

CALENDAR NO. (1132/08) KA 07-01663. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEVIN MOSLEY, DEFENDANT-APPELLANT. -- Appeal dismissed upon stipulation. PRESENT: HURLBUTT, J.P., SMITH, CENTRA, GREEN, AND PINE, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (283/01) KA 98-05448. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GREGORY HILL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, GREEN, AND PINE, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (366/01) KA 99-05013. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DERRIC W. CLARK, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, GREEN, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1659/01) KA 99-05058. -- THE PEOPLE OF THE STATE OF NEW YORK, V THOMAS MCFADDEN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, PINE, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1468/03) KA 00-02533. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLARENCE PRUDE, DEFENDANT-APPELLANT. (APPEAL NO. 1.) -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P.,

CENTRA, PINE, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (29/06) KA 04-00047. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DEXTER MASTOWSKI, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, GREEN, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (185/06) KA 04-02750. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES W. MADILL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., GREEN, PINE, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (445/06) KA 05-00193. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD F. MILLS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., SMITH, GREEN, AND PINE, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (646/07) KA 04-01772. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ADOLPH WRIGHT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, GREEN, AND PINE, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1104/07) KA 05-02034. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V JERRY L. JOHNSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1125/07) KA 06-01069. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHAWN E. AKIN, DEFENDANT-APPELLANT. -- Motion for reargument or, in the alternative, leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, GREEN, AND PINE, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (27/08) KA 04-02128. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANDREW FIGGINS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis dismissed. PRESENT: HURLBUTT, J.P., SMITH, PERADOTTO, AND GREEN, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1203/08) KA 07-02291. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVID C. WILLIAMS, 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 issues on direct appeal that would have resulted in reversal, specifically, in failing to argue that the warrantless search of defendant's residence and property was unlawful and that trial counsel was ineffective in failing to seek a remedy for an alleged *Rosario* violation. Upon our review of the trial court proceedings, we conclude that the issues

may have merit. Therefore, the order of October 10, 2008 is vacated and this Court will consider the appeal de novo (see *People v LeFrois*, 151 AD2d 1046). Defendant is directed to perfect his appeal on or before March 1, 2010. PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1377/08) CA 07-02389. -- JOSEPH GENTILE, PLAINTIFF-APPELLANT, V CAROL GENTILE, DEFENDANT-RESPONDENT. JOSEPH GENTILE, THIRD-PARTY PLAINTIFF-APPELLANT, V JOSEPH L. KILBRIDGE, ESQ. AND PETER J. FIORELLA, JR., ESQ., THIRD-PARTY DEFENDANTS-RESPONDENTS. (APPEAL NO. 1.) -- Motion for leave to appeal to the Court of Appeals and other relief denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, PERADOTTO, AND PINE, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1604/08) KA 03-01950. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD CHARLES BRINK, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, GREEN, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (739/09) CA 08-02607. -- ROBIN ADAIR, ET AL., PLAINTIFFS-RESPONDENTS, V MUNICIPAL UTILITY COMMISSION OF THE VILLAGE OF BATH, DOING BUSINESS AS BATH ELECTRIC, GAS AND WATER SYSTEMS, AND VILLAGE OF BATH, DEFENDANTS-APPELLANTS. -- Motion for leave to appeal to the Court

of Appeals denied. PRESENT: HURLBUTT, J.P., FAHEY, CARNI, AND PINE, JJ.
(Filed Dec. 30, 2009.)

MOTION NO. (841/09) CA 08-01231. -- CHRISTOPHER OURSLER, INDIVIDUALLY AND
AS ADMINISTRATOR OF THE ESTATE OF JULIE OURSLER, DECEASED,
PLAINTIFF-APPELLANT, V ROBERT E. BRENNAN, DEFENDANT-APPELLANT, AND MALBEAT,
INC., DOING BUSINESS AS MALLWITZ'S ISLAND LANES, DEFENDANT-RESPONDENT. --
Motion for leave to appeal to the Court of Appeals granted. PRESENT:
HURLBUTT, J.P., CENTRA, PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Dec. 30,
2009.)

MOTION NO. (859/09) KA 08-01165. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V STANLEY A. BROWN, DEFENDANT-APPELLANT. -- Motion for writ of
error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, SMITH, AND
CENTRA, JJ. (Filed Dec. 30, 2009.)

MOTION NOS. (987-988/09) CA 08-00195. -- JOSEPH GENTILE, PLAINTIFF-
APPELLANT, V CAROL GENTILE, DEFENDANT-RESPONDENT. (APPEAL NO. 1.) CA 08-
02032. -- JOSEPH GENTILE, PLAINTIFF-APPELLANT, V CAROL GENTILE, DEFENDANT-
RESPONDENT. (APPEAL NO. 2.) -- Motion for reargument, leave to appeal to
Court of Appeals and other relief denied. PRESENT: SCUDDER, P.J.,
HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (998/09) CA 08-01910. -- STANLEY A. GIZOWSKI,
CLAIMANT-RESPONDENT-APPELLANT, V STATE OF NEW YORK,
DEFENDANT-APPELLANT-RESPONDENT. (CLAIM NO. 112634.) -- Motion for
reargument or leave to appeal to the Court of Appeals denied. PRESENT:
SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Dec. 30,
2009.)

