

COURT OF APPEALS NEW FILINGS

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

May 29, 2015 through June 4, 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.

CHU-JOI (KARL), PEOPLE v a/k/a CHU-JOY a/k/a CHUJOI:

2ND Dept. App. Div. order of 2/11/15; affirmance; leave to appeal granted by Lippman, Ch. J., 5/19/15; Rule 500.11 review pending; CRIMES - SENTENCE - MOTION TO SET ASIDE SENTENCE - WHETHER SUPREME COURT ERRED IN DENYING DEFENDANT'S CPL 440 MOTION WITHOUT A HEARING WHERE THE MOTION TO SET ASIDE THE SENTENCE AS INVALID WAS BASED ON NEW EVIDENCE INDICATING THAT DEFENDANT WAS 15 YEARS OLD AT THE TIME OF THE CRIME; Supreme Court, Queens County, denied, without a hearing, defendant's CPL 440.20(1) motion to vacate a 1994 sentence, imposed upon defendant's conviction of murder in the second degree and criminal possession of a weapon in the second degree; App. Div. affirmed.

FLOWERS (IMMANUEL), PEOPLE v:

2ND Dept. App. Div. order of 10/22/14; affirmance; leave to appeal granted by Pigott, Jr., 5/14/15;
CRIMES - SENTENCE - RESENTENCE - DUE PROCESS CLAUSE OF STATE CONSTITUTION - WHETHER THE PEOPLE v VAN PELT (76 NY2d 156 [1990]) "PRESUMPTION OF INSTITUTIONAL VINDICTIVENESS" APPLIES WHERE THE TRIAL COURT, WHICH IMPROPERLY CONSIDERED DURING THE ORIGINAL SENTENCING A CRIME THAT WAS DISMISSED AT TRIAL FOR LACK OF LEGALLY SUFFICIENT EVIDENCE, IMPOSES AN IDENTICAL SENTENCE UPON REMITTITUR FROM THE APPELLATE DIVISION FOR RESENTENCING; CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - NO DUTY TO MAKE FUTILE ARGUMENT - WHETHER DEFENSE COUNSEL'S FAILURE TO REGISTER AN OBJECTION TO THE TRIAL COURT'S IMPOSITION OF A RESENTENCE IDENTICAL TO THE ORIGINAL SENTENCE CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL;
Supreme Court, Kings County, resentenced defendant, upon remittitur from the App. Div. for resentencing, as a persistent violent felony offender, to an indeterminate term of imprisonment of 20 years to life; App. Div. affirmed.

FRANKLINE (LENNIE), PEOPLE v:

1ST Dept. App. Div. order of 12/11/14; affirmance; leave to appeal granted by Pigott, J., 5/22/15;
CRIMES - PROOF OF OTHER CRIMES - EVIDENCE OF PRIOR ASSAULT ON VICTIM ADMITTED AS BACKGROUND EVIDENCE TO COMPLETE NARRATIVE AND PROBATIVE OF MOTIVE - WHETHER VICTIM'S DETAILED NARRATIVE ACCOUNT OF PRIOR ASSAULT WAS SO PREJUDICIAL AND INFLAMMATORY THAT IT DEPRIVED DEFENDANT OF A FAIR TRIAL;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of attempted murder in the second degree, two counts of burglary in the first degree, assault in the third degree and endangering the welfare of a child, and sentenced him to an aggregate term of 25 years; App. Div. affirmed.

MORGAN (PATRICK), PEOPLE v:

1ST Dept. App. Div. order of 1/6/15; affirmance; leave to appeal granted by Manzanet-Daniels, J., 5/7/15; Rule 500.11 review pending;
CRIMES - INSTRUCTIONS - DEADLOCKED JURY - WHETHER THE TRIAL COURT'S DEADLOCK CHARGE IN RESPONSE TO A DEFECTIVE VERDICT WAS IMPROPERLY COERCIVE; WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of manslaughter in the first degree and criminal possession of a weapon in the second degree, and sentenced him to an aggregate term of 18 years; App. Div. affirmed.

