

MOTION NO. (901/83) KA 11-01167. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MATTHEW LEMON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (761/89) KA 11-01311. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CARLTON BROWN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, SCONIERS, AND GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (288/94) KA 10-01190. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLIE MIXON, DEFENDANT-APPELLANT. -- Motion to renew writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (777/99) KA 97-05259. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY YOUNGBLOOD, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, SCONIERS, AND GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (720/03) KA 02-00263. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FRANK D'ANTUONO, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, SCONIERS, GREEN,

AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (830/03) KA 02-00550. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V DEMETRIUS COLEMAN, DEFENDANT-APPELLANT. -- Motion for writ of
error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO,
LINDLEY, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (1618/03) KA 03-00349. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V DAMION SMITH, DEFENDANT-APPELLANT. (APPEAL NO. 1.) -- Motion
for reconsideration denied. PRESENT: SCUDDER, P.J., SMITH, CARNI,
LINDLEY, AND GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (1619/03) KA 03-00350. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V DAMION SMITH, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion
for reconsideration denied. PRESENT: SCUDDER, P.J., SMITH, CARNI,
LINDLEY, AND GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (100/05) KA 03-01927. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V CHRISTOPHER ARIOLA, DEFENDANT-APPELLANT. (APPEAL NO. 1.) --
Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J.,
SCONIERS, GREEN, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (101/05) KA 03-01928. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V CHRISTOPHER ARIOLA, DEFENDANT-APPELLANT. (APPEAL NO. 2.) --

Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SCONIERS, GREEN, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (748/06) KA 04-00217. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ERIC BOYER, DEFENDANT-APPELLANT. -- Upon the Court's own motion, the memorandum and order entered July 7, 2006 (31 AD3d 1136, *lv denied* 7 NY3d 865) is amended by adding the phrase "plus a period of postrelease supervision of five years" after the phrase "determinate term of imprisonment of seven years" in both the ordering paragraph and fifth paragraph of the memorandum. PRESENT: SCUDDER, P.J., GREEN, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (994/06) KA 03-02424. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSE RODRIGUEZ, DEFENDANT-APPELLANT. -- Upon the Court's own motion, the memorandum and order entered November 17, 2006 (34 AD3d 1181, *lv denied* 8 NY3d 926) is amended by adding the phrase "plus a period of postrelease supervision of five years" after the phrase "determinate term of imprisonment of seven years" in both the ordering paragraph and third paragraph of the memorandum. PRESENT: SCUDDER, P.J., GREEN, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (1006/06) KA 07-00713. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JARVIS LASSALLE, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND GORSKI, JJ.

(Filed Sept. 30, 2011.)

MOTION NO. (1123/06) KA 04-02221. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIAM M. NICHOLS, DEFENDANT-APPELLANT. -- Motion for reargument and reconsideration denied. PRESENT: SMITH, J.P., CENTRA, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (1009/09) KA 05-01142. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TYRONE PRESCOTT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, LINDLEY, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (158/10) KA 08-00527. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V THOMAS GREGORY, DEFENDANT-APPELLANT. -- Motion for clarification denied. PRESENT: SCUDDER, P.J., CENTRA, CARNI, AND SCONIERS, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (483/10) KA 09-00206. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RONNIE WOODS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (689/10) KA 09-01075. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V NICHOLAS J. JOSEPH, DEFENDANT-APPELLANT. -- Motion for writ

of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ. (Filed Sept. 30, 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 Sept. 30, 2011.)

MOTION NO. (1511/10) KA 09-02220. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DANA P. BROWN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (212.2/11) CA 10-02057. -- IN THE MATTER OF COLONIAL SURETY COMPANY, PETITIONER-APPELLANT, V LAKEVIEW ADVISORS, LLC, RESOLUTION MANAGEMENT, LLC, RESPONDENTS-RESPONDENTS, AND NATIONAL CREDIT ADJUSTERS, LLC, RESPONDENT. (APPEAL NO. 2.) -- Motion for reargument dismissed (see CPLR 321 [a]; *Hilton Apothecary v State of New York*, 89 NY2d 1024; *Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593). PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (278/11) CA 10-00367. -- DANIEL C. OAKES AND LISA M. OAKES,

