

October 18, 2012

CASES

No. 229
Commonwealth of the Northern Mariana
Islands,
Appellant,
v.
Canadian Imperial Bank of Commerce,
Respondent,
William H. Millard,
Defendant,
The Millard Foundation,
Intervenor.

Certification of questions by the United States Court
of Appeals for the Second Circuit, pursuant to section
500.27 of this Court's Rules of Practice, accepted and
the issues presented are to be considered after
briefing and argument.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Smith, Pigott and Jones concur.

2 No. 166
In the Matter of Michael D'Angelo,
Respondent,
v.
Nicholas Scoppetta, &c., et al.,
Appellants.

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

1 No. 227 SSM 36
Summer H., &c., et al.,
Appellants,
v.
The New York City Department of Education,
Respondent.

On review of submissions pursuant to section 500.11
of the Rules, order affirmed, with costs, in a
memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Smith, Pigott and Jones concur.

3 No. 174
The People &c.,
 Respondent,
 v.
Calvin L. Harris,
 Appellant.

Order reversed and a new trial ordered.
Opinion by Judge Pigott.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Smith and Jones concur.
Judge Read dissents and votes to reverse and dismiss
the indictment for the reasons stated in so much of
the dissenting opinion of Justice Bernard J. Malone at
the Appellate Division as addressed sufficiency of the
evidence (88 AD3d 83, at 98-120).

1 No. 154
Hudson Valley Federal Credit Union,
 Appellant,
 v.
New York State Department of Taxation and
Finance, et al.,
 Respondents.

Order modified, with costs to defendants, by
declaring that federal credit unions are not exempt
from the New York State mortgage recording tax
and, as so modified, affirmed.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Ciparick, Pigott
and Jones concur.
Judge Read dissents and votes to reverse in an
opinion.
Judge Smith took no part.

3 No. 175
James Knapp et al.,
 Respondents,
 v.
James R. Hughes, et al.,
 Appellants.

Judgment appealed from and order of the Appellate
Division, insofar as brought up for review, reversed,
with costs, and judgment granted to defendants
declaring in accordance with the opinion herein.
Opinion by Judge Smith.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Pigott and Jones concur.

2 No. 163
Town of Oyster Bay,
 Appellant,
 v.
Galen D. Kirkland, &c., et al.
 Respondents.

Order affirmed, with costs, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Smith, Pigott and Jones concur.

1 No. 177
Jayvaun Stephenson, &c., et al.,
 Appellants,
 v.
The City of New York, et al.,
 Respondents.

Order affirmed, with costs, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Smith, Pigott and Jones concur.

1 No. 156
The People &c.,
 Respondent,
 v.
Western Express International Inc., et al.,
 Defendants,
Douglas Latta and Anna Ciano a/k/a Angela
Perez,
 Appellants.

Order, insofar as appealed from, reversed and orders
of Supreme Court, New York County, dismissing the
enterprise corruption count of the indictment as
against appellants, reinstated.
Opinion by Chief Judge Lippman.
Judges Ciparick, Graffeo, Read, Smith and Jones
concur.
Judge Pigott dissents and votes to affirm in an
opinion.

MOTIONS

1 Mo. No. 2012-750
Stella Asante et al.,
 Appellants,
 v.
JPMorgan Chase & Co. et al.,
 Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2012-979
The People &c.,
 Respondent,
 v.
Travis Augustine,
 Appellant.

Motion for assignment of counsel granted and
Matthew C. Hug, Esq., 105 Jordan Road, Troy, NY
12180 assigned as counsel to the appellant on the
appeal herein.

3 Mo. No. 2012-741
Ronald B. Brashear,
 Appellant,
 v.
Christopher J. Pelto,
 Respondent,
et al.,
 Defendant.

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

4 Mo. No. 2012-755
In the Matter of Alberto C., Jr.

Erie County Department of Social Services,
 Respondent;
Tibet H.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2012-793
Henry Castro,
 Appellant,
 v.
City of New York, et al.,
 Respondents.

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

1 Mo. No. 2012-734
Carmen Cintron,
 Appellant,
 v.
Montefiore Medical Center,
 Respondent.

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

2 Mo. No. 2012-1017
The People &c.,
 Respondent,
 v.
Jocelyn Clermont,
 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. 2012-1046
In the Matter of Commissioner of Social
Services, on Behalf of Elizabeth S.,
 Appellant,
 v.
Julio J.,
 Respondent.

Motion for poor person relief granted.

1 SSD 43
In the Matter of Darryl C., A Person Alleged
to be a Juvenile Delinquent,
 Respondent;
Presentment Agency,
 Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the two-justice dissent at the Appellate Division is not on a question of law (see CPLR 5601[a]).

1 Mo. No. 2012-747
Theresa Devito,
 Appellant,
 v.
Dennis Feliciano et al.,
 Respondents.

Motion for leave to appeal granted.

2 SSD 62
In the Matter of Gregory John Fischer, et al.,
 Appellants,
 v.
NYS Board of Elections, et al.,
 Respondents.

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

2 Mo. No. 2012-997
In the Matter of Riven Flamenbaum,
Deceased.

Motion by Archaeological Institute of America et al.
for leave to file a brief amici curiae on the appeal
herein granted and the proposed brief is accepted as
filed.

