

MOTION NO. (225/89) KA 02-00347. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL RHYMES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND WHALEN, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (31/01) KA 98-05081. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V THOMAS WILLIAMS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND SCONIERS, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (286/02) KA 97-05362. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL SPIRLES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis and for other relief denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND WHALEN, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (201/07) KA 06-00534. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EUGENE WRIGHT, JR., DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (715/07) KA 04-01773. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V PETER D. THOUSAND, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis and for other relief denied. PRESENT: SMITH, J.P.,

CENTRA, FAHEY, PERADOTTO, AND WHALEN, JJ. (Filed Apr. 26, 2013.)

**MOTION NO. (1011/07) KA 06-00940. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EDUNDABIRA O. OJO, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 26, 2013.)

**MOTION NO. (732/08) KA 07-01017. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GERMAINE BROWN, DEFENDANT-APPELLANT. (APPEAL NO. 2.)** -- 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 an issue on direct appeal that would have resulted in reversal, specifically, County Court's deference to the decision of defendant to forgo a jury charge for lesser included offenses denied him the expert judgment of counsel, to which the Sixth Amendment entitles him. Upon our review of the motion papers, we conclude that the issue may have merit. Therefore, the order of June 6, 2008 is vacated and this Court will consider the appeal de novo (*see People v LeFrois*, 151 AD2d 1046). Defendant is directed to file and serve his records and briefs with this Court on or before July 25, 2013. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Apr. 26, 2013.)

**MOTION NO. (6/10) KA 09-01559. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES WESOLOWSKI, DEFENDANT-APPELLANT.** -- Motion for writ of

error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ. (Filed Apr. 26, 2013.)

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 WHALEN, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (403/12) KA 08-01439. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD G. KIRK, SR., DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (448/12) CA 11-01853. -- SHARLENE MCKENZIE, AS EXECUTRIX OF THE ESTATE OF OSCAR MCKENZIE, JR., DECEASED, PLAINTIFF-APPELLANT, V ONONDAGA COUNTY AND ONONDAGA COUNTY BAR ASSOCIATION ASSIGNED COUNSEL PROGRAM, INC., DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1252/12) CA 12-00182. -- JANNIE NESMITH, IN HER REPRESENTATIVE CAPACITY ONLY AS PARENT AND NATURAL GUARDIAN OF JANNIE PATTERSON, AN INFANT AND LORENZO PATTERSON, JR., PLAINTIFFS-RESPONDENTS, V ALLSTATE INSURANCE

COMPANY, DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, LINDLEY, AND WHALEN, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1317/12) CA 12-01143. -- IN THE MATTER OF THE ARBITRATION BETWEEN PROFESSIONAL, CLERICAL, TECHNICAL, EMPLOYEES ASSOCIATION, PETITIONER-RESPONDENT, AND BOARD OF EDUCATION FOR BUFFALO CITY SCHOOL DISTRICT, RESPONDENT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1333/12) CA 12-01208. -- ROBERT LANDAHL AND GAIL LANDAHL, PLAINTIFFS-RESPONDENTS, V CITY OF BUFFALO AND U&S SERVICES, INC., DEFENDANTS-APPELLANTS. U&S SERVICES, INC., THIRD-PARTY PLAINTIFF-RESPONDENT, V INDUSTRIAL POWER & LIGHTING CORPORATION, THIRD-PARTY DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1335/12) CA 12-01013. -- PENN MILLERS INSURANCE COMPANY, PLAINTIFF-APPELLANT-RESPONDENT, V C.W. COLD STORAGE, INC., DEFENDANT-RESPONDENT-APPELLANT, AND THRUWAY PRODUCE, INC., DEFENDANT-RESPONDENT. -- Motion for reargument, clarification, or leave to

appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1363/12) CA 12-00459. -- JANNETTE MORALES, PLAINTIFF, V ASARESE MATTERS COMMUNITY CENTER, ET AL., DEFENDANTS, CITY OF BUFFALO PARKS AND RECREATION DEPARTMENT, CITY OF BUFFALO, DEFENDANTS-RESPONDENTS, AND COUNTY OF ERIE, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., FAHEY, SCONIERS, VALENTINO, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1426/12) KA 11-01396. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RONALD D. ROSSBOROUGH, DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, WHALEN, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1438/12) CA 12-01105. -- LEE T. HENDRYX AND SHARON HENDRYX, PLAINTIFFS-RESPONDENTS, V RICHARD M. PAYNE, SUZANNE PAYNE, MARK NOLAN, DEFENDANTS-APPELLANTS, ET AL., DEFENDANT. RICHARD M. PAYNE, SUZANNE PAYNE AND ENCHANTED VALLEY RENTALS, LLC, THIRD-PARTY PLAINTIFFS-RESPONDENTS, V MARK NOLAN, THIRD-PARTY DEFENDANT-APPELLANT. -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1460/12) CA 12-00596. -- FRANK FERGUSON AND EVA FERGUSON, PLAINTIFFS-APPELLANTS, V HANSON AGGREGATES NEW YORK, INC., DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (1470/12) KA 11-00927. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ENNIS E. RUFFIN, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (81/13) CA 12-01423. -- IN THE MATTER OF THE ESTATE OF GLORIA H. LAMBERT, DECEASED. WAYNE C. LAMBERT, PETITIONER-RESPONDENT-RESPONDENT; JOHN R. LAMBERT, RESPONDENT-PETITIONER-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ. (Filed Apr. 26, 2013.)

MOTION NO. (154/13) CA 12-00714. -- BERNICE MALCOLM, PLAINTIFF-APPELLANT, V HONEOYE FALLS-LIMA CENTRAL SCHOOL DISTRICT, HONEOYE FALLS-LIMA EDUCATION ASSOCIATION AND NEW YORK STATE UNITED TEACHERS, DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., FAHEY, CARNI, SCONIERS, AND VALENTINO, JJ. (Filed Apr. 26, 2013.)

**KA 11-01774. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD J. GALASSO, 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. - Violation of Probation). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

**KA 11-01775. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD J. GALASSO, 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. - Violation of Probation). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

**KA 12-01046. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DANIEL L. GOODELL, ALSO KNOWN AS DANIEL GOODELL, 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 Genesee County Court, Robert C. Noonan, J. - Violation of Probation). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

**KAH 12-00948. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. JEFFREY ROCKEFELLER, PETITIONER-APPELLANT, V SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.** -- Appeal dismissed as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Judgment

[denominated order] of Supreme Court, Cayuga County, Mark Fandrich, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)

**KAH 12-00908. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. CHARLES STRAUSS, PETITIONER-APPELLANT, V NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT-RESPONDENT.** -- Appeal dismissed as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Judgment of Supreme Court, Wyoming County, Mark H. Dadd, A.J. - CPLR Article 78). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 26, 2013.)