



*State of New York  
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

**October 1, 2021 through October 7, 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.**

PEOPLE v BUTLER (DEVON T.):

3rd Dept. App Div. order of 5/20/21; affirmance; leave to appeal granted by Pritzker, J., 7/21/21; Rule 500.11 review pending;

**Crimes--Unlawful Search and Seizure--Whether reasonable suspicion or probable cause standard applies to canine sniff of a defendant's person following traffic stop;** County Court, Broome County, convicted defendant upon his plea of guilty of the crimes of criminal possession of a controlled substance in the third degree and tampering with physical evidence; App. Div. affirmed.

EAST 72nd v MTA:

1st Dept. App. Div. order of 8/26/21; affirmance; sua sponte examination of whether an appeal lies to the Court of appeals;

**Eminent Domain--Judicial Review--Whether issues of fact remained whether condemnor could have acquired easements on the subject property, located in a "Special Transit Land Use District," without payment to claimant upon its redevelopment of the property; whether issues of fact remained regarding claimant's ability to build above the permanent easements without additional cost; alleged Fifth Amendment violations;**

Supreme Court, New York County, granted condemnor's motion for summary judgment dismissing the proceeding; App. Div. affirmed.

MATTER OF GRAY v LAFOUNTAIN:

Town Board, Town of Penfield determination of 9/22/21; imposing discipline; Rule 500.11 review pending; **Civil Service--Disciplinary Proceedings--Whether substantial evidence supports the determination of guilt; whether the penalty of termination is so disproportionate to the offense as to shock one's sense of fairness;**

Town Board, Town of Penfield, terminated petitioner's employment with the Town, App. Div. modified, granted the CPLR article 78 petition in part by annulling that part of the determination finding petitioner guilty under charges 1 and 2 and vacating the penalty of termination and, as so modified, confirmed the determination and remitted the matter to respondent Town Board of the Town of Penfield for the imposition of a penalty less severe than termination; Town Board, Town of Penfield, thereafter suspended petitioner without pay for a period of two months.

MATTER OF GREEN v DUTCHESS COUNTY BOCES:

3rd Dept. App. Div. order of 3/5/20; modification; leave to appeal granted by the Court of Appeals, 9/14/21;

**Workers' Compensation--Disability Benefits--Whether a claimant's non-schedule award under Workers' Compensation Law (WCL) § 15 (3) (w), "payable during the continuance of such disability [and] subject to reconsideration of the degree of such impairment," abates upon their death arising from causes other than the injury itself such that WCL § 15 (4) does not apply to entitle the claimant's spouse or qualifying dependents to recover the posthumous unpaid benefits associated with the remaining potential weeks of the award;**

Workers' Compensation Board ruled that claimant was not entitled to receive the remaining 38.8 weeks of decedent's permanent partial disability award subsequent to decedent's death; App. Div. modified decision by reversing so much thereof as limited the non-schedule permanent partial disability award payable to claimant to 311.2 weeks, remitted matter to the Board for further proceedings not inconsistent with the court's decision, and, as so modified, affirmed.

PEOPLE v RUIZ (REBECCA):

4th Dept. App. Div. order of 8/26/21; reversal; leave to appeal granted by NeMoyer, J. 9/15/21;

**Crimes--Instructions--Whether the trial court erred by denying defendant's request**

**to instruct the jury on the defense of temporary and lawful possession of a firearm; whether the defense of temporary and lawful possession is available when the defendant uses a weapon in a dangerous and justified matter.**

App. Div., with one Judge dissenting, reversed and granted a new trial on the second count of the indictment.