

**State of New York**  
**Court of Appeals**

**Decisions**

March 21, 2023

**CASES**

No. 15

The People &c.,  
Respondent,  
v.  
Mamadou Ba,  
Appellant.

Order insofar as appealed from reversed and case remitted to the Appellate Term, First Department, for a determination whether defendant's sentence is unduly harsh or severe (CPL 470.45 [6] [b]). Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur, Judge Garcia in a concurring opinion, in which Acting Chief Judge Cannataro and Judge Singas concur and Judge Troutman in a separate concurring opinion, in which Judges Rivera and Wilson concur.

3                    No. 14

The People &c.,  
Respondent,  
v.  
Dakota W. Baldwin,  
Appellant.

Appeal dismissed upon the ground that the issues presented have become moot, in a memorandum. Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur, Judge Wilson in a concurring opinion.

1                    No. 27

The People &c.,  
Respondent,  
v.  
Anthony Debellis,  
Appellant.

Reargument ordered for a future Court session. Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

1                    No. 11

Kathleen Henry,  
Respondent,  
v.  
New Jersey Transit Corporation et al.,  
Appellants,  
et al.,  
Defendant.

Appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Opinion by Judge Singas. Acting Chief Judge Cannataro and Judges Rivera and Garcia concur. Judge Wilson dissents in an opinion, in which Judge Troutman concurs.

3                    No. 19  
James B. Nutter & Company,  
    Appellant,  
    v.  
County of Saratoga et al.,  
    Respondents,  
et al.,  
    Defendants.

Order reversed, with costs, and case remitted to the  
Appellate Division, Third Department, for  
consideration of issues raised but not determined on  
the appeal to that Court.  
Opinion by Acting Chief Judge Cannataro.  
Judges Rivera, Garcia, Wilson, Singas and Troutman  
concur.

## MOTIONS

1                    Mo. No. 2022-865  
37-10 114th Street ML Funding LLC,  
Respondent,  
v.  
Ai Yun Chen et al.,  
Appellants.

Motion for leave to appeal denied.

1                    Mo. No. 2022-906  
Geraldine Andreas, &c. et al.,  
Appellants,  
v.  
186 Tenants Corp., et al.,  
Respondents.

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.

3                    Mo. No. 2022-838  
The People &c.,  
Respondent,  
v.  
Jonathan Bonner,  
Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2022-880  
In the Matter of John Boyle,  
Appellant,  
v.  
NYS Department of Motor Vehicles,  
Respondent.

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

2                    Mo. No. 2023-20  
The People &c.,  
Respondent,  
v.  
Steven M. Centeno,  
Appellant.

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

3 Mo. No. 2022-878  
Lora Colucci et al.,  
Appellants,  
v.  
Thomas J. Rzepka,  
Defendant,  
Osborn Reed & Burke, LLP, et al.,  
Respondents.

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

4 Mo. No. 2022-892  
Counsel Financial Holdings LLC,  
Respondent,  
v.  
Sullivan Law, L.L.C., 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.

2 Mo. No. 2023-51  
Althea Davis,  
Respondent,  
v.  
John Khani, et al.,  
Appellants,  
et al.,  
Defendants.

Motion for leave to appeal denied.

1 Mo. No. 2022-894  
Erin Domingo,  
Appellant,  
v.  
541 Operating Corp., et al.,  
Respondents.

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.

3 Mo. No. 2022-862  
Kyle Endemann,  
Appellant,  
v.  
Edward DuBois,  
Respondent.

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

2 Mo. No. 2023-10  
The People &c.,  
Respondent,  
v.  
Antonio Escobar,  
Appellant.

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

2 Mo. No. 2023-11  
The People &c.,  
Respondent,  
v.  
Jose J. Fuentes,  
Appellant.

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

2 Mo. No. 2023-58  
The People &c.,  
Respondent,  
v.  
Guillermo Gorostiza,  
Appellant.

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

1 Mo. No. 2023-43  
Lukasz Gottwald, &c., et al.,  
Respondents,  
v.  
Kesha Rose Sebert, &c.,  
Appellant,  
et al.,  
Defendants.

Motion by New York State Senator Brad Hoylman for leave to file a brief amicus curiae on the appeal herein denied (*see Local Govt. Assistance Corp. v Sales Tax Asset Receivable Corp., mot by Speaker of the Assembly Sheldon Silver for leave to file a brief amicus curiae denied 2 NY3d 771 [2004]*).  
Judges Rivera and Wilson dissent.

1 Mo. No. 2023-112  
Lukasz Gottwald, &c., et al.,  
Respondents,  
v.  
Kesha Rose Sebert, &c.,  
Appellant,  
et al.,  
Defendants.

Motion by Samuel D. Isaly 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.

1 Mo. No. 2023-187  
Lukasz Gottwald, &c., et al.,  
Respondents,  
v.  
Kesha Rose Sebert, &c.,  
Appellant,  
et al.,  
Defendants.

Motion by Advance Publications, Inc., 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. 2023-188  
Lukasz Gottwald, &c., et al.,  
Respondents,  
v.  
Kesha Rose Sebert, &c.,  
Appellant,  
et al.,  
Defendants.

Motion by María Kim Grand 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. 2022-871  
Gramercy Park Partners, LLC,  
Appellant,  
v.  
GPH Ground Tenant LLC, et al.,  
Respondents.

