

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. David Friedman, Justice Presiding,
David B. Saxe
Sallie Manzanet-Daniels
Paul G. Feinman
Judith J. Gische, Justices.

-----X

The People of the State of New York,
Respondent,

-against-

M-4902
Ind. No. 448/10

Justin Waller,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on June 2, 2015 (Appeal No.15275), unanimously affirming a judgment of the Supreme Court, New York County (Michael Obus, J.), rendered on May 24, 2011,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. David Friedman,
Karla Moskowitz
Troy K. Webber
Marcy L. Kahn
Ellen Gesmer,

Justice Presiding,

Justices.

-----X

Alfonso Guzman,

Plaintiff-Appellant,

-against-

M-5746

Index No. 309993/11

The Seiden Group,

Defendant-Respondent.

-----X

Defendant-respondent having moved for dismissal of the appeal taken from an order of the Supreme Court, Bronx County, entered on or about June 9, 2015,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. David Friedman,
Karla Moskowitz
Troy K. Webber
Marcy L. Kahn
Ellen Gesmer,

Justice Presiding,

Justices.

-----X

Angelo Seminerio,

Plaintiff-Respondent,

-against-

Murray Landsman,

Defendant-Appellant.

-----X

M-5781

Index No. 111272/10

Plaintiff-respondent having moved for dismissal of the appeal taken from a judgment of the Supreme Court, New York County, entered on or about January 13, 2016,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. John W. Sweeny, Jr., Justice Presiding,
Rolando T. Acosta
David Friedman
Barbara R. Kapnick
Marcy L. Kahn, Justices.

-----X

Susan Budney,

Plaintiff-Respondent,

-and-

Michael Santomauro,

Defendant-Appellant.

-----X

CONFIDENTIAL

M-5957

Index No. 350091/12

Defendant-appellant having moved for clarification of the decision and order of this Court entered on July 5, 2016 (Appeal No. 1652),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. John W. Sweeny, Jr., Justice Presiding,
Diane T. Renwick
David B. Saxe
Judith J. Gische
Marcy L. Kahn, Justices.

-----X
Gilbane Building Co./TDX Construction
Corp., et al.,
Plaintiffs-Respondents,

-against-

M-5243
Index No. 653199/11

St. Paul Fire and Marine Insurance
Company, et al.,
Defendants,

Liberty Insurance Underwriters,
Defendant-Appellant.

- - - - -
Greenwich Insurance Company,
Amicus Curiae.

-----X

Plaintiffs-respondents having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on September 15, 2016 (Appeal No. 884),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, to the extent it seeks reargument, is denied. So much of the motion which seeks leave to appeal to the Court of Appeals is granted, and this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

"Was the order of this Court, which reversed the
Order of the Supreme Court, properly made?"

This Court further certifies that its determination was
made as a matter of law and not in the exercise of discretion.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
Dianne T. Renwick
Rosalyn H. Richter
Sallie Manzanet-Daniels
Barbara R. Kapnick, Justices.

-----X
Chao Jiang,
Plaintiff-Appellant,

-against-

M-5742
Index No. 652260/15

Ping An Insurance, et al.,
Defendants-Respondents.

-----X
Ping An Property & Casualty Insurance
Company of China, Ltd., etc.,
Third-Party Plaintiff,
Interpleading Plaintiff-Respondent,

-against-

Third-Party
Index No. 595757/16

Chao Jiang,
Third-Party Defendant
Interpleader Defendant-Appellant,

-and-

China North East Petroleum Holdings
Limited,
Third-Party Defendant
Interpleader Defendant-Respondent.

-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about November 4, 2016,

And third-party interpleader defendant-appellant Chao Jiang having moved to enjoin interpleader plaintiff-respondent Ping An Property & Casualty Insurance Company of China, Ltd. from depositing certain proceeds from a settlement agreement between said parties into a Court account in the specified Nevada action, pending hearing and determination of the appeal taken from the aforesaid order,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied and the interim relief granted by an order of a Justice of this Court, dated November 9, 2016, is hereby vacated.

ENTER:

A handwritten signature in black ink, appearing to read "Eric Schuck". The signature is fluid and cursive, with a long horizontal stroke at the end.

DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
In the Matter of

Jamel S.,
Jaylen G.,
Desire G.,
Christopher G.,
Carven S.,

Children Under the Age of 18 Years
Alleged to be Neglected by

Commissioner of Social Services of
the City of New York,
Petitioner-Respondent,

M-5693
Docket No. NN-36405-9/14

Crystal G.,
Respondent-Appellant.

Kenneth M. Tuccillo, Esq., Attorney
for the Child Carve S..

-----X

Subject child Carven S. having moved for leave to respond, as a poor person, to the appeals taken from the orders of the Family Court, New York County, entered on or about September 28, 2016, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of
(1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Kenneth M. Tuccillo, Esq., 591 Warburton Avenue #576, Hastings on Hudson, NY 10706, Telephone No. (914)439-4843, as counsel for purposes of responding to the

appeal; (2) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for petitioner-appellant and 8 copies thereof are filed with this Court.

ENTER:

A handwritten signature in black ink, appearing to read "Eric Schuck", written in a cursive style.

DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

Moses S.,
Defendant-Appellant.

SEALED

M-5731

Ind. Nos. 4176/09
1026/10
227/12

-----X

An appeal having been taken from a judgment of the Supreme Court, Bronx County, rendered on or about February 24, 2012,

Now, upon reading and filing the stipulation of the parties hereto, dated November 1, 2016, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

Jamel Stevens,
Defendant-Appellant.

M-5780
Ind. Nos. 257/10
4364/11

-----X

An appeal having been taken from a judgment of the Supreme Court, New York County, rendered on or about May 17, 2012,

Now, upon reading and filing the stipulation of the parties hereto, dated October 3, 2016, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5091
Ind. No. 3612/15

Ramell Drayton,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, Bronx County, rendered on or about July 11, 2016, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, New York 10005, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme
Court held in and for the First Judicial Department in
the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5090
Ind. No. 2121/15

Cleon McHayle,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person,
the appeal from a judgment of the Supreme Court, Bronx County,
rendered on or about October 3, 2016, for leave to have the appeal
heard upon the original record and a reproduced appellant's brief, and
for related relief,

Now, upon reading and filing the papers with respect to the
motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of
permitting the appeal to be heard on the original record, except that
a certified copy of the indictment(s) shall be substituted in place of
the original indictment(s), and upon a reproduced appellant's brief,
on condition that appellant serves one copy of such brief upon the
District Attorney of said county and files 8 copies of such brief,
together with the original record, pursuant to Rule 600.11 of the
Rules of this Court.

The court reporter shall promptly make and file with the criminal
court (CPL §460.70) one transcript of the stenographic minutes of any
proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the
plea or trial and sentence. The Clerk shall furnish a copy of such
transcripts to appellant's counsel, without charge, the transcripts to
be returned to this Court when appellant's brief is filed.

Rosemary Herbert, Esq., Office of the Appellate Defender,
11 Park Place, Room 1601, New York, New York 10007, Telephone No.
212-402-4100, is assigned as counsel for defendant-appellant for
purposes of the appeal. The time within which appellant shall perfect
this appeal is hereby enlarged until 120 days from the date of filing
of the record.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5089
Ind. No. 807/16

Edwin Morel,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, Bronx County, rendered on or about October 4, 2016, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Rosemary Herbert, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5935
Ind. No. 3534N/14

Angel Ruiz,
Defendant-Appellant.

-----X

An appeal having been taken from a judgment of the Supreme Court, New York County, rendered on or about February 3, 2015,

Now, upon reading and filing the stipulation of the parties hereto, dated November 16, 2016, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-6066
Sci. No. 108404

Aldo Valdiveiso,
Defendant-Appellant.

-----X

An appeal having been taken from a judgment of the Supreme Court, Bronx County, rendered on or about June 15, 2015,

Now, upon reading and filing the stipulation of the parties hereto, dated November 15, 2016, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-4132
Ind. No. 2443/90

Thomas Cross,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on October 28, 1993 (Appeal No. 50031), unanimously affirming a judgment of the Supreme Court, Bronx County (Frank Diaz, J.), rendered on September 17, 1991,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Richard T. Andrias, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-4522
Ind. No. 5154/00

David DeJesus, also known as
Daniel DeJesus,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on September 21, 2006 (Appeal No. 8993), unanimously affirming a judgment of the Supreme Court, New York County (Edward McLaughlin, J.), rendered on March 21, 2003,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. Peter Tom, Justice Presiding,
David Friedman
David B. Saxe
Paul G. Feinman
Marcy L. Kahn, Justices.

