

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
March 15, 2002 through March 21, 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 March 15, 2001 through March 21, 2002 the following jurisdictional statements for appeals were filed:

BERROA (DARIO), PEOPLE v:

1st Dept. App. Div. order of 11/27/01; affirmance; leave to appeal granted by Tom, J., 3/5/02;
CRIMES AND CRIMINAL PROCEDURE; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL - DEFENSE ATTORNEY'S STIPULATION TO REMOVE WITNESSES' PERJURED TESTIMONY FROM JURY'S CONSIDERATION; ADVOCATE-WITNESS RULE;
Supreme Court, Bronx County, conviction of murder in the second degree; App. Div. affirmed.

CARR-EL (JARED), PEOPLE v:

2nd Dept. App. Div. order of 10/29/01; affirmance with dissents; leave to appeal granted by McGinity, J., 3/5/02;

CRIMES AND CRIMINAL PROCEDURE; ROBBERY SECOND DEGREE - SUFFICIENCY OF EVIDENCE OF INTENT AS AN ACCESSORY; INEFFECTIVE ASSISTANCE OF COUNSEL;

Supreme Court, Queens County, conviction of robbery in the second degree, grand larceny in the fourth degree, criminal possession of a weapon in the fourth degree and criminal possession of stolen property in the fifth degree; App. Div. affirmed, dissenters would modify and dismiss the robbery count of the indictment.

HENDRICKSON v THE CITY OF KINGSTON:

3rd Dept. App. Div. order of 2/21/02; reversal; sua sponte examination of whether there is a jurisdictional predicate for an appeal taken as of right (CPLR 5601[a] as amended by L 1985, ch 300);

TORT - MUNICIPALITIES; CIVIL PROCEDURE - SUMMARY JUDGMENT; PRIOR WRITTEN NOTICE RULE (KINGSTON CITY CHARTER ARTICLE XVII, SECTION C17-1);

Supreme Court, Ulster County, denied the defendant's motion for summary judgment dismissing the complaint; App. Div. reversed, granted the motion and dismissed the complaint.

JANSEN (BRUCE), PEOPLE v:

4th Dept. App. Div. order of 12/21/01; affirmance; leave to appeal granted by Ciparick, J., 3/8/02;

CRIMES AND CRIMINAL PROCEDURE; DISCLOSURE OF GRAND JURY MINUTES - "COMPELLING AND PARTICULARIZED NEED" REQUIREMENT;

Monroe County Court, conviction of sexual conduct against a child in the first degree (Penal Law, § 130.75 [former (a)]); App. Div. affirmed.

LA PLANT v THE TOWN OF MANCHESTER:

4th Dept. App. Div. order of 2/1/02; reversal with dissents;

TORT - NEGLIGENCE; CIVIL PROCEDURE - SUMMARY JUDGMENT; SUFFICIENCY OF PLAINTIFF'S SHOWING OF TRIABLE ISSUE OF FACT; Supreme Court, Ontario County, denied defendant's motion for summary judgment; App. Div. reversed, granted the motion and dismissed the complaint, dissenters would affirm.

NAGEL, et al. v D&R REALITY CORPORATION:

1st Dept. App. Div. order of 11/20/01; affirmance; leave to appeal granted by Court of Appeals, 3/14/02;

TORT - PERSONAL INJURY; LABOR LAW § 241(6) - APPLICABILITY TO ACCIDENTS ARISING FROM ROUTINE MAINTENANCE (ELEVATOR SAFETY TEST) PERFORMED OUTSIDE A CONSTRUCTION CONTEXT;

Supreme Court, New York County, granted the defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

NITTI v CLERRICO, et al.:

4th Dept. App. Div. order of 2/1/02; affirmance with dissents; TORT; INSURANCE - NO-FAULT; SUFFICIENCY OF PROOF OF SERIOUS INJURY WITHIN 90/180 DAY CATEGORY OF INSURANCE LAW § 5102(d); Supreme Court, Oneida County, judgment in favor of plaintiffs; App. Div. affirmed, dissenters would reverse and dismiss the complaint.

ROBINSON (SHAKIYA), PEOPLE v:

4th Dept. App. Div. order of 11/9/01; reversal; leave to appeal granted by Ciparick, J., 2/20/02; CRIMES AND CRIMINAL PROCEDURE; APPEALS - PROPRIETY OF APPELLATE COURT DENYING DEFENSE ACCESS TO GRAND JURY TESTIMONY; Monroe County Court, granted the defendant's motion and reduced the one count indictment from assault in the second degree to assault in the third degree; App. Div. reversed, denied the motion, reinstated the indictment and remitted the matter for further proceedings.

SCHAVRAN, MATTER OF, v MULLEN, et al.:

2nd Dept. App. Div. order of 12/31/01; denial of article 78 petition (prohibition); sua sponte examination whether a substantial constitutional question is directly involved; CIVIL PROCEDURE - AVAILABILITY OF ARTICLE 78 PROCEEDING (PROHIBITION) TO ATTACK GRAND JURY PROCEEDINGS AS JURISDICTIONALLY DEFECTIVE; App. Div. granted respondents motion, denied the petition and dismissed the proceedings.

SU v YU (AND ANOTHER TITLE):

1st Dept. App. Div. order of 2/26/02; denial of motion for poor person relief; appeal taken to pursuant CPLR 5601(b); sua sponte examination of finality and whether a substantial constitutional question is directly involved; TORT - LEGAL MALPRACTICE; ALLEGED OVER BILLING; SCHOOLS - DISCIPLINARY PROCEEDINGS; APPEALS - DENIAL OF POOR PERSON RELIEF; App. Div. denied, with leave to renew plaintiff's motion for poor person relief.

