

April 26, 2012

CASES

3 No. 65
In the Matter of Albany Law School et al.,
 Respondents-Appellants,
 v.
New York State Office of Mental Retardation
and Developmental Disabilities et al.,
 Appellants-Respondents.

Order modified, without costs, by remitting to
Supreme Court, Albany County, for further
proceedings in accordance with the opinion herein
and, as so modified, affirmed and certified question
answered in the affirmative.
Opinion by Judge Graffeo.
Judges Read, Pigott and Jones concur.
Judge Ciparick dissents in an opinion in which Chief
Judge Lippman and Judge Smith concur.

1 No. 136 SSM 3
The People &c.,
 Respondent,
 v.
Latisha Bowden,
 Appellant.

On review of submissions pursuant to section 500.11
of the Rules, appeal dismissed upon the ground that
the reversal by the Appellate Division was not "on
the law alone or upon the law and such facts which,
but for the determination of law, would not have led
to reversal" (CPL 450.90[2][a]).
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Smith, Pigott and Jones concur.

4 No. 71
State of New York ex rel. Kevin Grupp and
Robert Moll,
 Appellants,
 v.
DHL Express (USA), Inc., et al.,
 Respondents.

Order affirmed, with costs.
Opinion by Judge Jones.
Chief Judge Lippman and Judges Graffeo, Read and
Smith concur.
Judge Pigott dissents in an opinion in which Judge
Ciparick concurs.

3 No. 68
In the Matter of Luyster Creek, LLC,
 Appellant,
 v.
New York State Public Service Commission,
 Respondent,
Consolidated Edison Company of New York,
Inc.,
 Respondent.

Order reversed, with costs, petition granted and the April 2007 determination of the New York State Public Service Commission annulled, in a memorandum.
Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.
Chief Judge Lippman and Judge Read took no part.

1 No. 73
The People &c.,
 Respondent,
 v.
Rafael Rodriguez,
 Appellant.

Order affirmed.
Opinion by Judge Pigott.
Judges Graffeo, Read, Smith and Jones concur.
Judge Ciparick dissents in an opinion in which Chief Judge Lippman concurs.

1 No. 79
The People &c.,
 Respondent,
 v.
Leroy Williams,
 Appellant.

Order affirmed.
Opinion by Judge Ciparick.
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Jones concur.

1 No. 77
Jill Williams, et al.,
 Respondents,
 v.
State of New York,
 Appellant.

Order reversed, with costs, the judgment of the Court of Claims reinstated and the certified question answered in the negative, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

MOTIONS

4 Mo. No. 2012-189
The People &c. ex rel. Chris Applewhite,
Appellant,
v.
Harold D. Graham, &c.,
Respondent.

Motion for leave to appeal dismissed upon the ground that the issues presented have become moot. Motion for poor person relief dismissed as academic.

4 Mo. No. 2012-111
Art Capital Partners, LP, et al.,
Respondents,
v.
Tyco Acquisition Corp. XVIII, &c., et al.,
Appellants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2012-131
Kaylee Atehortua, &c., et al.,
Appellants,
v.
Jamie Lewin, et al.,
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2012-369
The People &c.,
Respondent,
v.
Rafael L. Belliard,
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2012-126
Kenneth Bennett,
Appellant,
v.
Health Management Systems, Inc.,
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2012-414
Bentoria Holdings, Inc.,
Respondent,
v.
Travelers Indemnity Company,
Appellant,
et al.,
Defendants.

Motion by American Insurance Association et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed.

1 SSD 11
Jennifer Cangro,
Appellant,
v.
John Z. Marangos,
Respondent.

Appeals dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

In the Matter of Gina Marie Reitano.

Jennifer Cangro, an Alleged Incapacitated
Person,
Appellant,
v.
Mary V. Rosado,
Respondent.

Mo. No. 2012-460
Daniel Marks Cohen, et al.,
Appellants,
v.
Governor Andrew M. Cuomo, et al.,
Respondents.

Motion by New Roosevelt Foundation, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and 19 copies filed within seven days.

Mo. No. 2012-466
Daniel Marks Cohen, et al.,
Appellants,
v.
Governor Andrew M. Cuomo, et al.,
Respondents.

Motion by Common Cause New York for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and 19 copies filed within seven days.

4 Mo. No. 2012-371
The People &c.,
Respondent,
v.
Stephen DeProspero,
Appellant.

Motion for assignment of counsel granted only to the extent that Frank Policelli, Esq., 10 Steuben Park, Utica, NY 13501 is assigned without fee to represent appellant on the appeal herein. Counsel may, however, apply for reimbursement of necessary disbursements incurred in connection with the assignment.

1 Mo. No. 2012-409
The People &c.,
Respondent,
v.
Isaac Diggins,
Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2012-339
The People &c.,
Respondent,
v.
Alex Echevarria,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2012-168
Stephen Evans-Freke,
Appellant,
v.
Showcase Contracting Corp.,
Respondent,
et al.,
Defendant.
(And Related Actions.)

