

June 2019

NEW FILINGS DIGEST - QUARTERLY UPDATE

This report lists, by title and subject matter, appeals pending as of June 30, 2019. The appeals were previously published as "Court of Appeals New Filings."

Contact the Clerk's Office for additional information on pending appeals.

ADIRONDACK WILD: FRIENDS OF THE FOREST PRESERVE et al., MATTER OF v NEW YORK STATE ADIRONDACK PARK AGENCY et al.:

Environmental Conservation--Judicial Review--in CPLR article 78 proceeding challenging Department of Environmental Conservation's approval of Essex Chain Lakes Complex Unit Management Plan, whether certain causes of action were ripe for judicial review; whether a rational basis exists for the determination of the Department of Environmental Conservation that the Wild, Scenic and Recreational Rivers System Act permits establishment of snowmobile trail on a road that is located in a wild river area; whether Supreme Court properly dismissed the fourth cause of action on the basis that respondents are not bound by guidance document for the siting, construction and maintenance of snowmobile trails that was adopted by Department of Environmental Conservation in 2009.

ALLENDE (MARCELINO), PEOPLE v:

Crimes--Robbery--Whether defendant may be convicted of first-degree robbery under Penal Law § 160.15(4) where a witness to the crime, but not the victim, observes defendant display what appears to be a firearm.

ALSTON (RICKEY), PEOPLE v:

Crimes--Arraignment--Whether trial court's failure to follow procedure set forth in CPL 200.60 was harmless error; trial court required defendant to decide, prior to jury selection, whether to admit his prior conviction; Evidence--Whether trial court providently exercised its discretion in admitting a cell phone video recording of a restaurant's surveillance videotape; Sentence--Whether defendant was properly adjudicated a second felony offender based on a Washington D.C. drug conviction.

ALTAMIRANO (MAURICIO), PEOPLE v:

Crimes--Instructions--Whether defendant was denied the right to a fair trial when the trial court provided the jury with a charge on the defense of temporary and innocent possession of a weapon without first informing counsel and without permitting counsel to reopen his summation; whether harmless error analysis applies.

AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY v ALLIED CAPITAL CORPORATION, et al.:

Arbitration--Award in Excess of Arbitrator's Powers--Whether the arbitration panel exceeded its authority when it reconsidered the partial final award it had previously issued--common law doctrine of functus officio; arbitration proceeding arising out of litigation involving an insurance claim payment; summary judgment.

ANONYMOUS, PEOPLE v:

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.

MATTER OF ANONYMOUS:

Attorney and Client--Disciplinary Proceedings--Appellate Division order denying motion to vacate disbarment order.

ATES, MATTER OF v CRECCA, &c., et al.:

Proceeding against Body or Officer--Prohibition.

BADJI (FREDERIC), PEOPLE v:

Crimes--Larceny--Whether a defendant may be convicted of grand larceny based on the theft of the victim's credit card where the People present proof that defendant used victim's credit card number to make purchases but did not possess the physical credit card; Crimes--Identification of Defendant--Whether the trial court properly admitted non-eyewitness testimony regarding identification of defendant; Crimes--Evidence--Whether best evidence rule applies to video stills where the People did not introduce video surveillance tape from which the video stills were taken.

BATTICKS (JONATHAN), PEOPLE v:

Crimes--Jurors--Challenge to trial court's handling of situation involving juror who made an outburst during cross-examination of a witness by co-defendant's counsel--whether trial court erred in failing to conduct an inquiry of the juror pursuant to People v Buford (69 NY2d 290).

BILAL (RASHID), PEOPLE v:

Crimes--Unlawful Search and Seizure--Whether police had reasonable suspicion to justify a police pursuit; defendant, whose companion matched general description of perpetrator in a shooting, fled when approached by police; whether gun discarded by defendant during police pursuit was voluntarily abandoned by defendant.

BILL BIRDS, INC., et al. v STEIN LAW FIRM, P.C. et al.:

Attorney and Client--Misconduct by Attorney--Whether plaintiffs raised a triable issue of fact on their claim alleging a violation of Judiciary Law § 487; plaintiffs alleged that defendants engaged in a pattern of legal delinquency.

BOHLEN, MATTER OF v DiNAPOLI:

Civil Service--Retirement and Pension Benefits--Whether New York State Retirement System properly excluded longevity allowance payments from petitioners' final average salaries in calculating retirement benefits; application of Retirement and Social Security Law § 431.

MATTER OF PUAH B., et al., &c.:

Parent, Child and Family--Abused or Neglected Child--Whether a preponderance of the evidence supports Family Court's finding of educational neglect as to mother's two older children and derivative neglect as to the younger children.

BRITO v GOMEZ et al.:

Disclosure--Scope of Disclosure--Whether plaintiff in personal injury action who makes a claim for lost earnings and loss of enjoyment of life waives the physician-patient privilege only with respect to personal injuries affirmatively placed in controversy, and not with respect to prior injuries not raised in the lawsuit; plaintiff's bill of particulars alleged injuries only to her cervical spine, lumbar spine, and left shoulder, but defendants sought discovery relating to prior knee injuries.

BRITT (CLINTON), PEOPLE v:

Crimes--Possession of Forged Instrument--Defendant's possession of counterfeit bills in public—whether there was legally sufficient evidence of defendant's "intent to defraud, deceive or injure another," as required by Penal Law § 170.30 for criminal possession of a forged instrument in the first degree; suspect's running away compared to "active flight".

BROWN, PEOPLE ex rel. v CAPRA:

Habeas Corpus--Denial of application for writ of habeas corpus.