PLAINTIFFS-RESPONDENTS, V RAJNIKANT PATEL, M.D., SATISH K. MONGIA, M.D.,
AND KALEIDA HEALTH, AS SUCCESSOR IN INTEREST TO MILLARD FILLMORE HOSPITALS,
DOING BUSINESS AS MILLARD FILLMORE SUBURBAN HOSPITAL,
DEFENDANTS-APPELLANTS. -- Motions for reargument denied. Motions for leave
to appeal to the Court of Appeals granted. PRESENT: SMITH, J.P.,
PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (317/11) CA 10-01163. -- FRANK MCGUIRE, ET AL., PLAINTIFFS, AND
MCGUIRE CHILDREN, LLC, PLAINTIFF-RESPONDENT, V WILLIAM L. HUNTRESS, ACQUEST
HOLDINGS, INC., ACQUEST DEVELOPMENT, LLC, ACQUEST GOVERNMENT HOLDINGS OPP,
LLC, ACQUEST GOVERNMENT HOLDINGS, U.S. GEOLOGICAL, LLC, AND LINCOLN PARK
ASSOCIATES, LLC, DEFENDANTS-APPELLANTS. (APPEAL NO. 1.) -- Motion for
renewal, reconsideration, reargument, and reversal denied. PRESENT:
SMITH, J.P., CARNI, LINDLEY, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (318/11) CA 10-01165. -- FRANK MCGUIRE, ET AL., PLAINTIFFS, AND
MCGUIRE CHILDREN, LLC, PLAINTIFF-RESPONDENT, V WILLIAM L. HUNTRESS, ACQUEST
HOLDINGS, INC., ACQUEST DEVELOPMENT, LLC, ACQUEST GOVERNMENT HOLDINGS OPP,
LLC, ACQUEST GOVERNMENT HOLDINGS, U.S. GEOLOGICAL, LLC, AND LINCOLN PARK
ASSOCIATES, LLC, DEFENDANTS-APPELLANTS. (APPEAL NO. 2.) -- Motion for
renewal, reconsideration, reargument, and reversal denied. PRESENT:
SMITH, J.P., CARNI, LINDLEY, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (579/11) CA 10-01996. -- EARTH ENERGY CONSULTANTS, LLC,
PLAINTIFF-APPELLANT, V SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, SENECA
COUNTY ECONOMIC DEVELOPMENT CORPORATION, AND ROBERT J. ARONSON, EXECUTIVE
DIRECTOR, SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of
Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND
MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (582/11) CA 10-02338. -- VICKI JEWETT AND JOHN JEWETT,
PLAINTIFFS-RESPONDENTS-APPELLANTS, V M.D. FRITZ, INC., DOING BUSINESS AS
THE BURGUNDY ROOM RESTAURANT & LOUNGE, DEFENDANT-APPELLANT-RESPONDENT,
BARZMAN, KASIMOV & VIETH, D.D.S., P.C., B.K.V. REALTY CO., LLC,
DEFENDANTS-RESPONDENTS, AND R.M.F. HOLDING CORPORATION,
DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH,
J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30,
2011.)

MOTION NO. (626/11) CA 10-02018. -- IN THE MATTER OF SISTERS OF CHARITY
HOSPITAL, PETITIONER-RESPONDENT, V RICHARD F. DAINES, M.D., COMMISSIONER OF
HEALTH, STATE OF NEW YORK, AND LAURA L. ANGLIN, DIRECTOR OF BUDGET, STATE
OF NEW YORK, OR THEIR SUCCESSORS, RESPONDENTS-APPELLANTS. -- Motion for
leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P.,
FAHEY, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (639/11) KA 09-01649. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V VIRGINIA RICHARDSON, DEFENDANT-APPELLANT. -- Motion for reargument granted and, upon reargument, the memorandum and order entered June 10, 2011 (85 AD3d 1556) is amended by deleting the third sentence of the memorandum and substituting the following sentence: "The record supports the findings of the suppression court that defendant's statement was not tainted by her statement made before she was given her *Miranda* warnings." PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, GREEN, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (662/11) KA 07-01369. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER JONES, DEFENDANT-APPELLANT. -- Motion for reargument and reconsideration denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (668/11) CA 11-00248. -- ELIZABETH L. HAIDT, PLAINTIFF-RESPONDENT, V JOSEPH F. KURNATH, M.D., DEFENDANT, HENRY WENGENDER AND LYNN WENGENDER, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (670/11) CA 10-02435. -- JASON THOME, PLAINTIFF-RESPONDENT, V BENCHMARK MAIN TRANSIT ASSOCIATES, LLC, CHRISTA CONSTRUCTION, LLC, DEFENDANTS-APPELLANTS, ET AL., DEFENDANT. -- Motion for reargument or leave

