

COURT OF APPEALS NEW FILINGS

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

November 10, 2017 through November 16, 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.

CANGRO v PARK SOUTH TOWERS ASSOCIATES, et al.:

1ST Dept. App. Div. order of 10/12/17; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; Dismissal and Nonsuit--Dismissal of Complaint--Claims dismissed based on res judicata, untimeliness, and failure to plead with requisite particularity; sanctions against plaintiff; Supreme Court, New York County, granted defendants' motion to dismiss the complaint and for monetary sanctions; App. Div. affirmed.

ERIE INSURANCE EXCHANGE v J.M. PEREIRA & SONS, INC., et al.:

4TH Dept. App. Div. order of 6/30/17; affirmance; leave to appeal granted by App. Div., 9/29/17; Rule 500.11 review pending; Insurance--Duty to Defend and Indemnify--Whether summary judgment was properly denied to plaintiff--whether plaintiff failed to establish, as a matter of law, that a certain exception to Exclusion G in the subject business catastrophe liability policy does not apply--commercial liability umbrella coverage--exhaustion of underlying policy coverage; summary judgment; Supreme Court, Monroe County, insofar as appealed from, denied plaintiff's motion for summary judgment; App. Div. affirmed.

LEVY, MATTER OF v JAFFEE, et al.:

1ST Dept. App. Div. judgment of 9/26/17; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; Proceeding Against Body or Officer--Prohibition--Supreme Court Justice declined to sign order to show cause; claimed due process violations; App. Div. denied the CPLR article 78 application, and dismissed the petition.

RICART (DOMINGO), PEOPLE v:

1ST Dept. App. Div. order of 8/1/17; reversal; leave to appeal granted by Webber, J., 10/3/17; Rule 500.11 review pending and sua sponte examination of whether the Appellate Division 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" (CPL 450.90 [2][a]); Crimes--Right to Speedy Trial--Whether the motion court properly denied defendant's speedy trial motion; motion court determined that People failed to exercise due diligence in making witness available for trial and that exceptional circumstances therefore did not exist under CPL 30.30(4)(g); Supreme Court, New York County, convicted defendant of attempted murder in the second degree and assault in the first degree, and imposed sentence; App. Div. reversed, granted defendant's CPL 30.30 motion and dismissed the indictment.

SANABRIA (RAFAEL), PEOPLE v:

1ST Dept. App. Div. order of 6/1/17; affirmance; leave to appeal granted by Manzanet-Daniels, J., 9/28/17; Rule 500.11 review pending; Crimes--Evidence--Whether trial court improperly infringed on defendant's ability to present a defense by limiting defendant's expert's testimony; right to counsel--effective representation--whether defendant received the effective assistance of counsel; counsel referred to defendant's prior "sexual incident" during voir dire and failed to fully redact references to defendant's prior sexual assault conviction from

defense exhibits; jurors--whether trial court abused its discretion in refusing to conduct an inquiry into whether a highly publicized mass murder committed by a mentally ill man during the trial affected jurors' ability to serve; Supreme Court, New York County, convicted defendant, upon a jury verdict, of robbery in the first degree, and sentenced him, as a second violent felony offender, to a term of 10 years; App. Div. affirmed.

SHEPHERD, MATTER OF v ANNUCCI, &c.:

3RD Dept. App. Div. judgment of 9/21/17; confirmation of determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--Whether prisoner was denied the right to call witnesses and consult with an attorney; whether prisoner's employee assistant was inadequate; compliance with regulations concerning urinalysis testing; alleged due process violations;

App. Div. confirmed a determination finding petitioner guilty of violating a prison disciplinary rule, and dismissed the CPLR article 78 petition.

XOCHIMITL (OMAR), PEOPLE v:

2ND Dept. App. Div. order of 2/1/17; affirmance; leave to appeal granted by Barros, J., 10/12/17; Rule 500.11 review pending;

Crimes--Suppression Hearing-- Warrantless entry into suspect's home; whether the People established that elderly female relative, who lived in subject apartment with defendant, voluntarily consented to the police's entry into the apartment by opening the door and stepping aside in response to the officers' request to enter;

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