CAJIGAS, MATTER OF v STANFORD &c.:

Crimes--Sex Offenders--Whether petitioner is subject to Executive Law § 259-c(14) , which prohibits certain inmates being released from custody from knowingly entering into or upon any school-grounds; petitioner, a level three sex offender, was serving a sentence for an offense not enumerated in section 259-c prior to his release from custody.

CAYUGA NATION, &c. v CAMPBELL, et al.:

Native Americans--Internal Tribal Affairs--Dispute over which of two competing factions should have control as the lawful governing body of the Cayuga Nation, a sovereign Indian Nation; subject matter jurisdiction--whether determination of the controversy is beyond the authority of the courts of New York as usurping the sovereign right of the people of the Cayuga Nation to determine their own leadership.

CENTI v McGILLIN:

Contracts--Illegal Contracts--Dispute over money accumulated from illegal bookmaking business--whether loan agreement involving funds is enforceable.

CHEN v INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA:

Contracts--Waiver--Whether excess insurer defendant waived argument relating to its obligation to cover interest on personal injury judgment; Motions--Reargument or Renewal--Whether Supreme Court properly granted reargument to consider interest issue; Insurance--Construction of Policy--Whether Supreme Court properly interpreted excess insurance policy.

CITY OF NEW YORK v TRI-RAIL CONSTRUCTION, INC., et al.:

Parties--Capacity to Sue--Whether plaintiff City of New York has capacity to sue for negligent destruction of property; City sought money damages for injury to trees caused by defendants.

CNH DIVERSIFIED OPPORTUNITIES MASTER ACCOUNT, L.P. v CLEVELAND UNLIMITED, INC.:

Secured Transactions--Security Agreements--Whether Supreme Court properly dismissed plaintiffs' breach of contract claim based on parties' indenture, which tracked the language of section 316(b) of the Trust Indenture Act of 1939 (15 USC § 77ppp[b]) and provided that bondholder's right to receive payment or to bring enforcement suit shall not be impaired without holder's consent; whether collateral trustee was authorized to pursue default remedy of strict foreclosure.

COLLAZO, et al. v NETHERLAND PROPERTY ASSETS LLC, et al.:

Landlord and Tenant--Rent--Tenants' claims of rent overcharge by landlord allegedly taking advantage of luxury decontrol provisions of the Rent Stabilization Law while simultaneously receiving tax incentives under the City of New York's J-51 program—whether Supreme Court abused its discretion in determining that most of plaintiffs' claims were within the specialized expertise of the New York State Division of Housing and Community Renewal and dismissing those claims under the primary jurisdiction doctrine.

COLON v MARTIN:

Municipal Corporations--Examination of Claims--Whether Supreme Court properly dismissed plaintiffs' complaint for failure to comply with General Municipal Law § 50-h; plaintiffs demanded that each plaintiff be permitted to be present while other testified at § 50-h hearing and municipal defendants refused, resulting in § 50-h hearing not being conducted; whether General Municipal Law § 50-h permits municipal defendants to exclude one claimant from the examination of another claimant.

COOK (TYRELL), PEOPLE v:

Crimes--Suppression Hearing--Whether trial court properly reopened a suppression hearing, before rendering a decision, to permit the People to call an officer with additional information tending to establish reasonable suspicion for defendant's detention; Legal Sufficiency—whether the evidence was legally sufficient to establish that the victim suffered a physical injury; Right to a Fair Trial—whether defendant was denied his right to a fair trial based on alleged juror misconduct.

CUBERO (MICHAEL), PEOPLE v:

Crimes--Appeal--Preservation of constitutional challenge to statute creating Justice Center for the Protection of People with Special Needs; whether Appellate Division, pursuant to its interest of justice jurisdiction or by its inherent authority, may remit matter for further factual findings as to whether Special Prosecutor acted with consent of District Attorney; crimes—right to counsel—effective representation—whether defendant's counsel was ineffective for failing to raise constitutional argument challenging authority of Special Prosecutor.

SAMUEL D., MATTER OF v MID-HUDSON FORENSIC PSYCHIATRIC CENTER:

Incapacitated and Mentally Disabled Persons--Involuntary Administration of Drug--Whether nondurational order authorizing the involuntary administration of medication to patient at secure psychiatric facility violates the due process clause.

TOWN OF DELAWARE v LEIFER, &c.:

Municipal Corporations--Zoning--Variance--Action by town to enjoin defendant landowner from holding outdoor festival on his land without applying for a use variance—whether the outdoor festival with presentation of music falls within the zoning code definition of a “theater” prohibited in the town’s Rural District; claimed violations of defendant’s First Amendment rights.

DELEON (OMAR), PEOPLE v:

Crimes--Larceny--Whether evidence before grand jury was sufficient to support the charges of attempted grand larceny in the third and fourth degrees; defendant placed “fishing device” in mailbox into which joint police-postal service task force had inserted more than \$3000 in money orders; no evidence presented as to the value of the mail defendant attempted to remove.

DELORBE (JOSE), PEOPLE v:

Crimes--Plea of Guilty--Whether defendant was required to preserve Peque claim (see People v Peque, 22 NY3d 168 [2013]) where defendant was served with a notice of immigration consequences form at arraignment; crimes--vacatur of judgment of conviction--whether Supreme Court properly denied defendant’s CPL 440.10 motion without a hearing.

