

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
March 22, 2002 through March 28, 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 22, 2002 through March 28, 2002 the following jurisdictional statements for appeals were filed:

BOJARCZUK v MILLS, et al.:

3<sup>rd</sup> Dept. App. Div. order of 12/13/01; affirmance; leave to appeal granted by Court of Appeals, 3/21/02; Rule 500.4 review pending;

CIVIL SERVICE - PUBLIC SCHOOLS; BOCES TAKEOVER OF DISTRICT'S SPECIAL EDUCATION PROGRAM AS EFFECTING ABOLITION OF TEACHER POSITION; TEACHER RECALL RIGHTS (EDUCATION LAW 2510[3] AND 3013[3]);

Supreme Court, Albany County, dismissed the application to review a determination denying petitioner's request for reappointment to a teaching position; App. Div. affirmed.

BROWN (ANDREW), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/30/01; affirmance; leave to appeal granted by Smith, J., 12/18/01;  
CRIMES AND CRIMINAL PROCEDURE; SPEEDY TRIAL; PROPRIETY OF MISSING WITNESS CHARGE; SALE OF FIREARM, FIRST DEGREE AND SECOND DEGREE - AGGREGATION OF SEPARATE SALES;  
Supreme Court, New York County, conviction of conspiracy in the fourth degree, criminal possession of a firearm in the third degree and a criminal possession of a weapon in the third degree; App. Div. affirmed.

DAVIDSON (JAYSON), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 2/1/02; reversal with dissents; leave to appeal granted by Pine, J., 3/15/02;  
CRIMES - LOITERING IN PUBLIC PLACE FOR THE PURPOSE OF GAMBLING WITH CARDS, DICE OR OTHER GAMBLING PARAPHERNALIA; VALIDITY OF PENAL LAW 240.35(2);  
Supreme Court, Monroe County, granted defendant's motion to set aside the verdict and held that Penal Law § 240.35(2) was unconstitutional; App. Div. reversed, denied the motion and reinstated the verdict, dissenters would affirm.

KENNEDY v MOSSAFA AND KLEIMAN, et al.:

2<sup>ND</sup> Dept. App. Div. order of 2/4/02; affirmance with dissents; REAL PROPERTY; TAX FORECLOSURE - SUFFICIENCY OF NOTICE;  
Supreme Court, Orange County, inter alia, granted plaintiff's motion for summary judgment; App. Div. affirmed, dissenters would reverse and deny the motion.

NANTON v GROSSO &c., et al.:

2<sup>ND</sup> Dept. App. Div. orders of 8/6/01 - denial of article 78 petition (prohibition) and 11/30/01 denial of reargument; sua sponte examination whether there is a jurisdictional predicate for the appeals taken as of right from the orders of the Appellate Division and whether the order denying reargument dated 11/30/01 is final;  
CIVIL PROCEDURE; ARTICLE 78 (PROHIBITION) - SUFFICIENCY OF SHARING CLEAR LEGAL RIGHT TO THE EXTRAORDINARY REMEDY OF PROHIBITION;  
App. Div., in a proceeding commenced there, denied the petition and dismissed the proceeding.

ROMAN, MATTER OF, v GROSSO:

3<sup>RD</sup> Dept. App. Div. order of 1/17/02; affirmance; sua sponte examination whether a substantial constitutional question is directly involved.  
ADMINISTRATIVE PROCEEDINGS - PAROLE; BASIS FOR DETERMINATION DENYING PAROLE RELEASE;  
Supreme Court, Washington County, dismissed the application to review a determination denying petitioner's request for parole release; App. Div. affirmed.

SMOCUM (JOHN), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 9/24/01; affirmance; leave to appeal granted by Kaye, Ch.J., 2/27/02;  
CRIMINAL PROCEDURE; TRIAL-JURY SELECTION; BATSON CHALLENGES - ADEQUACY OF OPPORTUNITY FOR DEFENDANT TO REBUT PEOPLE'S JUSTIFICATION FOR PEREMPTORY CHALLENGE;  
Supreme Court, Kings County, conviction of criminal possession of stolen property in the fifth degree; App. Div. affirmed.