

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 29 through June 4, 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.

CARNCROSS (JAMES J.), PEOPLE v:

4th Dept. App. Div. order of 2/11/09; affirmance; leave to appeal granted by Smith, J., 5/20/09;

CRIMES AND CRIMINAL PROCEDURE - CRIMINALLY NEGLIGENT HOMICIDE - SUFFICIENCY OF EVIDENCE; RIGHT TO COUNSEL - WHETHER TRIAL COURT ERRED IN GRANTING THE PEOPLE'S MOTION TO DISQUALIFY DEFENSE COUNSEL; CLAIMED VIOLATION OF DUE PROCESS RIGHTS;

Supreme Court, Onondaga County convicted defendant, upon a jury verdict, of aggravated criminally negligent homicide and reckless driving; App. Div. affirmed.

CARR (ERIC D.), PEOPLE v:

4TH Dept. App. Div. order of 2/6/09; affirmance; leave to appeal granted by Graffeo, J., 5/27/09;

CRIMES AND CRIMINAL PROCEDURE - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A MISSING WITNESS CHARGE; SUFFICIENCY OF THE EVIDENCE TO ESTABLISH THE ELEMENT OF INTENT WITH RESPECT TO THE ATTEMPTED MURDER CHARGE;

Supreme Court, Erie County convicted defendant, upon a jury verdict, of attempted murder in the second degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree and criminal possession of a weapon in the fourth degree; App. Div. affirmed.

FIAMMEGTA (VINCENT), PEOPLE v:

2ND Dept. App. Div. order of 12/30/08; affirmance; leave to appeal granted by Pigott, J, 5/21/09;

CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WHAT PROCESS IS DUE WHEN DEFENDANT TAKES A DEFERRED SENTENCING PLEA AND DISPUTES THE CLAIM THAT HE VIOLATED A CONDITION OF THAT PLEA - CLAIM BY DRUG TREATMENT PROGRAM THAT DEFENDANT BREACHED THE PROGRAM'S RULES;

Supreme Court, Kings County convicted defendant, upon his guilty plea, of burglary in the second degree and imposed sentence; App. Div. affirmed.

FULTON, PEOPLE ex rel. v LAPE:

3RD Dept. App. Div. order of 4/23/09; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - AVAILABILITY OF RELIEF;

Supreme Court, Greene County denied petitioner's application for writ of habeas corpus; App. Div. affirmed.

JOHNSON (TERRANCE), PEOPLE v:

4TH Dept. App. Div. order of 3/20/09; affirmance; leave to appeal granted by Lippman, Ch. J., 5/20/09; Rule 500.11 review pending;

CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL - VALIDITY;

Supreme Court, Erie County convicted defendant, upon his guilty plea, of robbery in the first degree; App. Div. affirmed.

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, et al.,
MATTER OF v LANTERMAN et al.:

3RD Dept. App. Div. order of 5/14/09; reversal with dissents; ARBITRATION - MATTERS ARBITRABLE - TEACHER CERTIFICATION - PUBLIC POLICY EXCEPTION - TERMINATION OF PUBLIC SCHOOL TEACHER BASED UPON FAILURE TO MAINTAIN PROFESSIONAL CERTIFICATION;

Supreme Court, Albany County denied petitioners' application to permanently stay arbitration and granted respondents' cross application to compel arbitration; App. Div. reversed, granted petitioners' application to permanently stay arbitration and denied respondents' cross application to compel arbitration.

WISE (ANTHONY), PEOPLE v:

2ND Dept. App. Div. order of 4/21/09; denial of application for a writ of error coram nobis; sua sponte examination whether there is a jurisdictional predicate for an appeal as of right in the criminal proceeding;

APPEAL - EFFECTIVENESS OF APPELLATE COUNSEL - DENIAL OF APPLICATION FOR WRIT OF ERROR CORAM NOBIS;

App. Div. denied appellant's application for writ of error coram nobis to vacate a 6/28/82 App. Div. order.

