



*State of New York
Court of Appeals*

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Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

February 25, 2022 through March 3, 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.

PEOPLE v BALDWIN (DAKOTA W.):

3rd Dept. App. Div. order of 9/23/21; affirmance; leave to appeal granted by Wilson, J., 1/27/22;

Crimes--Sentence--Whether Appellate Division erred in requiring a showing of extraordinary circumstances or an abuse of discretion to invoke its interest of justice jurisdiction to reduce a sentence.

County Court, Chemung County, convicted defendant of attempted assault in the second degree; App. Div. affirmed.

BECK v CITY OF NIAGARA FALLS:

4th Dept. App. Div. order of 1/28/22; reversal, with two Justices dissenting; Rule 500.11

review pending;

Judgments--Summary Judgment--Whether summary judgment was properly granted in favor of defendant Patriot Field Services, Inc., which leased part of a building abutting street near accident injuring plaintiff; plaintiff alleged injured by steel beam that fell from forklift when it hit a defect in surface of street.

Supreme Court, Niagara County, denied the motion of defendant Patriot Field Services, Inc. seeking summary judgment dismissing the complaint and all cross claims against it; App. Div. reserved, granted the motion, and dismissed the complaint and all cross claims against defendant Patriot Field Services, Inc.

MATTER OF LALLO v NYC DEPT. OF EDUCATION:

1st Dept. App. Div. order of 5/25/21; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved in the order appealed;

Schools--Teachers--Termination of Employment--Whether arbitrator's findings sustaining specifications against petitioner are supported by the evidence; whether penalty of termination shocks the conscience;

Supreme Court, New York County, denied petitioner's article 75 petition to annual an arbitrator's decision and award, dated June 14, 2016, terminating her employment with respondent; App. Div. affirmed.

LYNCH v CITY OF NY:

1st Dept. App. Div. order of 5/4/21; modification; leave to appeal granted by the Court of Appeals;

Civil Service--Retirement and Pension Benefits--Whether defendant City of New York wrongfully denied transfers, purchase, and buy-back of credit for prior service with a public employer to tier 3 members of the New York City Police Pension Fund; Proceeding Against Body or Officer--Conversion of Declaratory Judgment Action to Article 78 Proceeding;

Supreme Court, New York County, inter alia, granted defendants' motion to convert the declaratory judgment action to an article 78 proceeding, and granted in part and denied in part the motion and cross motion for summary judgment; App. Div. modified the order and judgment to grant the part of the plaintiffs' motion seeking summary judgment on their first, second, third and fourth causes of action and declaring that defendants have wrongfully denied transfers, purchase, and buy-back of credit pursuant to Retirement and Social Security Law §§ 43, 513 (b), and 645 (2) and Administrative Code of City of NY §§ 13-143 and 13-218, "so declared" that the City wrongfully denied such transfers, and otherwise affirmed.

PEOPLE v TALLUTO (DANIEL):

4th Dept. App. Div. order of 1/28/22; affirmance with dissents;

Crimes--Sex Offenders--Whether defendant was properly designated a sexually violent offender (see Correction Law 168-a[7][b]; defendant convicted of a felony in another jurisdiction "for which [he] is required to register as a sex offender in [that]

jurisdiction "(see Correction Law 168-a[3][b]), but defendant would not qualify as a sexually violent offender had he committed same conduct in New York;
County Court, Oswego County, determined that defendant is a level one risk pursuant to the Sex Offender Registration Act and designated him a sexually violent offender; App. Div. affirmed.

TOWN OF SOUTHAMPTON v DEC:

3rd Dept. App. Div order of 5/27/21; affirmance and modification; leave to appeal granted by the Court of Appeals;

Mines and Minerals--Mined Land Reclamation Law--Whether section 23-2703 (3) of the Mined Land Reclamation Law bars the Department of Environmental Conservation from processing the renewal and modification permits sought for a preexisting mine because the local zoning code prohibits mining in the Suffolk County District where the mine is located;

Supreme Court, Albany County, denied a motion by the County of Suffolk to intervene; and thereafter among other things, dismissed petitioners' application, in a proceeding pursuant to CPLR article 78, to review two determinations of respondent Department of Environmental Conservation granting certain Mined Land Reclamation permits to respondent Sand Lot Corporation; App. Div. affirmed order and modified judgment by reversing so much of the judgment as dismissed the petition, granted the petition, annulled the determinations of respondent Department of Environmental Conservation granting certain Mine Land Reclamation permits, and, as so modified, affirmed.