

**State of New York**  
**Court of Appeals**

**Decisions**

May 18, 2023

**CASES**

4                    No. 35  
The People &c.,  
    Respondent,  
    v.  
Tyquan Johnson,  
    Appellant.

Order reversed and indictment dismissed.  
Opinion by Chief Judge Wilson.  
Judges Garcia, Singas, Cannataro and Troutman  
concur.  
Judge Rivera concurs in result in an opinion.  
Judge Halligan took no part.

                          No. 55  
Ester Lelchook, &c., et al.,  
    Appellants,  
    v.  
Société Générale de Banque au Liban SAL,  
    Respondent.

Certification of questions by the United States Court  
of Appeals for the Second Circuit, pursuant to section  
500.27 of this Court's Rules of Practice, accepted and  
the issues presented are to be considered after  
briefing and argument.  
Chief Judge Wilson and Judges Rivera, Garcia,  
Singas, Cannataro, Troutman and Halligan concur.

2                    No. 38  
The People &c.,  
    Respondent,  
    v.  
Michael Saenger,  
    Appellant.

Order modified in accordance with the opinion herein  
and, as so modified, affirmed.  
Opinion by Judge Troutman.  
Chief Judge Wilson and Judges Rivera, Garcia,  
Singas and Cannataro concur.  
Judge Halligan took no part.

2                    No. 54 SSM 4  
The People &c.,  
    Appellant,  
    v.  
Elsun Wheeler,  
    Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for consideration of facts and issues raised but not determined on the appeal to that Court, in a memorandum.  
Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur.

**MOTIONS**

Mo. No. 2023-318  
The People &c.,  
Respondent,  
v.  
Justice A.,  
Appellant.

Motion, pursuant to CPL 460.60 (3), to extend the time for argument or submission of the appeal and to continue the stay granted and stay continued pending determination of the appeal.

4 Mo. No. 2023-161  
In the Matter of Jaytoya Ann Bailey,  
Respondent,  
v.  
Donald Albert Bailey,  
Appellant.  
(App. Div. No. CAF 21-01790)

Motion for leave to appeal denied.

4 Mo. No. 2023-162  
In the Matter of Jaytoya Ann Bailey,  
Respondent,  
v.  
Donald Albert Bailey,  
Appellant.  
(App. Div. No. CAF 21-01791)

Motion for leave to appeal denied.

3 SSD 22  
In the Matter of The Brightonian Nursing  
Home, Inc., et al.,  
Appellants,  
v.  
Howard Zucker, &c.,  
Respondent.  
(And Another Related Proceeding.)

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

1 Mo. No. 2023-126  
In the Matter of Damaris C.,  
Respondent,  
v.  
Juan O.,  
Appellant.  
Daniel X. Robinson, Esq., Attorney for the  
Child,  
Appellant.

Motions for leave to appeal denied.  
Motions for poor person relief dismissed as  
academic.

1 Mo. No. 2023-129  
The People &c.,  
Respondent,  
v.  
Juan Carmona,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4 Mo. No. 2023-108  
In the Matter of Randolph Conrad,  
Appellant,  
v.  
Susan Conrad,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2023-332  
Consolidated Restaurant Operations, Inc.,  
Appellant,  
v.  
Westport Insurance Corporation,  
Respondent.

Motion by American Property Casualty Insurance  
Association et al. for leave to file a brief amici curiae  
on the appeal herein granted and the proposed brief  
is accepted as filed. The brief must be submitted in  
digital format within seven days.

2 Mo. No. 2023-279  
The People &c.,  
Respondent,  
v.  
Napoleon C. Curtis,  
Appellant.

Motion for an extension of the time within which to  
apply for permission to appeal pursuant to CPL  
460.20 dismissed as untimely.

4 Mo. No. 2023-153  
In the Matter of Todd E. Dickes,  
Respondent,  
v.  
Nicole L. Johnston,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-91  
Dulcette Technologies, LLC,  
Respondent,  
v.  
MTC Industries, Inc.,  
Appellant,  
et al.,  
Defendant.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1 Mo. No. 2023-297  
The People &c.,  
Appellant,  
v.  
Corey Dunton,  
Respondent.

Motion for assignment of counsel granted and Caprice R. Jenerson, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the respondent on the appeal herein.  
Judge Halligan took no part.

2 Mo. No. 2023-104  
Emad Ebaid,  
Appellant,  
v.  
Fursey R. Walsh,  
Respondent,  
et al.,  
Defendants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2023-130  
In the Matter of Egate-95, LLC,  
Appellant,  
v.  
Fitness International, LLC,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

3 Mo. No. 2023-296  
The People &c.,  
Respondent,  
v.  
Kenneth E. Fisher,  
Appellant.

Motion for assignment of counsel granted and Lisa A. Burgess, Esq., P.O. Box 440, Indian Lake, NY 12842 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2023-92  
Great American E&S Insurance Company,  
Respondent,  
v.  
Commack Hotel, LLC, &c., et al.,  
Defendants,  
Stanley Davis, &c.,  
Appellant.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2023-234  
In the Matter of Jerimiah H.  
  
