

COURT OF APPEALS NEW FILINGS

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

July 20, 2012 through July 26, 2012

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 sea 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 the 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.

BYER (MARVIN), PEOPLE v:

1ST Dept. App. Div. order of 11/3/11; affirmance; leave to appeal granted by Lippman, Ch.J., 7/16/12;

CRIMES - CONFESSION - WHETHER THE TRIAL COURT'S ERRONEOUS ADMISSION OF EVIDENCE, INCLUDING DEFENDANT'S STATEMENT THAT HE HAD KILLED NINE PEOPLE BEFORE THIS INCIDENT, CONSTITUTED HARMLESS ERROR;

Supreme Court, Bronx County convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 25 years to life; App. Div. affirmed.

CORTEZ (PAUL), PEOPLE v:

1ST Dept. App. Div. order of 6/2/11; affirmance; leave to appeal granted by Lippman, Ch.J., 7/17/12;

CRIMES - RIGHT TO COUNSEL - CONFLICT OF INTEREST - OPERATION OF CONFLICT ON DEFENSE - EFFECTIVE REPRESENTATION - WAIVER OF CONFLICT; EVIDENCE - JOURNAL ENTRIES WRITTEN YEARS BEFORE THE CHARGED OFFENSE AND RELATING TO DEFENDANT'S HOSTILITY TO TWO WOMEN OTHER THAN THE VICTIM - APPLICATION OF MOLINEAUX; FAIR TRIAL - ARGUMENT AND CONDUCT OF COUNSEL;

Supreme Court, New York County convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 25 years to life; App. Div. affirmed.

GUILFORD, (JAMES E.), PEOPLE v:

4TH Dept. App. Div. order of 6/8/12; affirmance with dissents; leave to appeal granted by Lindley, J., 7/18/12;

CRIMES - SUPPRESSION HEARING - STATEMENTS MADE BY DEFENDANT TO POLICE IN GEORGIA AND NEW YORK, ONE INTERROGATION SESSION LASTING ALMOST 50 HOURS; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL; ALLEGED PROSECUTORIAL MISCONDUCT DURING TRIAL; MURDER;

Onondaga County Court convicted defendant, upon a jury verdict, of murder in the second degree; App. Div. affirmed.

JAQUAN M., MATTER OF:

1ST Dept. App. Div. order of 7/3/12; reversal with dissents; sua sponte examination whether the dissent at the App. Div. is on a question of law;

CRIMES - SUPPRESSION HEARING - WHETHER POLICE HAD REASONABLE SUSPICION NECESSARY TO STOP 14-YEAR OLD AND FRISK HIS BACKPACK; PROBABLE CAUSE; CONSENT TO SEARCH; JUVENILE DELINQUENT;

Family Court, New York County adjudicated Jaquan M. a juvenile delinquent upon his admission that he committed an act that, if committed by an adult, would constitute the crime of criminal possession of a weapon in the second degree, and placed him on probation for a period of 15 months; App. Div. reversed, granted the motion to suppress, vacated the order of disposition and dismissed the petition.

LEACH, (TAWOND), PEOPLE v:

2ND Dept. App. Div. order of 12/27/11; affirmance; leave to appeal granted by Lippman, Ch.J., 7/17/12;

CRIMES - SUPPRESSION HEARING - RECOVERY BY POLICE OF A GUN IN THE SPARE BEDROOM OF DEFENDANT'S GRANDMOTHER'S APARTMENT WHERE DEFENDANT HAD HIS OWN BEDROOM - REASONABLE EXPECTATION OF PRIVACY IN ROOM TO WHICH DEFENDANT HAD ACCESS; STANDING TO CHALLENGE SEARCH;

Supreme Court, Kings County convicted defendant, upon a jury verdict, of attempted assault in the first degree, criminal possession of a weapon in the second degree, and reckless endangerment in the first degree, and imposed sentence; App. Div. affirmed.

POULOSE, MATTER OF, &c. v SHAH, &c. et al.:

3RD Dept. App. Div. judgment of 6/14/12; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PHYSICIANS AND SURGEONS - DISCIPLINARY PROCEEDINGS - REVOCATION OF MEDICAL LICENSE HELD BY DOCTOR WHO PLEADED GUILTY TO ATTEMPTED DISSEMINATION OF INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE, A FELONY - CHALLENGE TO DETERMINATION THAT PETITIONER IS MORALLY UNFIT TO PRACTICE MEDICINE - ALLEGED VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS;

App. Div. confirmed the determination of the Administrative Review Board for Professional Medical Conduct that, among other things, revoked petitioner's license to practice medicine in New York, and dismissed the CPLR article 78 petition.

VAN STEENBURG, (EDWARD), PEOPLE v:

3RD Dept. App. Div. order of 5/11/12; sua sponte examination whether a civil appeal lies from an order entered in a criminal proceeding;

CRIMES - APPELLATE DIVISION ORDER DENYING MOTION FOR LEAVE TO RENEW A MOTION FOR A WRIT OF ERROR CORAM NOBIS;

App. Div. denied defendant's motion for leave to renew a motion for a writ of error coram nobis to vacate an order of that court in People v Van Steenburg (221 AD2d 799 [1995], lv denied 87 NY2d 978 [1996]).