

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 20 through April 26, 2007

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.

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.

BRATEN v BRATEN:

2ND Dept. App. Div. orders of 3/22/07 and 1/25/07; sua sponte examination whether the App. Div. orders appealed from finally determine the action within the meaning of the Constitution and with respect to the appeal from the January 25, 2007 App. Div. order, whether a substantial constitutional question is directly involved to support an appeal as of right and whether the appeal was timely taken;

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR LEAVE TO PROSECUTE APPEAL AS A POOR PERSON AND DENIAL OF MOTION TO VACATE A PRIOR APPELLATE DIVISION ORDER DISMISSING THE APPEAL FOR FAILURE OF TIMELY PERFECTION; DISMISSAL OF APPEAL - CLAIMED DENIAL OF DUE PROCESS;

Supreme Court, Westchester County, among other things, dissolved marriage between the parties and granted a divorce to plaintiff; App. Div. denied that branch of appellant's motion which was to enlarge the time to perfect the appeal and, on the court's own motion, dismissed the appeal for failure to timely perfect it, and subsequently denied appellant's motion to, among other things, recall and vacate the order dismissing the appeal.

CUADRADO (WILLIAM), PEOPLE v.:

1ST Dept. App. Div. order of 2/13/07; reversal with dissent; leave to appeal granted by Andrias, J., 4/12/07; CRIMES AND CRIMINAL PROCEDURE - INFORMATION - PLEA OF GUILTY TO SUPERIOR COURT INFORMATION AND SEPARATE CONSOLIDATED INDICTMENTS - WHETHER APPELLATE DIVISION ERRED IN DENYING DEFENDANT'S CPL 440.10 MOTION, WHICH SOUGHT TO DISMISS A SUPERIOR COURT INFORMATION ON THE GROUND THAT DEFENDANT'S WAIVER OF INDICTMENT AND SUBSEQUENT GUILTY PLEA TO THE INFORMATION WERE EXECUTED IN VIOLATION OF CPL 195.10(2) (b) BECAUSE HE HAD ALREADY BEEN INDICTED AND WAS UNDER THE JURISDICTION OF THE SUPREME COURT PRIOR TO THE ISSUANCE OF THE INFORMATION; ALLEGED NON-WAIVABLE JURISDICTIONAL DEFECT - PROCEDURAL BAR OF CPL 440.10(2) (c) TO RAISING ISSUE THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL; ALLEGED UNCONSTITUTIONAL APPLICATION OF STATUTE; Supreme Court, New York County granted defendant's motion pursuant to CPL 440.10, and vacated a judgment convicting defendant, upon his guilty plea to superior court information, of assault in the first degree; App. Div. reversed, denied defendant's motion, and reinstated the judgment of conviction and sentence.

LEE, MATTER OF, v KAYE:

1ST Dept. App. Div. order of 3/22/07; 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; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION IN NATURE OF WRIT OF PROHIBITION SEEKING LEAVE TO CHALLENGE SEVERAL PRIOR ORDERS OF THE APPELLATE DIVISION AND A PRIOR ORDER OF THE COURT OF APPEALS; App. Div. denied petitioner's motion, in the nature of the writ of prohibition, for leave to challenge three prior decisions and orders of the App. Div., 1ST Dept. dated May 4, 1978, March 15, 1988, and January 6, 2005, and an order of the Court of Appeals dated February 16, 2005, and dismissed the petition.

MEEKINS (DWAIN), PEOPLE v:

2ND Dept. App. Div. order of 11/28/06; affirmance; leave to appeal granted by Pigott, J., 4/12/07; CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - DNA IDENTIFICATION TESTS - WHETHER PRIVATE LABORATORY'S DNA REPORT WAS PROPERLY ADMITTED UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE THROUGH TESTIMONY OF EXPERTS IN DNA ANALYSIS AND FORENSIC BIOLOGY EMPLOYED BY THE LABORATORY AND THE MEDICAL EXAMINER'S OFFICE WHERE THE WITNESSES HAD NO PERSONAL ROLE IN THE DNA TESTING; RIGHT OF CONFRONTATION - WHETHER DNA REPORT WAS INADMISSIBLE TESTIMONIAL STATEMENT (CRAWFORD v WASHINGTON) [541 US 36] AND DAVIS v WASHINGTON [126 S Ct 2266];

Supreme Court, Kings County judgment, 6/8/07, amended 1/3/05, convicted defendant, upon a jury verdict, of sodomy in the first degree, sexual abuse in the first degree, and robbery in the third degree, and imposed sentence; App. Div. affirmed.

RIVERA (MANUEL), PEOPLE v:

1ST Dept. App. Div. order of 10/3/06; affirmance; leave to appeal granted by Sweeny, Jr., J., 4/12/07; Rule 500.11 review pending; CRIMES AND CRIMINAL PROCEDURE - JURORS - SELECTION OF JURY - WHETHER TRIAL COURT PROPERLY DENIED A CHALLENGE FOR CAUSE TO A PARTICULAR JUROR - WHETHER JUROR GAVE AN UNEQUIVOCAL ASSURANCE OF IMPARTIALITY; WHETHER TRIAL COURT PROPERLY DENIED A MOTION TO PRECLUDE POLICE TESTIMONY - NOTICE REQUIREMENTS OF CPL 710.30 FOR IDENTIFICATIONS BY POLICE OFFICERS; WHETHER TRIAL COURT ERRED IN DENYING MOTION FOR MISTRIAL BASED ON PROSECUTION WITNESS'S STATEMENT THAT DEFENDANT'S FRIEND TRIED TO RAPE HER;

Supreme Court, New York County convicted defendant, after a jury trial, of two counts of criminal possession of a weapon in the third degree (defaced weapon), two counts of criminal possession of a weapon in the third degree (loaded firearm) and one count of unlawful wearing of a body vest, and convicted him, upon his guilty pleas, of unlawful wearing of body vest and bail jumping in the second degree; App. Div. affirmed.

SANATASS et al. v CONSOLIDATED INVESTING COMPANY, INC., et al.:

1ST Dept. App. Div. order of 3/20/07; affirmance with dissents; Rule 500.11 review pending; LABOR - SAFE PLACE TO WORK - LABOR LAW §§ 240(1) AND 241(6) - LIABILITY OF OWNER WHERE CONSTRUCTION WORK AT ISSUE WAS PERFORMED WITHOUT OWNER'S CONSENT AND IN VIOLATION OF THE LEASE; SUMMARY JUDGMENT; LANDLORD AND TENANT;

Supreme Court, New York County granted summary judgment motions of the Consolidated Investing Company defendants, dismissed the complaint, all counterclaims and third-party cross claims against them, and denied plaintiff's cross motion for summary judgment; App. Div. affirmed.