to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P.,
PERADOTTO, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (671/11) CA 11-00125. -- IN THE MATTER OF COMMUNICATION WORKERS
OF AMERICA, LOCAL 1170, PETITIONER-APPELLANT, V TOWN OF GREECE,
RESPONDENT-RESPONDENT. IN THE MATTER OF TOWN OF GREECE,
PETITIONER-RESPONDENT, V CWA LOCAL 1170 (GOLD BADGE CLUB), ON BEHALF OF
THOMAS SCHAMERHORN, RESPONDENT-APPELLANT. -- Motion for reargument or leave
to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P.,
PERADOTTO, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (672/11) CA 10-02265. -- IN THE MATTER OF ROBERT P. MEEGAN, JR.,
INDIVIDUALLY AND AS PRESIDENT OF BUFFALO POLICE BENEVOLENT ASSOCIATION AND
BUFFALO POLICE BENEVOLENT ASSOCIATION, INC., PETITIONERS-RESPONDENTS, V
BYRON W. BROWN, AS MAYOR OF CITY OF BUFFALO, DANIEL DERENDA, AS ACTING
COMMISSIONER OF POLICE, AND CITY OF BUFFALO, RESPONDENTS-APPELLANTS.
(APPEAL NO. 1.) -- Motion for leave to appeal to the Court of Appeals
denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND MARTOCHE,
JJ. (Filed Sept. 30, 2011.)

MOTION NO. (672.1/11) CA 11-00160. -- IN THE MATTER OF THE ARBITRATION
BETWEEN CITY OF BUFFALO, PETITIONER-APPELLANT, AND BUFFALO POLICE
BENEVOLENT ASSOCIATION, INC., RESPONDENT-RESPONDENT. (APPEAL NO. 2.) --

Motion for leave to appeal to the Court of Appeals denied. PRESENT:
SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept.
30, 2011.)

MOTION NO. (689/11) CA 10-00432. -- WALDEMAR H. JURKOWSKI, BY EDWARD C.
COSGROVE, GUARDIAN OF HIS PERSON AND PROPERTY, PLAINTIFF-APPELLANT, V
SHEEHAN MEMORIAL HOSPITAL, ET AL., DEFENDANTS, AND BHAVANSA PADMANABHA,
M.D., DEFENDANT-RESPONDENT. (APPEAL NO. 1.) -- Motion for leave to appeal
to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA,
PERADOTTO, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (690/11) CA 10-00435. -- WALDEMAR H. JURKOWSKI, BY EDWARD C.
COSGROVE, GUARDIAN OF HIS PERSON AND PROPERTY, PLAINTIFF-APPELLANT, V
SHEEHAN MEMORIAL HOSPITAL, ET AL., DEFENDANTS, AND MADAN G. CHUGH, M.D.,
DEFENDANT-RESPONDENT. (APPEAL NO. 2.) -- Motion for leave to appeal to the
Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO,
GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (691/11) CA 10-00436. -- WALDEMAR H. JURKOWSKI, BY EDWARD C.
COSGROVE, GUARDIAN OF HIS PERSON AND PROPERTY, PLAINTIFF-APPELLANT, V
SHEEHAN MEMORIAL HOSPITAL, DEFENDANT-RESPONDENT, ET AL., DEFENDANTS.
(APPEAL NO. 3.) -- Motion for leave to appeal to the Court of Appeals
denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, GORSKI, AND MARTOCHE,

JJ. (Filed Sept. 30, 2011.)

