

State of New York
Court of Appeals

Decisions

March 16, 2023

CASES

1 No. 10

Kathryn Casey, et al.,
 Respondents,
Pamela Renna et al.,
 Plaintiffs-Intervenors,
 v.
Whitehouse Estates, Inc., et al.,
 Appellants.

Whitehouse Estates, Inc., et al.,
 Third-Party Appellants,
 v.
Roberta L. Koepfel, et al.,
 Third-Party Defendants.

Order insofar as appealed from reversed, with costs, plaintiffs' motion insofar as sought summary judgment declaring that their legal regulated rent should be calculated according to the Rent Stabilization Code's default formula denied, case remitted to Supreme Court, New York County, for further proceedings in accordance with the memorandum herein, and certified question answered in the negative.
Acting Chief Judge Cannataro and Judges Rivera Garcia, Wilson, Singas and Troutman concur.

1 No. 12

The People &c.,
 Respondent,
 v.
Santino Guerra,
 Appellant.

Order affirmed, in a memorandum.
Acting Chief Judge Cannataro and Judges Garcia, Singas and Troutman concur.
Judge Wilson dissents in an opinion, in which Judge Rivera concurs.

3 No. 44 SSM 1

David J. Lemieux,
 Appellant,
 v.
Alton E. Horn et al.,
 Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs. The Appellate Division correctly concluded that defendant established prima facie entitlement to summary judgment and plaintiff failed to raise a triable issue of fact whether he suffered a serious injury within the meaning of Insurance Law § 5102 (d) as a result of the accident (*see Pommells v Perez*, 4 NY3d 566, 573-575 [2005]; *Franchini v Palmieri*, 1 NY3d 536, 537 [2003]).
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

3 No. 18
The People &c.,
 Respondent,
 v.
Andrew J. Regan,
 Appellant.

Order reversed and indictment dismissed.
Opinion by Judge Wilson.
Acting Chief Judge Cannataro and Judges Rivera and
Troutman concur.
Judge Garcia dissents for the reasons stated in so
much of the majority opinion of Justice Christine M.
Clark at the Appellate Division that upheld the denial
of the motion to dismiss the indictment on
constitutional speedy trial grounds (*see* 196 AD3d
735, 737 [3d Dept 2021]).
Judge Singas dissents and votes to affirm in an
opinion.

MOTIONS

2 Mo. No. 2022-639
In the Matter of the State of New York,
 Respondent,
 v.
Allan A.,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2023-137
In the Matter of Aaron Manor Rehabilitation
and Nursing Center, LLC, et al.,
 Appellants,
 v.
Howard A. Zucker, &c., et al.,
 Respondents.

Motion for leave to appeal granted.

3 Mo. No. 2022-897
In the Matter of Nicole B.,
 Respondent,
 v.
Franklin A.,
 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.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2023-182
The People &c.,
 Respondent,
 v.
Jorge Baque,
 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. 2022-902
In the Matter of Hassan Barrow,
 Appellant,
 v.
Lauren Carcaterra,
 Respondent.
(And Related Proceedings.)

Motion for leave to appeal denied.

4 SSD 9
Shane Christopher Buczek,
 Appellant,
 v.
Town of Evans, et al.,
 Respondents,
et al.,
 Defendants.

 Mo. No. 2023-128
Lujerio Cordero,
 Appellant,
 v.
Transamerica Annuity Service Corporation,
&c.,
 Respondent,
Transamerica Life Insurance Company,
 Respondent,
et al.,
 Third-Party Defendants-
 Cross Defendants.

1 Mo. No. 2023-125
The People &c.,
 Respondent,
 v.
Shamon Dilligard,
 Appellant.

1 Mo. No. 2023-122
Favourite Limited, et al.,
 Appellants,
 v.
Benedetto Cico, et al.,
 Respondents,
et al.,
 Defendant.

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

Motion by National Structured Settlements Trade Association for leave to file a brief amicus 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.
Acting Chief Judge Cannataro took no part.

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.

Motion to dismiss appeal denied.

4 Mo. No. 2022-803
In the Matter of Logan P.G.

Monroe County Department of Human
Services,
Respondent;
William G.,
Appellant.

4 Mo. No. 2022-763
In the Matter of Frank Garcia,
Appellant,
v.
Craig J. Doran, &c., et al.,
Respondents.

SSD 8
Amy R. Gurvey, &c.,
Appellant,
v.
State of New York et al.,
Respondents.

2 Mo. No. 2022-830
The People &c.,
Respondent,
v.
Jose A. Jamieson,
Appellant.

Motion for leave to appeal denied.

Motion for leave to appeal dismissed upon the
ground that the September 12, 2022 and October 6,
2022 letters sought to be appealed from are neither
judgments nor orders from which an appeal to this
Court may be taken (*see* CPLR 5512 [a]; CPLR 5602
[a]).
Motion for poor person relief dismissed as academic.
Judge Troutman took no part.

Appeal transferred without costs, by the Court *sua
sponte*, to the Appellate Division, Third 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]).
Acting Chief Judge Cannataro took no part.

Motion for leave to appeal denied.

3 SSD 7
Michael N. Kelsey,
 Appellant,
 v.
Lenore R.,
 Respondent.

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

1 SSD 11
The People &c.,
 Appellant,
 v.
Vladimir Krull,
 Respondent.

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

1 SSD 10
K.E. Liggett,
 Appellant,
 v.
Lew Realty LLC,
 Respondent.

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.

