

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
July 11, 2003 through July 17, 2003

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

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 Court Rule 500.11 and direct any questions to the Clerk's Office.

For July 11, 2003 through July 17, 2003 the following jurisdictional statements for appeals were filed:

ANDREA, et al. v ARNONE, et al.:

4TH Dept. App. Div. order of 6/13/03; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the double dissent at the Appellate Division was on a question of law;

LIMITATION OF ACTIONS - COMMENCEMENT OF ACTION AFTER TERMINATION OF PRIOR ACTION - APPLICABILITY OF CPLR 205(a) WHERE SUPREME COURT STATED ITS DISMISSAL OF PRIOR ACTION WAS PREDICATED ON "INEPTITUDE OF COUNSEL";

Supreme Court, Chautaugua County denied defendant Tiede-Zoeller, Inc.'s motions and defendant Jamestown Public Schools' cross motion to dismiss the complaints against them; App. Div. reversed, granted Tiede-Zoller, Inc.'s motions and Jamestown Public Schools' cross motion to dismiss the complaints against them and dismissed the complaints against those defendants.

ARMATULLO (ANTHONY), PEOPLE v:

1ST Dept. App. Div. order of 6/12/03; affirmance; sua sponte examination whether an appeal as of right lies from the Appellate Division order entered in this criminal action;
CRIMINAL LAW AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; ALLEGED VIOLATION OF CPL 200.70(1) AND (2); CLAIMED ROSARIO VIOLATION; ALLEGED JUDICIAL BIAS AND ABUSE; RIGHT TO REPRESENTATION PRO SE;
Supreme Court, New York County judgment convicting defendant of attempted assault in the second degree (2 counts), criminal possession of a weapon in the fourth degree, petit larceny and criminal possession of stolen property in the fifth degree; App. Div. affirmed.

GAROFALO, MATTER OF v NOLAN:

3RD Dept. App. Div. order of 5/7/03; dismissal; 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;
PROCEEDING AGAINST BODY OR OFFICER - CHALLENGE TO APPELLATE DIVISION ORDER GRANTING MOTION TO DISMISS CPLR ARTICLE 78 PROCEEDING;
App. Div. granted respondent's motion for an extension of time to move to dismiss a CPLR article 78 proceeding and to dismiss the proceeding, denied petitioner's cross motion for summary judgment and dismissed the proceeding.

JONES (COREY), PEOPLE v:

2ND Dept. App. Div. order of 2/10/03; affirmance; leave to appeal granted by Graffeo, J., 6/26/03;
CRIMES AND CRIMINAL PROCEDURE - CLAIM THAT LINEUP IDENTIFICATION MUST BE SUPPRESSED BECAUSE DEFENDANT WAS ARRESTED IN VIOLATION OF PAYTON v NEW YORK (445 US 573); CHALLENGE TO PHOTOGRAPHIC IDENTIFICATION PROCEDURE AS UNDULY SUGGESTIVE; SUFFICIENCY OF THE EVIDENCE; CLAIM THAT SENTENCE WAS IMPROPERLY BASED ON UNCHARGED CRIMES;
Supreme Court, Kings County denied that branch of defendant's omnibus motion that was to suppress identification testimony and thereafter rendered judgment convicting defendant of robbery in the first degree; App. Div. affirmed.

LEWIS (ANTHONY), PEOPLE v:

4TH Dept. App. Div. orders of 5/2/03; affirmances; leave to appeal granted by Lawton, J., 6/13/03;
CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE, AMONG OTHER THINGS, DEFENSE COUNSEL TESTIFIED AT SIROIS HEARING; CLAIM THAT PROSECUTOR BECAME AN UNSWORN WITNESS AT THE SIROIS HEARING AND SHOULD HAVE BEEN DISQUALIFIED FROM TRYING THE CASE; SUFFICIENCY OF EVIDENCE SUPPORTING HEARING COURT'S SIROIS RULING; CHALLENGE TO SEARCH WARRANT AND ITS EXECUTION; SUFFICIENCY OF EVIDENCE SUPPORTING CONVICTIONS; CHALLENGE TO POLICE OFFICER TESTIMONY THAT DEFENDANT WAS "IN CHARGE" DURING UNDERCOVER DRUG BUY; Stueben County Court rendered a judgment convicting defendant of criminal possession of a controlled substance in the fourth degree and a separate judgment convicting defendant of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree (two counts); App. Div. affirmed both judgments.

NYCTL 1996-1 TRUST, et al. v ANDREW-ZUCK REALTY CORP., et al.:

1ST Dept. App. Div. order of 5/6/03; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
TAXATION - TAX LIENS - CHALLENGE TO ORDER DISMISSING A COUNTERCLAIM FOR AN ACCOUNTING IN ACTIONS TO FORECLOSE TAX LIENS ON GROUND THAT COUNTERCLAIM WAS RENDERED MOOT BY PAYMENT OF TAX LIENS;
Supreme Court, Bronx County entered orders granting plaintiff's motions to discontinue six actions to foreclose tax liens and dismissing defendant's counterclaims; App. Div. affirmed.

STALIKAS v UNITED MATERIALS, LLC:

4TH Dept. App. Div. order of 6/13/03; affirmances; Rule 500.4 review pending;
NEGLIGENCE - VIOLATIONS OF STATUTORY DUTY - ENTITLEMENT TO JURY INSTRUCTION THAT VIOLATION OF VEHICLE AND TRAFFIC LAW § 1129(a) CONSTITUTES NEGLIGENCE; HARMLESS ERROR;
Supreme Court, Erie County entered a judgment in favor of defendants United Materials, LLC and James Pierce and a separate judgment in favor of defendant Michael Deakin; App. Div. affirmed both judgments.