

COURT OF APPEALS NEW FILINGS

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

August 12, 2016 through August 18, 2016

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. ACKRIDGE v DIAZ:

2ND Dept. App. Div. order of 6/28/16; denial of application for a writ of habeas corpus; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - CHALLENGE TO ORDER DENYING APPLICATION FOR A WRIT OF HABEAS CORPUS;

App. Div. denied that branch of petitioner's application which was for a writ of habeas corpus.

JOHNSON (MICHAEL), PEOPLE v:

2ND Dept. App. Div. order of 5/18/16; affirmance; leave to appeal granted by Hall, J., 8/5/16;

CRIMES - SUPPRESSION HEARING - VOLUNTARINESS OF STATEMENTS - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT PRE-ARRAIGNMENT DELAY AND CIRCUMSTANCES SURROUNDING INTERROGATION DURING THAT TIME DID NOT ESTABLISH THAT DEFENDANT'S STATEMENTS TO POLICE WERE INVOLUNTARY; WITNESSES - FAILURE TO CALL WITNESS - WHETHER TRIAL COURT PROPERLY DENIED DEFENDANT'S REQUEST FOR A MISSING WITNESS CHARGE AS TO VICTIM'S SON, AN EYEWITNESS TO THE CRIME; PROOF OF OTHER CRIMES - WHETHER THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION FOR A MISTRIAL, WHERE IT SUSTAINED DEFENDANT'S OBJECTION TO IMPROPER TESTIMONY BY A COOPERATING WITNESS, STRUCK THAT PORTION OF HIS TESTIMONY AND PROVIDED A CURATIVE INSTRUCTION; DISCLOSURE - DELAY IN PROVIDING EVIDENTIARY MATERIALS REGARDING COOPERATING WITNESS;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of attempted murder in the second degree, two counts of robbery in the first degree, assault in the first degree, three counts of criminal possession of a forged instrument in the first degree, two counts of criminal possession of a forged instrument in the second degree, robbery in the second degree, and criminal possession of stolen property in the fifth degree, under indictment number 2352/09, and imposed sentence; Supreme Court also convicted defendant, upon a jury verdict, of unauthorized use of a vehicle in the third degree under indictment number 1328/11, and imposed sentence; App. Div. affirmed.

McCAIN (DOUGLAS), PEOPLE v:

App. Term, 2nd, 11th and 13 Judicial Districts order of 12/31/15; affirmance; leave to appeal granted by Stein, J., 8/5/16;

CRIMES - POSSESSION OF WEAPON - SUFFICIENCY OF ACCUSATORY INSTRUMENT - WHETHER FACTUAL ALLEGATIONS WERE SUFFICIENT TO SUPPORT CHARGE OF CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE, WHERE DEFENDANT TOLD ARRESTING OFFICER THAT HE POSSESSED A RAZOR KNIFE CLIPPED TO THE OUTSIDE OF HIS PANTS POCKET FOR SELF PROTECTION - WHETHER APPELLATE TERM IMPROPERLY RELIED ON THE PRESUMPTION CONTAINED IN PENAL LAW § 265.15(4) IN UPHOLDING THE ACCUSATORY INSTRUMENT;

Criminal Court of the City of New York, Queens County, convicted defendant, upon his guilty plea, of criminal possession of a weapon in the fourth degree, and imposed sentence; App. Term affirmed.

RYAN, et al. v POWERS & SANTOLA, LLP, et al.:

App. Div. orders of 4/28/16 and 6/29/16; dismissal of appeal and denial of motion for reconsideration or leave to appeal to Court of Appeals; sua sponte examination whether the order appealed from finally determine the action within the meaning of the Constitution and whether there is jurisdiction for an appeal as of right;

APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL - FAILURE OF PROSECUTION;

App. Div. granted respondents' motions to dismiss the appeal taken by Matthew J. Ryan unless he filed and served a brief on or before 12/7/15, in which event the motions to dismiss the appeal taken by Matthew J. Ryan were denied; thereafter denied appellant's motions for extension of time to perfect the appeal, poor person relief, and leave to amend the notice of appeal, and dismissed the appeal; App. Div. denied appellant's motions for reconsideration or leave to appeal to the Court of Appeals, and for poor person relief.

SICA, MATTER OF v DiNAPOLI:

3RD Dept. App. Div. judgment of 7/7/16; annulled determination; Rule 500.11 review pending;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - ACCIDENTAL DISABILITY RETIREMENT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE RECORD DID NOT CONTAIN SUBSTANTIAL EVIDENCE TO SUPPORT THE COMPTROLLER'S DETERMINATION THAT PETITIONER FIREFIGHTER'S INJURIES FROM BEING EXPOSED TO COLORLESS AND ODORLESS GASES WHILE RESPONDING TO AN EMERGENCY AT A SUPERMARKET WERE NOT THE RESULT OF AN "ACCIDENT" WITHIN THE MEANING OF RETIREMENT AND SOCIAL SECURITY LAW § 363;

App. Div. annulled respondent's determination, which denied petitioner's application for accidental disability retirement benefits, and remitted the matter to respondent for further proceedings not inconsistent with the court's decision.

STATON (DARREN), PEOPLE v:

2ND Dept. App. Div. order of 4/27/16; affirmance; leave to appeal granted by Hall, J., 8/10/16; Rule 500.11 review pending; CRIMES - IDENTIFICATION OF DEFENDANT - PHOTOGRAPHIC ARRAY - WHETHER PHOTOGRAPHIC ARRAY USED TO IDENTIFY DEFENDANT WAS UNDULY SUGGESTIVE; SUFFICIENCY OF THE EVIDENCE THAT ONE OF THE COMPLAINANTS SUFFERED PHYSICAL INJURY WITHIN THE MEANING OF PENAL LAW § 10.00(9); RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL AS TO SENTENCING; Supreme Court, Queens County, convicted defendant, upon a jury verdict, of robbery in the second degree, assault in the second degree, and robbery in the third degree, and imposed sentence; App. Div. affirmed.