

MOTION NO. (0594-A/96) KA 08-02494. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DALE KAHLEY, 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 the court complied with the statutory mandates of CPL 310.30. Upon our review of the trial court proceedings, we conclude that the issue may have merit. Therefore, the order of May 31, 1996 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 July 17, 2009. PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (625/99) KA 98-08223. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ERNEST DUNHAM, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PINE, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (860/01) KA 00-00075. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARIO WOODS, DEFENDANT-APPELLANT. -- Motion for writ of error

coram nobis denied. PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1046/01) KA 99-05118. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RONALD COOK, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, CENTRA, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1663/05) KA 03-01672. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LUCAS RODRIQUEZ, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, SMITH, PERADOTTO, AND PINE, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (53/07) KA 04-01131. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RODERICK FITZGERALD PARDNER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1080/07) KA 04-01819. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER MARTINEZ, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, FAHEY, AND PINE, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1151/07) KA 04-02175. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V JESSE JAMISON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (996/08) CA 07-02215. -- SIDNEY D. HOLBROOK, PLAINTIFF-RESPONDENT-APPELLANT, V NATIONAL FUEL GAS DISTRIBUTION CORPORATION, NATIONAL FUEL GAS COMPANY, COMPENSATION COMMITTEE OF BOARD OF DIRECTORS OF NATIONAL FUEL GAS COMPANY, NATIONAL FUEL GAS COMPANY DEFERRED COMPENSATION PLAN, AND NATIONAL FUEL GAS COMPANY EXECUTIVE RETIREMENT PLAN, DEFENDANTS-APPELLANTS-RESPONDENTS. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., HURLBUTT, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1238/08) CA 08-01078. -- MARIE STIDHAM, AS TEMPORARY ADMINISTRATRIX OF THE ESTATE OF MATILDA STIDHAM, DECEASED, PLAINTIFF-RESPONDENT, V HARNATH CLERK, M.D., DEFENDANT-APPELLANT, ET AL., DEFENDANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1381/08) CA 08-00718. -- DARIA K. PRYSTAJKO, PLAINTIFF-RESPONDENT-APPELLANT, V WESTERN NEW YORK PUBLIC BROADCASTING ASSOCIATION, DEFENDANT-APPELLANT-RESPONDENT, ET AL., DEFENDANTS. -- Motion

for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, PERADOTTO, AND PINE, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1444/08) CA 08-00810. -- RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF, AS TRUSTEES OF THE BENDERSON 85-1 TRUST, PLAINTIFFS-APPELLANTS, V ULRICH/34 CHESTNUT STREET, LLC AND NATURE'S WAY ENVIRONMENTAL CONSULTANTS & CONTRACTORS, INC., DEFENDANTS-RESPONDENTS. -- Motion for reargument denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1490/08) CA 08-00487. -- LOUIS E. THYROFF AND VALERIE P. THYROFF, PLAINTIFFS-RESPONDENTS, V NATIONWIDE MUTUAL INSURANCE COMPANY, SHARON EASTMAN, RANDY FERRARO AND DUANE WELDON, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1491/08) CA 08-01299. -- MATTHEW D. ELLIS AND ZAN P. ELLIS, PLAINTIFFS-RESPONDENTS, V CRAIG ALAN EMERSON AND POSTLEWAIT LOGGING COMPANY, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1538/08) TP 08-01256. -- IN THE MATTER OF CLAUDIA CHILDS, PETITIONER, V NEW YORK STATE DIVISION OF HUMAN RIGHTS AND BUFFALO POLICE DEPARTMENT, RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, PERADOTTO, AND GREEN, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1603/08) TP 08-01172. -- IN THE MATTER OF HARPER'S AUTO SERVICE, INC. AND LOUIS SUTTLES, PETITIONERS, V NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Mar. 20, 2009.)

MOTION NO. (1632/08) KA 04-00585. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LUIS MARTINEZ, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Mar. 20, 2009.)

KAH 08-01694. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. TROY ALEXANDER, PETITIONER-APPELLANT, V NYS DIVISION OF PAROLE, RESPONDENT-RESPONDENT. -- Order unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Supreme Court, Onondaga County, John J. Brunetti, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., SMITH,

PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)

KAH 08-00446. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. CHARLES A. DINGLE, PETITIONER-APPELLANT, V JAMES T. CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT. -- Order unanimously affirmed. Counsel's motion to be relieved of assignment granted (see *People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Supreme Court, Wyoming County, Mark H. Dadd, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)

KA 07-02497. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V IAN HUNTER, DEFENDANT-APPELLANT. -- The case is held, the decision is reserved, the motion to relieve counsel of assignment is granted and new counsel is to be assigned. Memorandum: Defendant was convicted upon a guilty plea of burglary in the second degree (Penal Law § 140.25 [2]), and was sentenced to a determinate term of imprisonment of six years and a three-year period of postrelease supervision. Defendant was also ordered to pay restitution in the amount of \$5287.38. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38), and has submitted an affirmation in which he concludes that there are no nonfrivolous issues meriting this Court's consideration. The record reveals that restitution was not part of the plea agreement. This fact raises the issue of whether County Court erred

in ordering defendant to pay restitution without affording him an opportunity to withdraw his plea (*see People v Ponder*, 42 AD3d 880, *lv denied* 9 NY3d 925). Therefore, we relieve counsel of his assignment and assign new counsel to brief this issue, as well as any other issues that counsel's review of the record may disclose. (Appeal from Judgment of Livingston County Court, Dennis S. Cohen, J. - Burglary, 2nd Degree).

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)

KAH 08-00807. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. SHANNON JONES, PETITIONER-APPELLANT, V WAYNE COUNTY SHERIFF,

RESPONDENT-RESPONDENT. -- Order unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Supreme Court, Wayne County, John B. Nesbitt, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)

KA 08-00622. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ERIC JONES, 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 Erie County Court, Thomas P. Franczyk, J. - Attempted Burglary, 3rd Degree). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)

KA 07-02070. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V HORACE JONES, JR., 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 Livingston County Court, Dennis S. Cohen, J. - Criminal Possession Controlled Substance, 4th Degree). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)

KA 08-01665. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V VICTOR PETT, DEFENDANT-APPELLANT. -- The case is held, the decision is reserved, the motion to relieve counsel of assignment is granted and new counsel is to be assigned. Memorandum: Defendant was convicted upon a guilty plea of robbery in the second degree (Penal Law § 160.10 [1]). He was sentenced to a determinate term of imprisonment of nine and one-half years and a five-year period of postrelease supervision. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38), and has submitted an affirmation in which he concludes that there are no nonfrivolous issues meriting this Court's consideration. The record establishes that the trial court failed to advise the defendant of the postrelease supervision component of his sentence during the plea allocution. This fact raises the issue of whether defendant's plea was knowing, voluntary and intelligent (see *People v Louree*, 8 NY3d 541). Therefore, we relieve counsel of his assignment and assign new counsel to brief this issue, as well as any

other issues that counsel's review of the record may disclose. (Appeal from Judgment of Herkimer County Court, Patrick L. Kirk, J. - Robbery, 2nd Degree). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 20, 2009.)