

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

March 19, 2021 through March 25, 2021

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

DUARTE (VLADIMIR), PEOPLE v:

App. Term, 1st Dept. order of 11/27/20; affirmance; leave to appeal granted by Rivera, J., 3/3/21/;

Crimes--Right to Representation Pro Se--Whether defendant made a clear and unequivocal request to proceed pro se that would trigger the need for a fully inquiry by the court (see *People v McIntyre*, 36 NY2d 10 [1974]); whether defendant abandoned his request to represent himself;

New York City Criminal Court, New York County, convicted defendant, after a nonjury trial, of forcible touching and sexual abuse in the second degree; App. Term affirmed.

DUKES (KEVIN A.), PEOPLE v:

4TH Dept. App. Div. order of 8/20/20; affirmance with two-Justices dissenting; leave to appeal granted by Court of Appeals, 2/18/21; Rule 500.11 rule pending;

Crimes--Sex Offenders--Whether the court erred in relying on the facts underlying two juvenile delinquency adjudications contained within defendant's presentence report to grant an upward departure when it was not established that the underlying facts were admissible under Family Court Act § 381.2(1);

County Court, Monroe County, classified defendant as a level three risk pursuant to the Sex Offender Registration Act (SORA); App. Div. affirmed.

HEALY v EST DOWNTOWN, LLC, c/o FIRST AMHERST DEVELOPMENT GROUP:

4th Dept. App. Div. order of 2/5/21; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;

Labor--Safe Place to Work--Whether plaintiff was engaged in an activity protected by Labor Law 240 when he fell from a ladder;

App. Div. (amended order) denied in part defendant's motion for summary judgment and granted plaintiff's motion for partial summary judgment; and thereafter, affirmed.

MURRAY (HASAHN D.), PEOPLE v:

1ST Dept. App. Div. order of 12/30/20; affirmance; leave to appeal granted by Renwick, J., 2/1/21; Rule 500.11 review pending;

Crimes--Jurors--Whether an alternate juror who had been discharged and gone home was "available for service" under CPL 270.35(1) to replace a seated juror who had been discharged;

Supreme Court, New York County, convicted defendant, after a jury trial, of two counts of robbery in the second degree and assault in the second degree, and sentenced him, as a second violent felony offender, to an aggregate term of 12 years; App. Div. affirmed.

REIS v J.B. KAUFMAN REALTY CO., LLC, et al.:

2nd Dept. App. Div. order of 3/11/20; reversal; leave to appeal granted by Court of Appeals, 2/18/21; Rule 500.11 review pending;

Landlord and Tenant--Lease--Whether the parties' 2021 letter agreement containing a commercial lease renewal provision was an unenforceable agreement to agree;

Supreme Court, Queens County, denied those branches of defendants' motion for summary judgment declaring that the subject lease expired on 2/29/16, and to cancel a notice of pendency filed by the plaintiff; App. Div. (1) reversed, (2) granted those branches of defendants' motion for summary judgment declaring that the subject lease expired on 2/29/16, and to cancel the notice of pendency filed by the plaintiff, and (3) remitted to Supreme Court for entry of judgment, inter alia, declaring that the subject lease expired on 2/29/16.

ROMUALDO (FERNANDO), PEOPLE v:

2ND Dept. App. Div. order of 11/12/20; reversal; leave to appeal granted by Roman, J., 12/9/20; Rule 500.11 review pending;

Crimes--Verdict--Sufficiency of the Evidence--Whether the verdict convicting defendant of murder in the second degree was supported by legally sufficient evidence; whether the verdict was against the weight of the evidence;

County Court, Suffolk County, convicted defendant of murder in the second degree and imposed sentence; App. Div. reversed, dismissed the indictment and remitted the matter to Supreme Court for further proceedings consistent with CPL 160.50.

VENDETTI v ZYWIAK, et al.:

4th Dept. App. Div. order of 2/5/21; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Civil Rights--Federal Civil Rights Claim--Whether defendants' conduct rendered them liable under 42 USC § 1983 for retaliation predicated on violations of the First Amendment;

Supreme Court, Oneida County, awarded plaintiff money damages upon a jury verdict and awarded plaintiff attorneys' fees; App. Div. reversed, granted the motion for a directed verdict, vacated the award of attorneys' fees and dismissed the second amended complaint.