

COURT OF APPEALS NEW FILINGS

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

June 4 through June 10, 2010

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.

GILFORD (TERRELL), PEOPLE v:

1ST Dept. App. Div. order of 9/1/09; modification; leave to appeal granted by Read, J., 5/17/10;

CRIMES - IDENTIFICATION OF DEFENDANT - SHOWUP - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT THERE WAS "NO BASIS FOR SUPPRESSION OF THE SHOWUP OR IN-COURT IDENTIFICATIONS, BECAUSE THE SHOWUP WAS WITHIN PERMISSIBLY CLOSE TEMPORAL AND GEOGRAPHIC PROXIMITY TO THE CRIME . . . , TOOK PLACE SHORTLY AFTER THE WITNESS HAD ALREADY MADE A RELIABLE IDENTIFICATION . . . , AND WAS CONDUCTED IN A MANNER THAT WAS NOT UNDULY SUGGESTIVE";

Supreme Court, Bronx County convicted defendant of manslaughter in the first degree, assault in the first degree and criminal possession of a weapon in the fourth degree, and sentenced him, as a second felony offender, to concurrent terms of 20 years, 20 years and 1 year, respectively; App. Div. modified to the extent

of reducing the assault conviction to attempted assault in the first degree and reducing the sentence thereon to a term of 10 years, and otherwise affirmed.

GRIMM (RAYMOND B.), PEOPLE v:

3RD Dept. App. Div. order of 1/28/10; reversal; leave to appeal granted by Pigott, J., 5/26/10;

CRIMES - PLEA OF GUILTY - FAILURE TO ADVISE DEFENDANT AT PLEA ALLOCUTION ABOUT THE LENGTH OF THE PERIOD OF MANDATORY POSTRELEASE SUPERVISION - VALIDITY OF GUILTY PLEA WHERE COURT STATED TERMS OF POSTRELEASE SUPERVISION AT SENTENCING - APPLICABILITY OF PENAL LAW § 70.85;

Sullivan County Court convicted defendant, upon his guilty plea, of rape in the first degree and criminal sexual act in the first degree; App. Div. reversed, vacated defendant's guilty plea and remitted to Sullivan County Court for further proceedings not inconsistent with the court's decision.

KOZIOL, MATTER OF v WALSH-HOOD:

4TH Dept. App. Div. judgment of 4/30/10; dismissal of CPLR article 78 petition; sua sponte examination whether a substantial constitutional question is directly involved or whether any jurisdictional basis otherwise exists to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - MANDAMUS - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING CPLR ARTICLE 78 PETITION ON THE GROUND THAT PETITIONER "FAILED TO DEMONSTRATE A CLEAR LEGAL RIGHT TO EITHER [PROHIBITION OR MANDAMUS THAT] COULD NOT BE SAFEGUARDED THROUGH ALTERNATIVE REMEDIES";

App. Div. dismissed a CPLR article 78 petition seeking, among other things, relief in the nature of prohibition and mandamus.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. orders of 9/3/09, 12/1/09 and 1/13/10; grants of motions to enlarge time to perfect appeals and dismissal of certain appeals; sua sponte examination whether the orders appealed from finally determine the action within the meaning of the Constitution, whether appellant is an aggrieved party within the meaning of CPLR 5511 and whether any jurisdictional basis exists to support an appeal as of right;

APPEALS - CHALLENGE TO APPELLATE DIVISION ORDERS THAT, AMONG OTHER THINGS, GRANTED APPELLANT'S MOTIONS FOR ENLARGEMENTS OF TIME TO PERFECT APPEALS, DISMISSED CERTAIN APPEALS AND STATED, AFTER GRANTING ENLARGEMENTS OF TIME, THAT NO FURTHER ENLARGEMENTS OF TIME WOULD BE GRANTED;

App. Div. dismissed appellant's appeals from Supreme Court, Kings County orders dated 10/15/08 and 12/4/08 and granting appellant's motion to enlarge the time to perfect appeals from Supreme Court, Kings County orders dated 10/30/08, 12/4/08 and 1/22/09 to the extent of enlarging such time until 11/2/09, and otherwise denied appellant's application (9/3/09 order); granted appellant's

motion to enlarge the time to perfect appeals from Supreme Court,

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Kings County orders dated 10/30/08, 12/4/08 and 1/22/09 to the extent of enlarging such time until December 31, 2009 (12/1/09 order); and granted appellant's motion to enlarge the time to perfect appeals from Supreme Court, Kings County orders dated 10/30/08, 12/4/08 and 1/22/09 to the extent of enlarging such time until 2/17/10, and ordering that no further enlargement of time shall be granted (1/13/10 order).