DEL ROSARIO (SERGIO), PEOPLE v:

Crimes--Sex Offenders--Sex Offender Registration Act--Level Two Sex Offender--Upward Departure--Whether the courts below erred in concluding that defendant’s familial relationship with the victim was an aggravating circumstance not adequately taken into account by the Risk Assessment Instrument and provided a basis to upwardly depart from the presumptive risk level.

DEUTSCHE BANK NATIONAL TRUST COMPANY v BARCLAYS BANK;DEUTSCHE BANK NATIONAL TRUST v HSBC BANK USA:

Limitations of Actions--What Statute Governs--Whether plaintiff trustee’s breach of contract claims were barred by California’s four-year statute of limitations, pursuant to the borrowing statute of CPLR 202; defendant banks alleged to have breached representations and warranties made in connection with the sale of residential mortgage-backed securities pooled in trust; whether claim accrued in California or New York.

DEUTSCHE BANK NATIONAL TRUST COMPANY, &c. v MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, &c., et al.:

Contracts--Contractual Limitation of Liability--Whether plaintiff sufficiently pleaded gross negligence to render “sole remedy” clauses in parties’ residential mortgage-backed security agreements unenforceable, thereby permitting a claim for compensatory damages; whether plaintiff’s allegations of wrongdoing against it were sufficient to support a demand for punitive damages.

DiLORENZO v WINDERMERE OWNERS LLC, et al.:

Landlord and Tenant--Rent Regulation--Whether defendants, original and successor owner of residential building, substantiated defendants' claims that they made sufficient expenditures for individual apartment improvements, thereby rendering subject apartment exempt from rent stabilization; whether plaintiff waived claim regarding useful life of improvements.

EMERALD INTERNATIONAL HOLDINGS LTD., MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.:

Taxation--Sales and Use Taxes--Proceeding challenging adverse determination by Tax Appeals Tribunal; alleged constitutional violations.

EPIPHANY COMMUNITY NURSERY SCHOOL v LEVEY, et al.:

Limitations of Actions--Fraud--Whether plaintiff's fraud claim, based on defendant's unauthorized transfers from plaintiff's bank account between 2007 and 2013, is time-barred; Pleading--Sufficiency of Pleading--whether complaint sufficiently states a cause of action sounding in fraud.

FORBES (JAMES), PEOPLE v:

Crimes--Evidence--Hearsay Evidence--“Identity” or “modus operandi” exception to the Molineux rule—defendant convicted of two separate theft incidents in one trial--whether his identity in both incidents was “conclusively established” for purposes of the Molineux identity exception to the hearsay rule for admission of evidence of prior bad acts; whether CPL 200.20 eliminates the discretionary analysis by the trial court as to whether the probative value of the evidence outweighs the potential for prejudice to the defendant.

FOSTER-BEY (ELIJAH), PEOPLE v:

Crimes--Evidence--Whether trial court providently exercised its discretion in failing to hold a Frye hearing regarding admission of Low Copy Number DNA testing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; whether admission of DNA evidence violated defendant's right to confront witnesses against him; instructions--whether trial court's Allen charge was coercive.

FRANCIS (GERALD), PEOPLE v:

Crimes--Sentence--Whether CPL 470.15 (1) prevents an intermediate appellate court from reviewing the denial of a defendant's CPL 440.20 motion for resentencing if it finds that the denial of the motion was not "adverse" to defendant; defendant who received an illegally low sentence moved for resentencing with the ultimate intention to withdraw his guilty plea on the basis that it was not knowing and voluntary.

FRANKLIN STREET REALTY CORP., MATTER OF v NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, et al. (AND FOUR OTHER PROCEEDINGS):

Municipal Corporations--Regulation of Billboards--Challenge to determinations of the New York City Environmental Control Board (ECB) which found that petitioners engaged in unauthorized outdoor advertising--buildings displaying signs promoting the law offices of the attorney shareholder of the corporate building owners--whether the ECB's determinations are arbitrary and capricious or contrary to the plain language of the applicable sections of the City Administrative Code.

FREEDOM MORTGAGE CORPORATION v ENGEL, et al.:

Mortgages--Foreclosure--Whether mortgagee's voluntary discontinuance of prior foreclosure action constituted an affirmative act of revocation of its prior election to accelerate the mortgage debt; prior foreclosure action discontinued by so-ordered stipulation, which was silent on issue of revocation of election to accelerate.

GORDON (TYRONE D.), PEOPLE v:

Crimes--Search Warrant--Whether Supreme Court properly granted suppression of physical evidence seized from two vehicles during execution of search warrant that permitted a search of the "entire premises" located at a specific residential address, but did not particularize that a search of the vehicles was permitted.

GREEN (NICOLE), PEOPLE v:

Crimes--Appeal--Waiver of Right to Appeal--Whether defendant knowingly, voluntarily and intelligently waived right to appeal; waiver colloquy inaccurately stated rights defendant was waiving.

HARDY (EDWARD), PEOPLE v:

Crimes--Complaint--Whether local criminal court information can be amended by adding to or altering the factual allegations contained therein; application of CPL 100.45 and People v Easton (307 NY 336, 338 [1954]); date on which crime allegedly took place had not yet occurred when information was filed.

HAIMS, MATTER OF v LEHMANN:

Parent, Child and Family--Custody--Whether maternal aunt demonstrated existence of extraordinary circumstances warranting award of physical custody to her rather than to child's father; whether Family Court erred in awarding joint legal custody of the child to maternal aunt and father; whether Family Court's determination discontinuing father's supervised therapeutic parental access lacked a sound and substantial basis in the record; alleged constitutional violations.

