



*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 27, 2021 through September 2, 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.

GUERRA (SANTINO), PEOPLE v:

1st Dept. App. Div. order of 3/23/21; affirmance; leave to appeal granted by Rivera, J., 8/16/21;

Crimes--Justification--Whether *People v Miller* (39 NY2d 543 [1976]) should be overruled, allowing admission of a complainant's prior violent acts for purposes of proving the complainant was the initial aggressor in support of a justification defense;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of assault in the second degree, and sentenced him to a term of three years. App. Div. affirmed.

JOHNSON (RONALD K.), PEOPLE v:

4th Dept. App. Div. order of 4/30/21; affirmance; leave to appeal granted by Fahey, J., 8/23/21;

Crimes--Right to Speedy Trial--Whether defendant's due process rights were violated by nearly eight-year preindictment delay; defense to crime to which defendant pleaded guilty, a strict liability crime, was not prejudiced by preindictment delay; defendant also asserted preindictment delay deprived him of ability to negotiate a sentence that would have run concurrently with a prior unrelated burglary sentence;

County Court, Monroe County, convicted defendant of rape in the second degree. App. Div. affirmed.

WELLS FARGO BANK v KHAN:

2nd Dept. App. Div. order of 5/19/21 dismissed motion to recall and vacate; 2nd Dept. App. Div. order of 11/20/20 reversed; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any basis exists for an appeal as of right;

Motions and Orders;

Supreme Court, Queens County, denied plaintiff's motion for summary judgment and an order of reference; Supreme Court, Queens County, denied plaintiff's motion to reargue; App. Div. reversed 8/27/18 order insofar as appealed from, vacated the determination in the 3/14/18 order denying those branches of the plaintiff's motion for summary judgment insofar as asserted against defendants Simon Khan and Yeonsu Choi and for an order of reference, and granted those branches of the motion; App. Div. dismissed that branch of the motion which was for leave to reargue the appeal for lack of standing to seek that relief because defendants did not serve and file a brief, and otherwise denied the motion.