

State of New York
Court of Appeals

November 19, 2020

Decisions
CASES

4 No. 79
The People &c.,
 Respondent,
 v.
Everett D. Balkman,
 Appellant.

Order reversed, defendant's motion to suppress granted and indictment dismissed.
Opinion by Judge Feinman.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

1 No. 78
Laura DiLorenzo,
 Appellant,
 v.
Windermere Owners LLC, et al.,
 Respondents.

Order reversed, with costs, and case remitted to the Appellate Division, First Department, for consideration of issues raised but not determined on the appeal to that Court, in a memorandum.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

 No. 45
The People &c.,
 Appellant,
 v.
Robin Pena,
 Respondent.

Order insofar as appealed from reversed, defendant's motion to suppress denied and case remitted to Criminal Court of the City of New York, Bronx County, for further proceedings on the accusatory instrument. The courts below erred as a matter of law in granting defendant's suppression motion.
Chief Judge DiFiore and Judges Stein, Fahey, Garcia and Feinman concur, Judges Stein, Fahey and Garcia in a concurring memorandum and Chief Judge DiFiore and Judge Feinman in a separate concurring opinion by Judge Feinman.
Judge Wilson dissents in an opinion, in which Judge Rivera concurs in part in a separate dissenting opinion.

1 No. 95 SSM 24
The People &c.,
 Respondent,
 v.
Russell Smith,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to Supreme Court, Bronx County, for a hearing on defendant's CPL 330.30 motion. The motion court abused its discretion in denying defendant's CPL 330.30 (2) motion without first conducting a hearing (*see* CPL 330.40 [2] [d]-[f]; *People v Maragh*, 94 NY2d 569, 573-575 [2000]).
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

MOTIONS

1 Mo. No. 2020-451
In the Matter of Anonymous, &c.

Attorney Grievance Committee for the First
Judicial Department,
 Respondent;
Anonymous,
 Appellant.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the orders
appealed from do not finally determine the
proceeding within the meaning of the Constitution.
Motion for leave to appeal dismissed upon the
ground that the orders sought to be appealed from do
not finally determine the proceeding within the
meaning of the Constitution.
Motion for a stay dismissed as academic.

1 Mo. No. 2020-499
Bosco Credit V Trust Series 2012-1,
 Respondent,
 v.
Derek Johnson, &c. et al.,
 Appellants,
et al.,
 Defendants.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

4 Mo. No. 2020-621
In the Matter of Madeline C., et al.

Jefferson County Department of Social
Services,
 Respondent;
James M.,
 Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

4 Mo. No. 2020-558
In the Matter of Julianne Marie Cousineau,
 Respondent,
 v.
Frank Steven Ranieri,
 Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2020-519
Alexandros Demetriades,
 Appellant,
 v.
Royal Abstract Deferred, LLC,
 Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2020-488
Andrew J. Fiore, et al.,
 Appellants,
 v.
Eva Rem DeGina et al.,
 Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1 Mo. No. 2020-831
The People &c.,
 Respondent,
 v.
James Forbes,
 Appellant.

On the Court's own motion, appeal dismissed upon the ground that the criminal prosecution abated by reason of defendant's death (*see People v Mintz*, 20 NY2d 753 [1967]; *see also People v Mason*, 29 NY3d 972 [2017]).

2 Mo. No. 2020-462
Alen Fox, Jr., &c. et al.,
 Appellants,
 v.
Dionne Mark et al.,
 Defendants,
New York Health Care, Inc., et al.,
 Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2020-612
In the Matter of Joshua G.,
 Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.
Judge Feinman took no part.

4 Mo. No. 2020-480
In the Matter of Takoda G., et al.

Ontario County Department of Social
Services Child Protective Unit,
Respondent;
Juan T.,
Appellant.

Motion for reargument of motion for leave to appeal
denied.

4 Mo. No. 2020-479
Derrick Green,
Respondent,
Miles Green, et al.,
Appellants,
v.
Frank B. Iacovangelo, &c., et al.,
Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2020-532
Derrick Green,
Appellant,
Miles Green, et al.,
Respondents,
v.
Frank B. Iacovangelo, &c., et al.,
Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2020-524
In the Matter of State of New York,
Respondent,
v.
Jedediah H.,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2020-744
Hunters for Deer, Inc. et al.,
Respondents,
v.
Town of Smithtown,
Appellant.

Motion for leave to appeal granted.
Motion for a stay granted.

4 Mo. No. 2020-597
In the Matter of Natiz J.

Oneida County Department of Social
Services,
Respondent;
Maria R.,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2020-658
In the Matter of State of New York,
Respondent,
v.
Richard J.,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2020-485
In the Matter of Gaytri D. Kachroo, &c.

Attorney Grievance Committee for the First
Judicial Department,
Respondent;
Gaytri D. Kachroo,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2020-498
Rahamim Kattan et al.,
Appellants,
v.
119 Christopher LLC, &c.,
Respondent.

Motion for reargument of motion for leave to appeal
denied.

2 Mo. No. 2020-491
Sara Kelley,
Appellant,
v.
Bryan Insurance Agency, Inc. et al.,
Respondents.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

2 Mo. No. 2020-460
Louis Kestenbaum, et al.,
 Respondents,
 v.
Julie Globus,
 Defendant;
Eugene Volokh,
 Nonparty-Appellant.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2020-489
Joseph Kleinman,
 Appellant,
 v.
Weisman Law Group, P.C. et al.,
 Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2020-490
Weisman Law Group, P.C.,
 Respondent,
 v.
Joseph Kleinman,
 Appellant.

