

COURT OF APPEALS NEW FILINGS

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

September 15, 2017 through September 21, 2017

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.

BOYD (MARK), PEOPLE v:

1ST Dept. App. Div. order of 6/13/17; affirmance; leave to appeal granted by Acosta, PJ., 8/22/17; Rule 500.11 review pending; Crimes--Instructions--Submission of noninclusory concurrent count to jury--whether the trial court abused its discretion in granting People's request to dismiss the count of unlawful possession of an air pistol or BB gun and submitting to the jury only those counts relating to defendant's possession of a pistol; evidence--whether certain evidentiary rulings deprived defendant of a meaningful opportunity to present a defense; right to counsel--whether trial counsel was ineffective for failing to request admission of defendant's out-of-court post-arrest statement; district and prosecuting attorneys--alleged prosecutorial misconduct;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of criminal possession of a weapon in the third degree; App. Div. affirmed.

CISSE (ALI), PEOPLE v:

1ST Dept. App. Div. order of 4/6/17; affirmance; leave to appeal granted by Fahey, J., 8/23/17; Rule 500.11 review pending; Crimes--Evidence--Whether defendant's telephone calls from prison were admitted into evidence in violation of federal and/or state wiretapping statutes, or right to counsel and due process protections; suppression--whether various physical items should have been suppressed as fruits of an improper stop and search; whether the trial court improperly asked the jury whether it had reached a partial verdict; claimed ineffective assistance of counsel--counsel failed to move to suppress a suggestive identification and to dismiss the reckless endangerment count; whether the trial court erred in rejecting a voluntariness instruction to the jury;

Supreme Court, New York County, convicted defendant, upon a jury verdict, of two counts of robbery in the first degree, robbery in the second degree, two counts of attempted robbery in the first degree, attempted robbery in the second degree, two counts of criminal possession of a weapon in the second degree, reckless endangerment in the first degree, and criminal possession of a weapon in the third degree, and sentenced him to an aggregate term of 12 years; App. Div. affirmed.

FERRARA v PEACHES CAFÉ LLC, et al:

4TH Dept. App. Div. order of 4/29/16; reversal; leave to appeal granted by Court of Appeals, 9/5/17;

Liens--Mechanic's Lien--Whether defendant owner consented to improvements on real property it leased to a tenant who contracted for the improvements, thereby permitting imposition of a lien on the property under Lien Law § 3; whether lease indemnification clause extinguished owner's responsibility to pay for contractor's work;

Supreme Court, Monroe County, denied plaintiff's motion for partial summary judgment on its first cause of action and granted that part of the motion of defendant COR Ridge Road Company, LLC, seeking summary judgment dismissing the first cause of action against it; App. Div. reversed, denied the motion of defendant COR Ridge Road Company, LLC, reinstated the first cause of action, granted plaintiff's motion for partial summary judgment on the first cause of action, and remitted the matter to Supreme Court for an inquest on the issue of damages with respect to the first cause of action; Supreme Court, pursuant to a stipulation, awarded plaintiff \$62,000 in damages.

FENG LI, AN ATTORNEY, MATTER OF:

2ND Dept. App. Div. order of 7/19/17; suspension of attorney; examination, on Court's own motion, of whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client--Disciplinary Proceedings--Application by Grievance Committee for the Ninth Judicial District to impose discipline on respondent attorney based upon disciplinary action taken against him by the Supreme Court of New Jersey--attorney's disbursement of funds to himself from judgment recovered for client after dispute as to amount of attorney's fees; claimed due process and other constitutional violations related to the reciprocal discipline imposed;

App. Div., among other things, granted petitioner Grievance Committee's application to impose reciprocal discipline, and suspended respondent Feng Li from the practice of law for a period of three years; thereafter, the App. Div., among other things, denied respondent attorney's motion for leave to reargue, and to resettle and amend the suspension order.

