

MOTION NO. (783/96) KA 10-01645. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EDWIN GARCIA, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., SMITH, SCONIERS, AND GREEN, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (721/99) KA 98-08290. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLAUDE R. GIGUERE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (55/01) KA 99-05510. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DUDLEY HARRIS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GREEN, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1473/04) KA 02-00396. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ISMAEL SALADEEN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, GREEN, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1631/06) KA 05-01265. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLES J. FISHER, DEFENDANT-APPELLANT. (APPEAL NO. 1.) -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, GREEN, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1632/06) KA 05-01269. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLES J. FISHER, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, GREEN, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1634/06) KA 05-00497. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DARRELL DAVENPORT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, GREEN, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

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 leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, FAHEY, LINDLEY, AND GREEN, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1609/09) KA 08-01145. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLARENCE CARR, JR., DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND CARNI, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (780/10) KA 09-00160. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT L. WILLIAMS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (928/10) CA 09-02444. -- IN THE MATTER OF THE ACCOUNTING BY LAURIE C. KALKMAN, AS TRUSTEE UNDER L. WILLIAM COULTER FAMILY TRUST DATED JULY 20, 1994 UNDER WILL OF L. WILLIAM COULTER, DECEASED, RESPONDENT. GEOFFREY R. COULTER, APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., PERADOTTO, GREEN, GORSKI, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1045/10) CA 10-00746. -- GEOFFREY BOND AND SALLY T. BOOTY, PLAINTIFFS-APPELLANTS-RESPONDENTS, V THOMAS A. TURNER, MICHELLE M. TURNER, DEFENDANTS-RESPONDENTS-APPELLANTS, AND VILLAGE OF LAKEWOOD, DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CARNI, J.P., GREEN, GORSKI, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1071/10) CA 10-00740. -- DONNA PONHOLZER AND WILLIAM PONHOLZER, PLAINTIFFS-RESPONDENTS, V EDWARD D. SIMMONS, M.D. AND SIMMONS ORTHOPAEDIC & SPINE ASSOCIATES, LLP, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, AND SCONIERS, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1166/10) CA 10-00689. -- MOHAWK VALLEY WATER AUTHORITY, PLAINTIFF-RESPONDENT-APPELLANT, V STATE OF NEW YORK, ERIE BOULEVARD HYDROPOWER, L.P., AND NEW YORK STATE CANAL CORPORATION, DEFENDANTS-

