

COURT OF APPEALS NEW FILINGS

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

August 30 through September 5, 2019

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.

DELGADO, et al. v STATE OF NEW YORK et al.:

Supreme Court, Albany County, judgment of 6/7/19; sua sponte examination of whether a direct appeal lies pursuant to CPLR 5601(b)(2);

Constitutional Law--Validity of Statute--Whether Part HHH of Chapter 59 of the Laws of 2018 violates the New York State Constitution;

Supreme Court (1) granted defendants' motion to the extent of (a) dismissing the first, third and fourth causes of action in their entirety and (b) dismissing the second cause of action with the exception of claims related to the recommendations and determinations of the Committee on Legislative and Executive Compensation effective January 1, 2020 and beyond that contemplate prohibited activities and limitations on outside earned income, and (2) declared said recommendations and determinations null and void.

GRAFTON, PEOPLE ex rel. v FLUDD, &c.:

2ND Dept. App. Div. order of 7/17/19; denial of writ of habeas corpus; sua sponte examination whether any basis exists to support an appeal as of right;

Habeas Corpus--Petition--Whether the Appellate Division properly denied petitioner's application for a writ of habeas corpus;

App. Div., among other things, denied application for a writ of habeas corpus.

GURVEY, MATTER OF v GARRY &c et al.:

4TH Dept. App. Div. order of 7/17/19; dismissal of CPLR article 78 proceeding; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer--When Remedy Available--Dismissal of CPLR article 78 proceeding seeking mandamus relief; alleged constitutional violations;

App. Div. granted respondents' motion to dismiss the CPLR article 78 proceeding.

MURPHY v TOWN OF OYSTER BAY, et al.:

2ND Dept. App. Div. orders of 8/15/19 and 4/17/19; denial of leave to appeal; 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;

Navigable Waters--Public Right of Use--State Ownership of Underwater Lands--Whether the lower courts properly concluded that certain underwater lands belong to the State of New York rather than the Town of Oyster Bay;

Supreme Court, Nassau County, among other things, granted the motion of defendant State of New York for summary judgment, denying the cross motion of the defendant Town of Oyster Bay for summary judgment, and declaring that the boundary line between Oyster Bay and Long Island Sound is the line running east from Rocky Point in Oyster Bay to Whitewood Point on Lloyd's Neck, and that defendant State of New York owns all of the underwater lands north of that line; Ap. Div. affirmed insofar as appealed from and denied leave to renew or leave to appeal to Court of Appeals.

PEOPLE CARE INCORPORATED, d/b/a ASSISTED CARE, MATTER OF v THE CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION, et al.:

1ST Dept. App. Div. order of 7/23/19; affirmance with two-Justice dissents;

Social Services--Recoupment of Overpayments--Whether respondent The City of New York Human Resources Administration Department of Social Services has the authority to audit and recover overpayments of funds provided pursuant to the Health Care Reform Act from petition, a personal care service provider;

Supreme Court, New York County, among other things, granted the petition, brought pursuant to CPLR article 78, seeking to annul respondents' October 20, 2008 audit which demanded recoupment of \$6,998,432 from petitioner, and enjoining respondents from recouping those funds; App. Div. affirmed.

WESLOWSKI, MATTER OF v DAY, c, et al.:

2ND Dept. App. Div. order of 7/16/19; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeal--Dismissal--Dismissal of appeal for failure to comply with prior order of the court;

Supreme Court, Rockland County, granted the petition to the extent of directing the County respondent to deliver copies of the requested records upon prepayment of costs; App. Div. granted that branch of respondents' motion to dismiss the appeal for failure to comply with a prior order of the court, and denied as academic that branch of the motion to extend respondents' time to serve and file a brief.

WORTHAM (TYRONE), PEOPLE v:

1ST Dept. App. Div. order of 4/5/18; affirmance; leave to appeal granted by Stein, J., 8/15/19;

Crimes--Confession--Statement Made in Response to Pedigree Question--Whether admissions made in response to routine booking questions asked during the execution of a search warrant that are not designed to elicit an incriminating response are admissible under the pedigree exception to the requirements of Miranda v Arizona (384 US 436), even if the answer is reasonably likely to be incriminating; Crimes--Evidence--DNA Identification Tests--Whether defendant was entitled to a hearing pursuant to Frye v United States (293 F 1013 [DC Cir 1923]) to determine the reliability of forensic statistical tool DNA evidence;

Supreme Court, New York County, convicting defendant, following a jury trial, of two counts of second-degree criminal possession of a weapon, two counts of third-degree criminal possession of a weapon, two counts of third-and seventh-degree criminal possession of a controlled substance, two counts of second-degree criminally using drug paraphernalia, two counts of endangering the welfare of a child, and sentencing him, as a second violent felony offender, to an aggregate term of 9 years; App. Div. affirmed.