

COURT OF APPEALS NEW FILINGS

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

August 23, 2013 through August 29, 2013

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.

BURNS et al., MATTER OF v CARBALLADA &c., et al.:

4TH Dept. App. Div. order of 12/21/12; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PROCEEDING AGAINST BODY OR OFFICER - DISMISSAL OF PETITION - CPLR ARTICLE 78 PROCEEDING TO ANNUL TWO DETERMINATIONS OF THE MUNICIPAL CODE VIOLATIONS BUREAU OF RESPONDENT CITY OF ROCHESTER WHICH FOUND PETITIONERS GUILTY OF CITY CODE VIOLATION SET FORTH IN APPEARANCE TICKETS - OWNING PROPERTY OCCUPIED WITHOUT VALID CERTIFICATE OF OCCUPANCY;
Supreme Court, Monroe County, granted the petition in a CPLR article 78 proceeding; App. Div. reversed and dismissed the petition.

GARRETT (MARK), PEOPLE v:

2ND Dept. App. Div. order of 5/15/13; reversal; leave to appeal granted by Graffeo, J., 8/19/13;

CRIMES - VACATUR OF JUDGMENT OF CONVICTION - CPL 440.10 MOTION TO VACATE JUDGMENT BASED ON NEWLY DISCOVERED EVIDENCE - CLAIM THAT PEOPLE VIOLATED THEIR BRADY OBLIGATION BY FAILING TO DISCLOSE THAT THE INTERROGATING POLICE OFFICER HAD BEEN THE DEFENDANT IN AN UNRELATED FEDERAL CIVIL RIGHTS ACTION BY AN ARRESTEE CLAIMING THAT THE OFFICER HAD EXTRACTED A FALSE CONFESSION FROM HIM THROUGH THE USE OF FORCE; WITNESS - IMPEACHMENT;

County Court, Suffolk County, denied, without a hearing, defendant's CPL 440.10 motion to vacate a 6/13/00 judgment convicting him, upon a jury verdict, of two counts of murder in the second degree, and imposing sentence; App. Div. reversed and remitted matter to County Court for a hearing and a new determination of defendant's motion.

LUDWIG (DANIEL A.), PEOPLE v:

4TH Dept. App. Div. order of 3/15/13; affirmance; leave to appeal granted by Smith, J., 8/16/13;

CRIMES - EVIDENCE - PRIOR CONSISTENT STATEMENTS - WHETHER THE TRIAL COURT ERRED IN ALLOWING ADMISSION OF TESTIMONY FROM SEVERAL WITNESSES ABOUT WHEN AND HOW THE VICTIM DISCLOSED THE ABUSE; WHETHER THE TRIAL COURT ERRED IN PRECLUDING TESTIMONY FROM COMPLAINANT'S GRANDMOTHER THAT THE DEFENSE CONTENDED SHOWED THE VICTIM'S MOTIVE TO LIE;

County Court, Monroe County, convicted defendant, upon a jury verdict, of predatory sexual assault against a child; App. Div. affirmed.

M. (MARQUAN W.), PEOPLE v:

County Court, Albany County order of 5/20/13; affirmance; leave to appeal granted by Graffeo, J., 8/19/13;

CRIMES - CYBER-BULLYING - ALBANY LOCAL LAW NO. 11 OF 2010 - CONSTITUTIONAL CHALLENGE TO LOCAL LAW THAT CRIMINALIZES "ANY ACT OF COMMUNICATING OR CAUSING A COMMUNICATION TO BE SENT BY MECHANICAL OR ELECTRONIC MEANS, INCLUDING POSTING STATEMENTS ON THE INTERNET OR THROUGH A COMPUTER OR EMAIL NETWORK, DISSEMINATING EMBARRASSING OR SEXUALLY EXPLICIT PHOTOGRAPHS; DISSEMINATING PRIVATE, PERSONAL, FALSE OR SEXUAL INFORMATION, OR SENDING HATE MAIL, WITH NO LEGITIMATE PRIVATE, PERSONAL, OR PUBLIC PURPOSE, WITH THE INTENT TO HARASS, ANNOY, THREATEN, ABUSE, TAUNT, INTIMIDATE, TORMENT, HUMILIATE, OR OTHERWISE INFLICT SIGNIFICANT EMOTIONAL HARM ON ANOTHER PERSON" - ALLEGED VIOLATION OF DEFENDANT'S FIRST AMENDMENT RIGHTS - WHETHER THE LOCAL LAW IS UNCONSTITUTIONALLY OVERBROAD OR VAGUE ON ITS FACE OR AS APPLIED TO DEFENDANT;

Cohoes City Court convicted defendant, upon his guilty plea, of violating Albany County Local Law No. 11 of 2010, which makes it a misdemeanor to engage in "cyber-bullying" in Albany County; County Court affirmed.

MORPHEUS CAPITAL ADVISORS, LLC v UBS AG, et al.:

1ST Dept. App. Div. order of 3/12/13; modification; leave to appeal granted by App. Div., 8/13/13;

CONTRACTS - BREACH OF CONTRACT - CLAIMS ARISING OUT OF AGREEMENT GIVING PLAINTIFF THE RIGHT TO BROKER THE SALE OF CERTAIN STUDENT LOAN ASSETS - FRUSTRATION OF PURPOSE DEFENSE; DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT WITH PREJUDICE;

Supreme Court, New York County, dismissed the complaint with prejudice; App. Div. modified to the extent of vacating that part of the judgment dismissing the complaint as against defendant UBS Real Estate Securities, Inc., and directing that dismissal of the complaint as against defendant UBS AG be without prejudice.

SOWELL, MATTER OF v FISCHER, &c.:

3RD Dept. App. Div. order of 7/18/13; dismissal; sua sponte examination whether the appeal is moot and whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING APPEAL ON THE GROUND THAT, BASED UPON FURTHER PROCEEDINGS FOLLOWING ENTRY OF THE INITIAL JUDGMENT, PETITIONER RECEIVED ALL THE RELIEF TO WHICH HE WAS ENTITLED;

Supreme Court, Albany County, partially granted petitioner's application, in a CPLR article 78 proceeding, to annul a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules; App. Div. dismissed the appeal as moot.