Erie County Department of Social Services,  
Respondent;  
Kiarra M.,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2023-113  
HSBC Bank USA, N.A., &c.,  
Respondent,  
v.  
Anthony Ajaero, &c.,  
Appellant,  
et al.,  
Defendants.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.  
Motion for poor person relief dismissed as academic.  
Motion for a stay dismissed as academic.

SSD 23  
Joshua B. Kellier,  
Appellant,  
v.  
New York State Commission on Judicial  
Conduct,  
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that this Court does not have jurisdiction to entertain an appeal from a letter dismissing the complaint (*see* NY Const, art VI, § 22; Judiciary Law § 44 [7]; CPLR 5601).  
Judge Rivera took no part.

3                    Mo. No. 2022-870  
In the Matter of Marathon Power LLC, &c.,  
    Appellant,  
    v.  
Public Service Commission of the State of  
New York et al.,  
    Respondents.

Motion for leave to appeal denied.  
Judge Singas took no part.

1                    Mo. No. 2023-106  
Dmitry Markov,  
    Appellant,  
    v.  
Michael Barrows,  
    Respondent,  
et al.,  
    Defendant.

Motion, insofar as it seeks leave to appeal from that  
portion of the Appellate Division order that affirmed,  
insofar as appealed from, the April 2021 Supreme  
Court order, dismissed upon the ground that such  
portion of the order does not finally determine the  
action within the meaning of the Constitution;  
motion for leave to appeal otherwise denied.

1                    Mo. No. 2023-95  
Harry Mohinani et al.,  
    Appellants,  
    v.  
Tzili Doron Charney, &c., et al.,  
    Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2023-28  
In the Matter of New York City Asbestos  
Litigation.

Motion for leave to appeal denied.  
Chief Judge Wilson took no part.

Robert Olson, &c.,  
    Appellant,  
Brenntag North America, Inc., et al.,  
    Defendants,  
Johnson & Johnson et al.,  
    Respondents.

3 Mo. No. 2023-181  
In the Matter of Issac Q., &c.

Schuyler County Department of Social  
Services,  
Respondent;  
Kimberly R.,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4 Mo. No. 2023-191  
In the Matter of Walter R., &c.,  
Appellant,  
v.  
State of New York, et al.,  
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2023-103  
Thurayyah Z. Richardson,  
Appellant,  
v.  
The Proctor and Gamble Company et al.,  
Respondents.

Motion for leave to appeal denied.

2 SSD 21  
In the Matter of Angelo Ruotolo,  
Appellant,  
v.  
State of New York Division of Housing and  
Community Renewal,  
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

3 Mo. No. 2023-131  
In the Matter of Asiah S., &c.

Delaware County Department of Social  
Services,  
Respondent;  
Nancy S.,  
Appellant.

Motion for leave to appeal denied.



4 Mo. No. 2023-33  
In the Matter of David Sell,  
Appellant,  
v.  
C. Yehl, &c.,  
Respondent.

Motion for leave to appeal granted.

4 Mo. No. 2023-224  
In the Matter of Joanne C. Smith,  
Appellant,  
v.  
Daniel L. Baldwin,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2023-186  
In the Matter of Terrence Stevens et al.,  
Respondents,  
v.  
New York State Division of Criminal Justice  
Services, et al.,  
Appellants.

Motion by Parents of Murdered Children, Inc. for  
leave to file a brief amicus curiae on the appeal  
herein granted and the proposed brief is accepted as  
filed. The brief must be submitted in digital format  
within seven days.  
Judges Rivera and Halligan took no part.

1 Mo. No. 2023-341  
In the Matter of Terrence Stevens et al.,  
Respondents,  
v.  
New York State Division of Criminal Justice  
Services, et al.,  
Appellants.

Motion by New York Civil Liberties Union for leave  
to appear amicus curiae on the appeal herein granted  
only to the extent that the proposed brief is accepted  
as filed. Two copies of the brief must be served, an  
original and nine copies filed, and the brief submitted  
in digital format within seven days.  
Judges Rivera and Halligan took no part.

1 Mo. No. 2022-785  
The People &c.,  
Respondent,  
v.  
Robert Suttle,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1                    Mo. No. 2023-26  
The People &c.,  
    Respondent,  
    v.  
Robert Suttle,  
    Appellant.

Motion by The Center for HIV Law and Policy for leave to appear amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

2                    SSD 24  
In the Matter of Audrey A. Thomas, &c.  
  
Grievance Committee for the Second,  
Eleventh, and Thirteenth Judicial Districts,  
    Respondent;  
Audrey A. Thomas,  
    Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

3                    Mo. No. 2023-88  
In the Matter of Linda UU.,  
    Appellant,  
    v.  
Dana VV.,  
    Respondent.  
(And Related Proceedings.)

Motion for leave to appeal denied.

4                    Mo. No. 2023-81  
In the Matter of Damien W., et al.  
  
Oneida County Department of Social  
Services,  
    Respondent;  
Samantha N.M.,  
    Respondent,  
Donald L.W., &c.,  
    Appellant.

Motion for leave to appeal denied.

4                    SSD 20

Ryan Weaver,  
Respondent,

v.

Deronde Tire Supply, Inc., et al.,  
Defendants,  
Estes Express Lines,  
Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.