

COURT OF APPEALS NEW FILINGS

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

**January 29, 2021 through February 4, 2021**

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.**

ABDUL-MALIK v LIVOTE, etc., et al.:

2<sup>ND</sup> Dept. App. Div. order of 12/30/20; denial of motions for various relief; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved in the order appealed;

**Appeal--Appealable Paper--Appellate Division order denying motions for various relief;**

App. Div., inter alia, denied the CPLR article 78 petition and dismissed the proceeding; thereafter, denied a motion to reargue and a separate motion to vacate the decision, order and judgment of the court dated 9/2/20, or, in the alternative, for leave to appeal.

CARMONA (VINCENT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/1/20; affirmance; leave to appeal granted by Barros, J., 11/23/20; Rule 500.11 review pending;

**Crimes--Identification--Whether Supreme Court erred in relying on People's assurances of familiarity between defendant and complainant in denying defendant's request for a Rodriguez hearing (see People v Rodriguez, 79 NY2d 445 [1992]);**

Supreme Court, Kings County, convicted defendant of attempted murder in the second degree and criminal possession of a weapon in the second degree; App. Div. affirmed.

DOGAN (KEVIN), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 3/20/20; affirmance; leave to appeal granted by Whalen, J., 12/4/20; Rule 500.11 review pending;

**Crimes--Right to Counsel--Effective Representation--Whether defendant received the effective assistance of counsel at the suppression hearing; Crimes--Vacatur of Judgment of Conviction--Whether the papers in support of defendant's motion to vacate the judgment of conviction were insufficient to warrant a hearing on the motion; defendant argued his plea was not knowing, voluntary or intelligent based on counsel's failure to advise him of potential affirmative defense;**

County Court, Erie County, denied defendant's motion pursuant to CPL 440.10 to vacate the judgment convicting defendant of assault in the first degree and three counts of robbery in the first degree; App. Div. affirmed.

JACOB, &c. v FRANKLIN HOSPITAL MEDICAL CENTER, et al.:

2<sup>ND</sup> Dept. App. Div. order of 11/12/20; affirmance with two-Justice dissenting in part and affirmed; Rule 500.11 review pending;

**Judgments--Summary Judgment--Whether the courts below properly granted defendants' motions for summary judgment;**

Supreme Court, Nassau County, granted the separate motions of defendant Franklin Hospital Medical Center, defendants Abdul Majeed and AM Pulmonary Care, P.C., and defendant Madhukar Wadhwa for summary judgment dismissing the complaint insofar as asserted against them; App. Div. affirmed.