



*State of New York
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COURT OF APPEALS NEW FILINGS

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

September 23, 2022 through September 29, 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.

CABRERA (RAMON), PEOPLE v:

1st Dept. App. Div. order of 6/14/22; affirmance; leave to appeal granted by Rivera, J., 9/8/22;

Crimes--Confession--Whether defendant was in custody for purposes of *Miranda v Arizona* (384 US 436 [1966]) where he was handcuffed during traffic stop; 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]); whether defendant's sentence is unconstitutional under *Bruen* because Penal Law § 265.03 (3) distinguishes between public possession and possession in the home; Supreme Court, Bronx County, convicted defendant of criminal possession of a weapon in the second degree and imposed sentence; App. Div. affirmed.

COTTO (ALBERT), PEOPLE v:

1st Dept. App. Div. order of 3/10/22; affirmance; leave to appeal granted by the Court of Appeals, 9/13/22;

Crimes--Sex Offenders--Whether the SORA hearing court abused its discretion or otherwise erred as a matter of law when it denied defendant's request for an adjournment of the SORA hearing pending the outcome of an evaluation by a case review team under Mental Hygiene Law (MHL) § 10.05 (e) as to whether he is a sex offender requiring civil management pursuant to MHL article 10;

Supreme Court, Bronx County, adjudicated defendant a level three sexually violent predicate sex offender und the Sex Offender Registration Act; App. Div. affirmed.

MATTER OF EISENHAUER v WATERTOWN CSD:

4th Dept. App. Div. orders of 8/4/22; modification; dismissal; sua sponte examination of whether a substantial constitution question is directly involved to support an appeal as of right;

Taxation--Real Property Tax--Whether Proposition 1, which imposed a new tax on real property within the Watertown City School District for the purpose of raising money annually for the Roswell P. Flower Memorial Library, a public library within the borders of the City of Watertown, is invalid and was improperly enacted in violation of the Library's authorizing legislation, the Education Law, article IX of the New York Constitution, and the due process and equal protection clauses of the United States Constitution;

Supreme Court, Jefferson County, in a proceeding pursuant to CPLR article 78 and declaratory judgment action, among other things, dismissed the "[a]rticle 78 challenge."; App. Div. dismissed appeal from judgment; Supreme Court, Jefferson County, issued an amended judgment that, among other things, dismissed the "[a]rticle 78 challenge."; App. Div. modified amended judgment by granting judgment in favor of respondents-defendants Watertown City School District, Watertown City School District Board of Education, and Roswell P. Flower Memorial Library on the second cause of action to declare that Proposition 1 is not null and void, and as so modified, affirmed the amended judgment.

KILPATRICK v CUOMO:

1st Dept. App. Div. order of 8/23/22; denial of motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Denial of motion to vacate;

App. Div. denied a motion to vacate the dismissal of an appeal from an order of Supreme Court entered on or about March 6, 2020.

KILPATRICK v HOCHUL:

1st Dept. App. Div. order of 8/2/22; denial of motion; sua sponte examination of whether

the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Denial of motion to vacate;

App. Div. denied a motion to vacate the dismissal of an appeal from an order of Supreme Court, New York County, entered on or about May 16, 2022.

PEOPLE v KRULL (VADIMIR):

1st Dept. App. Div. order of 8/2/22; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Crimes--Sex Offender--Whether, when determining defendant's risk level under SORA, Supreme Court erred in assessing defendant 10 points under risk factor 12 for his refusal to accept responsibility for his criminal conduct when defendant invoked his Fifth Amendment right against self-incrimination and was tried and convicted but had a direct appeal pending;

Supreme Court, Bronx County, adjudicated defendant a level two sex offender under the Sex Offender Registration Act; App. Div. modified to the extent of reducing the adjudication to that of a level one offender, and, as so modified, affirmed.

MATTER OF NEMETH v K-TOOLING:

3rd Dept. App. Div. order of 5/5/22; affirmance; leave to appeal granted by the Court of Appeals, 9/15/22;

Limitation of Actions--Whether third prong of relation back doctrine applied to permit petitioners to add landowner as necessary party in amended petition filed after expiration of limitations period; petitioners knew identity of landowner, who was named as a respondent in a prior related proceeding; whether dismissal of claims against remaining respondents was warranted based on failure to name a necessary party;

Supreme Court, Delaware County, granted respondents' cross motion to dismiss the CPLR article 78 petition; App. Div., with one Justice dissenting, affirmed.

PEOPLE ex rel. RANKIN v BRANN:

2nd Dept. App. Div. order of 1/11/22; leave to appeal granted by the Court of Appeals, 9/13/22;

Habeas Corpus--When Remedy Available-- Whether criminal defendant who was released on bail and subsequently arrested for new violent felonies while on bail was entitled to evidentiary hearing under CPL 530.60 (2)(c) before the court could revoke bail and remand defendant to custody;

App. Div. sustained the writ to the extent of remitting the matter to Supreme Court to conduct an evidentiary hearing pursuant to CPL 530.60(2)(c) and otherwise dismissed the writ.

PEOPLE v RIVERA (STORM):

3rd Dept. App. Div. order of 6/23/22; leave to appeal granted by J. Aarons, 9/1/22; Rule 500.11 review pending;

Crimes--Jurors--Whether juror, who failed to disclose during jury selection that she was a victim of sexual abuse and who had an outburst during deliberations in rape prosecution, was grossly unqualified to serve; whether County Court failed to conduct probing and tactful inquiry of juror; Crimes--Right to Counsel--Effective Representation--Whether defendant received the effective assistance of counsel; Crimes--Confession--Whether defendant's statement to police should have been suppressed on the ground that he had been denied his right to counsel;

County Court, St. Lawrence County, convicted defendant of rape in the first degree and unlawful imprisonment in the second degree; App. Div., with one Justice dissenting, affirmed.

ZELIG v SNY DIV. OF HOUSING & COMMUNITY RENEWAL:

1st Dept. App. Div. order of 12/20/20; reversal; denial; sua sponte examination of whether an appeal lies from an order from which an appeal has already been taken and dismissed;

Landlord and Tenant--Rent Regulation--Whether Supreme Court erred in denying remission to the Division of Housing and Community Renewal for further fact finding and a new determination on the petition to deregulate the subject apartment; initial review of deregulation petition based on erroneous information; Supreme Court, New York County, denied petition to annul a determination of respondent DHCR that deregulated petitioner's apartment, and dismissed the proceeding; Supreme Court, New York County, denied petitioner's motions for leave to renew; App. Div., with two Justices dissenting, reversed judgment and remitted matter to Supreme Court with instructions to remand to DHCR for further proceedings in accordance with court's opinion, and dismissed appeal from 11/25/19 order as academic.