



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

July 12, 2024 through July 18, 2024

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 KANTARAKIAS v KIM:

APL-2024-00070

2nd Dept. App. Div. Judgment of 4/24/24; confirmed determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Whether the determination denying petitioner's application for a pistol license was arbitrary and capricious; whether the licensing eligibility requirements of Penal Law § 400.00 unconstitutionally infringe on petitioner's right to bear arms under the Second Amendment of the United States Constitution;

County Court, Orange County, denied the application of petitioner/plaintiff for a pistol license; App. Div. confirmed the determination, denied the petition, and dismissed the proceeding/action on the merits.

MATTER OF RECLAIM THE RECORDS v NYSDOH:

APL-2024-00087

3rd Dept. App. Div. order of 5/23/24; reversal;

Records—Freedom of Information Law—Whether the release of basic biographical information from the Department of Health’s death index data would constitute an unwarranted invasion of personal privacy under the Freedom of Information Law (see Public Officers Law §87 [2] [b]); whether the disclosure of uncertified death index data is barred under FOIL (see Public Officers Law § 87 [2] [a]), because of Public Health Law section 4147(1)(a)’s limitations on access to certified copies or transcripts of death records; whether the Department of Health’s allegation that it must compile its own files to produce them is the creation of a new record, therefore alleviating the Department from producing such records under Public Officers Law section 89(3)(a);

Supreme Court, Albany County, granted petitioner’s application, in a proceeding under CPLR article 78, to annul a determination of respondent denying petitioner’s Freedom of Information Law request; App. Div., with two Justices dissenting, reversed and dismissed the petition.

PEOPLE v MOREL (AGUSTIN):

APL-2024-00086

1st Dept. App. Term order of 1/11/24; affirmance; leave to appeal granted by Wilson, Ch.J., 6/27/24;

Motor Vehicles—Whether the accusatory instrument charging defendant with driving while ability impaired by drugs was facially insufficient when its factual allegations failed to demonstrate that his use of marijuana either rendered him incapable of employing, or actually impaired, the physical and mental abilities which he is expected to possess in order to operate a motor vehicle as a reasonable and prudent driver and when the complaint contained no allegations about his manner of driving, nor any other indicia of impairment such as slurred speech or stumbling, and defendant had merely consumed “two puffs” of marijuana (US Const, Amend XIV; NY Const, art 1, section 6; CPL 100.15[3], 100.40; VTL § 1192[4]);

New York City Criminal Court, New York County, convicted defendant, upon his plea of guilty, of driving while ability impaired, and imposed sentence; App. Term affirmed.

PEOPLE v SCOTT (MARQUESE):

APL-2024-00082

4th Dept. App. Div. order of 2/2/24; modification; leave to appeal granted by Wilson, Ch.J., 7/8/24;

Crimes—Preservation of Issue for Review—Whether defendant was required to preserve his claim that his guilty plea was involuntary because defendant was misinformed with respect to his maximum sentencing exposure;

Supreme Court, Erie County, convicted defendant, upon a plea of guilty, of burglary in the second degree (three counts); App. Div., modified, by reducing the sentence of imprisonment imposed on each burglary count to a determinate term of three and one-half years, and, as so modified, affirmed.