

COURT OF APPEALS NEW FILINGS

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

August 14, 2020 through August 20, 2020

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.

ANDERSON (KATHON), PEOPLE v:

2ND Dept. App. Div. order of 2/19/20; affirmance; leave to appeal granted by Fahey, J., 8/4/20;

Crimes--Witnesses--Expert Witnesses--Whether Supreme Court properly denied defendant's request to present expert testimony on the topic of adolescent brain development; defendant, 14 years old at time of the crime, asserted justification defense;

Supreme Court, Kings County, convicted defendant of murder in the second degree and attempted murder in the second degree; App. Div. affirmed.

NEW BRUNSWICK THEOLOGICAL v VAN DYKE:

2ND Dept. App. Div. order of 6/3/20; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Arbitration--Notice of Intention to Arbitrate--Whether the contractual method used to provide notice to respondent of an arbitration commenced against her violated her constitutional right to due process when she failed to receive actual notice of the arbitration and petitioner knew that she could be contacted by email and should have known that she spent long periods of time away from her New York residences;

Supreme Court, Suffolk County, in a proceeding pursuant to CPLR article 75 to confirm an arbitration award dated 1/12/18, upon an order of the court dated 8/13/18, granting the petition to confirm the arbitration award and denying respondent's cross motion to vacate the arbitration award and to dismiss the petition, in favor of petitioner, and against respondent in the principal sum of \$3,229,097; App. Div. affirmed.

MATTER OF S.O.:

Justice 2ND Dept. App. Div. paper of 3/16/20; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Appeal--Appealable paper;

App. Div. Justice declined to sign an order to show cause seeking a writ of habeas corpus.

MATTER OF ROSALES (OMAR), A SUSPENDED ATTORNEY:

2ND Dept. App. Div. order of 6/17/20; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client--Disciplinary Proceeding--Whether the attorney disciplinary process is unconstitutional;

App. Div. in the disciplinary proceeding instituted by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, granted petitioner's motion to confirm the Special Referee's report, revoked the admission of respondent to the Bar of the State of New York, pursuant to Judiciary Law § 90(2), and struck his name from the roll of attorneys and counselors-at-law.

STATE OF NEW YORK, MATTER OF v MARCELLO A.:

2ND Dept. App. Div. order of 2/13/20; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Crimes--Sex Offender--Whether it is constitutionally permissible to civilly confine an individual under article 10 of the Mental Hygiene Law based on findings that the individual has a mental abnormality as that term is defined in Mental Hygiene

Law § 10.03 (I) because of, among other things, antisocial personality disorder and psychopathy ; whether there is record support for the conclusion that the State established that the Hare Psychopathy Checklist-Revised (PCL-R) has achieved general acceptance in the psychiatric and psychological communities so as to make expert testimony on that instrument admissible;

Supreme Court, Suffolk County, in a proceeding to Mental Hygiene Law article 10 for the civil management of Marcello A, upon a finding, made after a nonjury trial, that Marcello A. suffers from a mental abnormality as defined in Mental Hygiene Law § 10.03(i), and upon a determination, made after a dispositional hearing, that he is a sex offender requiring strict and intensive supervision and treatment, in effect, granted the petition and directed that he be subject to a regimen of strict and intensive supervision and treatment; App. Div. affirmed.