

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 24 through August 30, 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.

W. (ANONYMOUS), AN ATTORNEY, MATTER OF:

3RD Dept. App. Div. order of 5/2/07; denial of application for voluntary nondisciplinary resignation from the New York State Bar while disciplinary proceedings are pending; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the appeal was timely taken;

ATTORNEY AND CLIENT - RESIGNATION - APPLICATION FOR VOLUNTARY NONDISCIPLINARY RESIGNATION - DENIAL OF APPLICATION BASED ON PENDING DISCIPLINARY PROCEEDINGS;

App. Div. denied petitioner's application for an expedited order granting petitioner's application for voluntary nondisciplinary resignation from the New York State Bar.

KOSICKI v SPRING GARDEN ASSOCIATION, INC., etc.:

4TH Dept. App. Div. order of 7/6/07; modification; sua sponte examination whether the App. Div. order finally determines the action within the meaning of the Constitution;

JUDGMENTS - SUMMARY JUDGMENT - NEGLIGENCE - MAINTENANCE OF PREMISES - WHETHER A TRIABLE ISSUE OF FACT EXISTS AS TO THE CONDITION OF THE GROUND UNDER A SWING ON DEFENDANT'S PLAYGROUND FROM WHICH PLAINTIFF'S INFANT FELL;

Supreme Court, Erie County granted defendant's motion for summary judgment dismissing the complaint; App. Div. modified by denying the motion in part and reinstating the complaint, and affirmed the order as so modified.

MITCHELL (CURTIS), PEOPLE v:

1ST Dept. App. Div. order of 4/19/07; affirmance; leave to appeal granted by Read, J., 8/21/07;

CRIMES AND CRIMINAL PROCEDURE - BURGLARY - WHETHER ERROR, IF ANY, ARISING FROM TRIAL COURT'S INSTRUCTION THAT JURY COULD CONVICT DEFENDANT OF BURGLARY ON THE BASIS OF EITHER OF TWO ALLEGED ENTRIES INTO THE SAME PREMISES, WHERE PEOPLE'S BILL OF PARTICULARS REFERRED ONLY TO THE FIRST ENTRY AND INDICTMENT CHARGED DEFENDANT WITH ONE ACT OF BURGLARY, CONSTITUTES A JURISDICTIONAL DEFECT; CHALLENGE TO WARRANTLESS SEARCH OF DEFENDANT'S BAG; ALLEGED VIOLATION OF PEOPLE v PELCHAT (62 NY2d 97);

Supreme Court, New York County convicted defendant, after a jury trial, of burglary in the third degree and possession of burglar's tools, and sentenced him, as a second felony offender, to concurrent terms of 3 to 6 years and 1 year, respectively; App. Div. affirmed.

PANASIA ESTATES, INC. v HUDSON INSURANCE COMPANY:

1ST Dept. App. Div. order of 4/17/07; affirmance; leave to appeal granted by App. Div., 8/16/07;

INSURANCE - INSURER'S LIABILITY FOR CONSEQUENTIAL DAMAGES - CLAIM FOR CONSEQUENTIAL DAMAGES RESULTING FROM INSURER'S ALLEGED BREACH OF DUTY TO SETTLE CLAIMS IN GOOD FAITH; WATER DAMAGE TO BUILDING; ATTORNEYS' FEES; PARTIAL SUMMARY JUDGMENT;

Supreme Court, New York County granted defendant's motion for partial summary judgment to the extent of precluding plaintiff from asserting claims in the action for legal fees plaintiff has or will incur in the prosecution of the action; App. Div. affirmed.

RODRIGUEZ (MANUEL), PEOPLE:

1ST Dept. App. Div. order of 10/26/06; affirmance; leave to appeal granted by Kaye, Ch.J., 8/14/07;

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 THIS

REGARDING POST-RELEASE SUPERVISION IN COURT CLERK'S FILE; WHETHER VERDICT CONVICTING DEFENDANT OF GANG ASSAULT IN THE FIRST DEGREE AND ACQUITTING HIM OF MANSLAUGHTER IN THE FIRST DEGREE WAS INCONSISTENT; SUFFICIENCY OF THE EVIDENCE - SERIOUS PHYSICAL INJURY; WHETHER TRIAL COURT PROPERLY REFUSED TO SUBMIT TO THE JURY ASSAULT IN THE THIRD DEGREE AS A LESSER INCLUDED OFFENSE OF GANG ASSAULT; ALLEGED VIOLATION OF PEOPLE v MOLINEUX (168 NY 264) - TESTIMONY CONCERNING DEFENDANT'S PRIOR USE OF A KNIFE; WHETHER SENTENCE IMPERMISSIBLY PUNISHED DEFENDANT FOR EXERCISING HIS RIGHT TO TRIAL AND WAS BASED IMPROPERLY UPON CONSIDERATIONS OF VICTIM WORTH;

Supreme Court, New York County convicted defendant, after a jury trial, of gang assault in the first degree and sentenced him to a term of 25 years; App. Div. affirmed.