



*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 4, 2023 through August 10, 2023

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.

PEOPLE v MITCHELL HERNANDEZ:

1st Dept. App. Div. order of 2/2/23; affirmance; leave to appeal granted by Wilson, Ch.J., 7/25/23;

Crimes—Sentence—Whether the courts below correctly adjudicated defendant a persistent violent felony offender under Penal Law 70.04(1)(b)(iv)-(v) when more than ten years without incarceration elapsed between his sentencing on the first predicate felony conviction and the incident underlying this case but the period of pre-sentencing incarceration on the predicate felony was subtracted from that ten-year period;

Supreme Court, New York County, convicted defendant, after a jury trial, of robbery in the first degree and two counts of robbery in the second degree, and sentenced him, as a persistent violent felony offender, to concurrent terms of 20 years to life; App. Div. affirmed.

MATTER OF HOFFMANN v IRC:

3rd Dept. App. Div. order of 7/13/23; reversal;

Proceeding Against Body or Officer—Whether the Appellate Division properly granted petitioners’ CPLR article 78 petition and directed the Independent Redistricting Commission to commence its duties; whether the proceeding was timely; whether the relief granted violates New York Constitution, Article III, Section 4(e); whether the relief granted conflicts with *Matter of Harkenrider v Hochul*, 38 NY3d 494 (2022);

Supreme Court, Albany County, in a proceeding pursuant to CPLR article 78, granted certain respondents’ motions to dismiss the amended petition; App. Div., with two Justices dissenting, reversed and granted the petition.

KELSEY v CATENA:

3rd Dept. App. Div. order of 6/22/23; affirmance; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Civil Rights—Whether the courts below properly dismissed plaintiff’s amended complaint in this action commenced under 42 USC § 1983 and asserting that alleged deficiencies in his criminal trial deprived him of due process and negatively impacted the appeal of his conviction;

Supreme Court, Columbia County, granted defendants’ motions to dismiss the amended complaint; App. Div. affirmed.