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain this motion for leave to appeal from the order of the Appellate Division entered in this action commenced in District Court, Nassau County (*see* NY Const, art VI, § 3 [b] [7]; CPLR 5602).

3 Mo. No. 2020-546
In the Matter of Laertes Solar, LLC et al.,
 Respondents,
 v.
Assessor of the Town of Harford et al.,
 Respondents,
Dryden Central School District,
 Appellant.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order as affirmed the November 2018 Supreme Court order, dismissed upon the ground that such portion of the order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.

1 SSD 60
Joan C. Lipin,
 Appellant,
 v.
Danske Bank,
 Respondent,
Ulf Bergquist, et al.,
 Respondents,
et al.,
 Defendants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it does not lie (*see* NY Const, art VI, § 3 [b]; CPLR 5601).

1 SSD 59
Estate of Theodore Lipin, et al.,
 Respondents,
 v.
Joan C. Lipin,
 Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it does not lie (*see* NY Const, art VI, § 3 [b]; CPLR 5601).

2 SSD 58
In the Matter of Margaret M.M.

Administration for Children's Services,
 Respondent;
Robert M.,
 Appellant.
(And Other Proceedings.)

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceedings within the meaning of the Constitution.

2 Mo. No. 2020-516
In the Matter of Edwin Madden, Jr.,
 Appellant,
 v.
Bruce M. Balter,
 Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2020-504
In the Matter of James K. McGowan,
 Appellant,
 v.
Thomas P. DiNapoli, &c.,
 Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2020-598
In the Matter of Mya N. et al.

Livingston County Department of Social
Services,
Respondent;
Reginald N.,
Appellant,
et al.,
Respondent.

1 Mo. No. 2020-787
Francis Nemeth, &c.,
Respondent,
v.
Brenntag North America, &c., et al.,
Defendants,
Whittaker, Clark & Daniels, Inc.,
Appellant.

1 Mo. No. 2020-788
Francis Nemeth, &c.,
Respondent,
v.
Brenntag North America, &c., et al.,
Defendants,
Whittaker, Clark & Daniels, Inc.,
Appellant.

1 Mo. No. 2020-526
OneWest Bank, FSB,
Appellant,
v.
Deutsche Bank National Trust Company, et
al.,
Defendants,
Signature Bank,
Respondent.
(And a Third-Party Action.)

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

Motion by Chamber of Commerce of the United
States of America et al. for leave to file a letter brief
amici curiae on the appeal herein granted and the
proposed brief is accepted as filed. A copy of the
letter brief must be filed and the letter brief
submitted in digital format within seven days.
Judge Wilson took no part.

Motion by Colgate Palmolive Company, et al. for
leave to file a letter brief amici curiae on the appeal
herein granted and the proposed letter brief is
accepted as filed. An original and two copies of the
letter brief must be filed and the letter brief
submitted in digital format within seven days.
Judge Wilson took no part.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

3 Mo. No. 2020-473
The People &c. ex rel. James Payne,
Appellant,
v.
Superintendent McIntosh, &c.,
Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2020-789
The People &c.,
Respondent,
v.
Greggory Pittman, &c.,
Appellant.

Motion for an extension of the time within which to
apply for permission to appeal pursuant to CPL
460.20 granted and motion papers treated as a timely
CPL 460.20 application.

2 Mo. No. 2020-632
In the Matter of Mateo M.Q.

Suffolk County Department of Social
Services,
Respondent;
Jessica Q.,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2020-517
In the Matter of Oscar Rezzolla, Deceased.

Lois Rosenblatt, &c.,
Respondent;
John P. Reinhardt, et al.,
Appellants.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.
Judge Feinman took no part.

2 Mo. No. 2020-717
The People &c.,
Respondent,
v.
Lance Rodriguez,
Appellant.

Motion by New York State Association of Criminal
Defense Lawyers, et al. for leave to appear amici
curiae on the appeal herein granted only to the extent
that the proposed letter brief is accepted as filed. A
copy of the letter brief must be filed and the letter
brief submitted in digital format within seven days.

2 Mo. No. 2020-472
Glenn Seaman, Jr. et al.,
 Appellants,
 v.
New York University, et al.,
 Respondents;
Peter Scalamandre & Sons, Inc.,
 Third-Party Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

1 SSD 57
In the Matter of Space Race, LLC,
 Respondent,
 v.
Alabama Space Science Exhibit Commission
d/b/a U.S. Space & Rocket Center,
 Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

1 Mo. No. 2020-497
The People &c.,
 Respondent,
 v.
U.S. Specialty Insurance Co. Inc., &c.,
 Surety-Appellant,
Moses Olanibi,
 Defendant.

Motion for leave to appeal denied.

1 Mo. No. 2020-776
The People &c.,
 Respondent,
 v.
Luis Vasquez,
 Appellant.

Motion for assignment of counsel granted and Stephen Chu, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2020-775
Wells Fargo Bank, N.A., &c.,
 Appellant,
 v.
Donna Ferrato,
 Respondent,
The Simon & Mills Building Condominium
Board, et al.,
 Defendants.

Wells Fargo Bank, N.A., &c.,
 Appellant,
 v.
Donna Ferrato,
 Respondent,
Capital One Bank (USA) N.A., et al.,
 Defendants.

2 Mo. No. 2020-763
The People &c.,
 Respondent,
 v.
Keith Wilkinson,
 Appellant.

4 Mo. No. 2020-731
The People &c.,
 Respondent,
 v.
Don Williams,
 Appellant.

Motion by Francis M. Caesar, Esq. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application. Chief Judge DiFiore took no part.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.