State of New York
Court of Appeals

Vol. 43 - No. 24
7/11/23

Lisa LeCours
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

COURT OF APPEALS NEW FILINGS

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

June 16, 2023 through June 22, 2023

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.

PEOPLE ex rel. BRUNI v APPLE:
3rd Dept. App. Div. order of 5/18/23; dismissal; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;
Appeal—Academic and Moot Questions--Dismissal of appeal from order denying application for a writ of habeas corpus;
County Court, Albany County, denied petitioner's applications for a writ of habeas corpus, App. Div. dismissed the appeals as moot.

PEOPLE v CONTRERAS VARGAS (NOLBERTO):
2nd Dept. App. Div. order of 12/28/22; reversal; leave to appeal granted by Dowling, J., 6/5/23; Rule 500.11 review pending;
Crimes--Harmless and Prejudicial Error--Whether error in admitting hearsay statements of an eyewitness at trial was harmless;

Supreme Court, Queens County, convicted defendant of assault in the first degree, upon a jury verdict, and imposed sentence; App. Div. reversed and ordered new trial.

PEOPLE v GARCIA (KENNETH):
2nd Dept. App. Div. order of 11/16/22; affirmance leave to appeal granted by Ch.J. Wilson, 5/31/23;
Crimes--Identification of Defendant--Whether defendant's motion to suppress identification evidence from a showup identification procedure was properly denied; whether the evidence was legally sufficient to establish defendant's guilt of the crimes of which he was convicted beyond a reasonable doubt; whether defendant was denied a fair trial based on certain of the court's statements;
Supreme Court, Queens County, convicted defendant of assault in the second degree, criminal possession of a weapon in the fourth degree, and endangering the welfare of a child, after a nonjury trial, and imposed sentence; App. Div. affirmed.

PEOPLE v NEKTALOV (SAMUAL):
2nd Dept. App. Term order of 12/23/22; affirmance; leave to appeal granted by Rivera, J. 5/26/23;
Crimes--Unlawful Search and Seizure--Whether the courts below properly held that there was probable cause to lawfully stop a vehicle based on excessively tinted windows under Vehicle and Traffic Law § 375 (12-a) (b); whether the arrest was lawful; whether the failure to conduct a test of the cocaine for 17 months after arraignment rendered the prior statements of readiness illusory, violating defendant's constitutional and statutory speedy rights;
Criminal Court, City of New York, Queens County convicted defendant, upon a plea of guilty, of criminal possession of a controlled substance in the seventh degree; App. Term affirmed.

PEOPLE ex rel. PAGE v FIELDS:
2nd Dept. App. Div. order of 5/17/23; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Appeal—Academic and Moot Questions—In habeas corpus proceeding seeking to challenge continued confinement of convicted sex offenders due to their failure to secure housing compliant with the Sexual Assault Reform Act (SARA), whether Supreme Court properly dismissed proceeding as academic as to four of the sex offenders who were released to SARA-compliant housing during pendency of proceeding; whether mootness exception applies;
Supreme Court, Dutchess County, in effect, denied the petition for writ of habeas corpus and dismissed the proceeding as academic insofar as asserted on behalf of Dennis Barr, Michael Blount, Frederick Hightower, Herbert McQueen, and Jason Smith, and, in effect, denied the petition and dismissed the proceeding on the merits insofar as asserted on behalf of Robert Rubino; App. Div. inter alia, (1) dismissed as academic the appeal from so much of the corrected order as, in effect, denied the petition and dismissed the

proceeding on the merits insofar as asserted on behalf of Robert Rubino; and (2) otherwise affirmed the corrected order insofar as reviewed.