State of New York
Court of Appeals

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Lisa LeCours
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

COURT OF APPEALS NEW FILINGS

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

September 1, 2023 through September 7, 2023

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.

APPIAH (KWABENA), PEOPLE v:
3rd Dept. App. Div. order of 7/27/23; affirmance; leave to appeal granted by McShan, J., 8/22/23; Rule 500.11 review pending;
Appeal—Waiver of Right to Appeal—Whether defendant validly waived the right to appeal;
County Court, Schenectady County, convicted defendant upon his plea of guilty of the crime of assault in the second degree; App. Div. affirmed.

CLEVELAND (KEVIN), PEOPLE v:
4th Dept. App. Div. order of 6/30/23; affirmance; leave to appeal granted by Ogden, J., 8/14/23; Rule 500.11 review pending;
Crimes—Unlawful Search and Seizure —Whether the police pursuit of defendant was supported by a reasonable suspicion of criminality;

Supreme Court, Monroe County, convicted defendant upon a jury verdict of criminal possession of a controlled substance in the fourth degree and aggravated unlicensed operation of a motor vehicle in the second degree; App. Div., with one Justice dissenting, affirmed.

LIGGETT v LEW REALTY:
Supreme Court, New York County, judgment of 8/15/23; dismissal;
Landlord and Tenant—Rent Regulation—Whether stipulation entered into by plaintiff's predecessor tenant and building owner – which provided that the initial legal regulated rent was $1,650 per month, but required tenant to pay only $650 per month, plus applicable Rent Guideline Board increases – was void as an impermissible waiver of rent stabilization rights; whether plaintiff must establish the elements of common law fraud; whether the Court implicitly overruled *Kent v Beford Apts*, 237 AD2d 140 (1st Dept 1997) in *Jazilek v Abart Holdings, LLP*, 10 NY3d 943 (2008);
Supreme Court, New York County, denied defendant's motion to dismiss the complaint, App. Div., 1st Dept., with two Justices dissenting, reversed, granted defendant's motion, and dismissed the complaint; Supreme Court, New York County, dismissed defendant's counterclaim.

NAPOLI, PEOPLE ex rel. v ANNUCCI:
2nd Dept. App. Div. order of 8/2/23; dismissal; sua sponte examination of whether a substantial constitutional question is involved to support an appeal as of right;
Habeas Corpus—Whether, by denying petitioner's habeas petition based on respondents' statutory authority to incarcerate SARA-subject persons in residential treatment facilities beyond their release dates, the courts below misapprehended petitioner's claims that respondents acted in an unconstitutional manner when implementing that authority;
Supreme Court, Dutchess County, in a habeas corpus proceeding, denied petitioner's application to convert the proceeding into a hybrid proceeding pursuant to CPLR article 78 and action for declaratory relief, denied the petition, and dismissed the proceeding; App. Div. on the Court's own motion, granted the motion to dismiss the appeal to the extent of dismissing the appeal from so much of the order and judgment as denied the petition and dismissed the proceeding as academic, and affirmed the order and judgment insofar as reviewed.

SHARP (ERIC D.), PEOPLE v:
4th Dept. App. Div. order of 3/24/23; affirmance; leave to appeal granted by Curran, J., 7/5/23;
Crimes—Right to be Present at Trial—Whether defendant was denied his right to be present at a material stage of the trial when Supreme Court conducted an in-chambers and off-the-record conference in his absence at which there was a discussion on the People's Sandoval application; whether the loss of certain video

exhibits admitted in evidence at trial deprived defendant of effective appellate review; whether the statutes under which defendant was convicted are unconstitutional in light of the United State Supreme Court's decision in *New York State Rifle & Pistol Assn., Inc. v Bruen (2022)*; whether defendant's claim that the statutes under which he was convicted are unconstitutional is preserved;
Supreme Court, Monroe County, convicted defendant upon a nonjury verdict of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree; App. Div., with one Justice dissenting, affirmed.

SIN (HU), PEOPLE v.:
4th Dept. App. Div. order of 6/9/23; affirmance; leave to appeal granted by Ogden, J., 8/1/23;
Crimes—Fair Trial—Whether defendant was deprived of a fair trial by County Court's Molinex ruling, admitting testimony about defendant's prior uncharged acts of abuse against two of the victim's other family members;
County Court, Erie County, convicted defendant upon a jury verdict of first degree rape, sexual abuse in the first degree, and rape in the third degree; App. Div., with one Justice dissenting, affirmed.