

MOTION NO. (388/00) KA 99-05191. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANDRE GARFIELD, DEFENDANT-APPELLANT. -- Motion for reargument or, in the alternative, leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, GREEN, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (28/05) KA 03-01922. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LEON A. WEEKS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, SMITH, CENTRA, AND GREEN, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1655/05) KA 03-02629. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVON M. GRIFFIN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis granted. Memorandum: Defendant contends that he was denied effective assistance of appellate counsel because counsel failed to raise an issue on direct appeal that would have resulted in reversal, specifically, whether defendant received an illegal sentence because of noncompliance with the statutory mandates of CPL 400.21. Upon our review of the trial court proceedings, we conclude that the issue may have merit. Therefore, the order of December 22, 2005 is vacated and this Court will consider the appeal de novo (*see People v LeFrois*, 151 AD2d 1046 [1989]). Defendant is directed to file and serve his records and briefs with this Court on or before June 5, 2009. PRESENT: SCUDDER, P.J., HURLBUTT, SMITH,

AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (629/07) KA 05-02514. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RYAN J. LAWS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1031/07) KA 04-01029. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ALFRED MILLER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, GREEN, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (333/08) KA 06-01520. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEYONTAY C. RICKS, DEFENDANT-APPELLANT. -- Motion for leave to appeal denied. PRESENT: MARTOCHE, J.P., FAHEY, PERADOTTO, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (473/08) KA 05-01523. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARK L. EMMONS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (632/08) KA 05-00854. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V HECTOR FUENTES, DEFENDANT-APPELLANT. -- Motion for reargument

denied. PRESENT: HURLBUTT, J.P., MARTOCHE, PERADOTTO, PINE, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1096/08) KA 05-01406. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER L. POOLE, DEFENDANT-APPELLANT. (APPEAL NO. 2.)

-- Motion for reargument denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1120/08) CA 06-03448. -- SAM PILATO AND SON, INC. AND SAM PILATO, PLAINTIFFS-RESPONDENTS, V LEO D. STAROWITZ, SR., ET AL.,

DEFENDANTS, AND FRANK STAROWITZ, DEFENDANT-APPELLANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, AND SMITH, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1125/08) CA 07-02393. -- SUSAN M. DOYLE, PLAINTIFF-RESPONDENT-APPELLANT, V CITY OF BUFFALO, BUFFALO POLICE DEPARTMENT AND JOHN SANDERS, DEFENDANTS-APPELLANTS-RESPONDENTS. (APPEAL NO. 3.) -- Motion for

reargument or, in the alternative, leave to appeal to the Court of Appeals denied; the cross motion for reargument is granted and, upon reargument, the memorandum and order entered November 14, 2008 is amended by deleting "\$36,000" from the penultimate sentence of the second paragraph of the memorandum and substituting "\$32,000." PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, AND SMITH, JJ. (Filed Feb. 6, 2009.)

MOTION NOS. (1153-1155.1/08) CA 07-01601. -- PETER E. BISSELL AND SHERRY BISSELL, PLAINTIFFS-RESPONDENTS, V TOWN OF AMHERST, DEFENDANT-APPELLANT. TOWN OF AMHERST, THIRD-PARTY PLAINTIFF, V MCGONIGLE & HILGER ROOFING COMPANY, THIRD-PARTY DEFENDANT-APPELLANT. (APPEAL NO. 1.) CA 07-01660. -- PETER E. BISSELL AND SHERRY BISSELL, PLAINTIFFS-RESPONDENTS, V TOWN OF AMHERST, DEFENDANT-APPELLANT. TOWN OF AMHERST, THIRD-PARTY PLAINTIFF-RESPONDENT, V MCGONIGLE & HILGER ROOFING COMPANY, THIRD-PARTY DEFENDANT-APPELLANT. (APPEAL NO. 2.) CA 07-02225. -- PETER E. BISSELL, ET AL., PLAINTIFFS, V TOWN OF AMHERST, DEFENDANT. TOWN OF AMHERST, THIRD-PARTY PLAINTIFF-RESPONDENT, V MCGONIGLE & HILGER ROOFING COMPANY, THIRD-PARTY DEFENDANT-APPELLANT. (APPEAL NO. 3.) CA 08-01113. -- PETER E. BISSELL, ET AL., PLAINTIFFS, V TOWN OF AMHERST, DEFENDANT. TOWN OF AMHERST, THIRD-PARTY PLAINTIFF-RESPONDENT, V MCGONIGLE & HILGER ROOFING COMPANY, THIRD-PARTY DEFENDANT-APPELLANT. (APPEAL NO. 4.) -- Motions for reargument or, in the alternative, leave to appeal to the Court of Appeals denied. PRESENT: HURLBUTT, J.P., SMITH, CENTRA, GREEN, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1207/08) KA 08-00449. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEMAR TURNER, DEFENDANT-APPELLANT. -- Motion for reargument and leave to appeal to the Court of Appeals denied. PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1218/08) CA 07-02601. -- JOAN HASTINGS-DOVE AND JOHN A. DOVE, PLAINTIFFS-RESPONDENTS, V BRIAN W. HACKFORD AND JENNIFER A. TURNER, DEFENDANTS-APPELLANTS. (ACTION NO. 1.) JENNIFER A. TURNER, PLAINTIFF-APPELLANT, V BRIAN W. HACKFORD, DEFENDANT-RESPONDENT. (ACTION NO. 2.) -- Motions for reargument denied. PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1275/08) KA 07-01918. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIAM LIGGINS, DEFENDANT-APPELLANT. -- Motion to amend the memorandum and order of this Court denied. PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, AND GREEN, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1292/08) CA 08-00978. -- FIRST PRESBYTERIAN CHURCH OF OAKFIELD, PLAINTIFF-APPELLANT, V PRESBYTERY OF GENESEE VALLEY OF THE PRESBYTERIAN CHURCH (USA) ("PC (USA)"), DEFENDANT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, AND GREEN, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1331/08) CA 08-00950. -- IN THE MATTER OF EDWARD W. GUZDEK, JR., AS PRESIDENT OF AMHERST POLICE CLUB, INC., DAVID SCHNEIDER AND JENNIFER KOEPEL, PETITIONERS-RESPONDENTS, V SATISH MOHAN, SUPERVISOR, TOWN OF AMHERST, RESPONDENT-APPELLANT, TOWN OF AMHERST, RESPONDENT-RESPONDENT, ET AL., RESPONDENT. -- Motion for leave to appeal to the Court of Appeals

denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND GREEN, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1366/08) KA 06-01295. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LARRY COMFORT, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, PERADOTTO, AND PINE, JJ. (Filed Feb. 6, 2009.)

MOTION NOS. (1402-1403/08) CA 07-02514. -- PATRICK DANIEU AND EILEEN DANIEU, PLAINTIFFS-APPELLANTS, V 109 SOUTH UNION ST., LLC AND FLAUM MANAGEMENT COMPANY, INC., DEFENDANTS-RESPONDENTS. (APPEAL NO. 1.) CA 08-00723. -- PATRICK DANIEU AND EILEEN DANIEU, PLAINTIFFS-APPELLANTS, V 109 SOUTH UNION ST., LLC AND FLAUM MANAGEMENT COMPANY, INC., DEFENDANTS-RESPONDENTS. (APPEAL NO. 2.) -- Motion for reargument or, in the alternative, leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1429/08) KA 04-00694. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLOVERIOUS THOMAS, JR., DEFENDANT-APPELLANT. -- Motion for reargument granted and, upon reargument, the memorandum and order entered November 14, 2008 is amended by deleting the second and third sentences of the memorandum and substituting the following sentences: "The sole contention of defendant on appeal is that the judgment revoking his probation was based on an illegal search. We reject defendant's contention

(see generally *People v Thomas*, 30 AD3d 1197, 1198, lv denied 9 NY3d 869)."

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1453/08) KA 05-02233. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KAREEM THOMAS, DEFENDANT-APPELLANT. -- Motion for reconsideration denied. PRESENT: HURLBUTT, J.P., SMITH, GREEN, PINE, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

MOTION NO. (1478/08) KA 07-00937. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARTIN L. OAKES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Feb. 6, 2009.)

KA 06-00133. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BRANDON CROSBY, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (see *People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, Stephen K. Lindley, A.J. - Attempted Robbery, 1st Degree). PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Feb. 6, 2009.)

KA 06-00773. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIE ELLINGTON, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (see *People v*

Crawford, 71 AD2d 38 [1979]). (Appeal from Judgment of Supreme Court, Monroe County, David D. Egan, J. - Attempted Grand Larceny, 3rd Degree).
PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ.
(Filed Feb. 6, 2009.)

KA 07-02199. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BOB J. GAY, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Yates County Court, W. Patrick Falvey, J. - Sodomy, 2nd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Feb. 6, 2009.)

KA 07-02200. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BOB J. GAY, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Yates County Court, W. Patrick Falvey, J. - Criminal Sexual Act, 2nd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Feb. 6, 2009.)

KA 07-02256. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVID H. LADD, DEFENDANT-APPELLANT. -- Appeal dismissed as abandoned. Counsel's motion to be relieved of assignment granted. (Appeal from Judgment of Monroe County Court, Frank P. Geraci, Jr., J. - Felony Driving While Intoxicated). PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND

PERADOTTO, JJ. (Filed Feb. 6, 2009.)

KA 07-01230. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GREENE B. MULLEN, ALSO KNOWN AS BARRY MULLENS, DEFENDANT-APPELLANT. -- Order unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Erie County Court, Michael L. D'Amico, J. - 2005 Drug Law Reform Act).
PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ.
(Filed Feb. 6, 2009.)

KA 06-01048. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DALE PETERSON, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, Stephen K. Lindley, A.J. - Burglary, 3rd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Feb. 6, 2009.)

KA 07-00450. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RODGER B. SAGE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, Frank P. Geraci, Jr., J. - Burglary, 3rd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Feb. 6, 2009.)