

COURT OF APPEALS NEW FILINGS

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

September 23, 2016 through September 29, 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.

CASTILLO (ELMER), PEOPLE v:

1ST Dept. App. Div. order of 6/9/16; modification; leave to appeal granted by Tom, J., 8/26/16; Rule 500.11 review pending; CRIMES - APPEAL - PRESERVATION OF ISSUE FOR REVIEW - OBJECTION TO JURY CHARGE - WHETHER AN EXCEPTION TO THE PRESERVATION RULE APPLIES AND, IF SO, WHETHER THE TRIAL COURT'S JURY CHARGE MISSTATED THE LAW ON CAUSATION OF DEATH; SEVERANCE NOT SOUGHT AT TRIAL; ARGUMENT AND CONDUCT OF COUNSEL - WHETHER THE PROSECUTOR'S REMARKS DEPRIVED DEFENDANT OF A FAIR TRIAL; CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENSE COUNSEL'S FAILURE TO PRESERVE CLAIMED ERRORS DEPRIVED DEFENDANT OF EFFECTIVE REPRESENTATION;

Supreme Court, New York County, convicted defendant, after a jury trial, of manslaughter in the first degree, and sentenced him to a term of 18 years; App. Div. modified to the extent of remanding the matter for resentencing proceedings, and otherwise affirmed.

FREEMAN (DARRION), PEOPLE v:

4TH Dept. App. Div. order of 7/8/16; affirmance with two-Justice dissent; leave to appeal granted by Whalen, J., 9/16/16; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER DEFENDANT VOLUNTARILY CONSENTED TO THE WARRANTLESS ENTRY INTO HIS HOME; WHETHER THE CONSENT TO SEARCH ENCOMPASSED A DUFFEL BAG LOCATED INSIDE DEFENDANT'S CLOSET;

County Court, Monroe County, convicted defendant, upon his plea of guilty, of two counts of criminal possession of a weapon in the second degree and criminal possession of marihuana in the third degree; App. Div. affirmed.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. orders of 4/5/16 and 8/1/16; denial of motions; sua sponte examination whether the orders of the App. Div. finally determine the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved in either order to support an appeal as of right;

APPEALS - CHALLENGE TO APPELLATE DIVISION ORDERS THAT, AMONG OTHER THINGS, DENIED APPELLANT'S MOTION AND RENEWED MOTION TO REINSTATE AN APPEAL;

App. Div. denied appellant's motion to, among other things, reinstate an appeal from an order of Supreme Court, Kings County; and thereafter, denied appellant's renewed motion to, among other things, reinstate the appeal from an order of Supreme Court, Kings County, and on the court's own motion, precluded appellant from making any further motions in the App. Div. in connection with the appeal without prior approval of the court.

SAWMA, MATTER OF v DiNAPOLI &c.:

3RD Dept. App. Div. order of 5/19/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - WHETHER THE STATE COMPTROLLER PROPERLY DETERMINED THAT FORMER COUNTY ELECTIONS BOARD EMPLOYEE WAS NOT ENTITLED TO REQUISITE CREDITED SERVICE PRIOR TO TERMINATION; APPLICATION OF RETIREMENT AND SOCIAL SECURITY LAW §§ 609, 612; CLAIMED DUE PROCESS VIOLATION; Supreme Court, Albany County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination denying petitioner's application for service retirement benefits; App. Div. affirmed.