HE (RONG), PEOPLE v:

Crimes--Confession--Whether statement obtained from defendant following a Payton violation (*see* Payton v New York, 455 US 573 [1980]) was sufficiently attenuated from illegal arrest; evidence--whether the People committed a Brady violation (*see* Brady v Maryland, 373 US 83 [1963]) by failing to disclose the contact information of potential witnesses.

HE v TROON MANAGEMENT, et al.:

Negligence--Maintenance of Premises--Whether New York City Administrative Code § 2-710 imposes a nondelegable duty on out-of-possession landlord to keep sidewalk free of ice and snow; commercial lease assigned the duty to clear snow and ice to tenant.

HENRY v HAMILTON EQUITIES, INC., et al.:

Negligence--Maintenance of Premises--Liability of out-of-possession landlords for condition of nursing home premises where plaintiff nurse was injured in a slip and fall incident--whether exception to out-of-possession landlord rule set forth in Putnam v Stout (38 NY2d 607 [1976]) applies where the owner has a duty to repair under its contract with and regulations promulgated by HUD.

HEWITT v PALMER VETERINARY CLINIC, P.C.:

Animals--Knowledge of Vicious Propensity--Whether strict liability rule applies where plaintiff seeks to recover from a defendant who maintained the premises where the injury occurred but did not own the animal that caused the injury; plaintiff attacked by another patron's dog at defendant veterinarian's office.

HINSHAW (ROBERT), PEOPLE v:

Crimes--Unlawful Search and Seizure--Whether the police had reasonable suspicion to stop defendant's vehicle; officer checked Department of Motor Vehicles (DMV) computer records for the vehicle's license plate number, which revealed that he car had been impounded and therefore should have been located on an impound lot; DMV report stated that it "should not be treated as a stolen vehicle hit" and "[n]o further action should be taken based solely upon this impounded response."

HOLZ (DAVID M.), PEOPLE v:

Crimes--Appeal--Whether Supreme Court's denial of suppression of evidence relating to a burglary count to which defendant did not plead guilty was reviewable on appeal from a judgment rendered on separate burglary count charged in the same indictment; application of CPL 710.70(2).

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION v CALIGURI, &c.:

Mortgages--Foreclosures--Whether plaintiff mortgagee established standing in foreclosure action; plaintiff attached to summons and complaint a copy of consolidated note, which bore an endorsement in blank from original lender; defendant demanded inspection of original note; Whether second foreclosure action was barred by res judicata; Whether Supreme Court erred in not transferring foreclosure action to Justice who dismissed plaintiff's earlier foreclosure action.

KLEIN v KLEIN:

Appeals--Appealable paper--Whether an appeal lies from an order to show cause signed by an individual Justice of the Appellate Division.

KRUG, MATTER OF v CITY OF BUFFALO:

Proceeding Against Body or Officer--CPLR article 78 proceeding to annul respondent's denial of petitioner's request to be defended in a civil action alleging that petitioner police officer assaulted a civilian; whether the denial of petitioner's request for a defense was arbitrary and capricious; whether conduct occurred while petitioner was acting within the scope of his public employment or duties.

LANG (DAVID R.), PEOPLE v:

Crimes--Disclosure--Whether defendant was entitled to a curative instruction where the police failed to conduct a timely blood alcohol level test; jurors--discharge of juror--whether the trial court engaged in reasonably thorough inquiry prior to discharging sworn juror; argument and conduct of counsel-- whether prosecutor's comments during summation deprived defendant of a fair trial.

LANG (STORM U.), a/k/a STORM U.J. LANG, a/k/a STORM LANG, PEOPLE v:

Crimes--Appeal--Whether defendant's waiver of the right to appeal was valid; Crimes--Sentence--Youthful Offender--whether defendant waived or forfeited his right to challenge sentencing court's denial of youthful offender status.

LANIOX v CITY OF NEW YORK:

Negligence--Maintenance of Premises--Whether plaintiff raised an issue of fact as to whether assailant was an intruder, rather than tenant or invitee, in building where plaintiff was attacked.

LeCLAIR, MATTER OF v FERGUSON et al.; FERGUSON, MATTER OF v LeCLAIR et al.:

Parent, Family and Child--Visitation--Visitation Rights of Grandparents--alleged constitutional violations.

LeCLAIR, MATTER OF v WAIT &c.:

Proceeding Against Body or Officer--When Remedy Available--Article 78 proceeding against Family Court Judge; alleged constitutional violations.

LEGGIO, MATTER OF v DEVINE:

Social Services--Food Stamp Allowance--Whether Suffolk County Department of Social Services properly determined that child support payments for two of petitioner's children, both full-time college students, counted as household income for purposes of determining eligibility for Supplemental Nutrition Assistance Program benefits.

LI (STAN XUHUI), PEOPLE v:

Crimes--Manslaughter--Whether legally sufficient evidence supports defendant's convictions for second degree manslaughter; defendant physician prescribed a combination of opioids and alpraxolam to the victims, who overdosed; whether a homicide charge may be based on the sale of a controlled substance; Crimes--Reckless Endangerment—whether legally sufficient evidence exists that defendant's prescribing practices placed patients at imminent risk of death.

PEOPLE v J. L. (ANONYMOUS):

Crimes--Possession of Weapon--Whether trial court erred in declining defendant's request to instruct the jury that voluntariness is an element of the charged criminal possession of a weapon; suppression of physical evidence--whether trial court erred in denying defendant's motion to suppress firearm and marijuana evidence found when police entered apartment where defendant's blood trail lead; alleged prosecutorial misconduct in summation to jury.

