



*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

September 9, 2022 through September 15, 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.

CRUZ (JAIME), PEOPLE v:

1st Dept., App. Term order of 10/9/20; affirmance; leave to appeal granted by Garcia, J., 8/22/22; Rule 500.11 review pending;

Crimes--Accusatory Instrument--Whether the accusatory instrument charging defendant with criminal possession of a controlled substance in the seventh degree was jurisdictionally defective under *People v Hill* (— NY3d —, 2022 NY Slip Op 03930);

Criminal Court, New York City, convicted defendant, upon a guilty plea, of criminal possession of a controlled substance in the seventh degree, and imposed sentenced; App. Div. affirmed.

JOHNSON (TYQUAN), PEOPLE v:

4th Dept. App. Div. order of 6/10/22; affirmance; leave to appeal granted by Wilson, J. 8/24/22;

Crimes--Unlawful Search and Seizure--Whether the arresting officer had the requisite predicate under *People v DeBour* (40 NY2d 210 [1976]) at each level of the encounter with defendant;

Supreme Court, Monroe County, convicted defendant after a nonjury trial of criminal possession of a controlled substance in the third degree (two counts) and unlawful possession of marihuana; App. Div. affirmed.

MOSLEY (FAROD), PEOPLE v:

4th Dept. App. Div. order of 12/23/21; affirmance; leave to appeal granted by Lindley, J. 8/4/22; Rule 500.11 review pending;

Crimes--Evidence--Whether County Court erred in allowing police detective to identify defendant in surveillance video; Crimes--Instructions--Whether the trial court erred in declining defendant's request for an adverse inference instruction based on People's failure to preserve a surveillance video; Crimes--Evidence--Whether defendant's conviction is supported by legally sufficient evidence; Crimes--Sentence--Youthful Offender--Whether sentencing court abused its discretion in refusing to grant defendant youthful offender status;

County Court, Onondaga County, convicted defendant of criminal possession of a weapon in the second degree (two counts) and reckless endangerment in the first degree, and imposed sentence; App. Div. affirmed.

MATTER OF ST. LAWRENCE COUNTY v CITY OF OGDENSBURG:

3rd Dept. App. Div. order of 8/11/22, affirmance with two Justices dissenting; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether the challenge to the City of Ogdensburg's obligation to enforce delinquent taxes of the Ogdensburg City School District has been rendered moot;

Municipal Corporations--Whether Ogdensburg Local Law 2-2021, which requires St. Lawrence County to enforce the City's delinquent taxes and make the City whole for uncollected City-levied taxes, is preempted by the Real Property Tax Law (RPTL) and not authorized by RPTL 936; whether the local law violates New York State Constitution, article IX, § 2(d) and Municipal Home Rule Law § 10(5);

Supreme Court, St. Lawrence County, in a combined proceeding pursuant to CPLR article 78, action for declaratory judgment and plenary action, among other things, partially dismissed petitioners' application to declare null and void City of Ogdensburg Local Law No. 2-2021; App. Div. affirmed.

STORA v BOARD OF ELECTIONS:

2nd Dept. App. Div. order of 9/14/22; affirmance; sua sponte examination of whether a substantial constitutional question is involved in the Appellate Division order and

whether any jurisdictional basis exists for an appeal as of right;

Elections--Independent Nominating Petitions;

Supreme Court, Kings County, denied the petition, inter alia, to validate an independent nominating petition and dismissed the proceeding; App. Div. affirmed.

MATTER OF TEAMSTERS LOCAL 445 v TOWN OF MONROE:

Supreme Court, Dutchess County judgment of 1/24/22; granted petition to compel arbitration; leave to appeal granted by the Court of Appeals on 9/15/22;

Arbitration--Collective Bargaining Agreement--Whether there is a statutory, constitutional, or public policy prohibition against arbitrating a dispute regarding the termination of an employee in an "exempt class" under Civil Service Law section 41(1)(c);

Supreme Court, Dutchess County, in a proceeding pursuant to CPLR article 75 to compel arbitration, denied the motion of the Town of Monroe to dismiss the petition; App. Div. affirmed; Supreme Court, Dutchess County, granted petition to compel arbitration.

ZHONG v MATRANGA:

1st Dept. App. Div. order of 8/30/22; reversal; Rule 500.11 review pending;

Judgments--Summary Judgment--Whether plaintiff raised issue of fact precluding summary judgment in action seeking to recover for personal injuries sustained when defendant, who was riding a bicycle in the bicycle lane, struck plaintiff pedestrian who stepped into bicycle's path;

Supreme Court, New York County, denied defendant's motion for summary judgment dismissing the complaint; App. Div., with dissents, reversed, granted the motion for summary judgment, and dismissed the complaint.