

State of New York
Court of Appeals

Decisions

October 7, 2021

CASES

2 No. 54
Anna Aybar, et al.,
 Appellants,
 v.
Jose A. Aybar, Jr., et al.,
 Defendants,
Ford Motor Company et al.,
 Respondents;
U.S. Tires and Wheels of Queens, LLC,
 Nonparty-Respondent.

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

2 No. 82 SSM 18
The People &c.,
 Respondent,
 v.
Vincent Carmona,
 Appellant.

On review of submissions pursuant to section 500.11
of the Rules, order modified by remitting the case to
Supreme Court, Kings County, for further
proceedings in accordance with the memorandum
herein and, as so modified, affirmed.
Chief Judge DiFiore and Judges Rivera, Fahey,
Garcia, Wilson, Singas and Cannataro concur.

3 No. 40
The People &c.,
 Respondent,
 v.
Richard B. Gaworecki,
 Appellant.

Order reversed and defendant's motion insofar as it
sought to dismiss the count in the indictment
charging manslaughter in the second degree granted.
Opinion by Judge Fahey.
Chief Judge DiFiore and Judges Rivera, Garcia,
Wilson, Singas and Cannataro concur.

 No. 83 SSM 19
The People &c.,
 Respondent,
 v.
Thomas Timko,
 Appellant.

On review of submissions pursuant to section 500.11
of the Rules, order reversed and accusatory
instrument dismissed, in a memorandum.
Chief Judge DiFiore and Judges Rivera, Fahey,
Garcia, Wilson, Singas and Cannataro concur.

MOTIONS

4 Mo. No. 2021-535
In the Matter of State of New York,
Respondent,
v.
Steven A.,
Appellant.

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

2 Mo. No. 2021-622
In the Matter of State of New York,
Respondent,
v.
Marcello A.,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-775
ACE Securities Corp., &c.,
Appellant,
v.
DB Structured Products, Inc.,
Respondent.

Motion by Patrick M. Connors 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.

4 SSD 54
Antonia Barone,
Appellant,
v.
James D. Haskins et al.,
Respondents,
et al.,
Defendants.

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

1 Mo. No. 2021-811
In the Matter of John Clinton,
 Appellant,
 v.
Board of Elections in the City of New York,
 Respondent,
Ronald Castorina, Jr., et al.,
 Respondents.

Motion for leave to appeal denied.

2 SSD 60
Dawson Huber Coleman, Jr.,
 Appellant,
et al.,
 Plaintiff,
 v.
J.P. Morgan Chase Bank, N.A.,
 Respondent,
et al.,
 Defendants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it is untimely (*see* CPLR 5513 [a]).

2 Mo. No. 2021-814
The People &c.,
 Respondent,
 v.
Tramel Cuencas,
 Appellant.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2021-795
The People &c.,
 Respondent,
 v.
Johntavious Dodson,
 Appellant.

Motion for assignment of counsel granted and Philip Rothschild, Esq., Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2021-783
The People &c.,
 Respondent,
 v.
Rakeem Douglas,
 Appellant.

Motion for assignment of counsel granted and
Caprice R. Jenerson, 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.

2 Mo. No. 2021-569
In the Matter of Jaaliyah M.R.E.

Forestdale, Inc.,
 Respondent;
Jennifer A.,
 Appellant.

Motion for reargument of motion for leave to appeal
denied.
Judges Singas and Cannataro took no part.

4 Mo. No. 2021-538
In the Matter of Natalee F.

Onondaga County Department of Children
and Family Services,
 Respondent;
Eric F.,
 Appellant.

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

1 SSD 61
In the Matter of Tracie Goldman,
 Appellant,
 v.
City of New York, et al.,
 Respondents,
Peter Ianniello,
 Respondent.