1 Mo. No. 2022-805
The People &c.,
 Respondent,
 v.
Eric Manley,
 Appellant.

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

1 Mo. No. 2022-856
Velin Mezinev,
 Appellant,
 v.
Bermet Tashybekova,
 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.

1 Mo. No. 2022-857
Gregory Morrison,
 Appellant,
 v.
New York City Housing Authority,
 Respondent.

Motion for leave to appeal granted.

 Mo. No. 2023-110
Andrew Nitkewicz, &c.,
 Appellant,
 v.
Lincoln Life & Annuity Company of New
York,
 Respondent.

Motion to expand the record denied.

1 Mo. No. 2023-140
The People &c.,
 Respondent,
 v.
Martin Ortiz,
 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. 2022-882
In the Matter of Brittini P.,
 Respondent,
 v.
Michael P.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-159
The People &c.,
 Respondent,
 v.
Juan Padilla-Zuniga,
 Appellant.

Motion for assignment of counsel granted and N.
Scott Banks, Esq., Legal Aid Society of Nassau
County, 40 Main Street, 3rd Floor, Hempstead, NY
11550 assigned as counsel to the appellant on the
appeal herein.
Judge Singas took no part.

2 Mo. No. 2022-802
The People &c.,
Respondent,
v.
Monir Parvez,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-12
The People &c.,
Respondent,
v.
William Ramirez,
Appellant.

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

3 Mo. No. 2022-837
In the Matter of Gregory Ramos,
Appellant,
v.
Anthony J. Annucci, &c., et al.,
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2023-221
The People &c.,
Respondent,
v.
Dwight Reid,
Appellant.

Motion by New York Civil Liberties Union for leave to appear amicus 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. 2022-811
The People &c.,
Respondent,
v.
Fernandez Rios,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2023-120
In the Matter of Rochester Police Locust
Club, Inc., et al.,
 Respondents,
 v.
City of Rochester, et al.,
 Respondents,
Council of City of Rochester,
 Appellant.

In the Matter of Arbitration between City of
Syracuse,
 Appellant,
Syracuse Police Benevolent Association, Inc.,
 Respondent.

1 Mo. No. 2023-47
Suzan Russell,
 Appellant,
 v.
New York University, et al.,
 Respondents.

3 SSD 12
In the Matter of the Estate of Michael Kevin
Ryan, &c.

Geraldine A. Whitney, &c.,
 Appellant;
Frank Headley, &c.,
 Respondent.
(And Another Related Proceeding.)

2 Mo. No. 2022-872
In the Matter of Aileen T. Smisek,
 Respondent,
 v.
Michael V. DeSantis,
 Appellant.

Motion by City of New York for leave to file a brief
amicus 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.
Judge Troutman took no part.

Motion to vacate this Court's December 8, 2022
dismissal order granted.

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

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.

2 Mo. No. 2022-746
Jeri Smith,
 Appellant,
 v.
City of New York, et al.,
 Respondents.
(And Third-Party Actions.)

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

4 Mo. No. 2022-669
Eleanor Stanley, &c., et al.,
 Appellants,
 v.
Thomas Kelly, et al.,
 Respondents.

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

1 Mo. No. 2023-193
Tax Equity Now NY LLC,
 Appellant,
 v.
City of New York et al.,
 Respondents,
State of New York et al.,
 Respondents.

Motion by LatinoJustice PRLDEF 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 13
Randolph J. Taylor,
 Respondent,
 v.
Anna Taylor,
 Appellant.

Appeal from orders of Supreme Court, Suffolk County, transferred without costs, by the Court *sua sponte*, to the Appellate Division, Second 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]).

2 SSD 14
In the Matter of Anna Taylor,
 Appellant,
 v.
Randolph J. Taylor Sr.,
 Respondent.

Appeal from order of Family Court, Suffolk County, transferred without costs, by the Court *sua sponte*, to the Appellate Division, Second 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]).

2 Mo. No. 2022-800
The People &c.,
 Respondent,
 v.
Mary Thompson,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-738
Verizon New York, Inc., &c.,
 Respondent,
 v.
Supervisor of Town of Hempstead, et al.,
 Appellants.
(And a Third-Party Action.)

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

3 Mo. No. 2023-94
The People &c. ex rel. Blake Wingate,
 Appellant,
 v.
State of New York Department of Corrections
and Community Services at Southport
Correctional Facility Medical,
 Respondent.

Motion for leave to appeal dismissed as untimely (*see* CPLR 5513 [b]).

2 Mo. No. 2022-793
The People &c.,
 Respondent,
 v.
Joseph Wolm,
 Appellant.

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

1 Mo. No. 2022-885

Shakeya Woodward,
Appellant,

v.

New York City, et al.,
Respondents.

In the Matter of Shakeya Woodward,
Appellant,

v.

New York State Office of Children and
Family Services, et al.,
Respondents.

Motion, insofar as it seeks leave to appeal from the portions of the Appellate Division order that denied appellant's motions for poor person relief and to consolidate the appeals, dismissed upon the ground that such portions of the order do not finally determine the action or proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Motion for poor person relief dismissed as academic.