State of New York
Court of Appeals

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Chief Clerk and
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COURT OF APPEALS NEW FILINGS

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

May 3, 2024 through May 9, 2024

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.

BURROWS v 75-25 153rd STREET:
APL-2024-00048
Supreme Court, New York County judgment of 12/5/23; leave to appeal granted by the Court of Appeals, 4/25/24;
Landlord and Tenant-Rent Regulation—Whether a tenant must establish the elements of common law fraud to prevail in a rent overcharge case, or fraud within the context of *Thornton/Grimm/Conason*; whether the Housing Stability and Tenant Protection Act required renewal of a pre-HSTPA rent concession; whether L. 2023, ch. 760 and L. 2024 ch. 95 require reversal;
Supreme Court, New York County, denied defendant's motion to dismiss the complaint; App. Div. reversed and granted motion to dismiss; Supreme Court, New York County, upon a stipulation discontinuing defendant's counterclaim for attorney's fees, dismissed.

PEOPLE v FUENTES (HENRY):
APL-2024-00052
2nd Dept. App. Term order of 12/14/23; reversal; leave to appeal granted by Singas, J., 4/30/24;
Crimes—Disclosure—Whether defendant's statutory right to a speedy trial was violated where People filed initial and supplemental certificates of compliance and statements of readiness before disclosing contents of Internal Affairs Bureau files for law enforcement officer who the People intended to call as a trial witness (see CPL 245.20 [1] [k] [iv]).
Suffolk District Court, 1st Dist., granted defendant's motion for an order finding the initial and supplemental certificates of compliance invalid and, upon such a finding, dismissed the accusatory instruments on the grounds that defendant's right to a speedy trial had been violated; App. Term reversed, denied the motion, reinstated the accusatory instruments, and remitted the matter to the District Court for further proceedings.

PEOPLE v HOWARD (DONKAVIUS):
APL-2024-00039
4th Dept. App. Div. order of 2/9/24; affirmance; leave to appeal granted by Ogden, J., 3/21/24, Rule 500.11 review pending;
Crimes—Right to Counsel—Whether defendant was denied the effective assistance of counsel; whether a defendant's claim that he received ineffective assistance of under the Sixth Amendment can be resolved by application of the "meaningful representation" standard of review for claims of ineffective assistance under the New York Constitution;
Supreme Court, Monroe County, convicted defendant upon a jury verdict of burglary in the first degree, assault in the second degree, aggravated criminal contempt and resisting arrest; App. Div., with two Justices dissenting, affirmed.

MATTER OF KELSEY v HOCHUL:
APL-2024-00050
3rd Dept. App. Div. order of 3/14/24; denial; sua sponte examination of whether the orders appealed from finally determine the proceeding within meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;
Appeals—Orders Appealable;
App. Div., inter alia, denied reargument.

PEOPLE v LICIUS (RICHECARDE):
APL-2024-00047
2nd Dept. App. Term order of 12/22/23; reversal; leave to appeal granted by Rivera, J., 4/24/24;
Crimes—Right to Speedy Trial—Whether the People's statement of readiness was untimely because, although the People transmitted it to the Unified Court System's Electronic Document System on the last day of the CPL 30.30(1)(b) period, the New

York City Criminal Court clerk's office did not "review[]" the transmitted document until the next day (22 NYCRR 202.5-c(c)(3)); whether the People were not in fact ready to proceed to trial when the People transmitted the statement of readiness because, among other things, the transmission occurred after the 5:00 PM close of the New York City Criminal Court's business hours on the last day of the CPL 30.30 period, at which time a trial could not be commenced;
New York City Criminal Court, Kings County, granted defendant's motion to dismiss the accusatory instrument on statutory speedy trial grounds; App. Term reversed, denied defendant's motion to dismiss the accusatory instrument on statutory speedy trial grounds, reinstated the accusatory instrument, and remitted the matter to Criminal Court for all further proceedings.

PEOPLE ex rel. WALSH v GARCIA:
APL-2024-00049
4th Dept. App. Div. order of 3/22/24; denial; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Habeas Corpus—Whether the Appellate Division erred by denying habeas corpus relief; whether CPL 30.30(2) requires Perez Aughtry's release on his own recognizance or reasonable bail; whether Perez Aughtry's continued pretrial detention for over 29 months constitutes being in custody within the meaning of CPL 30.30(2);
App. Div., in a proceeding pursuant to CPLR article 70 seeking a writ of habeas corpus, denied the writ.