Vorderasiatisches Museum,
 Respondant;
Hannah K. Flamenbaum,
 Appellant,
Israel Flambenbaum,
 Respondent.

4 Mo. No. 2012-778
Providenza M. Fraccola,
 Respondent,
 v.
Alan P. Fraccola,
 Appellant.

Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the action within the
meaning of the Constitution.

3 Mo. No. 2012-624
In the Matter of Shawn Green,
 Appellant,
 v.
Mark L. Bradt, &c.,
 Respondent.

Motion for reargument of motion for leave to appeal
denied.

4 Mo. No. 2012-716
Shawn Green,
Appellant,
v.
State of New York,
Respondent.

Motion for reargument of motion for leave to appeal denied.

4 Mo. No. 2012-1007
The People &c.,
Respondent,
v.
Daryl Hamm,
Appellant.

Motion for assignment of counsel granted and David C. Schopp, Esq., The Legal Aid Bureau of Buffalo, Inc., 237 Main Street, Suite 1602, Buffalo, NY 14203 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2012-775
Richard H. Kilmer et al.,
Appellants,
v.
George Miller et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

2 Mo. No. 2012-787
In the Matter of Kirquel Development, Ltd.,
Appellant,
v.
Planning Board of Town of Cortlandt,
Respondent.

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

4 Mo. No. 2012-802
In the Matter of Eric J. Koch, D.O.,
Respondent,
v.
James G. Sheehan, &c.,
Appellant.

Motion for leave to appeal granted.

4 Mo. No. 2012-801
In the Matter of Eddie James Lee, Sr.,
 Appellant,
 v.
Carol B. Woughter, &c.,
 Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

4 Mo. No. 2012-712
The People &c.,
 Respondent,
 v.
Leonard James,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2012-744
The People &c. ex rel. Nathan Lewis,
 Appellant,
 v.
Harold D. Graham, &c.,
 Respondent.

Motion for leave to appeal denied.

1 SSD 52
In the Matter of Jaquan M.,
a Person Alleged to be a Juvenile Delinquent,
 Respondent.
Presentment Agency,
 Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the two-justice dissent at the Appellate Division is not on a question of law (see CPLR 5601[a]).

 SSD 60
Edward P. Mangano, &c., et al.,
 Respondents,
 v.
Sheldon Silver, &c., et al.,
 Defendants,
State of New York, et al.,
 Appellants.

Appeals, treated as taken from the counter-judgment, transferred without costs, by the Court sua sponte, to the Appellate Division, Second Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

2 Mo. No. 2012-710
Arturo Fabian Pineda,
 Appellant,
 v.
Javar Corporation, et al.,
 Respondents,
et al.,
 Defendants.
(And a Third-Party Action.)

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

1 Mo. No. 2012-709
In the Matter of Timothy Quinn,
 Appellant,
 v.
Raymond Kelly, &c., et al.,
 Respondents.

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

1 Mo. No. 2012-720
Kenneth E. Ramseur,
 Appellant,
 v.
Hudsonview Company, et al.,
 Respondents.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2012-1014
The People &c.,
 Respondent,
 v.
Reyes Rodriguez,
 Appellant.

Motion for assignment of counsel granted and Arnold J. Levine, Esq, 233 Broadway, Suite 901, New York, NY 10279 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2012-752
Schuyler Meadows Country Club, Inc.,
 Appellant,
 v.
Margaret F. Holbritter et al.,
 Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2012-1029
In the Matter of P. David Soares, as District
Attorney of Albany County,
 Respondent,
 v.
Stephen W. Herrick, as Judge of the County
Court of Albany County,
 Respondent,
Naomi Loomis, et al.,
 Appellants.

Motion by District Attorneys Association of the State
of 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.

3 Mo. No. 2012-736
In the Matter of Hannah T.
et al., &c.

Motion for leave to appeal denied.

Schenectady County Department of Social
Services,
 Respondent;
Joshua U.,
 Appellant.

Motion for leave to appeal dismissed upon the
ground that timely substitution has not been made
(see CPLR 1021).

3 Mo. No. 2012-603
Troy Nursing & Rehabilitation Center, LLC,
&c.,
 Respondent,
 v.
Ernest Naylor,
 Defendant,
Diana Gaetano, &c.,
 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 respondent on the appeal herein.

2 Mo. No. 2012-987
The People &c.,
 Appellant,
 v.
Kevin W.,
 Respondent.

2 Mo. No. 2012-772
Grace E. Weinberg, et al.,
 Appellants,
 v.
City of New York, et al.,
 Respondents.

Motion for leave to appeal denied.
Chief Judge Lippman took no part.

1 Mo. No. 2012-996
The People &c.,
 Respondent,
 v.
Carl Wells,
 Appellant.

Motion for an extension of the time within which to
apply for permission to appeal pursuant to CPL
460.20 dismissed upon the ground that no
application for leave to appeal pursuant to CPL
460.20 will lie from an order of a single justice of the
Appellate Division denying leave to appeal to that
court pursuant to CPL 460.15.

2 Mo. No. 2012-1012
In the Matter of City of Yonkers,
 Respondent,
 v.
Yonkers Fire Fighters, Local 628, IAFF,
AFL-CIO,
 Appellant.

Motion by New York State Professional Firefighters
Association, I.A.F.F., AFL-CIO for leave to appear
amicus curiae on the appeal herein granted only to
the extent that the proposed brief is accepted as filed.