

COURT OF APPEALS NEW FILINGS

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

July 7, 2017 through July 13, 2017

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.

DIAZ (FREDERICK), PEOPLE v:

1ST Dept. App. Div. order of 4/13/17; reversal; leave to appeal granted by Court of Appeals, 6/27/17;

Crimes--Sex Offenders--Sex Offender Registration Act (SORA)

(Correction Law article 6-C)--Defendant convicted in Virginia of first-degree murder of a victim under the age of 15 (crime not involving any sexual motivation or conduct)--whether Appellate Division correctly concluded, under the specific facts of this case, that requiring defendant to register as a sex offender under Correction Law § 168-a (2)(ii) violated his substantive due process rights and was not rationally related to SORA's

legislative purpose;

Supreme Court, Bronx County, adjudicated defendant a level three sex offender pursuant to SORA; App. Div. reversed and annulled defendant's adjudication as a sex offender.

HUTCHINS v HUTCHINS et al.:

1ST Dept. App. Div. order of 5/4/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
Contracts--Construction--Contract concerning parents' lifetime residence on property of one son, with certain conditions upon death of parents, including payment of \$10,000 to their other son--whether contract remained enforceable and whether conditions precedent to son's receipt of \$10,000 were satisfied before the contract was cancelled; summary judgment; claimed due process and equal protection violations;
Supreme Court, Bronx County, denied plaintiff's motion for summary judgment, and granted defendant Peter Hutchins's cross motion for summary judgment dismissing the complaint; App. Div. affirmed.

KOWAL, MATTER OF v DiNAPOLI &c., et al.:

3RD Dept. App. Div. judgment of 12/1/16; confirmation of determination; leave to appeal granted by Court of Appeals, 6/29/17; Rule 500.11 review pending;
Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement--whether substantial evidence supports the Comptroller's determination that petitioner's injury did not result from an "accident" within the meaning of Retirement and Social Services Law § 605-a and, therefore, petitioner was not entitled to accidental disability retirement benefits;
App. Div. confirmed the determination of respondent State Comptroller denying petitioner's application for accidental disability retirement benefits, and dismissed the proceeding.

LAU v MARGARET E. PESCATORE PARKING, INC., et al.:

1ST Dept. App. Div. order of 12/15/16; affirmance; leave to appeal granted by Court of Appeals, 6/29/17; Rule 500.11 review pending;
Negligence--Maintenance of Premises--whether a triable issue of fact exists regarding defendants' ownership of parking barrels to which a cord was tied and over which plaintiff tripped, and as to defendants' notice of the cord, thereby precluding summary judgment;
Supreme Court, New York County, granted defendants' motions for summary judgment dismissing the complaint; App. Div. affirmed.

McCRAy, MATTER OF v GRAHAM &c.:

4TH Dept. App. Div. order of 5/16/17; denial of motion; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--whether substantial evidence supports the determination finding prisoner guilty of certain disciplinary rules; claimed due process violations; App. Div. (1) denied those parts of petitioner's motion seeking an order treating a motion filed in Supreme Court as a brief in a CPLR article 78 proceeding transferred to the App. Div., and seeking an order settling the record, and (2) dismissed as unnecessary that part of the motion seeking poor person relief.

SANCHEZ (ALADDIN), PEOPLE v, a/k/a SHAGS:

2ND Dept. App. Div. order of 3/8/17; modification; leave to appeal granted by LaSalle, J., 6/8/17; Rule 500.11 review pending; Crimes--Instructions--whether County Court properly denied defendant's request for a justification charge; County Court, Dutchess County, convicted defendant of manslaughter in the first degree, assault in the first degree, assault in the second degree, and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. modified, by vacating the convictions of manslaughter in the first degree, assault in the first degree and assault in the second degree, and the sentences imposed thereon, and dismissing the count in the indictment charging murder in the second degree, without prejudice to the People to re-present any appropriate charges to another grand jury; and as so modified, affirmed and ordered a new trial on the counts of the indictment charging the defendant with assault in the first and second degree.