

MOTION NO. (55/01) KA 99-05510. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DUDLEY HARRIS, DEFENDANT-APPELLANT. -- Motion for reargument and for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (296/03) KA 99-02239. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TIMOTHY J. PACE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND GREEN, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (678/05) KA 04-00781. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLES E. LUNDERMAN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, GORSKI, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (1630/09) KA 07-02570. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RAYMOND T. TOWNSEND, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: FAHEY, J.P., PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (779/10) KA 03-02419. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSE GUTIERREZ, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, AND

LINDLEY, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (1130/10) CA 10-00097. -- THOMAS E. DOMBROWSKI,  
PLAINTIFF-APPELLANT, V RAYMOND W. BULSON, DEFENDANT-RESPONDENT. -- Motion  
for reargument denied. Motion for leave to appeal to the Court of Appeals  
granted. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, AND SCONIERS, JJ.  
(Filed Apr. 29, 2011.)

MOTION NO. (1287/10) CA 10-00545. -- HAHN AUTOMOTIVE WAREHOUSE, INC.,  
PLAINTIFF-APPELLANT-RESPONDENT, V AMERICAN ZURICH INSURANCE COMPANY AND  
ZURICH AMERICAN INSURANCE COMPANY, DEFENDANTS-RESPONDENTS-APPELLANTS. --  
Motion for leave to appeal to the Court of Appeals granted. PRESENT:  
SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND GORSKI, JJ. (Filed Apr. 29,  
2011.)

MOTION NO. (1429/10) KA 08-01266. -- THE PEOPLE OF THE STATE OF NEW YORK,  
RESPONDENT, V NACHE AFRIKA, DEFENDANT-APPELLANT. -- Motion for reargument  
denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed  
Apr. 29, 2011.)

MOTION NO. (1464/10) CA 10-01450. -- IN THE MATTER OF THE ARBITRATION  
BETWEEN BUFFALO PROFESSIONAL FIREFIGHTERS ASSOCIATION, INC., IAFF LOCAL  
282, PETITIONER-RESPONDENT, AND CITY OF BUFFALO, RESPONDENT-APPELLANT. --  
Motion for reargument or leave to appeal to the Court of Appeals denied.

