

COURT OF APPEALS NEW FILINGS

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

August 24, 2012 through August 30, 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 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 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.

ABREU, MATTER OF v HOGAN (AD NO. 511236):

3RD Dept. App. Div. order of 7/6/12; denial of motion for leave to appeal to Court of Appeals; sua sponte examination whether the order finally determines the proceeding within the meaning of the Constitution;

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION FOR PERMISSION TO APPEAL TO THE COURT OF APPEALS; App. Div. denied appellant's motion for permission to appeal to the Court of Appeals.

PEOPLE ex rel. PONS v LEE:

2ND Dept. App. Div. order of 7/16/12; denied motion for reargument; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING A MOTION TO REARGUE A MOTION FOR LEAVE TO APPEAL AS A POOR PERSON AND FOR ASSIGNMENT OF COUNSEL;
App. Div. denied appellant's motion for leave to reargue his prior motion for leave to prosecute an appeal from a 3/2/12 Supreme Court, Dutchess County, order as a poor person and for assignment of counsel.

DOLL (SCOTT F.), PEOPLE v:

4th Dept. App. Div. order of 7/6/12; affirmance with dissents; leave to appeal granted by Fahey, J., 8/20/12;
CRIMES - SUPPRESSION HEARING - WHETHER STATEMENTS MADE BY DEFENDANT, INCLUDING THOSE IN RESPONSE TO QUESTIONS BY LAW ENFORCEMENT OFFICERS, SHOULD HAVE BEEN SUPPRESSED WHERE THE STATEMENTS WERE MADE WITHOUT MIRANDA WARNINGS AND AFTER DEFENDANT INVOKED THE RIGHT TO COUNSEL - CPL 60.45 - APPLICABILITY OF "EMERGENCY" OR "PUBLIC SAFETY" EXCEPTION; UNLAWFUL SEARCH AND SEIZURE - ALLEGED VIOLATIONS OF PEOPLE v DeBOUR (40 NY2d 210) AND DUNAWAY v NEW YORK (442 US 200) - CHALLENGE TO SEIZURE OF VEHICLES AND OTHER PHYSICAL EVIDENCE - VALIDITY OF SEARCH WARRANTS;
Genesee County Court convicted defendant, upon a jury verdict, of murder in the second degree; App. Div. affirmed.

DUTROW, MATTER OF v NEW YORK STATE RACING and WAGERING BOARD:

3RD Dept. App. Div. order of 7/19/12; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
HORSE RACING - REVOCATION OR SUSPENSION OF LICENSE - TRAINER - ADMINISTRATION OF RESTRICTED DRUGS - WHETHER PETITIONER WAS DEPRIVED OF A FAIR HEARING BECAUSE THE CHAIR OF RESPONDENT NEW YORK STATE RACING AND WAGING BOARD REFUSED TO RECUSE HIMSELF - WHETHER THE APPELLATE DIVISION APPLIED THE CORRECT STANDARD OF LAW IN DETERMINING THAT PETITIONER WAS NOT DEPRIVED OF A FAIR HEARING - DETERMINATION RESULTING FROM ALLEGED VINDICTIVENESS - BURDEN OF PROOF TO ESTABLISH A POST-RACE POSITIVE DRUG TEST - PENALTY;
App. Div. confirmed respondent's determination which, among other things, revoked petitioner's license to participate in pari-mutuel racing for a period of 10 years, and dismissed the CPLR article 78 petition.

FLOYD (DANIEL), PEOPLE v:

2ND Dept. App. Div. order of 5/15/12; affirmance; leave to appeal granted by Graffeo, J., 8/16/12; Rule 500.11 review pending; CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT EXCLUDED DEFENDANT'S MOTHER FROM THE COURTROOM DURING THE JURY VOIR DIRE DUE TO LACK OF SEATING;

Supreme Court, Kings County convicted defendant, upon a jury verdict, of murder in the second degree, manslaughter in the second degree, and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

PLATEK, et al. v TOWN OF HAMBURG, et al.:

4TH Dept. App. Div. order of 7/6/12; modification; sua sponte examination whether (1) the appeal from the Supreme Court order was timely taken, (2) any jurisdictional basis exists to support a direct appeal from the Supreme Court order and (3) the Appellate Division order finally determines the action within the meaning of the Constitution;

INSURANCE - EXCLUSIONS - WATER DAMAGE - EXCEPTION FOR "EXPLOSION" - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE "EXPLOSION" EXCEPTION WAS AMBIGUOUS AND, THUS, HAD TO BE CONSTRUED IN FAVOR OF THE INSURED;

Supreme Court, Erie County granted plaintiffs' motion for summary judgment, declared that plaintiffs' loss is covered by the subject insurance policy, directed defendant Allstate Indemnity Company to pay plaintiffs' claim and denied Allstate's cross motion for summary judgment dismissing the complaint against it; App. Div. modified by vacating the declaration.

SANTIAGO (HECTOR), PEOPLE v:

1ST Dept. App. Div. order of 1/17/12; affirmance; leave to appeal granted by Smith, J., 8/21/12;

CRIMES - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A CIRCUMSTANTIAL EVIDENCE CHARGE TO THE JURY IN A DRUG POSSESSION CASE INVOLVING PRESENCE OF A CONTROLLED SUBSTANCE IN AN AUTOMOBILE - "PRESUMPTIVE EVIDENCE OF KNOWING POSSESSION...BY EACH AND EVERY PERSON IN THE AUTOMOBILE" (PENAL LAW § 220.25[1]) - CONSTRUCTIVE POSSESSION; EXCESSIVE SENTENCE;

Supreme Court, New York County convicted defendant, after a jury trial, of criminal possession of a controlled substance in the first degree, and sentenced him to a term of 14 years; App. Div. affirmed.