

MOTION NO. (838/96) KA 11-02481. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LEON HENRY, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1850/96) KA 06-01509. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARK MITCHELL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (1809/00) KA 97-05331. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ELI LEWIS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1429/01) KA 00-01987. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ADRIAN M. TRICE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1573/07) KA 05-00983. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES F. CAHILL, III, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (114/10) KA 08-02140. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTONIO D. RUTLEDGE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, FAHEY, AND LINDLEY, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (375/10) KA 09-00476. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V OHNJA OLOMONSA, ALSO KNOWN AS JOHN SOLOMON, DEFENDANT-APPELLANT. -- Motion for reargument and reconsideration denied. PRESENT: CENTRA, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1412/10) KA 10-00774. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TOBIAS BOYLAND, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., LINDLEY, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Jan. 31, 2012.)

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 writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (103/11) KA 07-00779. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V BENJAMIN RIVERA, DEFENDANT-APPELLANT. (APPEAL NO. 1.) --
Motion for reargument and reconsideration denied. PRESENT: CENTRA, J.P.,
CARNI, LINDLEY, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (104/11) KA 08-00201. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V BENJAMIN RIVERA, DEFENDANT-APPELLANT. (APPEAL NO. 2.) --
Motion for reargument and reconsideration denied. PRESENT: CENTRA, J.P.,
CARNI, LINDLEY, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (390/11) KA 10-00665. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V RICKY L. WINTERS, DEFENDANT-APPELLANT. -- Motion for
reargument denied. PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, AND LINDLEY,
JJ. (Filed Feb. 10, 2012.)

MOTION NO. (708/11) KA 09-00483. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V ELVIN QUINONES, DEFENDANT-APPELLANT. -- Motion for writ of
error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, CARNI, AND
SCONIERS, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (871/11) CA 10-02433. -- LORI MARCERA, PLAINTIFF-APPELLANT, V
MICHAEL S. MARCERA, DEFENDANT-RESPONDENT. -- Motion for reargument or leave
to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA,
FAHEY, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (876/11) CA 11-00339. -- STEVEN M. TUDISCO AND GENESEE VALLEY LEASING, INC., PLAINTIFFS-APPELLANTS, V CARL DUERR AND CAROL DUERR, DEFENDANTS-RESPONDENTS. (APPEAL NO. 2.) -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (892/11) CA 11-00571. -- UNIFUND CCR PARTNERS, PLAINTIFF-RESPONDENT, V GERALD YOUNGMAN, DEFENDANT-APPELLANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (913/11) CA 10-02278. -- CRANE-HOGAN STRUCTURAL SYSTEMS, INC., CLAIMANT-RESPONDENT, V STATE OF NEW YORK, DEFENDANT-APPELLANT. (CLAIM NO. 110250.) -- Motion for reargument denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (917/11) CA 11-00680. -- NIAGARA FRONTIER COUNCIL OF AMERICAN YOUTH HOSTELS, INC., PLAINTIFF-APPELLANT, V AMERICAN YOUTH HOSTELS, INC., DOING BUSINESS AS HOSTELLING INTERNATIONAL-USA, DEFENDANT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (997/11) CA 09-01214. -- JESSIE J. BARNES, CLAIMANT-APPELLANT, V THE STATE OF NEW YORK, DEFENDANT-RESPONDENT. (CLAIM NO. 100753.) -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, LINDLEY, SCONIERS, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (1012/11) KA 09-01372. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V PAUL A. OSBORNE, DEFENDANT-APPELLANT. -- Motion for clarification denied. PRESENT: CENTRA, J.P., FAHEY, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (1066/11) KA 06-01663. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EDWIN PEREZ, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (1075/11) CA 11-00786. -- CARL L. FISHER, AS POWER OF ATTORNEY FOR JOHN C. FISHER, PLAINTIFF-RESPONDENT-APPELLANT, V KENNETH FLANIGAN, ET AL., DEFENDANTS, AND DAMON CORPORATION, DEFENDANT-APPELLANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND GORSKI, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (1109/11) KA 08-01268. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SALEEM K. ALI, DEFENDANT-APPELLANT. -- Motion for reargument

and reconsideration denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1122/11) CA 11-00320. -- COLLEEN O'BRIEN, PLAINTIFF-RESPONDENT-APPELLANT, V LARRY J. BAINBRIDGE AND FEDEX GROUND PACKAGE SYSTEM, INC., DEFENDANTS-APPELLANTS-RESPONDENTS. (APPEAL NO. 1.)

-- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1123/11) CA 11-00322. -- COLLEEN O'BRIEN, PLAINTIFF-RESPONDENT-APPELLANT, V LARRY J. BAINBRIDGE AND FEDEX GROUND PACKAGE SYSTEM, INC., DEFENDANTS-APPELLANTS-RESPONDENTS. (APPEAL NO. 2.)

-- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1129/11) KA 07-02083. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KAREEM DOWDELL, DEFENDANT-APPELLANT. -- Motion for reargument and reconsideration denied. PRESENT: FAHEY, J.P., SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Jan. 31, 2012.)

