

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

**Decisions**

February 10, 2022

**CASES**

1                    No. 31 SSM 32  
Julia Bonem,  
    Appellant,  
    v.  
William Penn Life Insurance Company of  
New York,  
    Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum.  
Chief Judge DiFiore and Judges Garcia, Singas, Cannataro and Troutman concur.  
Judge Wilson dissents in an opinion, in which Judge Rivera concurs.

                          No. 6  
Danny Donohue, &c., et al.,  
    Appellants,  
    v.  
Andrew M. Cuomo, &c., et al.,  
    Respondents,  
et al.,  
    Defendants.

Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and record submitted, certified questions answered in accordance with the opinion herein.  
Opinion by Judge Singas.  
Judges Rivera, Garcia, Wilson and Cannataro concur.  
Chief Judge DiFiore and Judge Troutman took no part.

2                    No. 1  
Hunters for Deer, Inc. et al.,  
    Respondents,  
    v.  
Town of Smithtown,  
    Appellant.

Order affirmed, with costs, in a memorandum.  
Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas and Cannataro concur.  
Judge Troutman took no part.

2                    No. 32 SSM 34  
The People &c.,  
    Respondent,  
    v.  
Juan Johnson,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for further proceedings. Under the totality of the circumstances and upon the People's concession that the appeal waiver was invalid because the plea court conflated the right to appeal with those rights automatically forfeited by a guilty plea, defendant's appeal waiver did not foreclose consideration of his suppression claim (*see People v Moyett*, 7 NY3d 892, 892-893 [2006]).

Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas, Cannataro and Troutman concur.

4                    No. 8  
Ersin Konkur,  
    Appellant,  
    v.  
Utica Academy of Science Charter School,  
    Defendant,  
Turkish Cultural Center and High Way  
Education, Inc.,  
    Respondent.

Order affirmed, with costs.

Opinion by Judge Garcia.

Chief Judge DiFiore and Judges Singas and Cannataro concur.

Judge Rivera dissents in an opinion, in which Judge Wilson concurs.

Judge Troutman took no part.

## MOTIONS

2                    Mo. No. 2021-751  
In the Matter of 314 Rutledge Street, LLC,  
    Appellant,  
    v.  
Tax Commission of the City of New York,  
    Respondent.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as resolved the proceedings for the tax years 2011/2012, 2012/2013, and 2013/2014, denied; motion for leave to appeal otherwise dismissed upon the ground that the order sought to be appealed from does not finally determine the remaining proceedings within the meaning of the Constitution.

4                    Mo. No. 2021-885  
In the Matter of Trinity B.-S. et al.  
  
Oswego County Department of Social  
Services,  
    Respondent;  
William R.N.,  
    Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Troutman took no part.

1                    Mo. No. 2021-808  
In the Matter of Jimmy Baldea, &c.,  
    Appellant,  
    v.  
City of New York License Division of the  
NYPD,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2021-780  
The People &c. ex rel. Jerry Bonton,  
    Appellant,  
    v.  
Supreme Court, Kings County, et al.,  
    Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-903  
In the Matter of Roman Brik,  
Appellant,  
v.  
Ilana Stroutsovsky,  
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2021-816  
The People &c. ex rel. Edward Brown,  
Appellant,  
v.  
Jeffrey Tedford, &c.,  
Respondent.

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

2 Mo. No. 2021-793  
Shameem Chowdhury,  
Appellant,  
v.  
Robert Thomas,  
Respondent.

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

4 SSD 4  
In the Matter of Coalition of Concerned  
Citizens et al.,  
Appellants,  
v.  
New York State Board on Electric Generation  
Siting and the Environment et al.,  
Respondents.

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

3 Mo. No. 2022-27  
Roxanne Delgado, et al.,  
Appellants,  
v.  
State of New York et al.,  
Respondents.

Motion by Carl E. Heastie for leave to file a brief  
amicus curiae on the appeal herein granted and 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.  
Chief Judge DiFiore took no part.

2 Mo. No. 2021-747  
In the Matter of Peter P. Duke II, &c.,  
Respondent,  
v.  
Westchester Medical Center et al.,  
Appellants.

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

4 Mo. No. 2021-802  
The People &c.,  
Respondent,  
v.  
John E. Dziedzic,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Troutman took no part.

