



*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

October 13, 2023 through October 19, 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.

FLANDERS v GOODFELLOW:

4th Dept. App. Div. order of 4/28/23; affirmance, leave to appeal granted by the Court of Appeals, 9/21/23;

Animals—Liability and Animal Bite—Whether plaintiff demonstrated material issues of fact with respect to defendants' knowledge of their dog's vicious propensities; whether the courts below properly granted summary judgment on plaintiff's negligence cause of action for injuries caused by a domestic animal; Supreme Court, Onondaga County, granted motion of defendants for summary judgment and dismissed the complaint; App. Div. affirmed.

LIVELY, (EUGENE L.), PEOPLE v:

4th Dept. App. Div. order of 7/28/23; affirmance; leave to appeal granted by Bannister, J., 10/10/23;

Crimes—Unlawful Search and Seizure—Whether warrantless search of defendant's person and residence by parole officer was unreasonable and in violation of the Fourth Amendment;

County Court, Jefferson County, convicted defendant upon a nonjury trial of criminal possession of a controlled substance in the third degree; App. Div. affirmed.

MATTER OF SMITH v PELAGALLI:

3rd Dept. App. Div. order of 10/10/23; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Dismissal and Nonsuit;

App. Div. granted motion to dismiss proceeding for failure to state a cause of action.

MATTER OF SMITH v PELAGALLI:

3rd Dept. App. Div. paper, Individual Judge, 10/10/23; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Motions and Orders—Order to Show Cause;

Individual Justice of the App. Div. declined to sign order to show cause.

VAUGHN (DAVID), PEOPLE v:

2nd Dept. App. Div. order of 6/14/23; affirmance; leave to appeal granted by Rivera, J., 9/28/23;

Crimes—Identification of Defendant—Whether Supreme Court abused its discretion by limiting the defense expert's testimony regarding certain factors affecting the reliability of eyewitness identifications; whether the People presented sufficient corroborating evidence connecting the defendant to the crime to obviate the need for an additional inquiry;

Supreme Court, Kings County, convicted defendant of robbery in the first degree and burglary in the second degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.