

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
March 20 through March 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.

ANDERSON, et al., MATTER OF v TOWN OF CHILI PLANNING BOARD, et al.:

4TH Dept. App. Div. order of 2/6/09; affirmance with dissents; Rule 500.11 review pending;
ENVIRONMENTAL CONSERVATION - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE A DETERMINATION OF RESPONDENT PLANNING BOARD GRANTING RESPONDENT METALICO ROCHESTER, INC.'S APPLICATION REGARDING INSTALLATION OF A METAL SHREDDER ON THE SITE OF ITS SCRAP METAL PROCESSING FACILITY NEAR THE ROCHESTER INTERNATIONAL AIRPORT; Supreme Court, Monroe County granted respondents' motions to dismiss the petition and dismissed the petition; App. Div. affirmed.

AYERS v O'BRIEN et al.:

3RD Dept. App. Div. order of 12/31/08; modification and affirmance; leave to appeal granted by App. Div., 3/5/09;
NEGLIGENCE - EXEMPTION FROM LIABILITY FOR PERSON ENGAGED IN EMERGENCY OPERATION OF AN AUTHORIZED VEHICLE - VEHICLE AND TRAFFIC LAW §§ 101, 114-b AND 1104 - MOTION BY PLAINTIFF DEPUTY SHERIFF TO DISMISS AFFIRMATIVE DEFENSE ASSERTED BY DEFENDANTS ALLEGING THAT PLAINTIFF'S OWN CULPABLE CONDUCT CAUSED OR CONTRIBUTED TO HIS DAMAGES;

Supreme Court, Broome County, among other things, granted plaintiff's motion to dismiss defendants' first affirmative defense; App. Div. modified by reversing so much of the Supreme Court order as granted plaintiff's motion to dismiss defendants' first affirmative defense, denied the motion and affirmed as so modified.

BROWN, PEOPLE ex rel. v CONWAY:

4TH Dept. App. Div. order of 9/19/08; sua sponte examination whether a substantial constitutional question is directly involved to support the appeal as of right and whether an appeal lies from an order of a single Appellate Division justice; HABEAS CORPUS - WHEN REMEDY AVAILABLE; App. Div. granted petitioner's motion to proceed as a poor person, and denied the petition for a writ of habeas corpus on the grounds that relator's claims could have been (and were) raised pursuant to CPL article 440 and would not entitle him to immediate release from custody.

MATTER OF ADOPTION OF DOE [L.M.B. v E.R.J.]:

1ST Dept. App. Div. order of 11/25/08; affirmance; leave to appeal granted by App. Div., 3/12/09; INTERNATIONAL LAW - ACT OF STATE DOCTRINE - APPLICATION TO TRANSNATIONAL ADOPTIONS; CHOICE OF LAW - APPLICATION OF CAMBODIAN LAW OR NEW YORK LAW TO DETERMINE VALIDITY OF RELINQUISHMENT OF ADOPTIVE RIGHTS TO AN ORPHANED CAMBODIAN CITIZEN; TERMINATION OF ADOPTIVE PARENT'S RIGHTS WITHOUT CONSIDERATION OF THE BEST INTERESTS OF THE CHILD; Surrogate's Court, New York County granted petitioner L.M.B.'s application for immediate visitation and for vacatur of a prior Surrogate's Court order that granted E.R.J.'s application to re-adopt John Doe; App. Div. affirmed.

GILLYARD (COLLIER), PEOPLE v:

1ST Dept. App. Div. order of 10/2/08; affirmance; leave to appeal granted by Smith, J., 2/6/09; CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - ADMISSION INTO EVIDENCE OF A "UNIVERSAL" HANDCUFF KEY RECOVERED FROM DEFENDANT DURING HIS PRETRIAL INCARCERATION APPROXIMATELY ONE MONTH AFTER THE LAST CHARGED CRIME - ALLEGED VIOLATION OF PEOPLE v MOLINEAUX (168 NY 264); CHALLENGE TO PROSECUTOR'S SUMMATION - TRIAL COURT'S DENIAL OF DEFENDANT'S SEVERANCE MOTION; Supreme Court, New York County convicted defendant of robbery in the second degree, grand larceny in the fourth degree and criminal impersonation in the first and second degrees, and sentenced him, as a second violent felony offender, to an aggregate term of nine years; App. Div. affirmed.

JAGLOM et al. v INSURANCE COMPANY OF GREATER NEW YORK:

1ST Dept. App. Div. order of 12/16/08; affirmance with dissents; leave to appeal granted by App. Div., 3/12/09; Rule 500.11 review

pending;

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INSURANCE - DUTY TO DEFEND AND INDEMNIFY - LATE NOTICE OF OCCURRENCE AND CLAIM - WHETHER ISSUES OF FACT EXIST REGARDING THE EXISTENCE AND REASONABLENESS OF INSUREDS' PROFESSED GOOD-FAITH BELIEF THAT THE PARTY THAT HAS SINCE COMMENCED A DEFAMATION ACTION AGAINST THEM WOULD NOT SEEK TO HOLD THEM LIABLE; Supreme Court, New York County denied defendant's motion to dismiss the complaint; App. Div. affirmed.

PIERCE (MARCELLUS), PEOPLE v:

4TH Dept. App. Div. order of 12/31/08; affirmance; leave to appeal granted by Ciparick, J., 3/18/09; Rule 500.11 review pending;

CRIMES AND CRIMINAL PROCEDURE - INFORMATION - JURISDICTIONAL VALIDITY;

Supreme Court, Erie County convicted defendant, upon his guilty plea, of criminal possession of stolen property in the third degree and grand larceny in the fourth degree; App. Div. affirmed.

SIMMS (EVERTON D.), PEOPLE v:

2ND Dept. App. Div. order of 9/2/08; reversal; leave to appeal granted by Smith, J., 3/9/09;

CRIMES AND CRIMINAL PROCEDURE - VERDICT - WHETHER TRIAL COURT ERRED IN ACCEPTING VERDICT BASED UPON STATEMENTS MADE BY JUROR DURING POLLING AND SUBSEQUENT INQUIRY BY THE COURT;

Supreme Court, Kings County convicted defendant of robbery in the first degree, upon a jury verdict, and imposed sentence; App. Div. reversed and ordered a new trial.

WORD, MATTER OF v SUPERINTENDENT OF BEDFORD HILLS CORRECTIONAL FACILITY, et al.:

Supreme Court, Westchester County order of 4/30/08; sua sponte examination whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);

GRAND JURY - APPLICATION BY PRISONER FOR SUPREME COURT TO IMPANEL GRAND JURY REGARDING ALLEGED MISCONDUCT BY DEPARTMENT OF CORRECTIONAL SERVICES MEDICAL PERSONNEL;

Supreme Court denied petitioner's application for the court to impanel a grand jury.