MOTION NO. (1146.1/11) KAH 11-00458. -- THE PEOPLE OF THE STATE OF NEW YORK
EX REL. ROBERT CASS, PETITIONER-RESPONDENT, V SIBATU KHAHAIFA,
SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY, RESPONDENT-APPELLANT. --
Motion for reargument and for leave to appeal to the Court of Appeals
denied. PRESENT: FAHEY, J.P., CARNI, SCONIERS, GORSKI, AND MARTOCHE, JJ.
(Filed Jan. 31, 2012.)

MOTION NO. (1164/11) CA 10-00954. -- IN THE MATTER OF MICHAEL MELENDEZ,
PETITIONER-APPELLANT, V JAMES L. BERBARY, SUPERINTENDENT, COLLINS
CORRECTIONAL FACILITY, BRIAN FISCHER, COMMISSIONER, AND NORMAN R. BEZIO,
DIRECTOR, S.H.U./INMATE DISCIPLINARY PROGRAMS, NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES, RESPONDENTS-RESPONDENTS. -- Motion for reargument or
leave to appeal to the Court of Appeals denied. PRESENT: PERADOTTO, J.P.,
CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1168/11) CA 11-00033. -- IN THE MATTER OF JEFFREY THRALL,
PETITIONER-RESPONDENT, V CNY CENTRO, INC. AND CENTRAL NEW YORK REGIONAL
TRANSPORTATION AUTHORITY, RESPONDENTS-APPELLANTS. (APPEAL NO. 1.) --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
PERADOTTO, J.P., CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

MOTION NO. (1169/11) CA 11-00034. -- IN THE MATTER OF JEFFREY THRALL,
PETITIONER-RESPONDENT, V CNY CENTRO, INC. AND CENTRAL NEW YORK REGIONAL

TRANSPORTATION AUTHORITY, RESPONDENTS-APPELLANTS. (APPEAL NO. 2.) --

Motion for leave to appeal to the Court of Appeals denied. PRESENT:

PERADOTTO, J.P., CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

**MOTION NO. (1399/11) KA 10-00852. - THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V TYRONE A. WEBB, DEFENDANT-APPELLANT. --** Motion for reargument

is granted and, upon reargument, the memorandum and order entered December 23, 2011 (90 AD3d 1563) is amended by deleting the last paragraph of the memorandum and substituting the following paragraph: "Defendant further contends that he was denied effective assistance of counsel based on defense counsel's failure to pursue a suppression hearing on the ground that the police did not have probable cause to arrest him or reasonable suspicion to detain him. We reject that contention. "[I]t is incumbent on defendant to demonstrate the absence of strategic or other legitimate explanations" for [defense] counsel's alleged shortcomings' (*People v Benevento*, 91 NY2d 708, 712, quoting *People v Rivera*, 71 NY2d 705, 709). Here, defendant failed to meet that burden (*see People v Elamin*, 82 AD3d 1664, 1665, *lv denied* 17 NY3d 794; *People v Jacobs*, 52 AD3d 1182, 1184, *lv denied* 11 NY3d 926; *People v Maryon*, 20 AD3d 911, 912, *lv denied* 5 NY3d 854)." PRESENT: SMITH, J.P., FAHEY, CARNI, AND SCONIERS, JJ. (Filed Feb. 10, 2012.)

**MOTION NO. (1426/11) CA 11-00437. -- SHAWN GREEN, CLAIMANT-APPELLANT, V
STATE OF NEW YORK, DEFENDANT-RESPONDENT. (CLAIM NO. 112892.) --** Motion for

reargument or leave to appeal to the Court of Appeals denied. PRESENT:
SCUDDER, P.J., CENTRA, GORSKI, AND MARTOCHE, JJ. (Filed Jan. 31, 2012.)

**MOTION NO. (1427/11) CA 11-01260. -- LEO J. ROTH CORPORATION,
PLAINTIFF-RESPONDENT, V TRADEMARK DEVELOPMENT CO., INC., LEGACY AT ERIE
STATION LLC, U.S. HOMES CO., INC., LEGACY AT FAIRWAYS LLC, AND MARK IV
CONSTRUCTION CO., INC., DEFENDANTS-APPELLANTS. (APPEAL NO. 2.) --** Motion
for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER,
P.J., CENTRA, GORSKI, AND MARTOCHE, JJ. (Filed Jan. 31, 2012.)

**KA 08-02608. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHANE
GATZ, 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, Stephen T.
Miller, A.J. - Attempted Robbery, 1st Degree). PRESENT: SCUDDER, P.J.,
CENTRA, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

**KA 11-00318. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSE
SANTANA, 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, Michael F.
Pietruszka, J. - Petit Larceny). PRESENT: SCUDDER, P.J., CENTRA,
PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

KA 08-01554. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SEAN P. TRACY, 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 Supreme Court, Monroe County, Patricia D. Marks, A.J. - Petit Larceny). PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

KA 10-01200. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V STEPHEN J. VERSTREATE, 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 Weapon, 3rd Degree). PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)

KA 10-01215. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V STEPHEN J. VERSTREATE, 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, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Feb. 10, 2012.)