

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
February 1 through February 7, 2008

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.

ALESSIO, MATTER OF, v CAREY:

4TH Dept. App. Div. order of 1/18/08; reversal; leave to appeal granted by Court of Appeals, 2/5/08;

ELECTIONS - COURT'S SUBJECT MATTER JURISDICTION TO CONDUCT A CANVASS OF BALLOTS AND DETERMINE THE WINNER OF AN ELECTION BEFORE THE BOARD OF ELECTIONS HAS CERTIFIED THE WINNER - WHETHER LOSING CANDIDATE MAY CHALLENGE ELECTION DETERMINATION PURSUANT TO ELECTION LAW § 16-106(5) BEFORE THE BOARD OF ELECTIONS CERTIFIES THE WINNER;

Supreme Court, Onondaga County granted the petition pursuant to Election Law article 16 and directed respondent Board of Elections to count three absentee ballots cast in petitioner's favor for the office of Town Justice in the Town of Salina; App. Div. reversed, granted the motion to dismiss the petition and dismissed the petition.

HALL, PEOPLE ex rel. v KEYSOR:

3RD Dept. App. Div. order of 1/9/08; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE - APPELLATE DIVISION DENIED PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS; App. Div., among other things, denied petitioner's application for a writ of habeas corpus.

JEAN-BAPTISTE (JEAN), PEOPLE v:

2ND Dept. App. Div. order of 10/9/07; modification and affirmance; leave to appeal granted by Smith, J., 1/23/08; CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE MURDER - SUFFICIENCY OF THE EVIDENCE OF DEPRAVED INDIFFERENCE MURDER (PENAL LAW § 125.25[2]); MANSLAUGHTER - SUFFICIENCY OF THE EVIDENCE OF MANSLAUGHTER IN THE SECOND DEGREE (PENAL LAW § 125.15[1]); RETROACTIVE APPLICATION OF PEOPLE v FEINGOLD (7 NY3d 288);

Supreme Court, Kings County judgment convicted defendant of murder in the second degree; App. Div. modified by reducing the defendant's conviction to manslaughter in the second degree and vacating the sentence imposed thereon, affirmed the judgment of conviction as so modified and remitted to Supreme Court for sentencing on the conviction of manslaughter in the second degree.

KESSLER v HEVESI:

1ST Dept. App. Div. order of 11/27/07; modification and affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - TAKING OF PROPERTY - CHALLENGE TO COUNTY LAW § 309;

Supreme Court, New York County granted defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the complaint and denied plaintiffs' cross motion for summary judgment; App. Div. modified to declare County Law § 309 constitutional and otherwise affirmed.

KURZ (INA), PEOPLE v:

County Court, Fulton County order of 11/30/07; denial of application pursuant to CPL 170.15; sua sponte examination whether there is any jurisdictional basis for this appeal taken as of right in a criminal matter;

CRIMES AND CRIMINAL PROCEDURE - REMOVAL TO SUPERIOR COURT - COUNTY COURT DENIED DEFENDANT'S APPLICATION TO REMOVE HARASSMENT CASE FROM JUSTICE COURT TO CITY COURT;

County Court, Fulton County denied defendant's application to remove this case from Justice Court, Town of Ephratah to the City Court of the City of Johnstown.

VANN (ERNEST), PEOPLE v:

3RD Dept. App. Div. order of 1/9/08; denial of writ of error coram nobis; sua sponte examination whether an appeal as of right lies from an order entered in a criminal proceeding;

CRIMES AND CRIMINAL PROCEDURE - APPELLATE DIVISION DENIED

APPLICATION FOR WRIT OF ERROR CORAM NOBIS - PETITIONER ASSERTS VARIOUS TRIAL ERRORS;

App. Div. denied motion for writ of error coram nobis.