

State of New York
Court of Appeals

Decisions

September 2, 2021

CASES

No. 70
Fast Trak Investment Company, LLC, &c.,
Respondent,
v
Richard Philip Sax, &c. et al.,
Appellants.

Pursuant to the July 23, 2021 order of the United States Court of Appeals for the Ninth Circuit granting the joint motion to withdraw certification and dismiss the appeal to that Court, certified questions marked withdrawn.
Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

4 No. 67 SSM 11
The People &c.,
Respondent,
v.
John W. Walls,
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, defendant's motion to suppress granted and indictment dismissed, in a memorandum.
Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

MOTIONS

3 Mo. No. 2021-410
The People &c. ex rel. Quiry Alcantara,
 Appellant,
 v.
William Keyser, &c.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-692
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.

Motion by American Association for Justice 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.

2 Mo. No. 2021-705
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.

Motion by New York City Bar Association 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.

2 Mo. No. 2021-706
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.

Motion by Chamber of Commerce of the United States of America 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. The brief must be submitted in digital format within seven days.

4 Mo. No. 2021-353
In the Matter of Dagan B.

Ontario County Department of Social
Services,
 Respondent,
Calla B.,
 Appellant.
(And Another Proceeding.)

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.

1 Mo. No. 2021-575
In the Matter of Daniel B.,
 Respondent,
 v.
Selina T.,
 Appellant,
et al.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-391
In the Matter of Faith B., et al.

Onondaga County Department of Children
and Family Services,
 Respondent;
Jocelyn V.,
 Appellant,
et al.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2021-457
In the Matter of Jaylina B. &c.

Clayson N.
 Appellant,
et al.,
 Respondent;
Administration for Children's Services,
 Respondent.

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

2 Mo. No. 2021-291
In the Matter of State of New York,
 Respondent,
 v.
Jermaine B.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-561
In the Matter of Nicolas Jude B., &c.

Rosetta B.,
 Respondent;
Administration for Children's Services,
 Respondent;
Michelle B.,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2021-515
In the Matter of Tahj B.-L.

Erie County Department of Social Services,
 Respondent;
Tahjma L.,
 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.

1 Mo. No. 2021-722
The People &c.,
 Respondent,
 v.
Donnell Baines,
 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.

4 Mo. No. 2021-389
In the Matter of Kevin J. Blair,
 Respondent,
 v.
Crystal L. Bassette-DiGregorio,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2021-399
In the Matter of Asia A. Breland,
 Appellant,
 v.
Hakeem S. Hameed,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2021-340
In the Matter of the Foreclosure of Tax Liens
by County of Broome.

County of Broome,
 Respondent;
John Cadore et al.,
 Appellants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Motion for a stay dismissed as academic.

3 Mo. No. 2021-727
The People &c.,
 Respondent,
 v.
Devon T. Butler,
 Appellant.

Motion for assignment of counsel granted and Clea Weiss, Esq., c/o Law Office of Clea Weiss, PO Box 39, Ithaca, NY 14851 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2021-586
The People &c.,
Respondent,
v.
Martin Carillo,
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.

3 Mo. No. 2021-525
The People &c. ex rel. Felipe Concepcion,
Appellant,
v.
William Keyser,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-596
In the Matter of Ashleigh Cook,
Respondent,
v.
Benjamin Sierra, Jr.,
Respondent.
George E. Reed, Jr., Esq., Attorney for the
Child,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal dismissed upon the ground that appellant, having taken no appeal to the Appellate Division, may not appeal to this Court from the Appellate Division order of affirmance.

2 Mo. No. 2021-743
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by CVS Albany LLC, 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, an original and nine copies filed and the brief submitted in digital format within seven days.

3 Mo. No. 2021-414
The People &c. ex rel. Angel Diaz,
Appellant,
v.
William Keyser, &c.,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-415
In the Matter of Matthew A. Dixon,
 Respondent,
 v.
Taylor R. Crow,
 Appellant.

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

3 Mo. No. 2021-532
In the Matter of Holly F.,
 Appellant,
 v.
Daniel G.,
 Respondent.
(And Another Proceeding.)

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

3 Mo. No. 2021-412
The People &c. ex rel. William Figueroa,
 Appellant,
 v.
William Keyser, &c.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-345
In the Matter of Christian G.

Administration for Children's Services,
 Respondent;
Alexis G.,
 Respondent,
Kujo G.,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2021-459
In the Matter of Andrew G. et al.

Onondaga County Department of Children
and Family Services,
Respondent;
Elizabeth G.,
Respondent,
Jefferson P.,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2021-597
Kevin Grady,
Appellant,
v.
Chenango Valley Central School District, et
al.,
Respondents.

Motion by New York State Trial Lawyers
Association for leave to file a brief amicus curiae on
the appeal herein granted and the proposed brief is
accepted as filed. One copy of the brief must be filed
and the brief submitted in digital format within seven
days.