MOTION NO. (696/11) CA 11-00319. -- IN THE MATTER OF ALFONS J. POHOPEK,
PETITIONER-APPELLANT, V TOWN OF WESTERN ZONING BOARD OF APPEALS AND DONALD
CROFT, RESPONDENTS-RESPONDENTS. -- Motion for leave to appeal to the Court
of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, GORSKI, AND
MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (717/11) CA 10-02322. -- DORIS BAITY, ET AL.,
PLAINTIFFS-RESPONDENTS-APPELLANTS, V GENERAL ELECTRIC COMPANY,
DEFENDANT-APPELLANT-RESPONDENT. -- Motion for leave to appeal to the Court
of Appeals denied. PRESENT: CENTRA, J.P., FAHEY, CARNI, SCONIERS, AND
GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (726/11) KA 11-00081. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V R. MICHAEL HILDRETH, DEFENDANT-APPELLANT. -- Motion for
reargument denied. PRESENT: SMITH, J.P., FAHEY, CARNI, LINDLEY, AND
GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (741/11) TP 10-02283. -- IN THE MATTER OF SUSAN KRUSE,
PETITIONER, V NEW YORK STATE DIVISION OF HUMAN RIGHTS, NEW YORK STATE
DEPARTMENT OF CORRECTIONAL SERVICES/COLLINS CORRECTIONAL FACILITY, NEW YORK
STATE DEPARTMENT OF CIVIL SERVICE, AND NEW YORK STATE, OFFICE OF STATE

COMPTROLLER, RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (749/11) KA 09-00194. -- **THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JEROME T. CISSON, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (778/11) CA 10-01399. -- **JOHN T. GOWANS AND SHERRY BATCHELDER, PLAINTIFFS-APPELLANTS, V OTIS MARSHALL FARMS, INC., DOING BUSINESS AS MARSHALL FARMS, DEFENDANT-RESPONDENT. OTIS MARSHALL FARMS, INC., DOING BUSINESS AS MARSHALL FARMS, THIRD-PARTY PLAINTIFF-APPELLANT, V GOWANS HOME IMPROVEMENT AND HAROLD GOWANS, THIRD-PARTY DEFENDANTS-RESPONDENTS.** -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (799/11) CA 10-02402. -- **JAMES R. BYRNES, PLAINTIFF-APPELLANT, V CLYDE SATTERLY, M.D., DEFENDANT-RESPONDENT, ET AL., DEFENDANT.** -- Motion for reargument denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, SCONIERS, AND GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (803/11) CA 11-00333. -- **NIAGARA FOODS, INC., BENLEY REALTY CO.**

AND THE CHARTER OAK FIRE INSURANCE COMPANY,
PLAINTIFFS-APPELLANTS-RESPONDENTS, V FERGUSON ELECTRIC SERVICE COMPANY,
INC. AND TEGG CORPORATION, DEFENDANTS-RESPONDENTS-APPELLANTS. -- Motion for
reargument or leave to appeal to the Court of Appeals denied. PRESENT:
SCUDDER, P.J., SMITH, CARNI, SCONIERS, AND GREEN, JJ. (Filed Sept. 30,
2011.)

MOTION NO. (804.3/11) CA 10-01418. -- MARCIA A. WILD, THOMAS F. HORN, AS
CO-EXECUTORS OF THE ESTATE OF MARGUERITE HORN, DECEASED, AND JOSEPH HORN,
PLAINTIFFS-RESPONDENTS, V CATHOLIC HEALTH SYSTEM, DOING BUSINESS AS MERCY
HOSPITAL OF BUFFALO, ET AL., DEFENDANTS, BUFFALO EMERGENCY ASSOCIATES, LLP
AND RAQUEL MARTIN, D.O., DEFENDANTS-APPELLANTS. -- Motion for reargument or
leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J.,
SMITH, CARNI, SCONIERS, AND GREEN, JJ. (Filed Sept. 30, 2011.)

MOTION NO. (819/11) KA 08-01036. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V DAMIEN WARREN, DEFENDANT-APPELLANT. -- Motion for reargument
denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND, SCONIERS, JJ.
(Filed Sept. 30, 2011.)