1 SSD 2  
East 72nd, LLC, &c.,  
Appellant,  
v.  
Metropolitan Transportation Authority,  
Respondent.

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

Mo. No. 2022-64  
Jesus Ferreira,  
Appellant,  
v.  
City of Binghamton et al.,  
Respondents.

Motion by New York State Trial Lawyers Association for leave to file a brief amicus curiae on consideration of the certified question herein granted and 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.

3 Mo. No. 2021-969  
In the Matter of Desiree FF. et al.,  
Respondents,  
v.  
Jeanette GG. et al.,  
Appellants.

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

4 Mo. No. 2021-851  
Gary Franklin,  
Appellant,  
v.  
Eric A. Learn et al.,  
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Judge Troutman took no part.

1 Mo. No. 2022-67  
Lukasz Gottwald, &c., et al.,  
Respondents,  
v.  
Kesha Rose Sebert, &c.,  
Appellant,  
et al.,  
Defendants.

Motion by Samuel D. Isaly for leave to file a brief amicus curiae on the appeal herein granted and 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.

2 Mo. No. 2021-792  
Robert Grosbard et al.,  
Respondents,  
v.  
Abbey on Willow Lane, LLC,  
Appellant.

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

2 Mo. No. 2021-842  
The People &c.,  
Respondent,  
v.  
Frederick Hightower,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-60  
The People &c.,  
Respondent,  
v.  
Luis Jimenez,  
Appellant.

Motion for assignment of counsel granted and Janet E. Sabel, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2021-998  
In the Matter of Celinda JJ.,  
Respondent,  
v.  
Adrian JJ.,  
Appellant.

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

3 Mo. No. 2022-103  
In the Matter of the Claim of Thomas  
Johnson,  
Appellant,  
v.  
City of New York,  
Respondent.  
Workers' Compensation Board,  
Respondent.

Motion by New York State AFL-CIO 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.

2 Mo. No. 2021-845  
In the Matter of David Kalantarov,  
Respondent,  
v.  
Marina Priyeva,  
Respondent.  
Carol Lipton, Esq., Attorney for the Children,  
Appellant.

Motion for reargument of motion for leave to appeal denied.  
Judge Troutman took no part.

3 Mo. No. 2021-895  
In the Matter of Leon R. Koziol, a Suspended  
Attorney.  
  
Committee on Professional Standards, &c.,  
Respondent;  
Leon R. Koziol,  
Appellant.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that denied reinstatement, denied; motion for leave to appeal otherwise dismissed upon the ground that the remaining portions of the Appellate Division order do not finally determine the proceeding within the meaning of the Constitution  
Motion for a stay &c. dismissed as academic.

1                    Mo. No. 2021-779  
In the Matter of Patrick J. Lynch, &c. et al.,  
    Respondents-Appellants,  
    v.  
City of New York, et al.,  
    Appellants-Respondents.

Motions for leave to appeal granted.  
Judge Rivera took no part.

4                    Mo. No. 2021-834  
In the Matter of Ahkeila M. et al.

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

Onondaga County Department of Children  
and Family Services,  
    Respondent;  
Tiffany B.,  
    Appellant.

1                    Mo. No. 2021-840  
In the Matter of Steven Mears,  
    Appellant,  
    v.  
A. Kirke Bartley, &c., et al.,  
    Respondents.  
Cyrus R. Vance, Jr., &c.,  
    Nonparty-Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2021-919  
Moret, LLC,  
    Respondent,  
    v.  
NewBank,  
    Appellant,  
et al.,  
    Defendants.  
(Index No. 608402/18)

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.



2                    Mo. No. 2021-920  
Moret, LLC,  
                    Respondent,  
                    v.  
NewBank,  
                    Appellant,  
et al.,  
                    Defendants.  
(Index No. 608403/18)

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.

1                    Mo. No. 2021-798  
Napoli Shkolnik, PLLC,  
                    Appellant,  
                    v.  
Greenwich Insurance Company et al.,  
                    Respondents,  
et al.,  
                    Defendant.

