

**State of New York**  
**Court of Appeals**

**Decisions**

May 24, 2022

**CASES**

- |  |        |   |
|--|--------|---|
| 4<br>Batavia Townhouses, Ltd., et al.,<br>Respondents,<br>v.<br>Council of Churches Housing Development<br>Fund Company, Inc.,<br>Appellant. | No. 45 | Order affirmed, with costs.<br>Opinion by Judge Troutman.<br>Chief Judge DiFiore and Judges Garcia, Singas and<br>Cannataro concur.<br>Judge Wilson dissents in part in an opinion, in which<br>Judge Rivera concurs.         |
| 2<br>The People &c.,<br>Respondent,<br>v.<br>Sergio Cerda,<br>Appellant.   | No. 56 | Reargument ordered for a future Court session.<br>Chief Judge DiFiore and Judges Rivera, Garcia,<br>Wilson, Cannataro and Troutman concur.<br>Judge Singas took no part.  |
| 2<br>The People &c.,<br>Respondent,<br>v.<br>Dashawn Deverow,<br>Appellant.  | No. 46 | Order reversed and a new trial ordered.<br>Opinion by Judge Singas.<br>Chief Judge DiFiore and Judges Rivera, Garcia,<br>Wilson, Cannataro and Troutman concur.   |
| The People &c.,<br>Respondent,<br>v.<br>Cesar Garcia,<br>Appellant.  | No. 17 | Order affirmed, in a memorandum.<br>Chief Judge DiFiore and Judges Garcia, Cannataro,<br>Troutman and Winslow concur.<br>Judge Wilson dissents in an opinion, in which Judge<br>Rivera concurs.<br>Judge Singas took no part. |

No. 44  
The People &c.,  
Respondent,  
v.  
Marc Mitchell,  
Appellant.

Order affirmed.  
Opinion by Judge Garcia.  
Chief Judge DiFiore and Judges Cannataro and  
Troutman concur.  
Judge Rivera dissents in an opinion, in which Judge  
Wilson concurs.  
Judge Singas took no part.

3 No. 63 SSM 4  
The People &c.,  
Respondent,  
v.  
Kamil Wideman, &c.,  
Appellant.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, in a memorandum.  
Chief Judge DiFiore and Judges Rivera, Garcia,  
Wilson, Singas, Cannataro and Troutman concur.

## MOTIONS

3 Mo. No. 2022-123  
In the Matter of Thomas Auringer,  
Appellant,  
v.  
Town of Woodstock Zoning Board of  
Appeals, et al.,  
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2022-195  
The People &c.,  
Respondent,  
v.  
Nathaniel Boone,  
Appellant.

Motion for leave to appeal granted.

1 Mo. No. 2022-98  
Sherrina Bradshaw,  
Appellant,  
v.  
City of New York,  
Respondent.

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

3 Mo. No. 2022-137  
In the Matter of the Claim of Marvin Centeno,  
Respondent,  
v.  
Academy Group Properties, LLC, et al.,  
Appellants,  
Uninsured Employers' Fund,  
Respondent.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2022-219  
Comptroller of the City of New York, et al.,  
    Respondents,  
State of New York ex rel. FX Analytics,  
    Appellant,  
    v.  
Bank of New York Mellon Corp., et al.,  
    Defendants.

Motion for leave to appeal denied.

2                    Mo. No. 2022-107  
Amelia D. Cooper, &c.,  
    Appellant,  
    v.  
City of New York, et al.,  
    Defendants,  
Reuven Moshenyat et al.,  
    Respondents.

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

1                    Mo. No. 2022-128  
Zoe Denison,  
    Appellant,  
    v.  
300 East 57th Street LLC et al.,  
    Respondents,  
et al.,  
    Defendants.

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

3                    Mo. No. 2022-167  
In the Matter of the Claim of Roshonda  
Dorsey,  
    Respondent.  
NY GO Express Inc.,  
    Appellant.  
Commssioner of Labor,  
    Respondent.

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.

3                    Mo. No. 2022-251  
In the Matter of the Claim of Timothy Doster,  
                         Respondent.  
Fundamental Labor Strategies,  
                         Appellant.  
Commissioner of Labor,  
                         Respondent.

Motion to renew the prior motion for leave to appeal, deemed a motion for leave to appeal from a February 2022 determination of the Unemployment Insurance Appeals Board, dismissed upon the ground that such determination does not finally determine the proceeding within the meaning of the Constitution (*see* CPLR 5602 [a] [1] [ii]).

1                    Mo. No. 2022-97  
Carlos E. Elias, &c. et al.,  
                         Appellants,  
                         v.  
Judith Tionson, et al.,  
                         Respondents.

Motion, insofar as it seeks leave to appeal from the October 2019 and September 2020 Appellate Division orders, dismissed upon the ground that such orders do not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2                    Mo. No. 2022-164  
The People &c.,  
                         Respondent,  
                         v.  
Jacob Gable,  
                         Appellant.