POWELL (REGINALD), PEOPLE v:

2ND Dept. App. Div. order of 2/25/15; affirmance; leave to appeal granted by Lippman, Ch. J., 5/19/15;

CRIMES - EVIDENCE - THIRD-PARTY CULPABILITY - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT SUPREME COURT PROPERLY PRECLUDED DEFENDANT FROM PRESENTING EVIDENCE THAT THE MURDER VICTIM HAD A \$500,000 LIFE INSURANCE POLICY NAMING DEFENDANT'S BROTHER AS THE PRIMARY BENEFICIARY ON THE GROUND THAT SUCH EVIDENCE WAS "BASED ON MERE SPECULATION" BECAUSE DEFENDANT HAD NOT STATED THAT HE WAS ACTUALLY ACCUSING HIS BROTHER OF COMMITTING THE MURDER; LESSER INCLUDED OFFENSE - WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A JURY CHARGE ON MANSLAUGHTER IN THE FIRST DEGREE AS A LESSER-INCLUDED OFFENSE OF MURDER IN THE FIRST DEGREE AND ON CRIMINAL TRESPASS AS A LESSER-INCLUDED OFFENSE OF BURGLARY IN THE SECOND DEGREE; CONFESSION - WHETHER STATEMENTS DEFENDANT MADE AFTER WAIVING HIS MIRANDA RIGHTS WERE SUFFICIENTLY ATTENUATED FROM INADMISSIBLE PRE-MIRANDA STATEMENTS SO THAT THEY WERE PROPERLY ADMITTED AT TRIAL; SUFFICIENCY OF THE EVIDENCE OF DEFENDANT'S INTENT TO REMAIN UNLAWFULLY IN VICTIM'S HOME TO SUPPORT CONVICTION OF BURGLARY IN THE SECOND DEGREE; ALLEGED PREJUDICIAL TESTIMONY FROM DEFENDANT'S PAROLE OFFICER; TRIAL COURT'S ALLEGED FAILURE TO MEANINGFULLY RESPOND TO JURY NOTE REGARDING CLARIFICATION OF INTENT ELEMENT AS TO MURDER COUNT; SENTENCE - WHETHER SUPREME COURT IMPROPERLY CONSIDERED UNCHARGED CRIMES IN IMPOSING SENTENCE;

Supreme Court, Westchester County, convicted defendant of murder in the first degree, burglary in the second degree, two counts of grand larceny in the third degree, two counts of criminal possession of stolen property in the third degree, criminal possession of a controlled substance in the third degree, and criminal possession of a controlled substance in the seventh degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

SANCHEZ (JAVIER), PEOPLE v:

1ST Dept. App. Div. order of 3/12/15; reversal; leave to appeal granted by Stein, J., 5/13/15;

CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WAIVER OF CONSTITUTIONAL RIGHTS - DRIVING WHILE INTOXICATED NOT A PETTY OFFENSE - WHETHER THE GUILTY PLEA WAS VOLUNTARY, KNOWING AND INTELLIGENT WHERE DEFENDANT WAS NOT INFORMED OF THE RIGHTS HE WAS WAIVING PRIOR TO MAKING HIS GUILTY PLEA;

Supreme Court, Bronx County, convicted defendant, upon his guilty plea, of operating a motor vehicle while under the influence of alcohol, and sentenced him to a conditional discharge and a \$500 fine; App. Div. reversed, vacated the plea, and remanded the matter for further proceedings.

SCHMID v KNAUER, et al.:

Supreme Court, Suffolk County order of 10/10/13; dismissal of complaint; sua sponte examination whether there is any basis for an appeal pursuant to CPLR 5601(b) (2);

DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT - CPLR 3211(a)(7); Supreme Court granted defendants' motions to dismiss the complaint, denied plaintiff's cross motions to, among other things, amplify the complaint, and dismissed the complaint.

SOUGOU (MACTAR), PEOPLE v:

App. Term, 1st Dept. order of 2/20/15; affirmance; leave to appeal granted by Stein, J., 5/13/15; Rule 500.11 review pending; CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WAIVER OF CONSTITUTIONAL RIGHTS - WHETHER THE RECORD ESTABLISHED THAT DEFENDANT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVED HIS BOYKIN RIGHTS WHERE THE TRIAL COURT, DURING THE PLEA COLLOQUY, CONFIRMED THAT DEFENDANT UNDERSTOOD HE WAS GIVING UP HIS RIGHT TO TRIAL AND FAILED TO DISCUSS OTHER BOYKIN RIGHTS; Criminal Court of the City of New York, New York County, convicted defendant, upon his guilty plea, of unlicensed general vending, and imposed sentence; App. Term affirmed.