TRIAL CONCERNING HIS "ATTORNEY AND ADVICE," THE TRIAL COURT "IMPROPERLY DENIED HIS REQUEST FOR SUBSTITUTION OF COUNSEL WITHOUT CONDUCTING ANY INQUIRY WHATSOEVER, AND WITHOUT PERMITTING DEFENDANT TO EXPLAIN, EITHER ORALLY OR IN WRITING, WHY SUCH AN INQUIRY MIGHT BE NECESSARY";

Supreme Court, New York County, convicted defendant, after a jury trial, of attempted murder in the second degree, assault in the first degree, and two counts of criminal possession of a weapon in the second degree, and sentenced him, as a second felony offender, to an aggregate term of 20 years; App. Div. reversed and remanded the matter for a new trial.

NEW YORK STATE CORRECTIONAL OFFICERS AND POLICE BENEVOLENT ASSOCIATION, INC., et al., MATTER OF v GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS et al.:

3RD Dept. App. Div. order of 3/26/15; affirmance with a two-Justice dissent;

LABOR UNIONS - GRIEVANCES - OUT-OF-TITLE WORK GRIEVANCE; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING TO REVIEW DENIAL OF AN OUT-OF-TITLE WORK GRIEVANCE OF A SAFETY AND SECURITY OFFICER WITH THE OFFICE OF MENTAL HEALTH; CIVIL SERVICE CLASSIFICATION STANDARDS;

Supreme Court, Albany County, dismissed petitioners' CPLR article 78 application to review a determination of respondent Governor's Office of Employee Relations denying petitioner Tierney's out-of-title work grievance; App. Div. affirmed.

NOEL v TYLER:

2ND Dept. App. Div. order of 3/25/15; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL FOR FAILURE TO PERFECT; MOTOR VEHICLES - ACCIDENT IN CONNECTICUT - NEW YORK ACTION COMMENCED AFTER SETTLEMENT OF CONNECTICUT ACTION WAS NOT FINALIZED;

Supreme Court, Queens County, granted defendant's motion to dismiss the action; App. Div. denied that branch of appellant's motion which was to enlarge the time to perfect the appeal, granted that branch of respondent's cross motion which was to dismiss the appeal, and dismissed the appeal, and affirmed the order as modified.

PINK et al. v RICCI, et al.:

4TH Dept. App. Div. order of 2/6/15; modification; leave to appeal granted by App. Div., 3/20/15; Rule 500.11 review pending;
NEGLIGENCE - DUTY - WHETHER THE DUTY OF A YOUTH HOCKEY ASSOCIATION AS THE FACILITY LESSOR TO HOCKEY SPECTATORS INCLUDED THE DUTY TO PROTECT PLAINTIFFS FROM ASSAULT BY A FELLOW SPECTATOR - FORESEEABILITY OF FIGHT BREAKING OUT IN LIGHT OF HOSTILE ENVIRONMENT IN THE AREA; SUMMARY JUDGMENT - WHETHER AN ISSUE OF FACT EXISTS;

Supreme Court, Oneida County, among other things, denied the motion of defendants Rome Youth Hockey Association, Inc. and Whitestown Youth Hockey Association, Inc. for summary judgment; App. Div. modified by granting in part the motion of defendants Rome Youth Hockey Association, Inc. and Whitestown Youth Hockey Association, Inc., and dismissing the complaint against defendant Whitestown Youth Hockey Association, Inc., and affirmed the order as modified.

RIDGE v GOLD, et al.:

Supreme Court, Erie County, order of 3/11/15; dismissal of complaint and all cross claims; Rule 500.11 review pending;
ADMINISTRATIVE LAW - COLLATERAL ESTOPPEL - PRECLUSIVE EFFECT OF WORKERS' COMPENSATION BOARD FINDING AS TO CAUSAL RELATIONSHIP - IDENTITY OF ISSUE - WHETHER THE APPELLATE DIVISION ERRED IN AWARDING SUMMARY JUDGMENT TO DEFENDANT CONTRACTOR ON THE GROUND THAT THE WORKERS' COMPENSATION BOARD DETERMINED THAT NO ACCIDENT OCCURRED AND THAT SUCH DETERMINATION WAS ENTITLED TO COLLATERAL ESTOPPEL EFFECT;

Supreme Court, Erie County, denied defendant Braymiller's motion for summary judgment dismissing plaintiff's complaint and the separate motion by defendants Gold and Griesman for summary

judgment dismissing plaintiff's complaint; App. Div. reversed the order insofar as appealed from, granted defendant Braymiller's motion for summary judgment dismissing plaintiff's complaint, and dismissed plaintiff's complaint as against defendant Braymiller; Supreme Court, Erie County, granted the motion by defendants' Gold and Griesman for summary judgment dismissing the complaint and all cross claim as against them, and dismissed the complaint and the cross claims by all defendants.