

COURT OF APPEALS NEW FILINGS

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

August 27 through September 2, 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.

ACEVEDO (BENITO), PEOPLE v:

1ST Dept. App. Div. order of 5/25/10; reversal; leave to appeal granted by Nardelli, J., 8/24/10;

CRIMES - SENTENCE - PERSISTENT FELONY OFFENDER - VACATUR OF SENTENCE FOR PREDICATE FELONY (DUE TO TRIAL COURT'S FAILURE TO PRONOUNCE THE MANDATORY TERM OF POST-RELEASE SUPERVISION) - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT, ALTHOUGH DEFENDANT'S 2001 ATTEMPTED ROBBERY CONVICTION NO LONGER QUALIFIES AS A PREDICATE FELONY, THE APPROPRIATE REMEDY IS TO REMAND FOR RESENTENCING TO AFFORD THE PEOPLE THE OPPORTUNITY TO ESTABLISH WHETHER HIS 1993 MASSACHUSETTS CONVICTION STILL QUALIFIES AS A PREDICATE FELONY WHEN THE TIME HE HAS SPENT INCARCERATED IS EXCLUDED FROM THE 10-YEAR LIMITATION PURSUANT TO PENAL LAW § 70.06(1)(b)(iv) AND (v)";

Supreme Court, New York County denied defendant's CPL 440.20 motion to set aside his sentence on a 11/14/06 judgment convicting him of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree, and sentencing him, as a second felony drug offender previously convicted of a violent felony, to concurrent terms of 6 years, to be followed by a 3-year term of post-release supervision; App. Div. reversed and remanded for sentencing, including further proceedings with respect to defendant's predicate felony status.

CREDLE (DONDI), PEOPLE v:

1ST Dept. App. Div. order of 10/22/09; affirmance; leave to appeal granted Jones, J., 8/20/10;

GRAND JURY - RESUBMISSION OF CHARGES - WHETHER THE PEOPLE ARE REQUIRED TO OBTAIN COURT AUTHORIZATION UNDER CPL 190.75 TO PRESENT THE CASE TO A DIFFERENT GRAND JURY WHERE THE PEOPLE WITHDREW A FULLY PRESENTED CASE TO A FIRST GRAND JURY WHICH VOTED "NO AFFIRMATIVE ACTION" (i.e., NOT ENOUGH VOTES TO INDICT OR DISMISS);

Supreme Court, New York County convicted defendant of criminal sale of a controlled substance in the third degree and criminal sale of a controlled substance in or near school grounds, and sentenced him, as a second felony drug offender whose prior felony conviction was a violent felony, to concurrent terms of 8 years; App. Div. affirmed.

BRAD H. v THE CITY OF NEW YORK, et al.:

1ST App. Div. order of 8/10/10; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the two-justice dissent at the Appellate Division is on a question of law;

STIPULATION - STIPULATION OF SETTLEMENT - MEANING OF STIPULATION THAT THE "PROVISIONS OF THIS AGREEMENT SHALL TERMINATE AT THE END OF FIVE YEARS AFTER MONITORING BY THE COMPLIANCE MONITORS BEGINS" - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE PROVISIONS OF THE SETTLEMENT AGREEMENT HAD "TERMINATED" AT THE TIME PLAINTIFFS SOUGHT INJUNCTIVE RELIEF TO COMPEL DEFENDANTS' COMPLIANCE WITH THE AGREEMENT; ESTOPPEL - AVAILABILITY AGAINST GOVERNMENTAL AGENCY;

Supreme Court, New York County, among other things, granted plaintiffs' motion for a preliminary injunction requiring defendants to continue to abide by the terms of parties' stipulation of settlement, which was approved in an 4/2/03 amended final order and judgment, and denied defendants' cross motion for an order declaring the action terminated pursuant to the terms of the stipulation; App. Div. reversed, "on the facts," granted defendants' cross motion and declared the action

terminated in the absence of jurisdiction over the dispute.

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STEWART (OWEN), PEOPLE v:

1ST Dept. App. Div. order of 4/20/10; affirmance; leave to appeal granted by Graffeo, J., 8/16/10;

CRIMES - JURORS - SELECTION OF JURY - WHETHER TRIAL COURT ERRED IN GIVING DEFENSE COUNSEL FIVE-MINUTE LIMIT FOR VOIR DIRE QUESTIONING OF EACH JURY PANEL; WHETHER TRIAL COURT ERRED IN ALLOWING WITNESSES TO IDENTIFY DEFENDANT ON A VIDEOTAPE; ADMISSIBILITY OF EVIDENCE OF DEFENDANT'S PRIOR CRIMINAL CONVICTION; ROBBERY;

Supreme Court, New York County convicted defendant of two counts of robbery in the first degree and robbery in the second degree, and sentenced him, as a second felony offender, to an aggregate term of 12 years; App. Div. affirmed.