MOTION NO. (820/11) CA 11-00325. -- IN THE MATTER OF THE APPLICATION OF
PETITIONER/CONDEMNOR NEW YORK STATE URBAN DEVELOPMENT CORPORATION, DOING
BUSINESS AS EMPIRE STATE DEVELOPMENT CORPORATION, PETITIONER-APPELLANT, TO

ACQUIRE IN FEE SIMPLE CERTAIN REAL PROPERTY CURRENTLY OWNED BY FALLSITE, LLC, AND KNOWN AS: 232 SIXTH STREET, CITY OF NIAGARA FALLS, 700 RAINBOW BLVD., CITY OF NIAGARA FALLS, 231 SIXTH STREET, CITY OF NIAGARA FALLS, 626 RAINBOW BLVD., CITY OF NIAGARA FALLS, 701 FALLS STREET, CITY OF NIAGARA FALLS, SITUATED IN THE COUNTY OF NIAGARA, STATE OF NEW YORK AND HAVING, RESPECTIVELY; THE FOLLOWING TAX SECTIONS, BLOCKS, AND LOTS:

159.09-2-25.122, 159.09-2-25.112, 159.09-2-25.121, 159.09-2-25.111, 159.09-2-25.211 TOGETHER WITH ALL COMPENSABLE INTERESTS THEREIN CURRENTLY OWNED BY FALLSITE, LLC, FALLSVILLE SPLASH, LLC AND ANY OTHER CONDEMNEDS WHO ARE CURRENTLY UNKNOWN. FALLSITE, LLC AND FALLSVILLE SPLASH, LLC, RESPONDENTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 30, 2011.)

KA 10-01911. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V STEVEN BARNEY, DEFENDANT-APPELLANT. -- Appeal dismissed as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Judgment of Erie County Court, Sheila A. DiTullio, J. - Criminal Possession of a Weapon, 3rd Degree). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 08-02480. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT J. BUCK, 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. - Attempted Burglary, 2nd Degree). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 09-00319. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KRISTA A. GANTZ, 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. - Criminal Possession of a Controlled Substance, 5th Degree). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 10-00811. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL E. KING, 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 Oneida County Court, John S. Balzano, A.J. - Driving While Intoxicated). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 10-01089. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V NICHOLAS J. LASKOWSKI, 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, A.J. - Driving While Intoxicated). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 11-00797. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOYCE MALONE, DEFENDANT-APPELLANT. -- Motion to dismiss granted. Memorandum: The matter is remitted to Oswego County Court to vacate the judgment of conviction and dismiss the indictment either sua sponte or on application by the District Attorney or the attorney who appeared for appellant (see *People v Matteson*, 75 NY2d 745). PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Sept. 30, 2011.)

KA 10-00800. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ISAIAH MCCOY, 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 and criminal possession of a controlled substance in the third degree. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38), on the ground that the appeal is wholly frivolous. We conclude, however, that a nonfrivolous issue exists as to whether the forfeiture of defendant's property was improper (see *People v Jacobson*, 60 AD3d 1326, lv denied 12 NY3d 916; *People v Sanders*, 289 AD2d 1019). 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., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

CAF 10-00786. -- IN THE MATTER OF CYNTHIA M.R., PETITIONER-RESPONDENT, V MITCHELL M.R., RESPONDENT-APPELLANT, ASHLEY M.S., RESPONDENT-RESPONDENT, AND CATTARAUGUS COUNTY DEPARTMENT OF SOCIAL SERVICES, RESPONDENT. --

Appeal is dismissed as abandoned and counsel's motion is granted. (Appeal from Order of Family Court, Cattaraugus County, Michael L. Nenno, J. - Custody). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

CAF 10-00783. -- IN THE MATTER OF JARED R., AALIYAH R., AND NOAH S.

CATTARAUGUS COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; MITCHELL R., RESPONDENT-APPELLANT. -- Appeal is dismissed as abandoned and counsel's motion is granted. (Appeal from Order of Family Court, Cattaraugus County, Michael L. Nenno, J. - Neglect). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KAH 11-00327. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. CHARLES SMITH, PETITIONER-APPELLANT, V SUPERINTENDENT EKPE EKPE, WATERTOWN CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT. -- 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, Jefferson County, Hugh A. Gilbert, J. - Habeas Corpus). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KAH 10-01865. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. ROBERT VAN NESS, PETITIONER-APPELLANT, V NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT-RESPONDENT. -- 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, Wyoming County, Mark H. Dadd, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 06-01249. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V YOLANDA WILLIAMS, 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, Patricia D. Marks, J. - Manslaughter, 2nd Degree). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)

KA 06-01248. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V YOLANDA WILLIAMS, 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, Patricia D. Marks, J. - Assault, 1st Degree). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GORSKI, AND MARTOCHE, JJ. (Filed Sept. 30, 2011.)