2 SSD 50
The People &c. ex rel. Kenneth Grafton,
Appellant,
v.
James Dzurenda, &c.,
Respondent.

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

4 Mo. No. 2021-748
The People &c.,
Respondent,
v.
Antone Herrod, &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.

3 Mo. No. 2021-387
In the Matter of Zakariya HH., &c.

Broome County Department of Social
Services,
Respondent;
Ahmed II.,
Appellant.

Mo. No. 2021-581
The People &c.,
Respondent,
v.
Ron Hill,
Appellant.

1 Mo. No. 2021-766
J.P. Morgan Securities Inc.,
et al.,
Appellants,
v.
Vigilant Insurance Company,
et al.,
Respondents.

1 Mo. No. 2021-767
J.P. Morgan Securities Inc.,
et al.,
Appellants,
v.
Vigilant Insurance Company,
et al.,
Respondents.

2 Mo. No. 2021-451
The People &c.,
Respondent,
v.
Luis Jimenez,
Appellant.

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

Motion for assignment of counsel granted and Janet
E. Sabel, Esq., The Legal Aid Society, 199 Water
Street, New York, NY 10038 assigned as counsel to
the appellant on the appeal herein.

Motion by James Corcoran, 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.

Motion by Securities Industry and Financial Markets
Association 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.

Motion to enlarge the record &c. granted only to the
extent that respondent is directed to provide
appellant's counsel with a copy of the grand jury
minutes, as consented to by respondent.

4 Mo. No. 2021-434
In the Matter of Derek Ramon Johnson,
Respondent,
v.
Kenya Iesha Johnson,
Appellant.
(And Another Proceeding.)

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

2 Mo. No. 2021-733
In the Matter of David Kalantarov,
Respondent,
v.
Marina Priyeva,
Respondent.
Carol Lipton, Esq., Attorney for the Children,
Appellant.

Motion for leave to appeal dismissed upon the
ground that appellant, having taken no appeal to the
Appellate Division, may not appeal to this Court
from the Appellate Division order of affirmance.
Motion for poor person relief dismissed as academic.
Motion for a stay dismissed as academic.

3 SSD 12
In the Matter of Leon R. Koziol, a Suspended
Attorney.

Committee on Professional Standards, &c.,
Respondent;
Leon R. Koziol,
Appellant.

Appeal, insofar as taken from that portion of the
Appellate Division order that denied reinstatement,
dismissed without costs, by the Court *sua sponte*,
upon the ground that no substantial constitutional
question is directly involved; appeal otherwise
dismissed without costs, by the Court *sua sponte*,
upon the ground that the remaining portion of the
order does not finally determine the proceeding
within the meaning of the Constitution.
Judge Fahey took no part.

4 Mo. No. 2021-576
The People &c.,
Respondent,
v.
Michael A. Lopez,
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. 2021-718
In the Matter of Adonnis M.

Administration for Children's Services,
Respondent;
Kenyetta M.,
Appellant;
Rising Ground,
Nonparty-Respondent.

Motion for poor person relief granted.

3 Mo. No. 2021-81
In the Matter of David McClary,
Appellant,
v.
Anthony J. Annucci, &c.,
Respondent.

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

3 Mo. No. 2021-491
In the Matter of Mental Hygiene Legal
Service, &c.,
Appellant,
v.
Kerry Delaney, &c. et al.,
Respondents,
et al.,
Respondent.

Motion by Autistic Self Advocacy Network, 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, an original and nine copies filed, and the
brief submitted in digital format within seven days.

3 Mo. No. 2021-505
In the Matter of Nahlaya MM., &c.

Chemung County Department of Social
Services,
Respondent;
Zaianna LL.,
Appellant.
(And Two Other Proceedings.)

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

1 Mo. No. 2021-512
Francis Nemeth, &c.,
Respondent,
v.
Brenntag North America, &c., et al.,
Defendants,
Whittaker, Clark & Daniels, Inc.,
Appellant.

Motion by Richard L. Kradin, 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.
Judge Wilson took no part.

1 Mo. No. 2021-708
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Protect the Harvest, 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, an original and nine copies filed and the brief submitted in digital format within seven days.

1 Mo. No. 2021-768
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Martha C. Nussbaum 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.

2 SSD 37
NYCTL 1998-2 Trust, &c.,
Plaintiff,
v.
DR 226 Holdings, LLC, et al.,
Defendants,
Warren Johnson,
Respondent;
Adam Plotch,
Intervenor,
AdelphiF, LLC,
Nonparty-Appellant.

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

Mo. No. 2021-277

Hector Ortiz, &c.,
Appellant,
v.
Ciox Health LLC, &c. et al.,
Respondents.

Motion by Greater New York Hospital Association et al. for leave to file a brief amici curiae on consideration of the certified question herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.
Chief Judge DiFiore and Judge Garcia took no part.

