



*State of New York  
Court of Appeals*

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*Lisa LeCours  
Chief Clerk and  
Legal Counsel to the Court*

*Clerk's Office  
20 Eagle Street  
Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

**November 25, 2022 through December 1, 2022**

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.**

AZEEZ, PEOPLE EX REL. v SUPERINTENDENT:

3rd Dept. App. Div. order of 9/29/22; denial; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

**Habeas Corpus—When Remedy Available;**

App. Div., inter alia, denied the application for a writ of habeas corpus.

PEOPLE v ELSUN WHEELER:

2nd Dept. App. Div. order of 1/26/22; reversal; leave to appeal granted by Zayas, J., 11/9/22; Rule 500.11 review pending with a sua sponte examination of whether the Appellate Division order of reversal was "on the law alone or upon the law and such facts which, but for the determination of law, would not have led to reversal" (CPL 450.90[2][a]).

**Crimes—Sufficiency of the Evidence—If properly preserved, whether conviction for assault in the second degree is supported by legally sufficient evidence that victim sustained a physical injury within the meaning of Penal Law § 10.00(9);**

Supreme Court, Kings County, convicted defendant of burglary in the second degree and assault in the second degree, and imposed sentence; App. Div. reversed, dismissed that count of the indictment charging defendant with assault in the second degree, granted that branch of defendant's omnibus motion which was to suppress two identifications of the defendant from arrest photographs, and ordered a new trial on the count of the indictment charging the defendant with burglary in the second degree, to be preceded by a hearing to determine whether an independent source exists fro the burglary complainant's identification.