State of New York
Court of Appeals

Vol. 42 - No. 23
6/29/22

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Chief Clerk and
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Clerk's Office
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COURT OF APPEALS NEW FILINGS

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

June 10, 2022 through June 16, 2022

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.

MATTER OF APPELLATE ADVOCATES v NYSDOCCS:
3rd Dept. App. Div. order of 3/3/22; affirmance, with two-Justice dissent; Rule 500.11 review pending and sua sponte examination of whether there is a dissent by at least two Justices on a question of law;
Records--Freedom of Information Law--Whether certain documents requested by petitioner under the Freedom of Information Law that relate to how the Board of Parole determined applications for parole release were properly withheld as protected under the attorney-client privilege or the intra-agency exemption;
Supreme Court, Albany County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent partially denying petitioner's Freedom of Information Law request; App. Div. affirmed.

PEOPLE v ORTEGA (YOSELYN):
1st Dept. App. Div. order of 2/8/22; modification; leave to appeal granted by Garcia, J., 6/1/22;
Crimes--Right of Confrontation--Whether introduction of an autopsy report through the testimony of a medical examiner who did not conduct the autopsy violated defendant's right to confrontation; whether the trial court responded meaningfully to a jury note; whether the trial court erred in denying a mistrial motion based on testimony that allegedly appealed to the jurors' sympathy;
Supreme Court, New York County, convicted defendant, after a jury trial, of two counts each of murder in the first and second degrees, and sentenced her to an aggregate term of life without parole; App. Div. modified to the extent of dismissing the second-degree murder counts, and otherwise affirmed.

PEOPLE ex. rel. RIVERA v SUPERINTENDENT:
3rd Dept. App. Div. order of 12/16/21; reversal; leave to appeal granted by the Court of Appeals, 5/24/22;
Crimes--Sex Offenders--Whether application of the school-grounds residency restriction of the Sexual Assault Reform Act (*see* Executive Law § 259-c [14], enacted after petitioner's conviction, violates the Ex Post Facto Clause of the US Constitution;
Supreme Court, Sullivan County, granted petitioner's application, in a proceeding pursuant to CPLR article 70, and directed respondents to release petitioner to parole supervision; App. Div. reversed, converted the petition to a declaratory judgment action and declared that respondents' implementation of the Sexual Assault Reform Act does not violate the Ex Post Facto Clause.

PEOPLE V SEIGNIOUS (JAYQUAINE):
1st Dept. App. Div. order of 2/10/22; modification; leave to appeal granted by Singas, J., 5/31/22;
Crimes--Lesser Included Offenses--Whether the trial court properly submitted to the jury second-degree burglary as a lesser-included offense of second-degree burglary as a sexually-motivated felony on the People's request under CPL 300.50 (2);
Supreme Court, New York County, convicted defendant, after a jury trial, of burglary in the second degree, sexual abuse in the first degree, forcible touching (two counts), and sexual abuse in the third degree (two counts), and sentenced him, as a second felony offender, to an aggregate term of 13 years; App. Div. modified to dismiss the count of burglary in the second degree, and otherwise affirmed.