MOTION NO. (1006/09) KA 08-01751. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V JAMES H. POWLESS, DEFENDANT-APPELLANT. -- Motion for
reargument or leave to appeal to the Court of Appeals denied. PRESENT:
HURLBUTT, J.P., CENTRA, FAHEY, PINE, AND GORSKI, JJ. (Filed Dec. 30,
2009.)

MOTION NO. (1021/09) CA 08-01826. -- IN THE MATTER OF THE APPLICATION OF
ARCELORMITTAL LACKAWANNA LLC, AND ARCELORMITTAL TECUMSEH REDEVELOPMENT
INC., PETITIONERS-RESPONDENTS, V CITY OF LACKAWANNA, RESPONDENT-RESPONDENT,
AND CITY OF LACKAWANNA SCHOOL DISTRICT, INTERVENOR-RESPONDENT-RESPONDENT.
COUNTY OF ERIE, PROPOSED INTERVENOR-RESPONDENT-APPELLANT. -- Motion for
leave to appeal to the Court of Appeals denied. PRESENT: HURLBUTT, J.P.,
CENTRA, FAHEY, PINE, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1043/09) CA 08-02176. -- IN THE MATTER OF MANUFACTURERS AND
TRADERS TRUST COMPANY (FORMERLY MERCHANTS NATIONAL BANK AND TRUST COMPANY

OF SYRACUSE), A COTRUSTEE OF THE DAVID SMALL TRUST UNDER AGREEMENT DATED DECEMBER 28, 1938, PETITIONER-RESPONDENT-APPELLANT, TO RESIGN AS TRUSTEE AND FOR APPROVAL OF ITS ACCOUNTING. JOAN SMALL FANELLI, JEAN SMALL COFFMAN, JANE SMALL KLINCZAK, SHEILA SMALL ATWATER, JAMES D. SMALL, AND PATRICIA SMALL KELLETT, INDIVIDUALLY AND AS BENEFICIARIES OF THE TRUST OF DAVID SMALL, RESPONDENTS-APPELLANTS-RESPONDENTS. JOAN SMALL FANELLI, JEAN SMALL COFFMAN, JANE SMALL KLINCZAK, SHEILA SMALL ATWATER, JAMES D. SMALL, AND PATRICIA SMALL KELLETT, INDIVIDUALLY AND AS BENEFICIARIES OF THE TRUST OF DAVID SMALL, PLAINTIFFS-APPELLANTS-RESPONDENTS, V M&T BANK CORPORATION, AS TRUSTEE OF THE TRUST OF DAVID SMALL, DEFENDANT-RESPONDENT-APPELLANT. -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND GREEN, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1069/09) TP 09-00361. -- IN THE MATTER OF MICHAEL MELENDEZ, PETITIONER, V JAMES L. BERBARY, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY, RESPONDENT. -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NOS. (1073-1074/09) KAH 07-01507. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. ROBERT C. HINTON, JR., PETITIONER-APPELLANT, V HAROLD GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

(APPEAL NO. 1.) KAH 07-01800. -- THE PEOPLE OF THE STATE OF NEW YORK EX
REL. ROBERT C. HINTON, JR., PETITIONER-APPELLANT, V HAROLD GRAHAM,
SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

(APPEAL NO. 2.) -- Motion for reargument denied. PRESENT: SCUDDER, P.J.,
PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1082/09) CA 09-00610. -- LEGACY DEVELOPMENT,
PLAINTIFF-RESPONDENT, V VICTOR LIBERATORE AND V.V.M.M., LLC,
DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the
Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND
GORSKI, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1089/09) CA 09-00250. -- KANSAS STATE BANK OF MANHATTAN,
PLAINTIFF-RESPONDENT-APPELLANT, V HARRISVILLE VOLUNTEER FIRE DEPARTMENT,
INC. AND DANKO EMERGENCY EQUIPMENT CO., DEFENDANTS-APPELLANTS-RESPONDENTS.
-- Motion for reargument or leave to appeal to the Court of Appeals denied.
PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Dec. 30,
2009.)

MOTION NO. (1136.1/09) KA 08-02244. -- THE PEOPLE OF THE STATE OF NEW YORK,
APPELLANT, V SAMMY L. SWIFT, DEFENDANT-RESPONDENT. -- Motion for reargument
denied. PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND PINE, JJ.
(Filed Dec. 30, 2009.)

