

COURT OF APPEALS NEW FILINGS

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

**April 23 through April 29, 2010**

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.**

BELL (JAMEL), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 12/15/09; affirmance; leave to appeal granted by Ciparick, J., 4/8/10;

CRIMES - SENTENCE - PERSISTENT VIOLENT FELONY OFFENDER - CHALLENGE TO THE CONSTITUTIONALITY OF DEFENDANT'S ADJUDICATION AS A PERSISTENT VIOLENT FELONY OFFENDER -- APPRENDI v NEW JERSEY (530 US 466 [2000]);

Supreme Court, New York County convicted defendant of robbery in the second degree and sentenced him, as a persistent violent felony offender, to a term of 16 years to life; App. Div. affirmed.

BRABHAM (JESSE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/22/09; modification; leave to appeal granted by Pigott, J., 4/1/10; Rule 500.11 review pending; CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - PENAL LAW § 70.25(2-c) - WHETHER THE APPELLATE DIVISION WAS REQUIRED TO SPECIFY "THE FACTS AND CIRCUMSTANCES" SUPPORTING ITS DETERMINATION THAT "MITIGATING CIRCUMSTANCES" WARRANTED CONCURRENT SENTENCES FOR BAIL JUMPING IN THE SECOND DEGREE AND ANOTHER CRIME;

Supreme Court, New York County convicted defendant of attempted criminal possession of a controlled substance in the third degree and bail jumping in the second degree and sentenced him, as a second felony offender, to consecutive terms of 4 to 8 years and 1 1/2 to 3 years, respectively; App. Div. modified, as a matter of discretion and in the interest of justice, to the extent of directing that the sentences be served concurrently, and otherwise affirmed.

BROWN (KENNETH), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 1/14/10; affirmance; leave to appeal granted by Graffeo, J., 4/23/10; CRIMES - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CPL 420.40 MOTION FOR A FINANCIAL HARDSHIP HEARING TO DEFER OR VACATE THE MANDATORY SURCHARGES AND FEES IMPOSED AT TIME OF SENTENCE - WHETHER DENIAL OF REQUEST TO DEFER MANDATORY SURCHARGES CAN BE REVIEWED ON APPEAL FROM JUDGMENT OF CONVICTION;

Supreme Court, New York County convicted defendant, upon his guilty plea, of burglary in the second degree and sentenced him, as a second violent felony offender, to a term of 5 years; thereafter, the same court denied defendant's motion pursuant to CPL 420.40 for a financial hardship hearing to defer or vacate the mandatory surcharges and fees imposed at time of sentence; App. Div. affirmed.

DOLBERRY a/k/a DUBERRY v STATE OF NEW YORK:

2<sup>ND</sup> Dept. App. Div. order of 3/23/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; COURTS - COURT OF CLAIMS - LEAVE TO FILE LATE CLAIM - PERSONAL INJURY CLAIM BY PRISONER; Court of Claims denied claimant's motion, in effect, for leave to file a late claim pursuant to Court of Claims Act § 10(6); App. Div. affirmed.

GRIFFITH OIL COMPANY, INC., et al. v NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, et al.:

4<sup>TH</sup> Dept. App. Div. order of 12/30/09; reversal; leave to appeal granted by App. Div., 3/19/10; INSURANCE - DUTY TO DEFEND AND INDEMNIFY - EXCLUSION OF GENERAL LIABILITY COVERAGE FOR PROPERTY DAMAGE CAUSED BY A POLLUTANT - SPUR PIPELINE OIL LEAK - WHETHER EXCEPTION TO POLLUTION EXCLUSION

Supreme Court, Monroe County, upon reargument, granted the motion of defendant Nation Union Fire Insurance Company of Pittsburgh, PA for partial summary judgment and denied that part of plaintiffs' cross motion for summary judgment; App. Div. reversed and denied National Union's motion for partial summary judgment, vacated the declaration, granted plaintiffs' cross motion in part and granted judgment to plaintiffs declaring that National Union is obligated to indemnify plaintiffs in the underlying actions and the proceeding commenced by the U.S. Environmental Protection Agency.

JORDAN (GEORGE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/22/09; affirmance; leave to appeal granted by Graffeo, J., 4/27/10; Rule 500.11 review pending;

CRIMES - SENTENCE - RESENTENCE - ADDITION OF POST-RELEASE SUPERVISION TO SENTENCE AFTER DEFENDANT'S RELEASE FROM PRISON; Supreme Court, New York County resentenced defendant to a term of 7 years with 5 years' post-release supervision; App. Div. affirmed.

SIMMONS v SACCHETTI:

1<sup>ST</sup> Dept. App. Div. order of 8/25/09; reversal; leave to appeal granted by Court of Appeals, 4/1/10; Rule 500.11 review pending; NEGLIGENCE - MAINTENANCE OF PREMISES - PROXIMATE CAUSE - SUMMARY JUDGMENT - EXISTENCE OF TRIABLE ISSUES OF MATERIAL FACT - UNATTENDED, 17-MONTH OLD CHILD SCALDED AFTER GETTING OR FALLING INTO BATHTUB AFTER HER BROTHER HAD TURNED ON HOT WATER ONLY AND WHILE MOTHER WAS IN ANOTHER ROOM;

Supreme Court, Bronx County orders that, in an action for personal injury to an infant, denied the respective motions by defendants building owner and management company, and by defendant boiler service contractor, for summary judgment dismissing the complaint and all cross claims against them; App. Div. reversed, granted the motions and dismissed the complaint and all cross claims against defendants building owner, management company and boiler service contractor.

WILLIAMS, MATTER OF v NEW YORK STATE DIVISION OF PAROLE:

1<sup>ST</sup> Dept. App. Div. order of 3/18/10; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PAROLE - SPECIAL CONDITIONS - CONDITION OF PAROLE FORBIDDING PETITIONER FROM HAVING CONTACT WITH HIS WIFE WITHOUT THE PERMISSION OF HIS PAROLE OFFICER - ALLEGED VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS TO MARRY, RAISE CHILDREN AND DUE PROCESS;

Supreme Court, New York County modified a special condition of petitioner's parole that forbade him from having any contact with his wife without the permission of his parole officer, to permit petitioner to see his wife during non-curfew hours so long as the wife wished to see him; App. Div. reversed, reinstated the

special condition and dismissed the CPLR article 78 petition.