LUBONTY v U.S. BANK NATIONAL ASSOCIATION, &c.:

Mortgages--Foreclosure--Whether six-year statute of limitations for defendant's foreclosure action was tolled pursuant to CPLR 204(a) because of plaintiff's two bankruptcy filings, which invoked the automatic stay under 11 USC § 362(a); limitation of actions; RPAPL 1501(4) action to cancel and discharge mortgage on real property.

LYNCH, &c., et al. v CITY OF NEW YORK, et al.:

Civil Service--Retirement and Pension Benefits--Whether police officers employed by the New York City Police Department who are tier 3 and tier 3 revised plan members of the New York City Police Pension Fund are eligible for the child care leave credit set forth in Administrative Code § 13-218(h); summary judgment; declaratory judgment.

MADDICKS v BIG CITY PROPERTIES:

Landlord and Tenant--Rent Regulation--Whether pre-answer dismissal regarding class action allegations was premature; putative class of rent-stabilized tenants alleged that defendants engaged in systematic effort to avoid compliance with rent-stabilization law; whether Supreme Court's sua sponte dismissal of complaint based on arguments not raised by defendants was improper.

MAFFEI (ROBERT), PEOPLE v:

Crimes--Right to Counsel--Effective Representation--Whether counsel's failure to challenge a juror who stated he was not certain he could be impartial deprived defendant of the effective assistance of counsel; whether defendant raised a "mixed claim" of ineffective assistance of counsel that should have been raised in a CPL 440.10 motion rather than on direct appeal.

MAIRENA (DAVID), PEOPLE v:

Crimes--Justification--Whether trial court erred by informing the parties, prior to summations, that it would instruct the jury on the specific instrumentality of death in its charge of manslaughter in the first degree, and then failing to include that language in its charge following summations; whether harmless error applies to the alleged error.

MANCUSO, &c. v KALEIDA HEALTH, &c.:

Contribution--Apportionment of Liability among Joint Tortfeasors--Whether Supreme Court properly precluded defendant from asserting CPLR article 16 defense at trial; defendant hospital, which treated decedent before her death, sought to introduce evidence of fault of third-party defendants, rehabilitation centers where decedent was treated after her release from the hospital.

MANKO v LENOX HILL ANESTHESIOLOGY, PLLC, et al.:

Appeal--Appealable Paper--Appellate Division order denying motion to vacate or, in the alternative, for leave to appeal.

McCULLUM (RAMEE), PEOPLE v:

Crimes--Possession of Weapon--Whether a defendant maintains a reasonable expectation of privacy in goods bailed as the result of a landlord's "legal possession" of an apartment, sufficient to establish standing to challenge a search under the Fourth Amendment of the United States Constitution--whether, where the People and the court both commit an error of fact, the defendant is justified in relying on that error for purposes of preservation of an argument.

McCURDY, PEOPLE ex rel. v WARDEN:

Crimes--Sex Offenders--Whether Department of Corrections and Community Supervision had authority to place a level three sex offender who already completed more than six months of postrelease supervision into Residential Treatment Facility where sex offender was unable to locate housing compliant with the Sexual Assault Reform Act; application of Penal Law § 70.45(3), Correction Law § 73(10), Executive Law § 259-c(14).

MEYERS (VINCENT), PEOPLE v:

Crimes--Trial--Jury Notes--Whether trial court failed to comply with CPL 310.30 and People v O'Rama requirements with regard to note from the jury belatedly discovered in the court file--whether there was a mode of proceedings error; whether verdict was against the weight of the evidence; whether there was ineffective assistance of counsel regarding a suppression hearing.

MIDDLETON (DONNA), PEOPLE v:

Crimes--Official Misconduct--Whether the information sufficiently established the "intent to obtain a benefit" element of Penal Law § 195.00 (1)--whether the acts charged fell outside defendant's "official duties"; prisons and prisoners.

MONFORTE (JONATHAN), PEOPLE v:

Crimes--Indictment--Whether defendant's prosecution by superior court information was jurisdictionally defective; defendant, who was charged by felony complaint with murder in the second degree, consented to being prosecuted by superior court information charging manslaughter in the first degree; Right to Counsel--Effective Representation--whether defendant was denied the effective assistance of counsel.

MSK REALTY INTERESTS, LLC, MATTER OF v DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK:

Taxation--Real Property Tax--Whether respondent Department of Finance of the City of New York properly determined that the term "primary residence" in RPTL 467-a refers to the dwelling place of individuals and does not apply to corporations, LLC partnerships, or other entities; Constitutional Law--Due Process of Law--whether restoration of petitioner's erroneously abated taxes violated its due process rights.

MUHAMMAD (ZHAKARIYYA), PEOPLE v:

Jury--Deliberations--Whether trial court's responses to notes sent by the jury were coercive; trial court repeated Allen charge it had given preceding day without providing additional guidance requested by jury and granted jury's request for more time to deliberate without addressing scheduling conflicts raised in jury note.

NATIONAL FUEL GAS SUPPLY CORP., MATTER OF v SCHUECKLER et al.:

Eminent Domain--Exemption from Public Hearing--Whether petitioner natural gas company held qualifying federal permit under Eminent Domain Procedure Law (EDPL) 206(A), thereby exempting it from standard hearing and findings procedure of EDPL article 2; Federal Energy Regulatory Commission granted petitioner's application for a certificate of public convenience and necessity to construct 97-mile natural gas pipeline across respondents' land, but State Department of Environmental Conservation denied petitioner's application for water quality certification (WQC); federal certificate of public convenience allowed construction of pipeline subject to various conditions, including State's issuance of WQC.

