

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
January 4, 2002 through January 10, 2002

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

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 Court Rule 500.11 and direct any questions to the Clerk's Office.

For January 4, 2002 through January 10, 2002 the following jurisdictional statements for appeals were filed:

BURGOS SANTOS (LUIS), PEOPLE v:

1ST Dept. App. Div. order of 10-18-01; affirmance; leave to appeal granted by Grafffeo, J., 12-28-01;
CRIMES AND CRIMINAL PROCEDURES; TRIALS - EVIDENCE USE OF WITHDRAWN, FALSE ALIBI NOTICE TO IMPEACH DEFENDANT;
Supreme Court, Bronx County, convictions of murder in the second degree and criminal possession of a weapon in the second degree; App. Div. affirmed.

COUNCIL OF THE CITY OF NEW YORK, MATTER OF v THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK:

3RD Dept. App. Div. order of 9-20-01; modification; leave to appeal granted by Court of Appeals, 12-18-01; MUNICIPALITIES - PUBLIC UTILITIES; CABLEVISION - PUBLIC SERVICE COMMISSION DETERMINATION APPROVING CABLEVISION FRANCHISE RENEWAL; ALLEGED NEED FOR APPROVAL OF NEW YORK CITY COUNCIL (9NYCRR 591.3);

Supreme Court, Albany County, partially granted the application to annul the determination of the Public Service Commission; App. Div. modified and remitted the matter to the Public Service Commission for more detailed findings.

GRAND JURY, MATTER OF: NEW YORK CITY HEALTH AND HOSPITALS CORPORATION v MORGENTHAU, et al.:

1ST Dept. App. Div. order of 10-9-01; reversal; leave to appeal granted by Court of Appeals, 12-18-01; GRAND JURY; SUBPOENA OF HOSPITAL RECORDS PROTECTED BY PHYSICIAN-PATIENT PRIVILEGE (CPLR 4504[a]);

Supreme Court, New York County, directed compliance with Grand Jury subpoenas; App. Div. reversed and granted the cross-motion to quash the subpoenas.

KEMP (VINCENT) v STATE OF NEW YORK AND NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES:

Supreme Court, Erie County, order of 10-31-01, dismissal of complaint; direct appeal pursuant to CPLR 5601(b)(2); sua sponte examination whether a direct appeal lies; CIVIL PROCEDURE - SUBJECT MATTER JURISDICTION; STATUTE OF LIMITATIONS;

Supreme Court, Erie County, granted the defendant's motion and dismissed the complaint.

MOLNAR (ALEXANDER), PEOPLE v:

4TH Dept. App. Div. order of 11-9-01; affirmance with dissent; leave to appeal granted by Green, J., 12-17-01; CRIMES AND CRIMINAL PROCEDURE; SEARCH AND SEIZURE; BASIS FOR WARRANTLESS ENTRY INTO DEFENDANT'S APARTMENT; EMERGENCY EXCEPTION BASED UPON FOUL ODOR;

Supreme Court, Erie County, inter alia determined that warrantless entry into defendant's apartment by police was justified; App. Div. affirmed; dissenter would suppress items of physical evidence and grant a new trial.

NICHOLAS (PETE), PEOPLE v:

4TH Dept. App. Div. order of 9-28-01; reversal with dissent;
leave to appeal granted by Hayes, J., 12-18-01;
CRIMINAL PROCEDURE - TRIALS; JURIES - DENIAL OF CHALLENGE FOR
CAUSE BASED UPON BIAS IN FAVOR OF POLICE OFFICERS; TRIAL COURT
FAILURE TO QUESTION JURORS CONCERNING IMPARTIALITY;
Supreme Court, Monroe County, conviction of murder in the second
degree; App. Div. reversed and granted a new trial; dissenter
would affirm.