

COURT OF APPEALS NEW FILINGS

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

November 13, 2015 through November 19, 2015

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.

FOR THE PEOPLE THEATERS v CITY OF NEW YORK; TEN'S CABARET v CITY OF NEW YORK:

1ST Dept. App. Div. order of 7/21/15; affirmance with a two-Justice dissent; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the two-Justice dissent at the App. Div. is on a question of law;

CONSTITUTIONAL LAW - FREEDOM OF SPEECH - ZONING AMENDMENTS
RESTRICTING ADULT ESTABLISHMENTS - CHALLENGE TO 2001 AMENDMENTS
TO NEW YORK CITY ZONING RESOLUTION § 12-10 - WHETHER THE
APPELLATE DIVISION APPLIED AN IMPROPER STANDARD OF REVIEW IN
DETERMINING WHETHER CITY MET ITS BURDEN OF PROOF - ALLEGED
IMPROPER RECONSIDERATION OF NEGATIVE SECONDARY EFFECTS;

Supreme Court, New York County, declared the 2001 amendments to New York City's adult use zoning regulation as to adult eating and drinking establishments and adult video and book stores an unconstitutional violation of the First Amendment and permanently enjoined the City from enforcing the amendments; App. Div. affirmed.

JAMES (KENYATTA), PEOPLE v:

2ND Dept. App. Div. order of 5/6/15; reversal; sua sponte examination whether the App. Div. order of reversal "was on the law alone or upon the law and such facts which, but for the determination of law, would not have led to reversal";

CRIMES - IDENTIFICATION OF DEFENDANT - SHOWUP - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE SHOWUP IDENTIFICATION WAS UNDULY SUGGESTIVE;

County Court, Orange County, convicted defendant, upon a jury verdict, of robbery in the first degree and criminal possession of a weapon in the third degree, and imposed sentence; App. Div. reversed, granted that branch of the defendant's omnibus motion which was to suppress identification testimony, and ordered a new trial.

JORDAN (RONNELL), PEOPLE v:

2ND Dept. App. Div. order of 2/11/15; affirmance; leave to appeal granted by Abdus-Salaam, J., 10/23/15; Rule 500.11 review pending;

CRIMES - JURORS - SELECTION OF JURY - WHETHER THE TRIAL COURT DISCHARGED POTENTIAL JURORS BASED UPON HARDSHIP WITHOUT CONDUCTING A SUFFICIENT INQUIRY - ALLEGED MODE OF PROCEEDINGS ERROR;

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

JUAN P., MATTER OF:

2ND Dept. App. Div. order of 9/30/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

INFANTS - JUVENILE DELINQUENTS - ALLEGED DUE PROCESS VIOLATION - BURDEN OF PROOF - WHETHER FAMILY COURT ERRED IN USING A PREPONDERANCE OF THE EVIDENCE STANDARD IN THIS JUVENILE DELINQUENCY PROCEEDING; EVIDENCE - HEARSAY EVIDENCE - WHETHER FAMILY COURT ERRED IN ADMITTING HEARSAY EVIDENCE;

Family Court, Kings County, adjudicated Juan P. a juvenile delinquent and placed him in the custody of the New York State Office of Children and Family Services for a period of three years; App. Div. affirmed.

WATSON, et al. v STATE OF NEW YORK (TWO APPEALS):

Court of Claims orders of 10/22/15 and 10/14/15; dismissals of claims; sua sponte examination whether there is any basis for the appeals as of right from the Court of Claims orders entered 10/14/15 and 10/22/15;

STATE - CLAIM AGAINST STATE - DISMISSAL OF CLAIMS BY COURT OF CLAIMS;

Court of Claims dismissed claim numbers 125779 and 126184.

WRIGHT (GARY), PEOPLE v:

3RD Dept. App. Div. order of 6/11/15; affirmance; leave to appeal granted by Fahey, J., 11/4/15;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ACTUAL OR POTENTIAL CONFLICT OF INTEREST - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT (1) DEFENDANT FAILED TO SHOW THAT AN ACTUAL CONFLICT OF INTEREST EXISTED BETWEEN HIS DEFENSE COUNSEL AND THE ALBANY COUNTY DISTRICT ATTORNEY, WHOSE OFFICE WAS PROSECUTING DEFENDANT, (2) EVEN ASSUMING THE EXISTENCE OF A POTENTIAL CONFLICT OF INTEREST, DEFENDANT FAILED TO SHOW THAT ANY SUCH CONFLICT OPERATED ON HIS DEFENSE, AND (3) COUNTY COURT WAS NOT REQUIRED TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE IN ANY FURTHER PROCEEDINGS THAT MAY OCCUR IN THIS CASE; EFFECT OF DISTRICT ATTORNEY'S FAILURE TO FILE AN AFFIDAVIT IN RESPONSE TO DEFENDANT'S CPL 440 MOTION;

County Court, Albany County, among other things, denied, without a hearing, defendant's motion pursuant to CPL 440.10 to vacate the judgment convicting him of attempted rape in the first degree and two counts of sexual abuse in the first degree; App. Div. affirmed.