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

1                    Mo. No. 2022-41  
In the Matter of Nonhuman Rights Project,  
Inc., &c.,  
                    Appellant,  
                    v.  
James J. Breheny, &c., et al.,  
                    Respondents.

Motion by Association of Zoos & Aquariums, 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.

3                    Mo. No. 2021-759  
In the Matter of Peter O'Brien,  
                    Appellant,  
                    v.  
Thomas P. DiNapoli, &c.,  
                    Respondent.

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

3                    Mo. No. 2021-841  
The People &c.,  
                    Respondent,  
                    v.  
Edward Odell,  
                    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2021-985  
In the Matter of Violet P.

Administration for Children's Services,  
Respondent;  
Catherine P.,  
Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2021-862  
Vassilis Panagouloupoulos et al.,  
Appellants,  
v.  
Carlos Ortiz Jr. MD, P.C., et al.,  
Respondents.

Motion for reargument of motion for leave to appeal  
denied.  
Judge Troutman took no part.

2                    Mo. No. 2021-784  
In the Matter of State of New York,  
Respondent,  
v.  
Geoffrey P.,  
Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2021-812  
Carlyle Parris,  
Appellant,  
v.  
Schneider Electric Mobility NA, Inc. et al.,  
Respondents,  
et al.,  
Defendant.

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

4                    Mo. No. 2021-836  
The People &c.,  
Respondent,  
v.  
Jason Richardson,  
Appellant.

Motion for leave to appeal denied.

2                    SSD 3  
Wayne Rose,  
    Appellant,  
    v.  
Different Twist Pretzel, Inc., et al.,  
    Respondents,  
et al.,  
    Defendants.

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.  
Chief Judge DiFiore took no part.

4                    Mo. No. 2021-939  
In the Matter of Christina S.  
  
Erie County Department of Social Services,  
    Respondent;  
Jeffery S.,  
    Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Troutman took no part.

3                    Mo. No. 2021-858  
In the Matter of Parvaz Ahmad Saber,  
    Appellant,  
    v.  
Ellen T. Saccone,  
    Respondent.  
(And Another Proceeding.)

Motion for reargument of motion for leave to appeal denied.  
Judge Troutman took no part.

1 Mo. No. 2021-818  
Shchukin OU, et al.,  
Appellants,  
v.  
Rustam Iseev,  
Respondent.

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Shchukin House OU,  
Appellant,  
v.  
Rustam Iseev,  
Respondent.

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Rustam Iseev,  
Third-Party Respondent,  
v.  
Nikolay Shchukin,  
Third-Party Appellant,  
et al.,  
Third-Party Defendant.

1 Mo. No. 2021-804  
The People &c. ex rel. Aaron Singleton,  
Appellant,  
v.  
Cynthia Brann, &c.,  
Respondent.

1 Mo. No. 2021-909  
The People &c. ex rel. Jerome Smith,  
Appellant,  
v.  
N.Y.S. Division of Parole, &c.,  
Respondent.

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.  
Cross motion for the imposition of sanctions denied.

Motion for leave to appeal denied.

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.  
Motion for poor person relief dismissed as academic.

2                    Mo. No. 2021-801  
In the Matter of State Farm Fire and Casualty  
Company,  
                  Respondent,  
          v.  
Maryann Llera-Negron et al.,  
                  Appellants.

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

3                    Mo. No. 2021-805  
Suburban Restoration Co. Inc.,  
                  Appellant,  
          v.  
State of New York,  
                  Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2021-821  
Payam Toobian,  
                  Respondent  
          v.  
Mehrdad Golzad et al.,  
                  Appellants.

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.  
Chief Judge DiFiore took no part.

3                    Mo. No. 2021-606  
The People &c.,  
                  Respondent,  
          v.  
Sam Wassilie,  
                  Appellant.

Motion for leave to appeal dismissed upon the ground that the issues presented have become moot (*see People v Wassilie*, — AD3d —, 2022 NY Slip Op 00103 [3d Dept 2022]).  
Motion for poor person relief dismissed as academic.

1                    Mo. No. 2021-790  
The People &c.,  
                  Respondent,  
          v.  
Walter Wright,  
                  Appellant.

Motion for leave to appeal denied.

Mo. No. 2022-13

The People &c.,  
Respondent,  
v.  
Justin Zapka,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.