-----X
In the Matter of

Amir A.,

M-5082

M-5083

A Child Under 18 Years of Age
Alleged to be Abused and/or
Neglected Under Article 10 of
the Family Court Act.

Docket No. NA-8293/16

- - - - -
Commissioner of Children's
Services of the City of New York,
Petitioner-Appellant,

-against-

Kristyle Z.,
Respondent-Appellant,

Francisco A., Janet A.,
and Matthew C.,
Respondents-Respondents.

- - - - -
Seymour W. James, Jr., Esq.,
The Legal Aid Society,
Juvenile Rights Division,
Attorney for the Child.

-----X

An appeal having been taken from an order of the Family Court, Bronx County, entered on or about October 4, 2016,

And, petitioner-appellant and counsel for subject child having moved by separate motions for an order staying the aforesaid order which released the subject child to the respondent father and staying the remand order under FCA 1027 which was in effect at the time of the release order, pending determination of the appeal (M-5082/M-5083),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon, it is

Ordered that the motions are denied.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme
Court held in and for the First Judicial Department
in the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels
Troy K. Webber, Justices.

-----X

The People of the State of New York,
Respondent,

-against-

M-4739
Ind. No. 3966/11

Alfredo Luna,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about March 26, 2015, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 reproduced copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Rosemary Herbert, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. (212)402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels
Troy K. Webber, Justices.

-----X
The People of the State of New York,
Respondent,

-against- M-5004
Ind. Nos. 3498/14
2010/15
James Cabral, 2404/15
Defendant-Appellant. 2247/15
-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about June 27, 2016, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, New York 10005, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels
Troy K. Webber, Justices.

-----X
Maimouna Kamate,
Plaintiff-Respondent,

-against-

M-4726

Index No. 22512/15E

MJ Cahn Co., Daniel Cahn, and Francis
Thomas Leahy,
Defendants-Appellants.

-----X

An appeal having been taken from that part of the order of the Supreme Court, Bronx County, entered on or about May 6, 2016, and said appeal having been perfected,

And, defendants-appellants having moved to stay all Supreme Court proceedings pending determination of the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted. The Clerk is directed to maintain the perfected appeal on the January 2017 Term of this Court.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Richard T. Andrias
David B. Saxe, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-3438
Ind. No. 6255/02

Dwayne Mitchell, also known as
Duane Mitchell,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on November 28, 2006 (Appeal No. 9641), unanimously affirming a judgment of the Supreme Court, New York County (Gregory Carro, J.), rendered on February 3, 2004,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Rolando T. Acosta
Richard T. Andrias, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-4424
Ind. No. 1402/08

Maurice Newman,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on April 17, 2012 (Appeal No. 6670-71), unanimously affirming the judgments of the Supreme Court, New York County (Daniel Fitzgerald, J.), rendered on June 12, 2009, as amended June 24, 2009,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT - Hon. Peter Tom, Justice Presiding,
David B. Saxe
Rosalyn H. Richter
Judith J. Gische
Ellen Gesmer, Justices.

-----X
In the Matter of a Proceeding Under
Article 70 of the CPLR for a Writ of
Habeas Corpus,

The Nonhuman Rights Project, Inc., on
behalf of Tommy,
Petitioner-Appellant,

-against-

M-5956
Index No. 162358/15

Patrick C. Lavery, etc., et al.,
Respondents-Respondents.

- - - - -
Richard L. Cupp, Jr., Pepperdine
University School of Law,
Amicus Curiae.

-----X
An appeal having been taken from the order of the Supreme Court, New York County, entered on or about July 8, 2016,

And Richard L. Cupp, Jr., Pepperdine University School of Law, having moved for leave to file a brief amicus curiae in connection with the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of directing movant to file an original and 8 copies of a brief amicus curiae, submitted with the moving papers, but in compliance with CPLR 5529 and 22NYCRR 600.10, with this Court

together with proof of service on counsel for petitioner and on all respondents on or before January 4, 2017, for the February Term, to which Term the perfected appeal is adjourned. Sua sponte, the instant appeal (Cal. No. 2358) is to be placed on the same day calendar as the appeal in Matter of Nonhuman Rights Project v Presti (Cal. No. 2483).

