

State of New York
Court of Appeals

Decisions

November 18, 2021

CASES

2 No. 85 SSM 20

The People &c.,
 Respondent,

v.

Tyjhe Hargrove,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to Supreme Court, Kings County, for further proceedings in accordance with the memorandum herein.

Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

4 No. 87 SSM 25

The People &c.,
 Appellant,

v.

Jermaine Jennings,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, and case remitted to the Appellate Division, Fourth Department, for consideration of the facts and issues raised but not determined on the appeal to that Court. Counsel's failure to challenge the verdict as repugnant did not render the representation ineffective because the issue was not clear-cut and dispositive given the jury charge (*see People v Rodriguez*, 31 NY3d 1067 [2018]).

Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

2 No. 88 SSM 27

The People &c.,
 Respondent,

v.

Eugene Mendoza,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for further proceedings. Under the totality of the circumstances and upon the People's concession, defendant's appeal waiver was invalid and therefore did not foreclose consideration of his harsh and excessive sentence claim (*see People v Bisono*, 36 NY3d 1013, 1017-1018 [2020]).

Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

No. 26
Hector Ortiz, &c.,
Appellant,
v.
Ciox Health LLC, &c. et al.,
Respondents.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and record submitted, certified question answered in the negative.
Opinion by Judge Singas.
Judges Rivera, Fahey and Cannataro concur.
Judge Wilson concurs in result in an opinion.
Chief Judge DiFiore and Judge Garcia took no part.

2 No. 22
The People &c.,
Respondent,
v.
Howard Powell,
Appellant.

Order affirmed.
Opinion by Chief Judge DiFiore.
Judges Garcia, Singas and Cannataro concur.
Judge Rivera dissents in an opinion, in which Judges Fahey and Wilson concur.

2 No. 89 SSM 28
The People &c.,
Appellant,
v.
Fernando Romualdo,
Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for further proceedings in accordance with the memorandum herein.
Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

4 No. 60
The People &c.,
Respondent,
v.
Don Williams,
Appellant.

Order affirmed.
Opinion by Judge Garcia.
Chief Judge DiFiore and Judges Rivera, Fahey, Wilson, Singas and Cannataro concur.

MOTIONS

2 Mo. No. 2021-636
In the Matter of Hanah A.

Orange County Department of Social
Services,
 Respondent;
Kristy M.,
 Appellant,
et al.,
 Respondent.
(And Another Proceeding.)

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

4 Mo. No. 2021-659
The People &c. ex rel. Abdool Azeez,
 Appellant,
 v.
Superintendent J. Noeth, &c.,
 Respondent.

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.
Motion for poor person relief dismissed as academic.

4 Mo. No. 2021-655
In the Matter of Charles B.,
 Appellant,
 v.
State of New York,
 Respondent.

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

2 Mo. No. 2021-629
Shalom Braunstein,
 Appellant,
 v.
Edwin J. Day,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-707
In the Matter of Matthew Brown,
Appellant,
v.
Shanna Simon,
Respondent.

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

2 Mo. No. 2021-831
Case Montauk, LLC,
Respondent,
v.
Montauk Cliffs, LLC, et al.,
Appellants.

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.
Motion for a stay dismissed as academic.

1 Mo. No. 2021-619
Gary K. Deane, &c.,
Appellant,
v.
Howard G. Brodman, &c. et al.,
Respondents,
et al.,
Defendant.

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.

4 Mo. No. 2021-660
In the Matter of Bonnie L. Dries,
Respondent,
v.
Patricia H. Johnson et al.,
Respondents,
Natalie S. Johnson,
Appellant.

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

1 Mo. No. 2021-855
In the Matter of Pedro Endara-Caicedo,
Appellant,
v.
New York State Department of Motor
Vehicles, et al.,
Respondents.

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 brief is accepted as filed. Two copies of the brief must be served, nine copies filed, and the brief submitted in digital format within seven days.

1 SSD 64
L.F.,
 Respondent,
 v.
M.J.,
 Respondent.
Eugene Volokh,
 Nonparty-Appellant.

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

1 Mo. No. 2021-558
In the Matter of Goetz Fitzpatrick, LLP,
 Respondent,
 v.
OTR Media Group, Inc.,
 Appellant.

Motion for leave to appeal dismissed upon the ground that appellant is not a party aggrieved (*see* CPLR 5511), and upon the further ground that the orders sought to be appealed from do not finally determine the proceeding within the meaning of the Constitution.

2 Mo. No. 2021-595
The People &c.,
 Respondent,
 v.
Jose Gonzalez,
 Appellant.

Motion for leave to appeal denied.
Judge Singas took no part.

3 Mo. No. 2021-521
Robert R. Greene,
 Appellant,
 v.
People's Neighborhood Bank, People's
Security Bank & Trust Company,
 Respondent.

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

2 Mo. No. 2021-638
In the Matter of Nickie Kane,
 Appellant,
 v.
Zora Tung,
 Respondent.

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

2 Mo. No. 2021-601
Aisha Kelly, &c.,
 Appellant,
 v.
New York City Health & Hospitals
Corporation, et al.,
 Defendants,
Nancy Camp, &c.,
 Respondent.

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

1 Mo. No. 2021-556
In the Matter of Ivy H. Lin,
 Appellant,
 v.
New York City Department of Education, et
al.,
 Respondents.

Motion for leave to appeal denied.