Appeal, insofar as taken from the January 2021 order
of the Appellate Division, dismissed without costs,
by the Court *sua sponte*, as untimely (*see* CPLR
5513 [a]); appeal, insofar as taken from the April
2021 Appellate Division order, dismissed without
costs, by the Court *sua sponte*, upon the ground that
such order does not finally determine the proceeding
within the meaning of the Constitution.

4 Mo. No. 2021-799
The People &c.,
 Respondent,
 v.
Ronald K. Johnson,
 Appellant.

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.

3 SSD 57
In the Matter of Edward Andrew Long, an
Attorney.

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

Edward Andrew Long,
 Appellant;
Attorney Grievance Committee for the Third
Judicial Department,
 Respondent.

3 Mo. No. 2021-829
In the Matter of Mental Hygiene Legal
Service, &c.,
 Appellant,
 v.
Kerry Delaney, &c. et al.,
 Respondents,
et al.,
 Respondent.

Motion by The Arc New York 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.

3 Mo. No. 2021-398
In the Matter of William MM.,
 Appellant,
 v.
Ann Marie T. Sullivan, &c., et al.,
 Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2021-776
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Christine M. Korsgaard 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. 2021-823
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Gary Comstock, 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. 2021-824
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by John Berkman, 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. 2021-825
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by American Veterinary Medical Association, 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. 2021-826
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Jane H. Fisher-Byrialsen, 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.

4 Mo. No. 2021-542
In the Matter of Jayce P., et al.

Oneida County Department of Social
Services,
Respondent;
Ashley P.,
Appellant,
et al.,
Respondent.

Motion for leave to appeal denied.

4 SSD 56
In the Matter of Arnold R. Petralia,
Appellant,
v.
New York State Department of Labor,
Respondent.

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

Mo. No. 2021-830
Plymouth Venture Partners, II, L.P. et al.,
Appellants,
v.
GTR Source, LLC et al.,
Respondents.

Plymouth Venture Partners, II, L.P. et al.,
Appellants,
v.
Capital Merchant Services, LLC,
Respondent.

Motion by New York State Creditors Bar Association for leave to file a brief amicus curiae on consideration of the certified questions 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.

4 Mo. No. 2021-570
In the Matter of Philip Q., &c.,
Appellant,
v.
State of New York, et al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-786
The People &c.,
Respondent,
v.
Lance Rodriguez,
Appellant.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2021-602
In the Matter of Tuere Tene Rodriguez,
Appellant,
v.
Randolph Starks, Jr.,
Respondent.
(And Other Proceedings.)

Motion for leave to appeal denied.

3 Mo. No. 2021-797
Kim E. Schoch,
Respondent,
v.
Lake Champlain OB-GYN, P.C.,
Appellant.

Motion by James D. Sullivan, et al. for leave to file a brief amici curiae on the appeals 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.

Columbia Memorial Hospital,
Appellant,
v.
Marcel E. Hinds,
Respondent.

Maple Medical, LLP,
Appellant,
v.
Joseph Scott, &c.,
Respondent,
et al.,
Defendant.
(And Five Other Appeals.)

3 Mo. No. 2021-828
Jennifer White et al.,
Appellants,
v.
Andrew Cuomo, &c., et al.,
Respondents.

Motion by New Sports Economy Institute for leave to participate at oral argument as amicus curiae denied.
Judge Garcia took no part.

3 Mo. No. 2021-809
The People &c.,
Respondent,
v.
Shaka Williams,
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 SSD 53
Randall Wiltz,
Appellant,
v.
New York City, et al.,
Respondents.

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

2 SSD 59
Binbing Xie,
Appellant,
v.
Yan Fang Chen, Physician, P.C.,
Respondent.

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

2 Mo. No. 2021-357
In the Matter of City of Yonkers,
Appellant,
v.
Yonkers Fire Fighters, Local 628, IAFF,
AFL-CIO,
Respondent.

Motion for leave to appeal granted.

3 Mo. No. 2021-574
In the Matter of Ramon ZZ.,
 Appellant,
 v.
Amanda YY.,
 Respondent.

Motion for leave to appeal denied.