

COURT OF APPEALS NEW FILINGS

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

April 22, 2016 through April 28, 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.

EATON, et al. v HUNGERFORD &c., et al.:

4TH Dept. App. Div. order of 3/18/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CIVIL RIGHTS - DISCRIMINATION IN EMPLOYMENT - DISCRIMINATION BASED ON SEXUAL ORIENTATION - WHETHER PLAINTIFFS RAISED A TRIABLE ISSUE OF FACT THAT THEY WERE SUBJECT TO AN ADVERSE EMPLOYMENT ACTION OR HOSTILE WORK ENVIRONMENT; DEFAMATION; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
Supreme Court, Monroe County, granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

ESTREMER (ROBERTO), PEOPLE v:

1ST Dept. App. Div. order of 12/29/15; affirmance; leave to appeal granted by Fahey, J., 4/6/16;
CRIMES - SENTENCE - RESENTENCE - WHETHER SUPREME COURT ERRED IN CONDUCTING A POSTRELEASE SUPERVISION RESENTENCING PURSUANT TO PENAL LAW § 70.85 WITHOUT DEFENDANT PRESENT;
Supreme Court, New York County, reimposed defendant's original prison sentence pursuant to Penal Law § 70.85 without imposing a period of postrelease supervision; App. Div. affirmed.

FAGAN (KEITH), PEOPLE v:

1ST Dept. App. Div. order of 12/1/15; affirmance; leave to appeal granted by Pigott, J., 4/12/16;
CRIMES - SENTENCE - RESENTENCE - SECOND VIOLENT FELONY OFFENDER - RETROACTIVE APPLICATION OF PEOPLE v CATU (4 NY3d 242 [2005]) - WHETHER DEFENDANT'S 2000 CONVICTION BY GUILTY PLEA WAS OBTAINED IN VIOLATION OF HIS FEDERAL CONSTITUTIONAL RIGHTS AND THEREFORE COULD NOT BE USED FOR PREDICATE FELONY PURPOSES WITHIN THE MEANING OF CPL 400.15 WHERE DEFENDANT WAS NOT ADVISED AT THE TIME OF THAT PLEA THAT THE SENTENCE WOULD INCLUDE POST-RELEASE SUPERVISION;
Supreme Court, Bronx County, resentenced defendant, upon remand from the App. Div., as a second violent felony offender, to a term of 15 years, and then denied the People's CPL 440.40 motion to set aside the judgment of resentencing; App. Div. affirmed.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. order of 12/1/14; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
APPEAL - APPELLATE DIVISION - DENIAL OF MOTION TO REINSTATE APPEALS AND VACATE VARIOUS APPELLATE DIVISION ORDERS;
App. Div. denied appellant's motion to, among other things, reinstate appeals from 5/18/12 and 10/7/11 Supreme Court, Kings County, orders and to recall and vacate four App. Div. orders dated 3/27/13, 7/5/13, 7/29/13 and 10/9/13.

MONTE, PEOPLE ex rel. v MINGO, et al.:

Supreme Court, New York County, order of 3/29/16; denial of petition;
HABEAS CORPUS - SUPREME COURT ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS;
Supreme Court denied the petition for a writ of habeas corpus and dismissed the writ.

OATES, &c. v NEW YORK CITY TRANSIT AUTHORITY, et al.:

1ST Dept. App. Div. order of 4/12/16; affirmance with two-Justice dissent;

NEGLIGENCE - SUFFICIENCY OF THE EVIDENCE TO ESTABLISH THAT BUS DRIVER WAS NEGLIGENT IN OPERATING A BUS THAT HIT AND KILLED A WOMAN WHILE PULLING OUT OF A BUS STOP - SUFFICIENCY OF THE EVIDENCE UNDER THE NOSEWORTHY DOCTRINE; EXPERT TESTIMONY - SUFFICIENCY OF EXPERT TESTIMONY TO ESTABLISH THAT DECEDENT ENDURED CONSCIOUS PAIN AND SUFFERING PRIOR TO HER DEATH; Supreme Court, Bronx County, upon a jury verdict, awarded plaintiffs \$300,000 for decedent Rachel Levy's conscious pain and suffering; \$150,000 for plaintiff Hadassah Levy's past loss of custodial services, and \$400,000 for her future loss of custodial services; and \$100,000 for plaintiff Miriam Levy Oates's future loss of nurture, care and guidance; App. Div. affirmed.