

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**February 20 through February 26, 2009**

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.

**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.**

AMAZON.COM et al. v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE et al.:

Supreme Court judgment of 2/17/09; dismissal of complaint; sua sponte examination whether a direct appeal lies pursuant to CPLR 5601(b)(2);  
CONSTITUTIONAL LAW - VALIDITY OF STATUTE - CHALLENGE TO TAX LAW § 1101(b)(8)(vi);  
Supreme Court, New York County dismissed the complaint.

BACKUS (DEREK), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 11/14/08; modification and affirmance with dissents; leave to appeal granted by Centra, J., 2/6/09; Rule 500.11 review pending;  
CRIMES AND CRIMINAL PROCEDURE - SENTENCE - CONCURRENT AND CONSECUTIVE ONE-YEAR TERMS - APPROPRIATE CORRECTIVE ACTION WHERE APPELLATE COURT VACATES AN ILLEGAL SENTENCE ENTERED ON A CONVICTION FOLLOWING A GUILTY PLEA WHERE DEFENDANT HAS SERVED ONE YEAR OF HIS SENTENCE - REMITTAL FOR FURTHER PROCEEDINGS INCLUDING RESENTENCING OR MOTION BY PEOPLE TO VACATE THE PLEA AND SET ASIDE THE CONVICTION AS OPPOSED TO MODIFICATION BY APPELLATE COURT TO DIRECT THAT ILLEGAL CONSECUTIVE SENTENCES RUN CONCURRENTLY;

Onondaga County Court convicted defendant of vehicular assault in the second degree and driving while intoxicated, and sentenced him to two one-year concurrent definite terms for vehicular assault and a one-year definite term for driving while intoxicated, to be served consecutively; App. Div. modified the judgment by vacating the sentence, affirmed the judgment as so modified and remitted the matter to Onondaga County Court for further proceedings.

BELL, MATTER OF v BROWN:

2<sup>ND</sup> Dept. App. Div. order of 12/30/08; dismissal of CPLR article 78 proceeding; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING FOR LACK OF SUBJECT MATTER JURISDICTION A CPLR ARTICLE 78 PROCEEDING SEEKING TO COMPEL DISMISSAL OF AN INDICTMENT;

App. Div. dismissed for lack of subject matter jurisdiction a CPLR article 78 proceeding in the nature of mandamus, among other things, to compel dismissal of an indictment.

CANO (JESUS), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 9/2/08; affirmance; leave to appeal granted by Ciparick, J., 2/4/09; Rule 500.11 review pending; CRIMES AND CRIMINAL PROCEDURE - VERDICT - ATTEMPT - SUFFICIENCY OF THE EVIDENCE - WHETHER DEFENDANT CAME "DANGEROUSLY NEAR" COMMISSION OF THE CRIMES OF USE OF A CHILD IN A SEXUAL PERFORMANCE, PROMOTING A SEXUAL PERFORMANCE BY A CHILD, CRIMINAL SEXUAL ACT IN THE THIRD DEGREE AND ENDANGERING THE WELFARE OF A CHILD;

County Court, Orange County convicted defendant of attempted use of a child in a sexual performance, attempted promoting a sexual performance by a child, attempted criminal sexual act in the third degree and endangering the welfare of a child, and imposed sentence; App. Div. affirmed.

SAMANDAROV (SIMON), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 11/12/08; affirmance; leave to appeal granted by Pigott, J., 2/2/09;

CRIMES AND CRIMINAL PROCEDURE - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CPL 440.10 MOTION WITHOUT A HEARING - ALLEGED VIOLATION OF RIGHTS UNDER PEOPLE v ROSARIO (9 NY2d 286) - CONTRADICTORY AFFIDAVITS FROM ONE OF THE PEOPLE'S PRIMARY WITNESSES;

Supreme Court, Queens County convicted defendant of attempted murder in the second degree, assault in the second degree, criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree, and imposed sentence; the same court denied defendant's motion pursuant to CPL 440.10 to vacate the judgment of conviction; App. Div. affirmed.

SANCHEZ (MATTHEW), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/23/08; modification and affirmance; leave to appeal granted by Smith, J., 2/3/09; CRIMES AND CRIMINAL PROCEDURE - GANG ASSAULT - WHETHER "TWO OR MORE PERSONS" SPECIFIED IN PENAL LAW § 120.06 MUST SHARE DEFENDANT'S INTENT TO CAUSE "SERIOUS PHYSICAL INJURY" IN ORDER TO HAVE "AIDED" DEFENDANT IN COMMITTING A GANG ASSAULT - JURY CHARGE - ARGUMENT THAT STATUTE IS VOID FOR VAGUENESS - PROSECUTOR'S USE OF DEFENDANT'S COLLEGE RECORD ON CROSS-EXAMINATION AND COURT'S INSTRUCTION THAT JURY COULD CONSIDER THAT RECORD IN EVALUATING DEFENDANT'S CREDIBILITY - ALLEGED ROSARIO VIOLATIONS - MOTION TO VACATE VERDICT BASED UPON POST-CONVICTION SURVEILLANCE TAPES OF VICTIM AND JUROR MISCONDUCT; Supreme Court, New York County convicted defendant of gang assault in the second degree, and sentenced him to a term of 8 years with five years post-release supervision; App. Div. modified, as a matter of discretion in the interest of justice, by reducing the term of imprisonment to 6 years, and otherwise affirmed.

WROTTEN (JUWANNA), PEOPLE:

1<sup>ST</sup> Dept. App. Div. order of 12/30/08; reversal with dissents; leave to appeal granted by Friedman, J., 2/19/09; CRIMES AND CRIMINAL PROCEDURE - WITNESSES - PRESENTATION OF OUT-OF-STATE COMPLAINANT'S TESTIMONY THROUGH TWO-WAY TELEVISION - DEFENDANT'S RIGHT OF CONFRONTATION; Supreme Court, Bronx County convicted defendant of assault in the second degree and imposed sentence; App. Div. reversed and remanded for a new trial.