

COURT OF APPEALS NEW FILINGS

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

June 5, 2015 through June 11, 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.

JONES, MATTER OF v HICKEY:

3RD Dept. App. Div. order of 5/15/15; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution; MOTIONS AND ORDERS - APPELLATE DIVISION ORDER DENYING MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS; App. Div. denied appellant's motion for permission to appeal to the Court of Appeals.

KNIGHT v STATE OF NEW YORK:

3RD Dept. App. Div. order of 4/16/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; STATE - CLAIM AGAINST STATE - CLAIM THAT STATE FAILED TO RENDER PROPER MEDICAL CARE TO PRISONER CLAIMANT WHEN IT DECIDED HE NO LONGER REQUIRED THE USE OF A CANE AND CONFISCATED IT - PRISONER FELL AND SUSTAINED PERSONAL INJURIES - WHETHER CLAIMANT PROVIDED COMPETENT EVIDENCE TO SUPPORT CLAIM; NEGLIGENCE - EXPERT TESTIMONY; Court of Claims, after a trial, found in favor of defendant and dismissed the claim; App. Div. affirmed.

KORELIS v CONRIV REALTY CORP.:

1ST Dept. App. Div. order 2/5/15 and Supreme Court, New York County order of 9/5/14; denial of poor person relief; sua sponte examination whether the orders finally determine the action within the meaning of the Constitution and whether any jurisdictional basis exists to appeal the orders as of right; APPEAL - POOR PERSONS - WHETHER THE APPELLATE DIVISION ERRED IN DENYING PLAINTIFF'S CPLR 5704(a) MOTION FOR POOR PERSON RELIEF; Supreme Court, New York County, denied plaintiff's motion to proceed as a poor person and declined to sign the order to show cause bringing on the motion; App. Div. denied plaintiff's CPLR 5704(a) motion for certain relief denied by Supreme Court in its 9/5/14 order, and for other relief.

PETKE (HAROLD L.), PEOPLE v:

3RD Dept. App. Div. order of 2/19/15; reversal; leave to appeal granted by Read, J., 5/11/15; CRIMES - JURORS - IMPROPER DENIAL OF CHALLENGE FOR CAUSE - WHETHER HARMLESS ERROR ANALYSIS SHOULD BE APPLIED WHERE THE TRIAL COURT FAILED TO DISCHARGE A JUROR FOR CAUSE, DEFENDANT USED A PEREMPTORY CHALLENGE ON THAT JUROR, THE ONE ADDITIONAL JUROR SELECTED AFTER DEFENDANT EXHAUSTED HIS PEREMPTORY CHALLENGES DID NOT PARTICIPATE IN DELIBERATIONS DUE TO A MEDICAL SITUATION, DEFENDANT HAD BEEN GIVEN ADDITIONAL PEREMPTORY CHALLENGES WHEN SELECTING ALTERNATIVE JURORS, AND DEFENDANT CHOOSE NOT TO EXERCISE A PEREMPTORY CHALLENGE ON THE ALTERNATE JUROR WHO REPLACED THE ILL JUROR; County Court, Lawrence County, convicted defendant of seven counts of promoting a sexual performance by a child, six counts of possessing a sexual performance by a child, and four counts of obscenity in the third degree; App. Div. reversed and remitted to County Court for a new trial.

THOMPSON (RITA), PEOPLE v:

App. Term, 1ST Dept. order of 12/31/14; affirmance; leave to appeal granted by Pigott, 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 HER BOYKIN RIGHTS WHERE THE TRIAL COURT INQUIRED WHETHER DEFENDANT UNDERSTOOD SHE WAS GIVING UP HER RIGHT TO A TRIAL, BUT FAILED TO MENTION OTHER BOYKIN RIGHTS;

Criminal Court of the City of New York, New York County, convicted defendant, upon her guilty plea, of harassment in the second degree, and imposed sentence; App. Div. affirmed.