NEGRON, PEOPLE ex rel. v SUPERINTENDENT, WOODBOURNE
CORRECTIONAL FACILITY:

Crimes--Sex Offenders--Whether petitioner is subject to Executive Law § 259-c (14), which prohibits certain inmates being released from custody from knowingly entering into or upon any school grounds; petitioner, a level three sex offender, was serving a sentence for an offense not enumerated in section 259-c prior to his release from custody.

NEULANDER (M. ROBERT), PEOPLE v:

Crimes--Jurors--Misconduct of Jurors--Whether the trial court improperly denied defendant's CPL 330.30 motion to set aside verdict on basis of juror misconduct; during trial, juror exchanged text messages with third parties regarding the trial.

O'DONNELL, MATTER OF v ERIE COUNTY, et al.:

Workers' Compensation--Voluntary Withdrawal from Labor Market--Whether the Appellate Division erred in affirming the Workers' Compensation Board's determination on the basis that an April 2017 amendment to Workers' Compensation Law § 15(3)(w) no longer requires a claimant to demonstrate an ongoing attachment to the labor market.

PAGE (LIMMIA), PEOPLE v:

Crimes--Unlawful Search and Seizure--Whether marine interdiction agent with the U.S. Customs and Border Protection Air and Marine Operations effected a valid citizen's arrest of defendant (CPL 140.30); whether evidence seized as a result of an invalid citizen's arrest is subject to suppression.

PENA (ROBIN), PEOPLE v:

Crimes--Unlawful Search and Seizure--Whether police officer made objectively reasonable mistake of law in stopping defendant's vehicle, which had working brake lights on right and left sides as required by Vehicle and Traffic Law § 375(40)(b), but defective center brake light, which is not a traffic violation.

PEREZ (JOSE), PEOPLE v:

Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Supreme Court erred when it assessed defendant 30 points for purposes of risk factor 9 based on a prior conviction of lewdness in New Jersey--whether prior New Jersey conviction for public lewdness constituted a "misdemeanor sex crime" under New York law.

PETTUS v BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE (INDEX NO. 0260040/2018):

Appeals--Papers appealable.

PETTUS v BOARD OF DIRECTORS (INDEX NO. 2413-18):

Appeal--Matters Appealable.

PETTUS v BOARD OF DIRECTORS et al. (INDEX NO. 260012/2018):

Appeal--Appealable Paper.

PETTUS v BOARD OF DIRECTORS; PETTUS v MAZZOLA:

Appeal--Appealable Paper.

PETTUS v DOUGLAS, et al.:

Appeal--Appealable Paper.

PETTUS v IMPERIAL PARKING SYSTEMS (INDEX NO. 2389-18):

Appeal--Matters Appealable.

PEYTON, MATTER OF v NEW YORK CITY BOARD OF STANDARDS AND APPEALS:

Administrative Law--Collateral Estoppel--Whether doctrine of collateral estoppel barred CPLR article 78 proceeding challenging respondent New York City Board of Standards and Appeals' resolution upholding New York City Department of Buildings' decision granting permit for construction of a nursing home on multiple-building zoning lot where petitioners reside; Municipal Corporations--Zoning--Whether respondent erred in calculating zoning lot's open space ratio by including as open space roof-top garden to which petitioners did not have access.

PLASTIC SURGERY GROUP, P.C., MATTER OF v COMPTROLLER OF THE STATE OF NEW YORK:

Disclosure--Medical Records and Reports--Whether CPLR 3122(a)(2), which generally requires that a subpoena requesting the production of a patient's medical records be accompanied by a written authorization by the patient, applies to a subpoena duces tecum served by the Comptroller during the course of an audit of a medical provider.

POOLER v STATE OF NEW YORK:

State--Claim Against State--Dismissal of claim for failure to appear; alleged constitutional violations.

POWELL (HOWARD), PEOPLE:

Crimes--Witnesses--Whether Supreme Court erred in denying, after a hearing, defendant's motion to present expert testimony on the topic of false confessions.

PRIESTON, PEOPLE ex rel. v NASSAU COUNTY SHERIFF'S DEPARTMENT:

Bail--Bail Bonds--Whether Supreme Court properly disapproved a bail package on the ground that the amount of collateral posted to secure the insurance company bail bond was insufficient.

RADEN, et al. v W 7879, LLC, et al.:

Landlord and Tenant--Rent--Whether look-back period for rent overcharge claim is limited to four years before overcharge complaint is filed; whether defendants engaged in fraud in deregulating apartment and whether deviation from rent stabilization was willful; whether plaintiffs are entitled to treble damages or attorneys' fees.

RAMLALL (GANESH), PEOPLE v:

Crimes--Right to Speedy Trial--Whether a CPL 30.30 dismissal on statutory speedy trial grounds of a misdemeanor charge of driving while intoxicated (Vehicle and Traffic Law § 1192[3]) affects the CPL 30.20 speedy trial analysis of the delays related to the traffic infraction charge of "driving while ability impaired" (Vehicle and Traffic Law § 1192[1]) based on the same underlying conduct.

REICH, et al. v BELNORD PARTNERS, LLC, et al.:

Landlord and Tenant--Rent Regulation--Whether Supreme Court properly dismissed as time-barred plaintiffs' claim for rent overcharges based on defendants' failure to charge rent stabilized rents while receiving J-51 tax benefits.

