

**CASE ISSUE STATEMENTS – SEPTEMBER 2023**

The calendar is subject to change. Please contact the Clerk's Office for any updated information.

If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeals Public Access and Search System (Court-PASS), which is accessible from the homepage on the Court's website.

***TUESDAY, SEPTEMBER 12***

**Nitkewicz v Lincoln Life (No. 59)**

CTQ-2022-2

The U.S. Court of Appeals for the Second Circuit certified the following question to this Court: “Whether a planned payment into an interest-bearing policy account, as part of a universal life insurance policy, constitutes a ‘premium actually paid for any period’ under the refund provision of New York Insurance Law section 3203(a)(2).”

**Matter of Celinette H.H. v Michelle R. (No. 60)**

APL-2022-130

Habeas Corpus—When Remedy Available—Whether Appellate Division properly dismissed appeal on ground that, without custody order in place, mother lacked standing to seek habeas relief.

**Matter of Hon. Robert J. Putorti (No. 61)**

JCR-2022-10

Review of determination of New York State Commission on Judicial Conduct.

***WEDNESDAY, SEPTEMBER 13***

**People v Pablo Pastrana (No. 63)**

APL-2022-100

Crimes—Unlawful Search and Seizure—Whether the Marihuana Regulation and Taxation Act (see Penal Law § 222.05[3]), which prohibits a finding of reasonable cause based solely on the order of cannabis, applies to criminal proceedings on direct appeal; Crimes—Possession of Weapon—Whether Penal Law § 265.03(3), which criminalizes the possession of a firearm in public places, is unconstitutional under the holding in *New York State Rifle & Pistol Assoc. v Bruen* (597 US —, 142 S Ct 2111 [2022]).

**People v Jose M. Rivera (No. 64)**

APL-2022-146

Crimes—Possession of Weapon—Whether the courts below erred in concluding that defendant was ineligible to be adjudicated as a youthful offender; whether defendant's conviction under Penal Law § 265.03(3), which criminalizes the possession of a firearm in public places, is

unconstitutional under *New York State Rifle & Pistol Assoc. v Bruen* (597 US —, 142 S Ct 2111 [2022]).

**People v Sebastian Telfair (No. 62)**

APL-2022-11

Crimes—Proof of Other Crimes—Where defendant was charged with various crimes involving weapons possession, whether Supreme Court properly allowed the People to introduce into evidence proof of prior uncharged crime regarding possession of a gun and prior conviction for criminal possession of a weapon under the state-of-mind exception to *People v Molineux* (168 NY 264 [1901]).

**People v Ramon Cabrera (No. 65)**

APL-2022-124

Crimes—Confession—Whether defendant was in custody for purposes of *Miranda v Arizona* (384 US 436 [1966]) where he was handcuffed during traffic stop; Crimes—Possession of a Weapon—Whether Penal Law § 265.03(3), which criminalizes the possession of a firearm in public places, is unconstitutional under the holding in *New York State Rifle & Pistol Assoc. v Bruen* (597 US —, 142 S Ct 2111 [2022]); whether defendant's sentence is unconstitutional under *Bruen* because Penal Law § 265.03(3) distinguishes between public possession and possession in the home.

**People v George Garcia (No. 66)**

APL-2022-183

Crimes—Possession of Weapon—Whether Penal Law § 265.03 (3), criminalizing possession of a firearm in public places, and Penal Law § 265.03 (1) (b), criminalizing possession of a firearm with the intent to use it unlawfully, are unconstitutional under *New York State Rifle & Pistol Assoc. v Bruen* (597 US —, 142 S Ct 2111 [2022]); whether defendant's sentence is unconstitutional under *Bruen* because Penal Law § 265.03 (3) distinguishes between public possession and possession in the home; whether defendant's sentence was cruel and unusual.

**People v Carlos L. David (No. 67)**

APL-2023-33

Crimes—Possession of Weapon—Whether Penal Law 265.05, which criminalizes possession of a loaded firearm outside one's home or business, violates due process in light of the United States Supreme Court holding in *New York State Rifle & Pistol Assoc. v Bruen* (597 US —, 142 S Ct 2111 [2022]); Crimes—Search and Seizure—Whether inventory search was invalid.

***THURSDAY, SEPTEMBER 14***

**Matter of Nemeth v K-Tooling (No. 48)**

APL-2022-132

Limitation of Actions—Whether third prong of relation back doctrine applied to permit petitioners to add landowner as necessary party in amended petition filed after expiration of limitations period; petitioners knew identity of landowner, who was named as a respondent in a prior related proceeding; whether dismissal of claims against remaining respondents was warranted based on failure to name a necessary party.

**People v Rakeem Douglas (No. 68)**

APL-2021-141

Crimes—Unlawful Search and Seizure—Whether police conducted a valid inventory search of the vehicle defendant was driving.

**People v Sergio Cerda (No. 69)**

APL-2021-122

Crimes—Evidence—Whether Supreme Court erred in applying the Rape Shield Law (CPL 60.42) to exclude evidence supporting an alternative explanation for the complainant's injuries.

**Matter of Stevens v NYS DCJS (No. 70)**

APL-2022-75

Parties— Standing—Whether petitioners, relatives of persons whose genetic profiles are in the New York State DNA database, have standing to challenge regulations adopted by respondents governing familial DNA searches; Constitutional Law—Separation of Powers—Whether respondents exceeded their authority in promulgating familial DNA search regulations.