



*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

August 13, 2021 through August 19, 2021

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.

BAINES (DONNELL), PEOPLE v:

1st Dept. App Div. order of 12/10/2019; modification; leave to appeal granted by Wilson, J., 7/13/2021;

Crimes--Search Warrant--Whether search warrant was facially insufficient; warrant failed to specify crime for which evidence was sought or describe with particularity the property to be seized; whether suppression court improperly considered supporting materials not incorporated by reference and attached to warrant; Crimes--Right to Counsel--Whether defendant was denied the right to counsel when the trial court permitted defendant to proceed pro se at pretrial proceedings; Crimes--Sufficiency of the Evidence--Whether the evidence was legally sufficient to support defendant's conviction;

Supreme Court, New York County, convicted defendant of rape in the first degree, criminal sexual act in the first degree, sex trafficking in the first degree (three counts), promoting prostitution in the second and third degrees, assault in the second degree (three counts), sexual abuse in the first degree, unlawful imprisonment in the second degree and coercion in the first degree, and sentenced him, as a predicate sex offender, to an aggregate term of 50 years; App. Div. modified to the extent of vacating the second-degree promoting prostitution conviction and dismissing the charge, directing that the sentence on the rape conviction run concurrently with all other sentences and directing that the sentences on the convictions of unlawful imprisonment in the second degree and coercion in the first degree run consecutively to all other sentences, resulting in an aggregate term of 28½ to 32 years, and otherwise affirmed.

BONEM v WILLIAM PENN LIFE INSURANCE:

1st Dept. App. Div. order of 1/14/21; reversal; leave to appeal granted by the Court of Appeals;

Insurance--Disclaimer of Coverage--Whether plaintiff was entitled to coverage under a life insurance policy where the policy had lapsed due to nonpayment of the premium before insured's death;

Supreme Court, New York County, awarded plaintiff \$1 million on a life insurance policy; App. Div. reversed, vacated the judgment, and directed the clerk to enter judgment declaring that plaintiff is not entitled to coverage under the subject insurance policy.

ORTIZ (GUILLERMO), PEOPLE v:

1st Dept. App. Div. order of 12/17/2020; affirmance; leave to appeal granted by Fahey, J., 5/12/2021; Rule 500.11 review pending;

Crimes--Confession--Whether defendant's statement that he had a firearm was the product of interrogation; Whether defendant received effective assistance of counsel;

Supreme Court, New York County, convicted defendant of criminal possession of a weapon in the second degree, and imposed sentence and, thereafter, denied defendant's CPL 440.10 motion to vacate the judgment; App. Div. affirmed.

PIETROCARLO (GRACE), PEOPLE v:

4th Dept. App. Div. order of 2/5/2021; affirmance; leave to appeal granted by Wilson, J.,

6/11/2021; Rule 500.11 review pending;

Crimes--Verdict-Sufficiency of Evidence--Whether verdict convicting defendant of assault in the second degree as an accessory is supported by legally sufficient evidence;

Supreme Court, Erie County convicted defendant of assault in the second degree and imposed sentence. App. Div. affirmed.