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

3 Mo. No. 2022-806  
In the Matter of the Claim of Glenn Hedges,  
Appellant,  
v.  
Scandia Realty, Ltd. et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

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

2                    Mo. No. 2023-17  
In the Matter of Kate Klenfer, et al.,  
                         Respondents,  
                         v.  
Abdus Shahid,  
                         Appellant,  
et al.,  
                         Respondents.

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

2                    Mo. No. 2022-863  
The People &c.,  
                         Respondent,  
                         v.  
Amin Laboriel,  
                         Appellant.

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

2                    Mo. No. 2022-848  
In the Matter of Douglas LaPerche,  
                         Appellant,  
                         v.  
City of Peekskill,  
                         Respondent.

Motion for leave to appeal denied.

3                    Mo. No. 2022-817  
In the Matter of the Claim of Henry G. Lopez Mendez,  
                         Claimant,  
                         v.  
TGA Construction, LLC,  
                         Respondent,  
Merchants Mutual Insurance Company, &c.,  
                         Appellant.  
Workers' Compensation Board,  
                         Respondent.

Motion for leave to appeal denied.

3                    Mo. No. 2022-884  
In the Matter of the Claim of Richard Mallen,  
Appellant,  
v.  
Ace Tinsmith & Building Products et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2023-59  
Nella Manko,  
Appellant,  
v.  
Lenox Hill Anesthesiology, PLLC, et al.,  
Respondents.

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 poor person relief dismissed as academic.  
Acting Chief Judge Cannataro took no part.

2                    Mo. No. 2023-2  
The People &c.,  
Respondent,  
v.  
Aubrey Marrow,  
Appellant.

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

4                    Mo. No. 2022-901  
Medlock Crossing Shopping Center Duluth,  
GA. Limited Partnership,  
Respondent,  
v.  
TT Medlock Crossing, LLC, et al.,  
Defendants,  
William P. Allen,  
Appellant.

Motion, insofar as it seeks leave to appeal from the  
Appellate Division order dismissing the appeal from  
the September 2021 Supreme Court order, dismissed  
upon the ground that such portion of the order does  
not finally determine the action within the meaning  
of the Constitution; motion for leave to appeal  
otherwise denied.

1                    Mo. No. 2023-76  
The People &c.,  
Respondent,  
v.  
Habiél Morales,  
Appellant.

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



2 Mo. No. 2023-148  
Moret, LLC,  
Respondent,  
v.  
NewBank,  
Appellant,  
et al.,  
Defendants.  
(Index No. 608402/18)

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

2 Mo. No. 2023-18  
In the Matter of Loreen Mortaya, et al.,  
Respondents,  
v.  
Abdus Shahid,  
Appellant,  
et al.,  
Respondent.

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

2 Mo. No. 2023-37  
Robert Parrino,  
Appellant,  
v.  
The People of the State of New York, et al.,  
Respondents.

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

4 Mo. No. 2022-875  
James Pickard, et al.,  
Appellants,  
v.  
Richard Campbell et al.,  
Respondents.

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

3 Mo. No. 2022-904  
In the Matter of Prisoners' Legal Services of  
New York,  
Appellant,  
v.  
New York State Department of Corrections  
and Community Supervision,  
Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2023-41  
S & H Clinton Associates, LLC,  
Respondent,  
v.  
Tyrone Cherry,  
Appellant.

Motion for leave to appeal dismissed upon the  
ground that the Court does not have jurisdiction to  
entertain it (*see* NY Const, art VI, § 3 [b] [7]; CPLR  
5602 [a]).

4 Mo. No. 2022-887  
Nicholas Smith,  
Appellant,  
v.  
MDA Consulting Engineers, PLLC,  
Respondent.

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

2 Mo. No. 2023-15  
The People &c.,  
Respondent,  
v.  
Antonio Sutton,  
Appellant.

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

2 Mo. No. 2022-823  
In the Matter of State of New York,  
Respondent,  
v.  
Michael T.,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-46  
The People &c.,  
Respondent,  
v.  
Kevin W. Thurmond,  
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2022-707  
In the Matter of the Claim of Justin Timperio,  
Respondent,  
v.  
Bronx-Lebanon Hospital et al.,  
Appellants.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal granted.

3 Mo. No. 2022-714  
In the Matter of the Claim of Justin Timperio,  
Respondent,  
v.  
Bronx-Lebanon Hospital et al.,  
Respondents.  
Workers' Compensation Board,  
Appellant.

Motion for leave to appeal granted.

2 Mo. No. 2023-14  
The People &c.,  
Respondent,  
v.  
Charles Titone,  
Appellant.

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

2 Mo. No. 2022-909  
Nina Tsokolakyan,  
Appellant,  
v.  
Tiffany Management, Ltd.,  
Respondent,  
et al.,  
Defendants.

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                    Mo. No. 2022-900  
City of Warwick Municipal Employees  
Pension Fund,  
    Appellant,  
    v.  
Restaurant Brands International Inc., et al.,  
    Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2023-36  
The People &c.,  
    Respondent,  
    v.  
Darryl Watts,  
    Appellant.

Motion for leave to appeal denied upon the ground  
that an appeal lies as of right (*see* CPLR 5601 [b]  
[1]).  
Motion for poor person relief granted.

4                    Mo. No. 2022-891  
Zoom Tan, Inc.,  
    Appellant,  
    v.  
Sheridan Plaza, LLC,  
    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.