RESCH, et al. v STATE OF NEW YORK, et al.:

Constitutional Law--Validity of Statute--Whether Vehicle and Traffic Law § 236(2)(d), which provides that hearing examiners of a municipality's parking violations bureau "shall not be considered employees of the city in which the administrative tribunal has been established," is unconstitutional; alleged violations of the due process, equal protection, labor-not-a-commodity, collective bargaining and merit-and-fitness clauses.

R.F. SCHIFFMAN ASSOCIATES, INC., et al. v BAKER & DANIELS, LLP:

Interest--Computation--Whether plaintiffs were entitled to CPLR 5001 prejudgment interest in addition to a late fee of 18% interest per annum, as awarded by prior Appellate Division order; alleged due process and equal protection violations.

RIVERA v STATE OF NEW YORK:

Employment Relations--Respondent Superior--Vicarious Liability--Whether the Court of Claims properly concluded that the State was not vicariously liable for the actions of a corrections officer; whether corrections officer, who assaulted inmate, was acting outside the scope of officer's employment; Pleading--Answer--whether the Court of Claims abused its discretion in allowing State to amend its answer to include affirmative defense.

ROBERTS v CITY OF NEW YORK:

Judgments--Summary Judgment--Whether plaintiff raised triable issues of fact sufficient to defeat summary judgment on claims alleging false arrest and imprisonment, and malicious prosecution; plaintiff arrested and prosecuted for murder for which he was acquitted.

RODRIGUEZ (MANUEL), PEOPLE v:

Crimes--Larceny--Whether evidence was legally sufficient to establish grand larceny in the third degree where defendant exercised dominion and control over proceeds of stolen check, but not over the stolen check itself.

ROUSE (CLARENCE), PEOPLE v:

Crimes--Witnesses--Whether trial court's restriction of cross-examination of a police witness concerning prior bad acts deprived defendant of his right to confrontation; whether the trial judge's denigration of defense counsel in front of the jury deprived defendant of a fair trial; whether trial court properly excluded evidence including 911 recordings; whether the verdict was based on legally sufficient evidence.

SALINAS v WORLD HOUSEWARES PRODUCING CO. LTD., et al.:

Negligence--Products Liability--Whether plaintiff raised a triable issue of fact as to whether a potholder manufactured, distributed and sold by defendants was a proximate cause of burn injuries in an accident involving a home oven; summary judgment--expert affidavits.

MATTER OF SAVITT, A SUSPENDED ATTORNEY:

Attorney and Client--Disciplinary Proceedings--Order suspending attorney from the practice of law for a period of three years; alleged due process violations.

LUIS S., MATTER OF v STATE OF NEW YORK, et al.:

Crimes--Sex Offenders--Proceeding pursuant to Mental Hygiene Law article 10 seeking an order discharging petitioner or releasing him to the community under a regimen of strict and intensive supervision and treatment after service of his sentence for a sex offense--claim by petitioner that reliance on a diagnosis of "Unspecified Paraphilic Disorder" to support a judicial finding of mental abnormality violated his due process rights; whether the finding of mental abnormality was against the weight of the evidence.

SEON, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, et al.:

Administrative Law--Judicial Review--Whether there is substantial evidence in the record to support the determination of the Administrative Law Judge that petitioner, New York City Transit bus driver, failed to exercise due care and that such failure caused pedestrian serious physical injury (Vehicle and Traffic Law § 1146).

SHIEH (LIANG-HOUH), MATTER OF v:

Attorney and Client--Disciplinary Proceedings--Denial of motion to vacate disbarment order.

SIPP (DON P.), PEOPLE v:

Crimes--Evidence--Sufficiency of evidence that victim sustained "a serious physical injury"--failure of trial court to charge the jury on the lesser included offense of assault in the third degree.

MATTER OF SKLAR, AN ATTORNEY:

Attorney and Client--Disciplinary Proceedings--Whether imposition of reciprocal discipline, based on findings of attorney misconduct in California, was proper; alleged due process violations.

SUGAMELE, &c. v THE TOWN OF HEMPSTEAD:

Admiralty--Maritime Action--Whether triable issues of fact exist regarding defendant Town's comparative fault; plaintiffs, passengers on a boat who were injured when boat collided with island, alleged that defendant Town was negligent in the placement and maintenance of buoys marking a channel around the island; claimed governmental immunity.

SUTTON 58 ASSOCIATES, LLC v PILEVSKY et al.:

United States--Federal Preemption--Whether plaintiff's state law claims are preempted by federal law; sole damages sought by plaintiff were losses resulting from the delay of a real estate project due to bankruptcy filing of two nonparty entities.

MATTER OF MARIAN T. (LAUREN R.):

Adoption--Adoption of Adult--Whether Surrogates' Court had discretion to dispense with adult adoptee's consent in adoption proceeding; petitioners commenced proceeding to adopt 64-year-old woman with severe intellectual disabilities, who resided in petitioners' family care home; construction of Domestic Relations Law § 111(1)(a).

MATTER OF MICAH T.:

Parent, Child and Family--Termination of Parental Rights--alleged constitutional violations.

TAYLOR et al. v 72A REALTY ASSOCIATES, L.P., et al.:

Landlord and Tenant--Rent Regulation--Action to recover rent overcharges for apartment leased as exempt from rent regulation while landlord received tax incentives under the City's J-51 program--Whether the Appellate Division erred in recognizing a residential rent overcharge computation starting more than four years before the action was commenced, and failing to dismiss the plaintiffs' claim for treble damages; effect of expiration of landlord's tax exemption/abatement (J-51) status in the 2002/2003 tax year.