ENTER:

A handwritten signature in black ink, appearing to read "Eric Schuck", written over a horizontal line.

DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Diane T. Renwick
Rosalyn H. Richter
Sallie Manzanet-Daniels
Paul G. Feinman, Justices.

-----X
Vera Djeddah, as Conservator/Guardian
for Estate of Richard Djeddah,
Plaintiff-Appellant,

CONFIDENTIAL

-against-

M-5269
Index No. 350094/00

Rachel Djeddah
Defendant-Respondent.
-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about June 4, 2015,

And, Vera Djeddah, as representative for the Estate of Richard Djeddah, having moved for an enlargement of time to perfect the aforesaid appeal

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied and the appeal is dismissed.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David B. Saxe
Paul G. Feinman
Judith J. Gische, Justices.

-----X

Stephanie Olson,
Plaintiff-Respondent,

-against-

David Olson,
Defendant-Appellant.

M-5102
M-5108
Index No. 350024/13

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about August 9, 2016,

And defendant-appellant having moved for an order staying the proceedings before the special referee, pending hearing and determination of the appeal (M-5102),

And defendant-appellant having moved by a separate motion for leave to prosecute the appeal as a poor person, and a free copy of the transcripts (M-5108),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motion is denied, without prejudice to defendant seeking further relief from the Supreme Court with respect to a distribution of marital assets for the sole purposes of paying counsel's fees (M-5102). The motion seeking poor person relief is denied, without prejudice to renew, upon defendant making a further showing as to financial status (M-5108).

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
David B. Saxe
Karla Moskowitz
Marcy L. Kahn
Ellen Gesmer, Justices.

-----X

The People of the State of New York,
Respondent,

SEALED

M-4696

-against-

Ind. No. 5073/15

Jose R.,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about May 18, 2016, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, New York 10005, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Diane T. Renwick
Rosalyn H. Richter
Sallie Manzanet-Daniels
Paul G. Feinman, Justices.

-----X
David K. Bialik,

Plaintiff-Appellant-Respondent,

-against-

M-5753
Index No. 156898/13

AXA Equitable Life Insurance Company,
formerly known as The Equitable Life
Assurance Society of the United States,

Defendant-Respondent-Appellant.
-----X

An appeal and cross appeal having been taken from an order of the Supreme Court, New York County, entered on or about April 12, 2016, and the appeals having been perfected,

And, plaintiff-appellant-respondent having moved for an order to strike respondent's brief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied as academic.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels
Barbara R. Kapnick, Justices.

-----X

In the Matter of

Traekwon I.,

CONFIDENTIAL

Action No. 1

A Person Alleged to be a Juvenile
Delinquent.

M-5776

Docket No. D-31820/13

- - - - -
Presentment Agency,
Petitioner-Respondent,

Traekwon I.,
Respondent-Appellant.

-----X

In the Matter of

Traekwon I.,

Action No. 2

A Person Alleged to be a Juvenile
Delinquent.

Docket No. D-29242/14

- - - - -
Presentment Agency,
Petitioner-Respondent,

Traekwon I.,
Respondent-Appellant.

-----X

An appeal (Action No. 1) having been taken from an order of the Supreme Court, Bronx County, entered on or about April 22, 2016; and an appeal (Action No. 2) having been taken from an order of the Supreme Court, Bronx County, entered on or about December 8, 2015, and said appeals having been perfected for the February 2017 Term,

And, respondent-appellant having moved to consolidate the aforesaid appeals (in Action No 1 and Action No. 2) to the extent of placing them on the same day calendar of this Court, and calendared for a Term earlier than previously noticed,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted and the perfected appeals are consolidated only to the extent of placing them on the same day calendar for the previously noticed February 2017 Term, with no further enlargements to be granted. So much of the motion which seeks an earlier calendar date for the consolidated appeals is denied.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels
Barbara R. Kapnick, Justices.