MOTION NOS. (1151-1152/09) CA 08-02263. -- JOHN T. NOTHNAGLE, INC.,
PLAINTIFF-RESPONDENT-APPELLANT, V PETER G. CHIARIELLO, ELMER'S BRIGHTON
GARAGE, INC., DEFENDANTS-APPELLANTS-RESPONDENTS, JOHN F. NICASTRO,
1832-1840 MONROE AVE., LLC, AND 1848 MONROE AVE., LLC,
DEFENDANTS-RESPONDENTS. (APPEAL NO. 1.) CA 08-02264. -- JOHN T.
NOTHNAGLE, INC., PLAINTIFF-RESPONDENT, V PETER G. CHIARIELLO, ELMER'S
BRIGHTON GARAGE, INC., DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS. (APPEAL
NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals
denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, PINE, AND GORSKI, JJ.
(Filed Dec. 30, 2009.)

MOTION NO. (1183/09) CA 09-00697. -- DAVID DALE, INDIVIDUALLY AND AS
ADMINISTRATOR OF THE ESTATE OF VIRGINIA DALE, DECEASED,
PLAINTIFF-APPELLANT, V WALETTA GENTRY, DEFENDANT-RESPONDENT. -- Motion for
leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P.,
FAHEY, PERADOTTO, AND GREEN, JJ. (Filed Dec. 30, 2009.)

MOTION NO. (1438/09) CA 09-00787. -- KENNETH GORDON, ET AL.,
PLAINTIFFS-APPELLANTS, V PRESBYTERY OF WESTERN NEW YORK AND PRESBYTERIAN
CHURCH (U.S.A.), A CORPORATION, DEFENDANTS-RESPONDENTS. -- Motion for leave
to appeal to the Court of Appeals denied. PRESENT: HURLBUTT, J.P., SMITH,
CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KAH 09-00082. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. WAYNE BARKSDALE, PETITIONER-APPELLANT, V SUPERINTENDENT, MOHAWK CORRECTIONAL FACILITY, AND NEW YORK STATE DIVISION OF PAROLE, RESPONDENTS-RESPONDENTS.

-- Order unanimously affirmed without costs. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Supreme Court, Oneida County, Bernadette Romano, J. - Habeas Corpus). PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KAH 09-00115. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. LLOYD BRIGGS, PETITIONER-APPELLANT, V DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT-RESPONDENT.

-- Order unanimously affirmed without costs. 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., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KAH 08-01459. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. JUAN CANDELARIA, PETITIONER-APPELLANT, V ROBERT A. KIRKPATRICK, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.

-- Order unanimously affirmed without costs. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of

Supreme Court, Erie County, Christopher J. Burns, J. - Habeas Corpus).

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KAH 09-00111. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. KEVIN GAMBLE, PETITIONER-APPELLANT, V DEPARTMENT OF CORRECTIONAL SERVICES,

RESPONDENT-RESPONDENT. -- Order unanimously affirmed without costs.

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., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KA 08-01675 AND KA 08-01676. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V ALVIN JACOBS, DEFENDANT-APPELLANT. -- Judgments unanimously

affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeals from Judgments of Erie County Court, Michael L. D'Amico, J. - Attempted Criminal Possession Controlled Substance, 4th Degree). PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KAH 08-00804. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. GARNETT R.

LEACOCK, PETITIONER-APPELLANT, V DEPARTMENT OF CORRECTIONAL SERVICES,

RESPONDENT-RESPONDENT. -- Order unanimously affirmed without costs.

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., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KAH 08-00805. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. GARNETT R. LEACOCK, PETITIONER-APPELLANT, V DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT-RESPONDENT. -- Appeal unanimously dismissed without costs (see *Hill v Goord*, 275 AD2d 492). Counsel's motion to be relieved of assignment granted. (Appeal from Order of Supreme Court, Wyoming County, Mark H. Dadd, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KA 05-01800. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FELIX ORTIZ, 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 Ontario County Court, James R. Harvey, J. - Burglary, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KA 08-00894. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSE A. SABASTRO, 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 Ontario County Court, Frederick G. Reed, J. - Criminal Sale Controlled Substance, 3rd Degree). PRESENT:

SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ. (Filed Dec. 30, 2009.)

KA 04-01832. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DONALD SIGSBEE, DEFENDANT-APPELLANT. -- Motion to dismiss granted.

Memorandum: Appeal unanimously dismissed and matter remitted to Onondaga County Court to vacate the judgment of conviction and dismiss the indictment either sua sponte or on application of either the District Attorney or counsel for defendant (see *People v Matteson*, 75 NY2d 745). PRESENT: SCUDDER, P.J., HURLBUTT, SMITH, AND CENTRA, JJ. (Filed Dec. 30, 2009.)