

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

July 1 through July 7, 2011

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. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

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.

BUSSEY (MONROE B.), PEOPLE v:

2ND Dept. App. Div. order of 3/15/11; affirmance; leave to appeal granted by Smith, J., 6/15/11;

CRIMES - MURDER - DEPRAVED INDIFFERENCE MURDER - WHETHER THE TRIAL COURT ERRED IN SUBMITTING COUNTS OF BOTH INTENTIONAL MURDER AND DEPRAVED INDIFFERENCE MURDER TO THE JURY; MERGER DOCTRINE - WHETHER MERGER DOCTRINE APPLIES TO CHARGE OF KIDNAPPING IN THE FIRST DEGREE;

Orange County Court convicted defendant of murder in the second degree (depraved indifference murder), murder in the second degree (felony murder), kidnapping in the first degree, tampering with physical evidence, and criminal possession of marijuana in the fourth degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

HAFFIZ (FEOID), PEOPLE v:

2ND Dept. App. Div. order of 10/12/10; affirmance; leave to appeal granted by Jones, J., 6/10/11;
CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON ATTORNEY'S STATEMENT CONCERNING THE DEPORTATION CONSEQUENCES OF DEFENDANT'S GUILTY PLEA - VOLUNTARINESS OF GUILTY PLEA;
Suffolk County Court convicted defendant of criminal sale of a controlled substance in the second degree, criminal sale of a firearm in the third degree, and criminal possession of a weapon in the second degree, upon his guilty plea, and imposed sentence; App. Div. affirmed.

LUYSTER CREEK LLC, MATTER OF v NEW YORK STATE PUBLIC SERVICE COMMISSION et al.:

3RD Dept. App. Div. order of 3/10/11; affirmance; leave to appeal granted by Court of Appeals, 6/23/11;
PUBLIC UTILITIES - PUBLIC SERVICE COMMISSION (PSC) - PROPERTY TRANSFER ORDER - CHALLENGE TO PSC DETERMINATION CONFIRMING THAT THE DEVELOPMENT OF CERTAIN REAL PROPERTY AS AN ENVELOPE MANUFACTURING FACILITY WAS AN ESSENTIAL FACTOR UNDERLYING THE PUBLIC INTEREST FINDING IN PSC'S PRIOR ORDER APPROVING THE TRANSFER OF THE PROPERTY - PSC'S CONSIDERATION OF ECONOMIC DEVELOPMENT BENEFITS - SCOPE OF PSC'S STATUTORY AUTHORITY;
Supreme Court, Albany County, among other things, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent Public Service Commission confirming that the development of certain real property as an envelope manufacturing facility was an essential factor underlying the public interest finding in its prior order approving the transfer of the property; App. Div. affirmed.

SMITH, MATTER OF v TORMEY:

4TH Dept. App. Div. judgment of 4/1/11; leave to appeal granted by Court of Appeals, 6/23/11;
PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER CHALLENGED DETERMINATION REGARDING COUNTY COURT'S AWARD OF COUNSEL FEES WAS MADE IN EXCESS OF ADMINISTRATIVE JUDGE'S AUTHORITY PURSUANT TO 22 NYCRR 127.2(b);
App. Div. granted the CPLR article 78 petition in part and annulled respondent District Administrative Judge's determination that Onondaga County Court had no authority to appoint petitioner as assigned counsel in the criminal proceeding in County Court or to award legal fees to petitioner.

WALKER (FREDERICK), PEOPLE v:

4TH Dept. App. Div. order of 11/19/10; affirmance; leave to appeal granted by Lindley, J., 4/14/11; Rule 500.11 review

pending;

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CRIMES - RIGHT TO BE PRESENT AT TRIAL - BURDEN OF ESTABLISHING
DEFENDANT'S ABSENCE FROM SANDOVAL HEARING - CHALLENGE TO
APPELLATE DIVISION RULING THAT COURT REPORTER'S FAILURE TO
DOCUMENT DEFENDANT'S PRESENCE OR ABSENCE AT SANDOVAL HEARING WAS
INSUFFICIENT TO SATISFY DEFENDANT'S BURDEN TO REBUT PRESUMPTION
OF REGULARITY THAT ATTACHES TO JUDICIAL PROCEEDINGS;

Supreme Court, Monroe County convicted defendant, upon a jury
verdict, of two counts of robbery in the first degree, two counts
of assault in the first degree, two counts of grand larceny in
the fourth degree, robbery in the second degree, and two counts
of attempted robbery in the second degree; App. Div. affirmed.