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COURT OF APPEALS NEW FILINGS

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

July 6, 2018 through July 12, 2018

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 &c. ex rel. ALLEN v YELICH &c.:
3RD Dept. App. Div. order of 3/15/18; modification; leave to appeal granted by Court of Appeals, 6/27/18;
Prisons and Prisoners--Calculation of Sentence--Whether respondent Department of Corrections and Community Supervision improperly calculated appellant's maximum expiration date for period of post-release supervision (PRS); appellant, who absconded from supervision, was sentenced for an unrelated crime in New Jersey; New Jersey court ordered sentence on New Jersey crime to run concurrently with undischarged portion of New York sentence, but appellant was not returned to New York State custody to serve the concurrent sentence; application of Penal Law §§ 70.40 and 70.45;

Supreme Court, Franklin County, denied petitioner's application for a writ of habeas corpus; App. Div. modified, by converting the CPLR article 78 proceeding, and, as so modified, affirmed.

DELEON (OMAR), PEOPLE v:
1ST Dept. App. Div. order of 1/30/18; reversal; leave to appeal granted by Wilson, J., 6/28/18;
Crimes--Larceny--Whether evidence before grand jury was sufficient to support the charges of attempted grand larceny in the third and fourth degrees; defendant placed "fishing device" in mailbox into which joint police-postal service task force had inserted more than $3000 in money orders; no evidence presented as to the value of the mail defendant attempted to remove;
Supreme Court, Bronx County, adhered to an order of the same court, entered on or about 7/8/16, which dismissed a count of the indictment charging attempted grand larceny in the third degree, and reduced a count charging attempted grand larceny in the fourth degree to attempted petit larceny; App. Div. reversed the order dated 11/16/16, denied defendant's motion to dismiss or reduce the indictment, and remanded the matter for further proceedings; and, dismissed the appeal from the order entered on or about 7/8/16 as superseded by the order entered 11/16/16.

DURAN v COUNTY OF MONROE, et al.:
Supreme Court, Monroe County, order of 5/2/18; sua sponte examination whether a direct appeal lies pursuant to CPLR 5601(b)(2) and whether the order appealed from finally determines the action within the meaning of the Constitution;
Negligence--Exemption from Liability for Negligence--Claims of personal injury by prisoner having a seizure while in custody of defendant jail deputies; liability of County for conduct of jail deputies; dismissal and nonsuit; claimed preemption of county law by state statutes;
Supreme Court, among other things, granted defendant's motion to dismiss the complaint to the extent of dismissing the third and fourth causes of action, plaintiff's claim for punitive damages on the third and fourth causes of action, and all causes of action against defendants Jail Deputies "John Does" #1-10; and denied defendant's motion seeking dismissal of plaintiff's first and second causes of action.

GIUCA (JOHN), PEOPLE v:
2ND Dept. App. Div. order of 2/7/18; reversal; leave to appeal granted by Wilson, J., 6/28/18;

Crimes--Vacatur of Judgment of Conviction--Whether the People violated their obligation to disclose material information favorable to defendant (Brady v Maryland, 373 U.S. 83);
Supreme Court, Kings County, after a hearing, denied defendant's CPL 440.10 motion to vacate a 10/19/05 Supreme Court judgment convicting him, upon a jury verdict, of murder in the second degree, robbery in the first degree, and criminal possession of a weapon in the second degree, and imposing sentence; App. Div. reversed, granted defendant's motion to vacate the judgment, vacated the judgment, and remitted the matter to Supreme Court for a new trial.

LI (STAN XUHUI), PEOPLE v:
1ST Dept. App. Div. order of 11/30/17; affirmance; leave to appeal granted by DiFiore, Ch.J., 6/25/18;
Crimes--Manslaughter--Whether legally sufficient evidence supports defendant's convictions for second degree manslaughter; defendant physician prescribed a combination of opioids and alpraxolam to the victims, who overdosed; whether a homicide charge may be based on the sale of a controlled substance;
Crimes—Reckless Endangerment—whether legally sufficient evidence exists that defendant's prescribing practices placed patients at imminent risk of death;
Supreme Court, New York County, convicted defendant of two counts of manslaughter in the second degree, three counts of reckless endangerment in the first degree, three counts of reckless endangerment in the second degree, 170 counts of criminal sale of a prescription, one count of scheme to defraud in the first degree, two counts of grand larceny in the third degree, and eight counts of offering a false instrument for filing in the first degree, and sentenced defendant to an aggregate term of 10 to 20 years; App. Div. affirmed.

TRIBECA LENDING CORPORATION v BARTLETT &c., et al.:
1ST Dept. App. Div. order of 12/14/17; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Mortgages--Foreclosure--Motion to vacate foreclosure judgment; claimed due process violations;
Supreme Court, New York County, denied defendant Bartlett's motion to vacate a judgment of foreclosure and sale; App. Div. affirmed.