THIAM (MOUHAMED), PEOPLE v:

Crimes--Accusatory Instrument--Where a defendant is charged only with misdemeanors or lesser charges in a multi-count accusatory instrument and at least one misdemeanor count is facially sufficient, does the trial court have jurisdiction over the defendant such that it may accept a plea to any count in the accusatory instrument, even those that are facially insufficient--whether a defendant may plead to a misdemeanor that is of an equal or higher grade than the misdemeanor charge that is facially sufficient.

THOMAS (VICTOR), PEOPLE v:

Crimes--Appeal--Waiver of Right to Appeal—whether defendant's waiver of the right to appeal was valid; crimes—confession—whether defendant's statement to police, made after a detective showed defendant an incriminating photograph, was the product of custodial interrogation requiring *Miranda* warnings.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK v D'AGOSTINO SUPERMARKETS, INC.:

Damages--Liquidated Damages--Whether liquidated damages provision of a commercial lease surrender agreement was enforceable.

TSINTZELIS (GEORGE), PEOPLE v:

Crimes--Evidence--DNA Identification Tests--Whether the trial court erred in denying defendant's discovery request pursuant to CPL 240.20(1)(c) for the electronic raw data used to develop his DNA profile; whether the admission of DNA lab reports through the testimony of an analyst who didn't perform or supervise the DNA testing violated defendant's confrontation rights.

UDEKE (SIXTUS), PEOPLE v:

Crimes--Plea of Guilty--Whether guilty plea was knowing and voluntary where trial court told defendant during plea allocution that he would have no right to a jury trial if the

prosecution proceeded on a B misdemeanor, and did not address the issue of a right to jury trial based on his immigrant status and possible deportation upon conviction; retroactivity of People v Suazo decided 11/27/18.

VANYO v BUFFALO POLICE BENEVOLENT ASSOCIATION, INC. et al.:

Limitation of Actions--Claim in Amended Pleading--Action by former police officer alleging improper termination following arbitration conducted pursuant to collective bargaining agreement; whether Supreme Court properly dismissed the first and second causes of action alleged in the amended complaint as time-barred; whether relation-back doctrine of CPL 203(f) applies to the first and second causes of action; dismissal of complaint--whether Supreme Court exceeded its authority in sua sponte dismissing original complaint with prejudice pursuant to CPLR 306-b; whether defendants waived any objection based upon lack of service of the original complaint.

MATTER OF VEGA (POSTMATES INC. et al.):

Unemployment Insurance--Employee or Independent Contractor--Whether claimant, who was engaged as a courier for Postmates Inc., was an employee of the company for unemployment insurance purposes—whether there is substantial evidence of an employer-employee relationship.

VELEZ (JOSE), PEOPLE v:

Crimes--Evidence--DNA Identification Tests--Whether electronic raw data underlying results of DNA test conducted by the New York City Office of the Chief Medical Examiner is discoverable in a criminal proceeding.

WAHAB, MATTER OF v MAPLE CREST GARDEN APARTMENTS, et al.:

Parties--Necessary Parties--In proceeding challenging determination of New York State Division of Human Rights (DHR), whether Supreme Court properly dismissed proceeding based on petitioner's failure to name DHR as a necessary party.

WALL, MATTER OF v ANNUCCI &c.:

Prisons and Prisoners--Challenge to require sex offender treatment program.

WALSH, MATTER OF v NEW YORK STATE COMPTROLLER et al.:

Civil Service--Retirement and Pension Benefits--in CPLR article 78 proceeding challenging the denial of performance of duty disability retirement benefits under Retirement and Social Security Law § 607-c, whether substantial evidence supports the Comptroller's determination that petitioner failed to demonstrate that her injuries were the "natural and proximate result of [] an act of any inmate" within the meaning of section 607-c--injury occurring when inmate impaired by alcohol or drugs fell on petitioner correction officer--involuntary versus deliberate act by inmate.

WHEELER (DAMON), PEOPLE v:

Crimes--Obstructing Governmental Administration--Whether an accusatory instrument asserting a violation of Penal Law § 190.05 must allege sufficient facts, which if true, establish that the underlying governmental function was authorized; facial sufficiency of accusatory instrument; sufficiency of evidence to prove charged offense beyond a reasonable doubt; various claims of violation of due process at trial.

WHITE v ANNUCCI (APP. DIV. NO. 526955):

Appeal--Appealable Paper--Order denying motion for reargument or renewal.

WHITE, MATTER OF v ANNUCCI, &c., et al.:

Prisons and Prisoners--Discipline of Inmates--Claimed due process violations with regard to a tier III disciplinary hearing involving a charge of violating facility correspondence procedures.

WHITE, MATTER OF v ANNUCCI (APPELLATE DIVISION NO. 527619):

Prisons and Prisoners--Discipline of Inmates--CPLR article 78 proceeding challenging determination finding prisoner guilty of violating a prison disciplinary rule; inmate charged with altering a document.

WHITE, MATTER OF v ANNUCCI &c. (APP. DIV. NO. 527619):

Appeal--Appealable Paper--Appellate Division order denying motion to reargue and renew or, in the alternative, for leave to appeal.

WILLIAMS (CADMAN), PEOPLE v:

Crimes--Evidence--Whether trial court abused its discretion in failing to hold a *Frye* hearing regarding admission of Low Copy Number Typing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; Crimes—Right to Counsel—Effective Representation—whether counsel was ineffective for failing to challenge court’s justification instruction; Crimes—Evidence—whether recordings of defendant’s phone calls, made while defendant was in pretrial detention, were admissible.