Mo. No. 2021-287

Hector Ortiz, &c.,
Appellant,
v.
Ciox Health LLC, &c. et al.,
Respondents.

Motion by Association of Health Information Outsourcing Services for leave to file a brief amicus curiae on consideration of the certified question 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.
Chief Judge DiFiore and Judge Garcia took no part.

Mo. No. 2021-288

Hector Ortiz, &c.,
Appellant,
v.
Ciox Health LLC, &c. et al.,
Respondents.

Motion by Chamber of Commerce of the United States of America for leave to appear amicus curiae on consideration of the certified question 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.
Chief Judge DiFiore and Judge Garcia took no part.

Mo. No. 2021-518

1
The People &c.,
Respondent,
v.
Guillermo Ortiz,
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.

SSD 38

David G. Peltan,
Respondent,
v.
Karen M. Cisler,
Appellant.

Appeal transferred without costs, by the Court *sua sponte*, to the Appellate Division, Fourth Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (*see* NY Const, art VI, §§ 3[b][2]; 5[b]; CPLR 5601[b][2]).

4 Mo. No. 2021-594
The People &c.,
Respondent,
v.
Grace Pietrocarlo,
Appellant.

Motion for assignment of counsel granted and Michael J. Stachowski, Esq., c/o Michael J. Stachowski, P.C., 2025 Clinton Street, Buffalo, NY 14206 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2021-413
The People &c. ex rel. Conrado Pons,
Appellant,
v.
William Keyser, &c.,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-351
In the Matter of the State of New York,
Respondent,
v.
Francisco R.,
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.

3 Mo. No. 2021-323
In the Matter of Jeremiah RR., &c.

Broome County Department of Social
Services,
Respondent;
Bonnie RR.,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2021-551
In the Matter of Balle S., et al.

Onondaga County Department of Children
and Family Services,
Respondent;
Tristian S.,
Appellant.

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

4 Mo. No. 2021-470
In the Matter of Bilinda S.,
Appellant,
v.
Carl P. et al.,
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2021-486
In the Matter of Eddie S.,
Appellant,
v.
Sylvia S.,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-536
In the Matter of Lamairik S.

Onondaga County Department of Children
and Family Services,
Respondent;
Erika S.,
Respondent,
Jonas S.,
Appellant.

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

4 Mo. No. 2021-377
In the Matter of Malachi S., &c.

Monroe County Department of Human
Services,
Respondent;
Teresa S.,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2021-411
The People &c. ex rel. Felix Sanchez,
Appellant,
v.
William Keyser, &c.,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-442
In the Matter of Margaret Michelle Waldman
Savage,
Appellant,
v.
Richard Morales,
Respondent.

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

4 Mo. No. 2021-502
In the Matter of Kathryn L. Schram,
Appellant,
v.
Joshua A. Nine,
Respondent.

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

3 Mo. No. 2021-700
The People &c.,
Respondent,
v.
Bradford L. Shanks,
Appellant.

Motion by Center for Appellate Litigation, 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, an original and nine copies filed, and the
brief submitted in digital format within seven days.

1 Mo. No. 2020-913
In the Matter of TCR Sports Broadcasting
Holding, LLP,
 Appellant,
 v.
WN Partner, LLC, et al.,
 Respondents,
Washington Nationals Baseball Club, LLC,
 Respondent,
Baltimore Orioles Baseball Club, et al.,
 Appellants.

Motion to dismiss appeal denied.
Chief Judge DiFiore and Judge Garcia took no part.

1 Mo. No. 2021-179
In the Matter of TCR Sports Broadcasting
Holding, LLP,
 Appellant,
 v.
WN Partner, LLC, et al.,
 Respondents,
Washington Nationals Baseball Club, LLC,
 Respondent,
Baltimore Orioles Baseball Club, et al.,
 Appellants.

Motion for leave to appeal granted.
Chief Judge DiFiore and Judge Garcia took no part.

1 Mo. No. 2021-528
In the Matter of Justice V., &c.

New York Foundling Hospital, et al.,
 Respondents;
Stephanie M. et al.,
 Respondents.

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

In the Matter of Ana R.V.,
 Appellant,
 v.
Administration for Children's Services, et al.,
 Respondents.

3 Mo. No. 2021-634
The People &c.,
Respondent,
v.
Quareese West,
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.

3 Mo. No. 2021-758
Jennifer White et al.,
Appellants,
v.
Andrew Cuomo, &c., et al.,
Respondents.

Motion by New Sports Economy Institute 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.
Judge Garcia took no part.

2 SSD 34
The People &c. ex rel. Ronald Williams,
Appellant,
v.
Cynthia Brann &c., et al.,
Respondents.

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

1 SSD 36
In the Matter of Diane Word,
Appellant,
v.
Dianne T. Renwick, &c., et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (*see* CPLR 5601).
Chief Judge DiFiore took no part.