

COURT OF APPEALS NEW FILINGS

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

October 27, 2017 through November 2, 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.

BERREZUETTA (STEVEN), PEOPLE v:

App. Term , 1st Dept. order of 5/12/17; affirmance; leave to appeal granted by DiFiore, Ch.J., 10/25/17; Rule 500.11 review pending;

Crimes--Possession of a Weapon--Whether information charging defendant with attempted criminal possession of a weapon in the fourth degree was jurisdictionally defective where it alleged that defendant possessed a switchblade that opened by means of a button located in the blade of the knife, as opposed to the handle of the knife; legal sufficiency of the evidence presented at trial; Penal Law 265.00(4);

Criminal Court of the City of New York, New York County, convicted defendant of attempted criminal possession of a weapon in the fourth degree and possession of a weapon or dangerous instrument within the Transit Authority, and imposed sentence; App. Term affirmed.

CHRISTIE, MATTER OF v ANNUCCI &c.:

3RD Dept. App. Div. order of 8/3/17; confirmation of determination; sua sponte examination whether any jurisdictional basis exists for an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--Petitioner's right to access certain information regarding evidence testing apparatus; application of 7 NYCRR 1020.4, 1020.5; alleged due process violation;

Supreme Court, Sullivan County, transferred the CPLR article 78 proceeding to the App. Div., Third Dept.; App. Div. confirmed the determination finding petitioner guilty of violating a prison disciplinary rule.

GATES (RICKY D.), PEOPLE v:

4TH Dept. App. Div. order of 7/7/17; reversal; leave to appeal granted by Winslow, J., 9/29/17; Rule 500.11 review pending; Crimes--Appeal--Whether defendant is precluded from challenging on appeal oral order denying suppression; defendant did not request that suppression ruling be memorialized in writing; suppression--whether state trooper had a founded suspicion of criminality so as to justify trooper's level two common-law inquiry under People v DeBour (40 NY2d 210 [1985]);

County Court, Jefferson County, convicted defendant, upon a guilty plea, of possessing or transporting 30,000 or more unstamped cigarettes, in violation of Tax Law § 1814(c)(2); App. Div. reversed, vacated defendant's guilty plea, granted that part of the omnibus motion seeking to suppress physical evidence and statements, dismissed the indictment, and remitted the matter to Jefferson County Court for proceedings pursuant to CPL 470.45.

SADOWSKI v HARMON:

2ND Dept. App. Div. order of 9/15/17; grant of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Liens--Foreclosure--Alleged constitutional violations and improper conduct of public servants;

Supreme Court, Nassau County, dismissed the action; App. Div. among other things, granted plaintiff's motion to enlarge the time to perfect the appeal and denied defendant's cross motion to dismiss the appeal for failure to timely perfect.