

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**March 14, 2003 through March 20, 2003**

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 14, 2003 through March 20, 2003 the following jurisdictional statements for appeals were filed:

BERRUS (PAUL M.), PEOPLE v:

County Court, Lewis County, order of 12/23/02; affirmance; leave to appeal granted by Smith, J., 3/10/03;  
CRIMES AND CRIMINAL PROCEDURE - PROPRIETY OF DISMISSAL OF CHARGE IN THE INTEREST OF JUSTICE (CPL 170.40);  
Denmark Town Court dismissed in the interest of justice an alleged violation of Vehicle and Traffic Law § 376; County Court affirmed.

BIGGS (BRUCE), PEOPLE v:

2<sup>nd</sup> Dept. App. Div. order of 10/7/02; affirmance; leave to appeal granted by Kaye, Ch.J., 3/10/03;  
CRIMES AND CRIMINAL PROCEDURE - DOUBLE JEOPARDY - PROPRIETY OF DEFENDANT'S TRIAL AND CONVICTION FOR INTENTIONAL MANSLAUGHTER FOLLOWING HIS ACQUITTAL OF INTENTIONAL MURDER;  
Supreme Court, Kings County judgment convicting defendant of manslaughter in the first degree; App. Div. affirmed.

COLLIER v ZAMBITO, et al.:

4<sup>th</sup> Dept. App. Div. order of 11/15/02; reversal; Rule 500.4 review pending;  
TORTS - ANIMALS - KNOWLEDGE OF VICIOUS PROPENSITIES;  
Supreme Court, Cayuga County denied cross motions for summary judgment; App. Div. reversed, granted defendants' motion and dismissed the complaint.

HART (DENNIS ANTHONY), PEOPLE v:

4<sup>th</sup> Dept. App. Div. order of 12/4/02; reversal; leave to appeal granted by Ciparick, J., 3/4/03; Rule 500.4 review pending;  
CRIMES AND CRIMINAL PROCEDURE - DOUBLE JEOPARDY - LARCENY - LEGAL SUFFICIENCY OF EVIDENCE ON DEFENDANT'S FIRST TRIAL FOR GRAND LARCENY IN THE SECOND DEGREE BASED ON THE THEORY THAT DEFENDANT OBTAINED THE VICTIMS'S PROPERTY BY FALSE PRETENSES;  
Supreme Court, Onondaga County judgment convicting defendant of grand larceny in the second degree upon retrial after first trial resulted in hung jury; App. Div. reversed, dismissed the indictment.

KELLOGG v TRAVIS:

1<sup>st</sup> Dept. App. Div. order of 10/31/02; modification; leave to appeal granted by Court of Appeals, 2/18/03; Rule 500.4 review pending;  
LAW ENFORCEMENT - DNA IDENTIFICATION INDEX; CONSTITUTIONALITY OF EXECUTIVE LAW § 995 UNDER THE EX POST FACTO CLAUSE OF THE FEDERAL CONSTITUTION; GENERAL CONSTRUCTION LAW §§ 93 AND 94;  
Supreme Court, New York County granted defendants' CPLR 3211(a) motion to dismiss the complaint; App. Div. modified to declare in defendants' favor that the State DNA Databank Law is constitutional to the extent challenged.

K.L. (ANONYMOUS), MATTER OF:

2<sup>ND</sup> Dept. App. Div. order of 2/3/03; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MENTAL HEALTH - PETITION TO COMPEL PSYCHIATRIC PATIENT TO COMPLY WITH ASSISTED OUTPATIENT TREATMENT PLAN - MENTAL HYGIENE LAW § 9.60 ("KENDRA'S LAW") - NOTICE AND OPPORTUNITY FOR HEARING - PATIENT'S CAPACITY TO MAKE REASONED TREATMENT DECISION; STANDARD OF REVIEW; BURDEN OF PROOF; MOOTNESS; REVIEWABILITY; Supreme Court, Queens County ordered respondent K.L. to receive and accept assisted outpatient treatment for 180 days in accordance with annexed treatment plan; ordered petitioner Director of Psychiatry Department at Queens Hospital Center to provide and arrange for ordered services; and provided for contingencies of taking respondent into custody and transporting to the hospital if respondent refused to take medications or failed drug testing; App. Div. affirmed.

COUNTY OF NASSAU v CANAVAN:

2<sup>ND</sup> Dept. App. Div. order of 3/3/03; reversal; FORFEITURES AND PENALTIES - FORFEITURE OF AUTOMOBILE PURSUANT TO ADMINISTRATIVE CODE OF COUNTY OF NASSAU § 8-7.0(g) AFTER ARREST FOR DRIVING WHILE INTOXICATED - DUE PROCESS - VAGUENESS - FAIR NOTICE - STANDING; Supreme Court, Nassau County denied defendant's motion for summary judgment and granted plaintiff County of Nassau's motion for summary judgment; App. Div. reversed, granted motion and denied cross motion.

NEW YORK STATE ASSOCIATION OF NURSE ANESTHETISTS v NOVELLO:

3<sup>RD</sup> Dept. App. Div. order of 1/23/03; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ADMINISTRATIVE LAW - VALIDITY OF DEFENDANTS' "CLINICAL GUIDELINES FOR OFFICE-BASED SURGERY" - DEFENDANTS' AUTHORIZATION TO ISSUE THE GUIDELINES; SEPARATION OF POWERS; STANDING; RIPENESS; Supreme Court, Albany County granted summary judgment to plaintiff and declared "The Clinical Guidelines for Office-based Surgery" promulgated by defendants to be null and void; App. Div. affirmed.

TARTAGLIONE, MATTER OF, v THE BOARD OF COMMISSIONERS OF THE  
POLICE DEPARTMENT OF THE VILLAGE OF BRIARCLIFF MANOR:

2<sup>nd</sup> Dept. App. Div. order of 1/27/03; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

MUNICIPAL CORPORATIONS - ADMINISTRATIVE PROCEEDINGS - POLICE DISCIPLINARY PROCEEDING - EFFECT OF RESPONDENT'S ALLEGED FAILURE TO PROVIDE PETITIONER POLICE OFFICER ADEQUATE NOTICE OF THE CHARGES FOR WHICH HE WAS FOUND GUILTY IN A DISCIPLINARY PROCEEDING; PROPRIETY OF SUPREME COURT'S CORRECTIVE ACTION; Supreme Court, Westchester County granted CPLR article 78 petition, annulled a determination of the Board of Commissioners of the Police Department of the Village of Briarcliff Manor which terminated the petitioner's employment with the Village of Briarcliff Manor Police Department and remitted the matter "to the Board for further proceedings in accordance with the views expressed herein"; App. Div. affirmed.

TAYLOR, MATTER OF, v NEW YORK CITY BOARD OF ELECTION, et al.:

2<sup>ND</sup> Dept. App. Div. order of 2/5/03; dismissal of appeal; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - ACADEMIC AND MOOT QUESTIONS - PROPRIETY OF DISMISSAL AS ACADEMIC OF APPEAL IN AN ELECTION PROCEEDING; Appellate Division dismissed as academic motion for leave to prosecute appeal as a poor person, for the assignment of counsel, and to enlarge the time to perfect the appeal.