



*State of New York  
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

**August 5, 2022 through August 11, 2022**

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.**

MATTER OF AARON MANOR REHABILITATION v ZUCKER:

3rd Dept. App. Div. order of 5/12/22; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Health--Medicaid Reimbursement Rates--Whether the 2020 amendment to Public Health Law § 2808 (20) (d) violates petitioner's equal protection rights under the New York and United States Constitutions by removing payment for residual equity reimbursement from the Medicaid rates of for-profit nursing homes for ongoing capital costs beyond the facility's 40th year of operation but leaving that factor in place for not-for-profit nursing homes;** Supreme Court, Albany County, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, partially granted respondents'

motion for summary judgment dismissing the complaint; App. Div. affirmed.

PEOPLE v MARCUS BROWN:

2nd Dept. App. Div. order of 3/30/22; affirmance; leave to appeal granted by the Court of appeals 7/21/22;

**Crimes--Sex Offenders--Whether Sex Offender Registration Act (Correction Law art 6-C) is unconstitutional as applied to defendant, where underlying crime of unlawful imprisonment did not involve any sexual component;**

Supreme Court, Kings County, designated defendant a level one sex offender pursuant to Correction Law article 6-C; App. Div. affirmed.

FAVOURITE LIMITED v CICO:

1st Dept. App. Div. order of 6/21/22; modification with two Justices dissenting; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;

**Pleading--Amendment--Whether a trial court has the discretion to grant plaintiff leave to amend a complaint after the Appellate Division has ordered the complaint dismissed with direction to enter judgment accordingly; at time plaintiffs sought leave to amend the time to commence a new action expired including the CPLR 205(a) grace period;**

Supreme Court, New York County, among other things, granted plaintiffs' motions for leave to file a third amended complaint and to dismiss defendants' counterclaims for breach of contract and a declaratory judgment; App. Div. modified order to deny plaintiffs' motion for leave to file a third amended complaint, and otherwise affirmed.

PEOPLE v DONNA JORDAN:

2nd Dept. App. Div. order of 1/26/22; affirmance; leave to appeal granted by Troutman, J., 7/21/22;

**Crimes--Right of Confrontation--Whether defendant's right to confrontation was violated by the testimony of a criminalist from the Office of the Chief Medical Examiner (OCME); whether defendant was denied a fair trial due to prosecutorial misconduct;**

Supreme Court, Queens County, convicted defendant of robbery in the second degree and petit larceny upon a jury verdict, and imposed sentence; App. Div. affirmed.

PEOPLE v MICHAEL N. KELSEY:

3rd Dept. App. Div. order of 2/17/22; dismissal; sua sponte examination of whether any basis exists for an appeal as of right;

**Crimes--Appeal;**

Supreme Court, St. Lawrence County, denied motion seeking, inter alia, permanent suppression and redaction of defendant's pre-sentence investigation report; App. Div. granted motion to dismiss the appeal.

MATTER OF ESTATE OF KING:

Justice of 3rd Dept. App. Div. declined to sign proposed order to show cause (7/18/22); sua sponte examination of whether any basis exists for an appeal as of right;

**Appeal--Appealable Paper;**

Justice of the App. Div. declined to sign a proposed order to show cause.

PEOPLE v HERMAN ANTHONY:

2nd Dept. App. Div. order of 3/23/22; affirmance; leave to appeal granted by the Court of Appeals on 7/21/22; Rule 500.11 review pending;

**Crimes--Sex Offenders--Whether SORA hearing court properly designated defendant a level three sex offender; whether the courts below abused their discretion or otherwise erred in denying defendant's request for a downward departure; whether the hearing court erred in determining that mitigating factors raised by the defendant were already adequately taken into account by the risk assessment instrument;**

Supreme Court, Queens County, after a hearing, designated defendant a level three sex offender under the Sex Offender Registration Act; App. Div. affirmed.

PEOPLE v PABLO PASTRANA:

1st Dept. App. Div. order of 5/5/22; affirmance; leave to appeal granted by Rivera, J., 7/27/22;

**Crimes--Unlawful Search and Seizure--Whether the Marihuana Regulation and Taxation Act (*see* Penal Law § 222.05 [3]), which prohibits a finding of reasonable cause based solely on the odor of cannabis, applies to criminal proceedings on direct appeal; Crimes--Possession of a Weapon--Whether Penal Law § 265.03 (3), which criminalizes the possession of a firearm in public places, is unconstitutional under the holding in *New York State Rifle & Pistol Assoc. v Bruen* (597 US —, 142 S Ct 2111 [2022]);**

Supreme Court, Bronx County, convicted defendant of criminal possession of a weapon in the second degree, criminal possession of marijuana in the fifth degree and unlawful possession of marijuana, and sentenced him, as a persistent violent felony offender, to an aggregate term of 16 years to life; App. Div. affirmed.

PEOPLE v MICHAEL WORLEY:

2nd Dept. App. Div. order of 2/16/22; affirmance; leave to appeal granted by the Court of Appeals 7/21/22;

**Crimes--Sex Offenders--Whether Supreme Court violated defendant's right to notice under Correction Law 168-n (3) or defendant's right to due process by sua sponte granting an upward departure from the presumptive risk level two classification and designating defendant a level three sex offender;**

Supreme Court, Kings County, designated defendant a level three sex offender pursuant to Correction Law article 6-C; App. Div. affirmed.