-----X
In the Matter of the Application of
Caryl Spinka Silvers,
Petitioner-Respondent,

For the Appointment of a Guardian
for the Person and/or Property of

Valerie L. Spinka,

An Alleged Incapacitated Person,
Respondent.

- - - - -
Kenneth W. Spinka,
Cross/Petitioner-Appellant.

-----X

CONFIDENTIAL

M-5851

Index No. 91809/14

Cross/petitioner-appellant having moved for an enlargement of time to perfect the appeal from an order and judgment (one paper) of the Supreme Court, Bronx County, entered on or about June 25, 2015,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time to perfect the appeal to the April 2017 Term, with no further enlargements to be granted.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

Present: Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels
Barbara R. Kapnick, Justices.

-----X
Yu Hua Chen,
Plaintiff-Appellant,

-against-

M-5873
Index No. 112630/09

Nancy Mak, et al.,
Defendants-Respondents.

-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about July 29, 2015,

And, plaintiff having moved for an enlargement of time to perfect the appeal, and to stay all proceedings, including trial, pending determination of said appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied in its entirety.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 22, 2016.

PRESENT: Hon. David Friedman, Justice Presiding,
Richard T. Andrias
Judith J. Gische
Barbara R. Kapnick, Justices.

-----X
In the Matter of the Application of
Malik Turner,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the CPLR,

-against-

M-5320
Index No. 101455/14

New York City Department of Housing
Preservation and Development, et al.,
Respondents-Respondents.
-----X

An appeal having been taken from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about June 23, 2015,

And petitioner having moved to reinstate a stay of a holdover proceeding pending hearing and determination of the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the interim relief granted by an order of a Justice of this Court, dated October 20, 2016, is hereby continued.

ENTER:



DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 20, 2016.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Rolando T. Acosta
Richard T. Andrias
Paul G. Feinman
Troy K. Webber, Justices.

-----x
Amiral Holdings SAS,
Plaintiff-Appellant,

-against-

XpresSpa Holdings LLC and Mistral
Capital Management LLC,
Defendants-Respondents,

M-6361
M-6370
Index No. 654051/16

-and-

Bruce Bernstein,
Defendant.

-----x
An appeal having been taken from an order of the Supreme Court, New York County, entered on or about November 21, 2016,

And an order of this Court having been entered on December 15, 2016 (M-6031), inter alia, enjoining defendants from taking any steps to consummate a proposed merger agreement between XpresSpa Holdings and non-party FORM Holdings on condition that plaintiff extends a bridge loan to defendant XpresSpa Holdings in the amount of \$4 million by December 22, 2016, to fund defendant's ongoing operations during the pendency of the appeal, that plaintiff posts an undertaking in the amount of \$6.5 million (inclusive of the undertaking already posted) by December 22, 2016, and on further condition that plaintiff perfects its appeal on or before January 30, 2017 for the April 2017 Term,

And plaintiff-appellant Amiral Holding SAS having moved for an extension of time to meet the deadlines set in our December 15, 2016 order, and for other relief [M-6361],

And defendant Bruce Bernstein, President of Rockmore Capital, LLC and Rockmore Investment Master Fund Ltd. (the Rockmore corporate entities), having cross-moved for leave to allow the Rockmore corporate entities to intervene for the limited purpose of opposing the motion [M-6370],

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion and cross motion are denied.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 21, 2016.

PRESENT: Hon. Rosalyn H. Richter, Justice Presiding,
Sallie Manzanet-Daniels
Paul G. Feinman
Barbara R. Kapnick
Ellen Gesmer, Justices.

-----X
U-Trend New York Investment I.P.,
individually and derivatively on
behalf of nominal defendant Hospitality
Suite International, S.A. and its
wholly-owned subsidiary US Suite Corp.,
Plaintiff-Respondent,

-against-

M-6290
Index No. 652082/14

US Suite LLC, et al.,
Defendants-Appellants,

Hospitality Suite International, et al.,
Nominal Defendants-Appellants.

-----X
Defendants-appellants Aura Investments Ltd., Hospitality Suite International, S.A. and US Suite Corp. having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on December 6, 2016 (Appeal Nos. 2409, 2409A and 2409B), and for vacatur of a stay granted by an order of a Justice of this Court dated December 15, 2016,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied in its entirety.

ENTER:



CLERK