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COURT OF APPEALS NEW FILINGS

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

November 2, 2018 through November 8, 2018

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.

ANONYMOUS, PEOPLE v:
1ST Dept. App. Div. order of 5/1/18; affirmance; leave to appeal granted by DiFiore, Ch.J., 10/24/18;
Crimes--Sealing of Records--Whether prosecution was entitled, pursuant to CPL 160.50 (1)(d)(ii), to an order unsealing record for the purpose of making sentencing recommendation; prosecution sought to have sentencing court consider defendant's testimony from another criminal case where defendant admitted to engaging in illegal activity, which was a violation of his plea agreement; if unsealing was improper, whether defendant is entitled to resentencing;
Supreme Court, New York County, convicted defendant, upon a guilty plea, of criminal possession of a controlled substance in the fourth degree, and sentenced defendant, as a second violent felony offender, to a term of eight years; App. Div. affirmed.

BURSCH, MATTER OF v PURCHASE COLLEGE OF THE STATE UNIVERSITY OF NEW YORK, et al.:
2ND Dept. App. Div. judgment of 9/19/18; confirmed determination; Rule 500.11 review pending;
Colleges and Universities--Disciplinary Proceedings--Whether respondent violated petitioner's right to due process or abused its discretion in denying petitioner's request for a three-hour adjournment of the disciplinary hearing so that petitioner's attorney could attend;
App. Div. confirmed respondent's 10/17/14 determination, denied the petition and dismissed the proceeding.

PENDELL (PERRY), PEOPLE v:
3RD Dept. App. Div. order of 8/23/18; modification; leave to appeal granted by Clark, J., 10/23/18; Rule 500.11 review pending;
Crimes--Verdict--Sufficiency of Evidence--Whether the convictions were supported by legally sufficient evidence; evidence--whether the trial court erroneously admitted photographic exhibits into evidence; whether a proper foundation was proffered validating the authenticity of the photographs;
County Court, Columbia County, convicted defendant of 9 counts of rape in the second degree, criminal sexual act in the second degree, four counts of possessing a sexual performance by a child, and criminal solicitation in the second degree; App. Div. modified by reversing defendant's convictions of possessing a sexual performance by a child under counts 21, 22 and 27 of indictment No. 13-017, dismissed said counts and vacated the sentences imposed thereon, and as so modified, affirmed.

SCHOONMAKER, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES:
2ND Dept. App. Div. order of 10/3/18; confirmed determination, with dissents; Rule 500.11 review pending;
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceeding to review determination of the New York State Department of Motor Vehicles Administrative Appeals Board affirming a determination of the administrative law judge which found that petitioner refused to submit to a chemical test in violation of Vehicle and Traffic Law § 1194 and revoked his driver's license; whether there was probable cause to stop the vehicle based on tire crossing the "fog line" on the shoulder of the road; breathalyzer test;
App. Div. confirmed the determination, denied the petition, dismissed the proceeding on the merits, and vacated the App. Div.'s stay of revocation of petitioner's driver's license.