1 SSD 62
Nella Manko,
 Appellant,
 v.
Dr. Dana Mannor, et al.,
 Respondents,
Lenox Hill Hospital, &c. et al.,
 Defendants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the actions within the meaning of the Constitution.
Chief Judge DiFiore took no part.

Nella Manko,
 Appellant,
 v.
Dana Mannor, et al.,
 Respondents,
"Anesthesiologist" (a fictitious name), et al.,
 Defendants.

1 Mo. No. 2021-620
In the Matter of Ashley McMikle,
Appellant,
v.
Department of Education of the City of New
York, et al.,
Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2021-691
In the Matter of Todd Michalak,
Respondent,
v.
Melissa Perez,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

1 Mo. No. 2021-516
Estate of Tayshana Murphy, &c.,
Appellant,
v.
New York City Housing Authority,
Respondent,
et al.,
Defendants.

Motion for leave to appeal granted.

1 Mo. No. 2021-590
In the Matter of The New York Times
Company,
Respondent,
v.
City of New York Office of the Mayor,
Appellant.

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

1 Mo. No. 2021-827
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by National Association for Biomedical
Research for leave to appear amicus curiae on the
appeal herein granted only to the extent that the
proposed brief is accepted as filed. The brief must
be submitted in digital format within seven days.

1 Mo. No. 2021-846
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Edwin Cameron for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2021-854
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Mahinda Deegalle, et al. for leave to file a brief amici 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.

1 Mo. No. 2021-869
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Joe Wills, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2021-900
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Laurence H. Tribe, et al. for leave to file a brief amici 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.

1 Mo. No. 2021-918
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by New York Farm Bureau, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

3 Mo. No. 2021-752
The People &c. ex rel. James Payne,
Appellant,
v.
Donita McIntosh, &c.,
Respondent.

Motion for leave to appeal denied.

3 SSD 63
Christopher Porco et al.,
Appellants,
v.
Lifetime Entertainment Services, LLC,
Respondent.

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

2 Mo. No. 2021-603
In the Matter of Geddiah S.R.

Motion for leave to appeal denied.

MercyFirst,
Appellant;
Seljeana P.,
Respondent,
et al.,
Respondent.

1 Mo. No. 2021-626
Hugh Raphael,
Appellant,
v.
Vintage Grape & Grog, Ltd.,
Respondent.

Motion for reargument of motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Judges Singas and Cannataro took no part.

3 Mo. No. 2021-843
The People &c.,
Respondent,
v.
Kristopher F. Richards,
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.

1 Mo. No. 2021-610
In the Matter of Christopher Rivera,
Appellant,
v.
James P. O'Neill, &c., et al.,
Respondents.

Motion for leave to appeal denied.
Judge Garcia took no part.

2 Mo. No. 2021-593
The People &c.,
Respondent,
v.
Bernabe Rodriguez, &c.,
Appellant.

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

4 Mo. No. 2021-644
In the Matter of Malachi S., &c.

Monroe County Department of Human
Services,
Respondent;
Michael W.,
Appellant.

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

2 Mo. No. 2021-694
In the Matter of Kevin Michael Schellinger,
Respondent,
v.
Jennifer Dunn,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2021-631
In the Matter of the Adoption of Sophia.

Tammy M.W. et al.,
Respondents,
v.
Irhad R.,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

1 Mo. No. 2021-645
Timothy Spicer, et al.,
Respondents,
v.
GardaWorld Consulting (UK) Limited,
Appellant.

Motion for leave to appeal dismissed upon the ground that no appeal lies to the Court of Appeals from a judgment appealed to the Appellate Division (see *Parker v Rogerson*, 35 NY2d 751, 753 [1974]; *Knudsen v New Dorp Coal Corp.*, 20 NY2d 875, 877 [1967]).

3 Mo. No. 2021-571
The People &c.,
Respondent,
v.
Jacob Stein,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-511
In the Matter of Ricardo T., Jr.

Orange County Department of Social
Services,
Respondent;
Ricardo T., Sr.,
Appellant,
et al.,
Respondent.

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

1 Mo. No. 2021-578
Tisoped Corp.,
Appellant,
v.
Thor 138 N 6th St LLC,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-565
Joseph Vendetti,
 Appellant,
 v.
Stephen Zywiak, et al.,
 Respondents,
et al.,
 Defendants.

Motion for leave to appeal denied.

1 Mo. No. 2021-438
Vincent L. Villani, &c.,
 Appellant,
 v.
Kings Harbor Multicare Center, et al.,
 Respondents,
et al.,
 Defendants.

Motion for leave to appeal from the Supreme Court judgment entered upon the Appellate Division order dismissed upon the ground that the judgment is not the final appealable paper from which leave to appeal may be sought (*see* CPLR 5611).

2 Mo. No. 2021-625
Debra Walker, et al.,
 Appellants,
 v.
Shaevitz & Shaevitz, Esqs.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-614
The People &c.,
 Respondent,
 v.
Christopher J. Weber,
 Appellant.

Motion for leave to appeal granted.

3 Mo. No. 2021-879
The People &c.,
 Respondent,
 v.
Kamil Wideman, &c.,
 Appellant.

Motion for assignment of counsel granted and Mitch Kessler, Esq., 63 Pike Creek Drive, Cohoes, NY 12047 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2021-889
The People &c.,
 Respondent,
 v.
Robert Yarbrough,
 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.