

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 22 through May 28, 2009

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.

ANONYMOUS, MATTER OF, AN APPLICANT FOR ADMISSION TO THE BAR:
3RD Dept. App. Div. order of 4/16/09; denial of application for admission to the Bar; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - ADMISSION TO PRACTICE - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPLICATION FOR ADMISSION TO THE BAR;
App. Div. denied an application for admission to the Bar.

BAKER, JR. (AVERY V.), PEOPLE v.:

3RD Dept. App. Div. order of 1/29/09; affirmance; leave to appeal granted by Ciparick, J., 5/11/09;

CRIMES - ARGUMENT AND CONDUCT OF COUNSEL - PEOPLE'S DISPLAY DURING SUMMATION OF COMPUTER SLIDES WITH VERBATIM STATUTORY DEFINITIONS OF RECKLESSNESS AND DEPRAVED INDIFFERENCE; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - COUNSEL'S FAILURE TO OBJECT TO SUBMISSION OF THREE HOMICIDE COUNTS TO JURY THAT ALLEGEDLY RESULTED IN AN INCONSISTENT VERDICT; RIGHT TO PUBLIC TRIAL - EXCLUSION FROM COURTROOM OF THE MOTHER OF DEFENDANT'S CHILDREN WHERE DEFENDANT LISTED HER AS A POTENTIAL WITNESS BUT ULTIMATELY DECIDED NOT TO CALL HER AS A WITNESS;

Supreme Court, Chemung County convicted defendant of murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, endangering the welfare of a child and reckless endangerment in the second degree; App. Div. affirmed.

PORTFOLIO RECOVERY ASSOCIATES, LLC v KING:

3RD Dept. App. Div. order of 10/23/08; affirmance; leave to appeal granted by Court of Appeals, 5/12/09;

CONFLICT OF LAWS - WHAT LAW GOVERNS - WHETHER NEW YORK'S "BORROWING STATUTE," CPLR 202, APPLIES AND, IF SO, WHETHER THIS COLLECTION ACTION TO RECOVER A CREDIT CARD BALANCE IS UNTIMELY UNDER THE THREE-YEAR DELAWARE STATUTE OF LIMITATION (WHERE THE BANK THAT ISSUED THE CREDIT CARD WAS INCORPORATED); ASSIGNMENTS - VALIDITY; SUMMARY JUDGMENT - EXISTENCE OF TRIABLE ISSUES OF MATERIAL FACT;

Supreme Court, Greene County granted plaintiff's motion for, among other things, summary judgment; App. Div. affirmed.

RAMOS v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 2/5/09 (as corrected 3/6/09); affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

MOTIONS AND ORDERS - REARGUMENT OR RENEWAL - LEAVE TO RENEW FOLLOWING REVERSAL OF PLAINTIFF'S CRIMINAL CONVICTION - CHALLENGE TO GRANT OF PLAINTIFF'S MOTION FOR RENEWAL AND, UPON RENEWAL, DENIAL OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSING COMPLAINT ALLEGING CLAIMS FOR FALSE ARREST, MALICIOUS PROSECUTION, ASSAULT AND BATTERY, AND VIOLATION OF 42 USC § 1983; Supreme Court, New York County granted plaintiff's motion to renew a prior order granting certain defendants' motion for summary judgment dismissing the complaint as against them and, upon renewal, denied defendants' motion for summary judgment; App. Div. affirmed.

TOLENTINO (JOSE), PEOPLE v:

1ST Dept. App. Div. order of 2/24/09; affirmance; leave to appeal granted by Lippman, Ch.J., 5/14/09;

CRIMES AND CRIMINAL PROCEDURE - SUPPRESSION HEARING - TRIAL COURT DENIED, WITHOUT A HEARING, DEFENDANT'S MOTION TO SUPPRESS DEPARTMENT OF MOTOR VEHICLES' RECORDS RELATING TO SUSPENSION OF HIS DRIVER'S LICENSE - WHETHER DMV RECORDS SHOULD HAVE BEEN SUPPRESSED AS FRUITS OF AN ALLEGEDLY UNLAWFUL VEHICULAR STOP DURING WHICH THE POLICE OBTAINED DEFENDANT'S PEDIGREE INFORMATION AND THEREBY OBTAINED HIS DMV INFORMATION THROUGH A COMPUTER CHECK;

Supreme Court, New York County convicted defendant, upon his guilty plea, of aggravated unlicensed operation of a motor vehicle in the first degree, and sentenced him to a term of 5 years' probation; App. Div. affirmed.

ZEPHRIN (PATRICK), PEOPLE v:

2ND Dept. App. Div. order of 9/30/08; reversal; leave to appeal granted by Smith, J, 5/15/09;

CRIMES - SENTENCE - PROBATION-REVOCATION - WHETHER A DEFENDANT'S PRE-SENTENCE INCARCERATION SHOULD BE CREDITED AGAINST A PERIOD OF PROBATION THAT IS PART OF DEFENDANT'S SPLIT SENTENCE OF INCARCERATION AND PROBATION UNDER PENAL LAW § 60.01(2)(d);

Supreme Court, Kings County amended judgment revoking a sentence of probation previously imposed by County Court, Suffolk County, upon a finding that defendant violated a condition of probation, upon his admission, and imposing a sentence of imprisonment upon his previous conviction of grand larceny in the third degree; App. Div. reversed the amended judgment and vacated the sentence imposed thereon.