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

2                    Mo. No. 2022-179  
The People &c.,  
                         Respondent,  
                         v.  
Shawn Hawkins,  
                         Appellant.

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

2                    Mo. No. 2022-129  
Craig Kauffman,  
                         Appellant,  
                         v.  
Turner Construction Company,  
                         Respondent.

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

1                    Mo. No. 2022-159  
Bernie Lewis,  
    Appellant,  
    v.  
311 Realty, LLC,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2022-178  
The People &c.,  
    Respondent,  
    v.  
Carlton London,  
    Appellant.

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

4                    Mo. No. 2022-236  
The People &c.,  
    Respondent,  
    v.  
Bradly C. Lund,  
    Appellant.

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

2                    Mo. No. 2022-326  
Nella Manko,  
    Appellant,  
    v.  
David A. Gabay, &c., et al.,  
    Respondents.  
(Action Nos. 1, 2, 3)

Motion for reconsideration of this Court's March 17,  
2022 dismissal order denied.  
Motion for poor person relief dismissed as academic.  
Chief Judge DiFiore took no part.

-----  
Nella Manko,  
    Appellant,  
    v.  
Law Offices of David A. Gabay, &c., et al.,  
    Respondents.  
(Action No. 4)

2 Mo. No. 2022-172  
Janice Patricia McPhaul-Guerrier, et al.,  
Appellants,  
v.  
Keriann Leppla, et al.,  
Defendants,  
Zelda R. Simmons, et al.,  
Respondents.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order as affirmed the Supreme Court order denying the motion to renew, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

3 Mo. No. 2022-115  
In the Matter of the Claim of Jerry Wayne  
Moore,  
Appellant,  
v.  
U.S. Xpress, Inc., et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (*see* CPLR 5601). Motion for leave to appeal denied. Motion for poor person relief dismissed as academic.

2 Mo. No. 2022-184  
Dennis Murray,  
Appellant,  
v.  
Town of North Castle, &c.,  
Respondent.

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

3 Mo. No. 2022-130  
In the Matter of City of Ogdensburg,  
Appellant,  
Ogdensburg Firefighters Association Local  
1799, A.F.L., C.I.O., I.A.F.F.,  
Respondent.

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

1 Mo. No. 2022-171  
P.F.J. Ltd.,  
Plaintiff,  
v.  
Uriel Marrache,  
Appellant.  
DB Mortgage LLC,  
Assignee-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.

3 Mo. No. 2022-161  
In the Matter of Sarwat Parvaz et al.,  
Appellants,  
v.  
Public Service Commission et al.,  
Respondents.

Motion, insofar as Sarwat Parvaz seeks leave to appeal purportedly on behalf of Moon Convenience & Deli, Inc., dismissed upon the ground that Moon Convenience & Deli, Inc. must appear by an attorney (*see* CPLR 321 [a]); motion for leave to appeal otherwise denied.

3 Mo. No. 2022-163  
The People &c.,  
Respondent,  
v.  
Trevor Porter,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-122  
Julie Prestigiacomio, et al.,  
Appellants,  
v.  
Katie Prestigiacomio,  
Respondent.

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

1 Mo. No. 2022-140  
Timothy Reif, et al.,  
Respondents,  
v.  
Richard Nagy et al.,  
Appellants,  
et al.,  
Defendants.

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



3 Mo. No. 2022-81  
The People &c. ex rel. Danny Rivera,  
Appellant,  
v.  
Superintendent, Woodbourne Correctional  
Facility, et al.,  
Respondents.

Motion for leave to appeal granted.  
Motion for poor person relief granted.

4 Mo. No. 2022-162  
In the Matter of Kerri W.S., &c. et al.,  
Appellants,  
v.  
Howard Zucker, &c., et al.,  
Respondents,  
et al.,  
Respondents-Defendants.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the hybrid action/  
proceeding within the meaning of the Constitution  
and is not an order of the type provided for in CPLR  
5602 (a) (2).  
Judge Troutman took no part.

2 Mo. No. 2022-157  
The People &c.,  
Respondent,  
v.  
Warren Saturnino,  
Appellant.

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

1 Mo. No. 2022-146  
The People &c.,  
Respondent,  
v.  
Dwight Smalls,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-186  
The People &c.,  
Respondent,  
v.  
Don Sneed,  
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2022-44  
The People &c.,  
Respondent,  
v.  
Joshua Stewart,  
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2022-218  
The People &c.,  
Respondent,  
v.  
Joshua Stewart,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-156  
Burton Sultan,  
Appellant,  
v.  
Stephane Cosman Connery, &c.,  
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. 2022-125  
The People &c.,  
Respondent,  
v.  
Mario Tingling,  
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2022-155  
The People &c.,  
Respondent,  
v.  
Henry West,  
Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2022-181  
Frady Zeidman,  
    Respondent,  
    v.  
Natan Zeidman,  
    Appellant.

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.