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2012-187
The People &c.,
Respondent,
v.
Manuel Fernandez,
Appellant.

Motion for leave to appeal denied.

4 SSD 12
In the Matter of H.H. Warner, LLC,
Appellant,
v.
Rochester Genesee Regional Transportation
Authority,
Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

4 Mo. No. 2012-368
The People &c.,
Respondent,
v.
Dayshawn P. Handy,
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2012-199
The People &c.,
Respondent,
v.
Mark R. Holt,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2012-412
The People &c.,
 Respondent,
 v.
Malik Howard,
 Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2012-307
The People &c.,
 Appellant-Respondent,
 v.
Gerard Ippolito, Also Known as
Gerald Ippolito,
 Respondent-Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the respondent-appellant on the appeal herein.

4 Mo. No. 2012-185
The People &c.,
 Respondent,
 v.
Trenton L. Iverson,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2012-179
Bonica Lescenski, &c.,
 Appellant,
 v.
Michael J. Williams,
 Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2012-386
The People &c.,
 Respondent,
 v.
Cornell Long,
 Appellant.

Motion for poor person relief granted.

2 Mo. No. 2012-173
In the Matter of Gawen M. (Anonymous),
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2012-183
The People &c.,
Respondent,
v.
William C. Marion,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2012-129
In the Matter of Mayrich Construction
Company,
Appellant,
v.
Oliver LLC, &c.,
Respondent.

Motion for leave to appeal granted.

1 Mo. No. 2012-337
The People &c.,
Appellant-Respondent,
v.
Edgar Morales,
Respondent-Appellant.

Motion by Center on the Administration of Criminal
Law for leave to file a brief amicus curiae on the
appeal herein granted and the proposed brief is
accepted as filed.

1 Mo. No. 2012-370
The People &c.,
Respondent,
v.
Andrew Moss,
Appellant.

Motion for assignment of counsel granted and
Richard M. Greenberg, Esq., Office of the Appellate
Defender, 11 Park Place, Suite 1601, New York, NY
10007 assigned as counsel to the appellant on the
appeal herein.

Mo. No. 2012-163
The People &c.,
Respondent,
v.
George Nager,
Appellant.

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain the motion from the order of the Appellate Term (see CPLR 5602[a]).

2 Mo. No. 2012-333
The People &c.,
Respondent,
v.
Elbert Norris,
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2012-319
The People &c.,
Respondent,
v.
Tyrell Norris,
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2012-118
NYCTL 1998-2 Trust,
Respondent,
v.
Norman Ackerman,
Appellant,
et al.,
Defendants.

Motion for leave to appeal dismissed as untimely. The prior motion for leave to appeal made to the Appellate Division was untimely (see Karger, Powers of the New York Court of Appeals § 12:3, at 436-437 [3d ed rev]).
Motion for poor person relief dismissed as academic.

4 Mo. No. 2012-347
The People &c.,
Respondent,
v.
David Plunkett,
Appellant.

Motion by American Academy of HIV Medicine et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed.

1 Mo. No. 2012-329
Rose Group Park Avenue LLC,
et al.,
 Appellants,
 v.
The New York State Liquor Authority,
 Respondent.

The Preservation Coalition,
et al.,
 Intervenors-Respondents.

1 Mo. No. 2012-314
In the Matter of Stephen Rosenblum,
 Respondent,
 v.
The New York City Conflicts of Interest
Board, et al.,
 Appellants.

4 Mo. No. 2012-161
Karen L. Salvato,
 Respondent,
 v.
Larry P. Salvato,
 Appellant.

4 Mo. No. 2012-197
In the Matter of Shirley A.S.

Erie County Department of Social Services,
 Respondent;
David A.S.,
 Appellant.

Motion by Brown Memorial Baptist Church et al. for
leave to file a memorandum of law amici curiae on
the motion for leave to appeal herein, and for leave
to file a brief amici curiae on the appeal herein,
dismissed as academic.

Motion for reargument denied with one hundred
dollars costs and necessary reproduction
disbursements.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2012-175
In the Matter of Benjamin Smalls,
Appellant,
v.
Brian Fischer, &c., et al.,
Respondents.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

4 Mo. No. 2012-401
The People &c.,
Respondent,
v.
Leroy Tuff, Jr.,
Appellant.

Motion for an extension of the time within which to
apply for permission to appeal pursuant to CPL
460.20 granted and motion papers treated as a timely
CPL 460.20 application.

3 Mo. No. 2012-108
In the Matter of Sarah A. Watson,
Appellant.
The Mohawk Homestead,
Respondent.
Commissioner of Labor,
Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2012-165
In the Matter of John Whitfield,
Appellant,
v.
Patricia J. Bailey, &c.,
Respondent.

Motion, insofar as it seeks leave to appeal from that
part of the Appellate Division order that affirmed the
October 2010 Supreme Court order, denied; motion
for leave to appeal otherwise dismissed upon the
ground that the remaining portions of the order
sought to be appealed from do not finally determine
the proceeding within the meaning of the
Constitution.