

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 17 through August 23, 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.

DAVIS v COUNTY OF WESTCHESTER, et al.:

3RD Dept. App. Div. order of 7/19/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CIVIL SERVICE - COMPENSATION AND BENEFITS - DISABLED CORRECTION OFFICER - FULL-PAY DISABILITY BENEFITS UNDER GENERAL MUNICIPAL LAW § 207-c(1) - COUNTY APPLICATION ON BEHALF OF PETITIONER FOR DISABILITY RETIREMENT BENEFITS UNDER RETIREMENT AND SOCIAL SECURITY LAW ARTICLE 15; CLAIMED DENIAL OF DUE PROCESS;
EXHAUSTION OF ADMINISTRATIVE REMEDIES;
Supreme Court, Albany County granted respondents' motions to dismiss the petition and dismissed the petition; App. Div. affirmed.

SALTERS (KYLE), PEOPLE v:

3RD Dept. App. Div. order of 6/29/06; affirmance; leave to appeal granted by Read, J., 8/21/07;

CRIMES AND CRIMINAL PROCEDURE - PROMOTING PRISON CONTRABAND - WHETHER MARIJUANA IS "DANGEROUS CONTRABAND" WITHIN THE MEANING OF PENAL LAW § 205.00(4) - WHETHER EVIDENCE IS LEGALLY SUFFICIENT TO SUSTAIN DEFENDANT'S CONVICTION OF ATTEMPTED PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE; LESSER INCLUDED CHARGE; PRISONS AND PRISONERS;

Supreme Court, Franklin County convicted defendant, upon a jury verdict, of attempted promoting prison contraband in the first degree and conspiracy in the fifth degree; App. Div. affirmed.

THOMAS (ROBERT), PEOPLE v:

1ST Dept. App. Div. order of 12/7/06; modification; leave to appeal granted by Graffeo, J., 8/7/07;

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - POST-RELEASE SUPERVISION - WHETHER SENTENCING COURT'S FAILURE TO PRONOUNCE IN OPEN COURT A PERIOD OF POST-RELEASE SUPERVISION AS PART OF THE SENTENCE RENDERS THE POST-RELEASE SUPERVISION COMPONENT OF THE SENTENCE INVALID - WHETHER DEFENDANT'S WAIVER OF HIS RIGHT TO APPEAL PRECLUDES HIM FROM ARGUING THE INVALIDITY OF THE POST-RELEASE SUPERVISION - PRESERVATION OF ISSUE FOR REVIEW;

Supreme Court, New York County convicted defendant, upon his pleas of guilty, of attempted aggravated assault on a police officer, criminal sexual act in the second degree, use of a child in a sexual performance and promoting an obscene sexual performance of a child, and sentenced him, as a second violent felony offender, to an aggregate term of 15 years; App. Div. modified to the extent of vacating the \$50 sex offender registration fee and the \$1,000 supplemental sex offender victim fee, and otherwise affirmed.

UMALI (ISAIAS), PEOPLE v:

1ST Dept. App. Div. order of 2/1/07; affirmance; leave to appeal granted by Ciparick, J., 8/10/07;

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - TRIAL COURT ORDER PROHIBITING DEFENSE COUNSEL FROM SPEAKING TO DEFENDANT ABOUT HIS TRIAL TESTIMONY FOR TWO DAYS; JURY INSTRUCTIONS - JUSTIFICATION;

Supreme Court, New York County convicted defendant, after a jury trial, of manslaughter in the first degree and sentenced him to a term of 17 years; App. Div. affirmed.