FLORES (ALEX), RAMIREZ (LUCIO), AGUILAR (BENIGNO), FLORES EMMANUEL), PEOPLE v:

2ND Dept. App. Div. order of 7/5/17; reversal; leave to appeal granted by Dillon, J., 8/28/17; Rule 500.11 review pending; Crimes--Jurors--Selection of Jurors--whether trial court's empaneling of an anonymous jury was improper under CPL 270.15 and deprived defendants of their right to a fair trial; whether error in empaneling anonymous jury was harmless;

County Court, Orange County, convicted defendant Alex Flores, upon a jury verdict, of gang assault in the first degree, gang assault in the second degree, assault in the first degree, and two counts of assault in the second degree (8/6/10 order); and, convicted defendant Lucio Ramirez, upon a jury verdict, of gang assault in the first degree, gang assault in the second degree, assault in the first degree, two counts of assault in the second degree, and criminal possession of a weapon in the fourth degree (8/9/10 order); and convicted defendant Benigno Aguilar, upon a jury verdict, of gang assault in the first degree, gang assault in the second degree, assault in the first degree, two counts of assault in the second degree, criminal possession of a weapon in the fourth degree (8/31/10 order); and convicted defendant Emmanuel Flores, upon a jury verdict, of gang assault in the first degree, gang assault in the second degree, two counts of assault in the second degree, and imposed sentence on all defendants; App. Div. reversed the judgments of conviction and ordered a new trial.

GRIMES (JAKIM), PEOPLE v:

4TH Dept. App. Div. order of 3/24/17; denial of motion for a writ of coram nobis; leave to appeal granted by Wilson, J., 8/17/17; Crimes--Right to Counsel--Effective Representation--Whether, under the New York State Constitution, an attorney's failure to file a criminal leave application on a defendant's behalf at the Court of Appeals deprives the defendant of the effective assistance of counsel or due process of law; App. Div. denied defendant's motion for a writ of error coram nobis.

PENA, MATTER OF v NEW YORK STATE GAMING COMMISSION:

3RD Dept. App. Div. order of 11/3/16; annulled determination;

leave to appeal granted by Court of Appeals, 9/7/17;

Horse Racing--Revocation or Suspension of License--Trainer--

Whether New York State Gaming Commission's determination revoking petitioner's licenses to participate in pari-mutuel harness

racing for three years is supported by substantial

evidence--veterinary records;

App. Div. granted the petition and annulled respondent Gaming

Commission's determination which, among other things, revoked

petitioner's licenses to participate in pari-mutuel harness

racing for a period of three years.

JAMES Q. (COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES; JAMES Q.; SUFFOLK COUNTY DISTRICT ATTORNEY), MATTER OF:

3RD Dept. App. Div. order of 8/17/17; modification with dissents;

sua sponte examination whether the order appealed from finally

determines the proceeding within the meaning of the Constitution

and whether the two-Justice dissent at the App. Div. is on a

question of law;

Records--Sealing of Records--Motion to seal record of CPL 330.20

retention proceeding--whether the Appellate Division erred in

determining that the confidentiality provisions of the Mental

Hygiene Law do not require the sealing of documents filed in a

CPL 330.20 (9) subsequent retention program; redaction;

Supreme Court, Franklin County, in a proceeding pursuant to CPL

330.20, denied respondent James Q.'s motion to seal the record of

the proceeding; App. Div. modified by reversing so much of the

Supreme Court order as failed to redact the record of

respondent's retention proceeding and, as so modified, affirmed.

STEINBERG, AN ATTORNEY, MATTER OF:

1ST Dept. App. Div. order of 7/31/17; denied motion; sua sponte

examination whether the order appealed from finally determines

the proceeding within the meaning of the Constitution and whether

a substantial constitutional question is directly involved to

support an appeal as of right;

Attorney and Client--Disciplinary Proceedings--Challenge to

Appellate Division order denying attorney's motion to transfer

disciplinary proceeding to another Appellate Division department;

alleged constitutional violations;

App. Div., among other things, denied respondent attorney's

motion to transfer an attorney disciplinary proceeding to another

App. Div. department.

WORD, PEOPLE ex rel. v STATE OF NEW YORK, et al.:

4TH Dept. App. Div. order of 8/23/17; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right, and whether any other basis exists for an appeal as of right;

Habeas Corpus--Challenge to Appellate Division order denying petitioner's motion for a final determination of a habeas corpus proceeding; alleged illegal detention and violation of petitioner's due process rights;

App. Div. denied petitioner's motion for a final determination of a habeas corpus proceeding pursuant to CPLR 7010.