PRESENT: SCUDDER, P.J., CARNI, LINDLEY, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (1484/10) CA 10-01081. -- ROBIN CUSTODI AND JOHN CUSTODI, PLAINTIFFS-APPELLANTS, V TOWN OF AMHERST, ET AL., DEFENDANTS, PETER MUFFOLETTO AND SUSAN MUFFOLETTO, DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals granted. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, GREEN, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (1505/10) CA 10-00401. -- WILLIAM E. BURKHART, JR., PLAINTIFF-APPELLANT-RESPONDENT, V STEVEN V. MODICA, J. MICHAEL WOOD, CHAMBERLAIN, D'AMANDA, OPPENHEIMER AND GREENFIELD, LLP, DEFENDANTS-RESPONDENTS, AND MERCURY PRINT PRODUCTIONS, INC., DEFENDANT-RESPONDENT-APPELLANT. -- Motion for reargument, leave to appeal to the Court of Appeals, and other relief denied. PRESENT: CENTRA, J.P., SCONIERS, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (1523/10) CA 10-01320. -- CUSTOM TOPSOIL, INC. AND 1070 SENECA STREET, INC., PETITIONERS-PLAINTIFFS-RESPONDENTS, V CITY OF BUFFALO, RESPONDENT-DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (1542/10) KA 09-01050. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V KUMAR S. JONES, ALSO KNOWN AS QUMAR JONES, ALSO KNOWN AS JESUS, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., SMITH, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (22/11) CA 10-01784. -- SMALL BUSINESS LOAN SOURCE, LLC, PLAINTIFF-APPELLANT, V 4 DOGS OF SYRACUSE, LLC, ET AL., DEFENDANTS. JOSEPH A. KESSLER, NON-PARTY RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (48/11) CA 10-00928. -- IRIC BURTON, PLAINTIFF-APPELLANT, V ANDREW C. MATTELIANO, M.D., NIAGARA FRONTIER TRANSPORTATION AUTHORITY AND DONALD J. JACOB, M.D., DEFENDANTS-RESPONDENTS. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (92/11) CA 10-01993. -- IN THE MATTER OF ROBERT P. MEEGAN, JR., INDIVIDUALLY AND AS PRESIDENT OF BUFFALO POLICE BENEVOLENT ASSOCIATION, AND BUFFALO POLICE BENEVOLENT ASSOCIATION, PETITIONERS-RESPONDENTS, V BYRON W. BROWN, AS MAYOR OF CITY OF BUFFALO, H. MCCARTHY GIPSON, AS COMMISSIONER OF POLICE, AND CITY OF BUFFALO, RESPONDENTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (113/11) CAF 10-00512. -- IN THE MATTER OF JALEEL E.F. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; CHERYL S. (DECEASED), RESPONDENT, AND ERNEST F., RESPONDENT-APPELLANT. -- Motion for reargument denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (137/11) CA 10-01273. -- DELIRIS DIAZ, INDIVIDUALLY AND AS PARENT AND NATURAL GUARDIAN OF THE INFANT, JOSE MARQUEZ-DIAZ, PLAINTIFF-APPELLANT, V LITTLE REMEDIES CO., INC., MEDTECH HOLDINGS, INC., MEDTECH PRODUCTS, INC., PRESTIGE BRANDS, INC., AND PRESTIGE BRANDS HOLDINGS, INC., DEFENDANTS-RESPONDENTS. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (155/11) KA 08-01558. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V C.W. POOLE, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., CARNI, SCONIERS, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

MOTION NO. (158/11) CAF 10-00390. -- IN THE MATTER OF VONDAJIA P.G., TONAJIA L.L.G., CIERRA C.C., AND PRECIOUS G.K. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT, SUSAN S.G., RESPONDENT-APPELLANT. -- Motion for reargument is granted in part and, upon reargument, the memorandum and order entered February 10, 2011 (81 AD3d 1317) is amended by

deleting the ordering paragraph and substituting the following ordering paragraph "that the order so appealed from is unanimously modified on the law by vacating that part of the ordering paragraph with respect to Vondajia P.G. and as modified the order is affirmed without costs and the matter is remitted to Family Court, Erie County, for further proceedings in accordance with the following memorandum:"; deleting the phrase "and the Attorney for the Child on behalf of Vondajia P.G." from the second sentence of the memorandum and adding the phrase "with respect to the three youngest children" to the end of that sentence; deleting the word "children's" from the third sentence of the memorandum and adding the phrase "of the three youngest children" to the end of that sentence; and adding the following sentence as the last sentence of the memorandum "We modify the order, however, by vacating those parts terminating the mother's parental rights with respect to Vondajia P.G. and freeing that child for adoption, and we remit the matter to Family Court for a new dispositional hearing to determine that child's best interests". PRESENT: SMITH, J.P., CARNI, SCONIERS, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

**MOTION NO. (168/11) CA 10-01354. -- CHARLES L. DAVIS, PLAINTIFF-APPELLANT, V RUSSELL FIRMAN, M.D., EMERGENCY MEDICINE PHYSICIANS OF CORTLAND COUNTY, PLLC, CORTLAND MEMORIAL HOSPITAL AND LYNN CUNNINGHAM, M.D., DEFENDANTS-RESPONDENTS.** -- Motion for reargument denied. PRESENT: SMITH, J.P., SCONIERS, GREEN, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

**MOTION NO. (190/11) CA 10-01282. -- J.N.K. MACHINE CORPORATION,**

**PLAINTIFF-RESPONDENT, V TBW, LTD., WOOLSCHLAGER, INC. AND BERNARD C.**

**WOOLSCHLAGER, DEFENDANTS-APPELLANTS.** -- Motion for reargument denied.

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GORSKI, JJ. (Filed Apr. 29, 2011.)

