

COURT OF APPEALS NEW FILINGS

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

March 11 through March 17, 2011

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 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.

ALVAREZ (LUIS), PEOPLE v:

2ND Dept. App. Div. order of 9/28/10; modification; leave to appeal granted by Lippman, Ch.J., 3/7/11; Rule 500.11 review pending;

CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT EXCLUDED DEFENDANT'S FAMILY MEMBERS FROM THE COURTROOM DURING THE JURY VOIR DIRE DUE TO LACK OF SEATING;

Supreme Court, Queens County convicted defendant, upon a jury verdict, of two counts of criminal possession of a weapon in the second degree, two counts of criminal possession of a weapon in the third degree and two counts of criminal possession of a weapon in the fourth degree; App. Div. modified by (1) vacating the convictions of criminal possession of a weapon in the fourth

degree, vacating the sentences imposed thereon, and dismissing those counts of the indictment, and (2) vacating the sentences imposed on the convictions of criminal possession of a weapon in the second degree; affirmed as so modified; and remitted the matter to Supreme Court for resentencing on the convictions of criminal possession of a weapon in the second degree.

JACKSON (SAMUEL), PEOPLE v:

App. Term, 2nd, 11th and 13th Districts, order of 1/22/10; affirmance; leave to appeal granted by Jones, J., 3/3/11; CRIMES - COMPLAINT - CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE (PENAL LAW § 221.10[1]) - WHETHER ACCUSATORY INSTRUMENT WAS JURISDICTIONALLY DEFECTIVE BECAUSE IT DID NOT ALLEGE THAT THE MARIHUANA WAS "OPEN TO PUBLIC VIEW" OR THAT IT WAS "BURNING" PRIOR TO THE STOP; SEARCH AND SEIZURE; Criminal Court of the City of New York, Kings County convicted defendant, upon his guilty plea, of criminal possession of marihuana in the fifth degree; App. Term affirmed.

OBOT v NATIONAL FUEL GAS DISTRIBUTION CORPORATION (AND ANOTHER APPEAL):

4TH Dept. App. Div. orders of 2/10/11; affirmance; sua sponte examination whether one of the orders appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; DISMISSAL AND NONSUIT - ACTION CONCERNING PROVISION OF NATURAL GAS TO PLAINTIFF'S RESIDENTIAL PROPERTY - DISMISSAL OF COMPLAINTS; PUBLIC UTILITIES; Supreme Court, Erie County granted defendant's motion for permission to enter plaintiff's residence for the purpose of moving the interior gas meter to the exterior; thereafter, Supreme Court dismissed plaintiff's complaints and directed that, in the event plaintiff decides to bring another claim against defendant, he must first obtain leave of court; In separate orders, the App. Div. affirmed both Supreme Court orders.