

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
June 5 through June 11, 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.

COMMISSIONER OF SOCIAL SERVICES OF THE CITY OF NEW YORK AS
ASSIGNEE OF LORRAINE C. v IRVING H.:

1ST Dept. App. Div. order of 3/10/09; affirmance; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;

CHILDREN BORN OUT OF WEDLOCK - PATERNITY PROCEEDING - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING FAMILY COURT ORDER THAT AFFIRMED A SUPPORT MAGISTRATE'S ORDER OF FILIATION AND SUPPORT; Family Court, New York County affirmed a Support Magistrate's order of filiation and support, App. Div. affirmed.

DOKU (CHRISTOPHER A.), PEOPLE v:

Troy City Court order of 1/9/09; sua sponte examination whether there is any jurisdictional basis for this appeal taken as of right in a criminal matter;

APPEAL - APPEAL AS OF RIGHT IN CRIMINAL MATTER - VACATUR OF JUDGMENT OF CONVICTION;

Troy City Court denied defendant's motion pursuant to CPL 440.10 to vacate the court's 9/16/08 judgment convicting defendant, upon his guilty plea, of sexual abuse in the second degree.

LAWRENCE et al. v ALBANY COUNTY DEPARTMENT FOR CHILDREN, YOUTH AND FAMILIES:

3RD Dept. App. Div. order of 4/9/09; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists to support an appeal as of right; DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT; SUMMARY JUDGMENT; Supreme Court, Albany County denied plaintiffs' motion for a default judgment; App. Div. affirmed.

MALISZEWSKI (PETER J.), PEOPLE v:

4TH Dept. App. Div. order of 3/20/09; affirmance with dissents; leave to appeal granted by Centra, J., 5/29/09; Rule 500.11 review pending;

CRIMES - SENTENCE - RESENTENCE IMPOSED UPON REMITTAL OF MATTER TO COUNTY COURT BY APPELLATE DIVISION - WHETHER THE RESENTENCE TERMS CONSTITUTE AN ILLEGAL SENTENCING ENHANCEMENT;

Oswego County Court resentenced defendant to an indeterminate term of incarceration of three to six years and restitution upon his conviction of burglary in the third degree; App. Div. affirmed.

MOTHERSELL (ROBERT), PEOPLE v:

4TH Dept. App. Div. order of 2/6/09; affirmance; leave to appeal granted by Lippman, Ch.J., 5/14/09;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - SEARCH WARRANT - STRIP SEARCH - CHALLENGE TO STRIP SEARCH CONDUCTED PURSUANT TO WARRANT PERMITTING THE SEARCH OF "ANY AND ALL PERSON(S) PRESENT" AT APARTMENT DESIGNATED IN THE WARRANT; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL;

Onondaga County Court convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the fifth degree; App. Div. affirmed.

MURRAY (KEZINE), PEOPLE v:

2ND Dept. App. Div. order of 12/23/08; affirmance; leave to appeal granted by Read, J., 5/26/09;

CRIMES - SENTENCE - POST-RELEASE SUPERVISION - WHETHER DEFENDANT'S GUILTY PLEA WAS KNOWINGLY AND VOLUNTARILY ENTERED IN LIGHT OF JUDGE'S IMPOSITION OF THREE YEARS' POST-RELEASE SUPERVISION (PRS) RATHER THAN THE TWO YEARS' PRS DISCUSSED AT THE TIME OF HIS CONDITIONAL PLEA; PRESERVATION OF CLAIM FOR APPELLATE REVIEW;

Supreme Court, Kings County convicted defendant, upon his guilty plea, of criminal possession of a weapon in the third degree, and imposed sentence; App. Div. affirmed.

RIBIS v EAST IRONDEQUOIT CENTRAL SCHOOL DISTRICT, et al.:

4TH Dept. App. Div. order of 4/24/09; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

SCHOOLS - BUS DRIVERS - CAUSES OF ACTION BASED UPON SCHOOL DISTRICT'S DETERMINATION, PURSUANT TO A CONTRACT BETWEEN THE DISTRICT AND A THIRD PARTY PROVIDER OF TRANSPORTATION, THAT PLAINTIFF BUS DRIVER, WHO WAS EMPLOYED BY THE THIRD PARTY, WAS DISQUALIFIED FROM TRANSPORTING DISTRICT STUDENTS BECAUSE HE OPERATED HIS BUS IN AN UNSAFE MANNER - ALLEGED VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS; SUMMARY JUDGMENT;

Supreme Court, Monroe County, among other things, granted defendants' motion for summary judgment and dismissed the complaint; App. Div. affirmed.