**MOTION NO. (225/11) CAF 10-00103. -- IN THE MATTER OF SHIRLEY A.S. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; SHARI D.S., RESPONDENT-APPELLANT.** -- Motion for reargument denied. PRESENT: CENTRA, J.P., FAHEY, LINDLEY, GREEN, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

**MOTION NO. (358/11) CA 10-02232. -- CAROL H. GRIECO, AS EXECUTRIX OF THE ESTATE OF JOHN P. GRIECO, DECEASED, PLAINTIFF-APPELLANT-RESPONDENT, V KALEIDA HEALTH, JANIERIO D. ALDRIDGE, M.D., BUFFALO THORACIC SURGICAL ASSOCIATES, P.C., IAN M. BROWN, R.P.A.C., TAMMY B. ERVOLINA, R.P.A.C., ROBERT J. GAMBINO, R.P.A.C., DEFENDANTS-RESPONDENTS-APPELLANTS, AND THOMAS J. CUMBO, M.D., DEFENDANT-RESPONDENT.** -- Motion for reargument denied. PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Apr. 29, 2011.)

**KA 09-02117. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY CASSATA, 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 Steuben County Court, Joseph W. Latham, J. - Grand Larceny, 4th Degree). PRESENT: SCUDDER, P.J., CENTRA,

CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 09-02643. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT A. HARRIS, 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. - Burglary, 3rd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 07-00321. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TONY L. IVEY, 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 assault in the second degree and was sentenced to a determinate term of imprisonment of four years and five 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 affirmation in which he concludes that there are no nonfrivolous issues that can be raised on appeal. The record reflects that defendant moved prior to sentencing to withdraw his plea, claiming, *inter alia*, that the plea was coerced. We conclude that a nonfrivolous issue exists as to whether the court erred in denying defendant's motion without conducting a hearing. 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 Monroe County

Court, John J. Connell, J. - Assault, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 09-02285. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V**

**NATHANIEL MOSS, 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 failing to register a change of address as a sex offender (Corrections Law § 168-f [4]), and was sentenced to a definite sentence of imprisonment of one year. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38). However, upon our review of the record we conclude that a nonfrivolous issue exists as to whether Supreme Court improperly imposed an enhanced sentence without affording defendant an opportunity to withdraw his plea. 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 Supreme Court, Erie County, John L. Michalski, A.J. - Failure to Register as Sex Offender). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 07-00417. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V QUENTIN**

**A. NOWLIN, DEFENDANT-APPELLANT.** -- Counsel's motion to be relieved of assignment granted and appeal dismissed as abandoned. (Appeal from Judgment of Monroe County Court, Roy W. King, A.J. - Assault, 3rd Degree).

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 09-00482. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V PATRICIA**

**A. PERRYMAN, 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, Craig J. Doran, J. - Felony Driving While Intoxicated). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 10-00549. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V PATRICIA**

**A. PERRYMAN, 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, Craig J. Doran, J. - Violation of Probation). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 10-01641. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIAM**

**ROGERS, 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. - Attempted Burglary, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 10-01642. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIAM ROGERS, 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. - Attempted Burglary, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 08-01184. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TERRY STEWARD, 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, Elma A. Bellini, J. - Manslaughter, 1st Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 10-00824. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V COUREY A. WILLIAMS, ALSO KNOWN AS COUREY HUNTER, 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, Shirley Troutman, J. - Criminal Possession of a Weapon, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)

**KA 09-02380. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT M. WILLIAMS, ALSO KNOWN AS MARQUISH M. JOHNSON, 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 Erie County Court, Thomas P. Amodeo, J. - Unauthorized Use of a Motor Vehicle, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ. (Filed Apr. 29, 2011.)