APPELLANTS-RESPONDENTS. (APPEAL NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1181/10) CA 10-01250. -- IN THE MATTER OF JANET HELLNER, PETITIONER-APPELLANT-RESPONDENT, V BOARD OF EDUCATION OF WILSON CENTRAL SCHOOL DISTRICT, WILSON CENTRAL SCHOOL DISTRICT, MICHAEL S. WENDT, IN HIS CAPACITY AS SUPERINTENDENT OF WILSON CENTRAL SCHOOL DISTRICT, RESPONDENTS-RESPONDENTS, BOARD OF EDUCATION OF ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL SERVICES, ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND DR. CLARK J. GODSHALL, IN HIS CAPACITY AS DISTRICT SUPERINTENDENT OF ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL SERVICES, RESPONDENTS-RESPONDENTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: LINDLEY, J.P., SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1185/10) CA 10-00950. -- IN THE MATTER OF THE ARBITRATION BETWEEN MICHAEL DRENNEN, AS PRESIDENT OF AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 650, AFL-CIO, PETITIONER-RESPONDENT, AND CITY OF BUFFALO, BYRON BROWN, MAYOR, AND KARLA THOMAS, COMMISSIONER OF HUMAN RESOURCES, RESPONDENTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: LINDLEY, J.P., SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1233/10) CA 10-00891. -- MARTA CHAIKOVSKA AND CREEK VENTURES, LLC, PLAINTIFFS-APPELLANTS, V ERNST & YOUNG, LLP, DEFENDANT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., LINDLEY, SCONIERS, AND GORSKI, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1235/10) CA 10-00091. -- AMY MCCABE AND THOMAS MCCABE, PLAINTIFFS-RESPONDENTS-APPELLANTS, V ST. PAUL FIRE AND MARINE INSURANCE COMPANY, DEFENDANT-APPELLANT-RESPONDENT, ET AL., DEFENDANT. (APPEAL NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., LINDLEY, SCONIERS, AND GORSKI, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1303/10) CA 09-02583. -- W. JAMES CAMPERLINO, PLAINTIFF-APPELLANT, V TOWN OF MANLIUS MUNICIPAL CORPORATION, VILLAGE OF MANLIUS, DEFENDANTS-RESPONDENTS, BENITA ROGERS, FRANK HEATH, CHRISTINE WARFIELD SMITH, EVAN SCOTT SMITH, KERI SEAGRAVES, DAVID ALTHOFF, MARY ANN CALO, MICHAEL J. CALO, DR. DAVID FEIGLIN, SHARON A. LINDBERG, JEROME A. LINDBERG, CAROL ILACQUA, DAVID SAMUEL, AND TROOP D VETERANS, INC., INTERVENORS-DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CARNI, LINDLEY, AND GREEN, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1323/10) CA 09-01969. -- IN THE MATTER OF THE COMPULSORY ACCOUNTING OF THE LIFETIME TRUST OF JOSEPH SROZENSKI, DECEASED. SUSAN PORCELLI, PETITIONER-RESPONDENT; BARBARA SROZENSKI, RESPONDENT-RESPONDENT; ROBERT SROZENSKI, RESPONDENT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SCONIERS, GREEN, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1374/10) CA 10-01013. -- IN THE MATTER OF MARTIN LUTHER NURSING HOME, INC., PETITIONER-APPELLANT, V MICHAEL J. DOWLING, COMMISSIONER OF SOCIAL SERVICES OF STATE OF NEW YORK, MARK CHASSIN, M.D., COMMISSIONER OF HEALTH OF STATE OF NEW YORK AND RUDY F. RUNKO, DIRECTOR OF BUDGET OF STATE OF NEW YORK, RESPONDENTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1376.1/10) CA 10-00771. -- IN THE MATTER OF THE STATE OF NEW YORK, PETITIONER-APPELLANT, V MICHAEL MATTER, RESPONDENT-RESPONDENT. (APPEAL NO. 1.) -- Motion for reargument denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

MOTION NO. (1376.2/10) KAH 10-00772. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. MICHAEL MATTER, PETITIONER-RESPONDENT, V MICHAEL F. HOGAN, PH.D., COMMISSIONER, NEW YORK STATE OFFICE OF MENTAL HEALTH, RESPONDENT-APPELLANT.

(APPEAL NO. 2.) -- Motion for reargument denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

KA 09-01312. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V HERLAND W. BOUWENS, III, 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 criminal sale of a controlled substance in the third degree (2 counts) (Penal Law § 220.39 [1]), and was sentenced to concurrent determinate terms of imprisonment of three and one-half years and three years 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 affidavit in which he concludes that there are no nonfrivolous issues meriting this Court's consideration. However, upon our review of the record we conclude that a nonfrivolous issue exists as to whether the court erred in failing either to offer the defendant the opportunity to withdraw his plea, or to conduct a hearing to determine whether defendant had met the requirements of the People's plea offer or had been prevented from doing so. 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 Ontario County Court, Frederick G. Reed, A.J. - Criminal Sale of a Controlled Substance, 3rd Degree). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

KA 08-00642. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARVIN BROWN, 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, Alex R. Renzi, J. - Criminal Possession of a Controlled Substance, 2nd Degree). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

KA 09-01209. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DARRYN GIBSON, 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 Supreme Court, Erie County, John L. Michalski, A.J. - Sex Offender Registration Act). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

KAH 10-01654. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. LEROY WHITLEY, PETITIONER-APPELLANT, V CHARLES HYNES, KINGS COUNTY DA, J.V. CARDONE, ORLEANS COUNTY DA, S. KHAHAIFA, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY, ET AL., RESPONDENTS-RESPONDENTS. -- Appeal dismissed without costs as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Judgment of Supreme Court, Orleans County, James P. Punch, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2011.)

