SUPREME COURT, APPELLATE DIVISION
FIRST DEPARTMENT

NOVEMBER 1, 2018

THE COURT ANNOUNCES THE FOLLOWING DECISIONS:

Acosta, P.J., Sweeny, Manzanet-Daniels, Gesmer, Singh, JJ.

7142 In re Strata Realty Corp., Index 570821/16
Petitioner-Respondent,

-against-

Rosa Pena,
Respondent-Appellant,

John Doe, et al.,
Respondents.

_____

Manhattan Legal Services, New York (Rubin Englard of counsel), for appellant.

Rosenberg & Estis, P.C., New York (Bradley S. Silverbush and Nithin E. Jayadeva of counsel), for respondent.

_____

Order of the Appellate Term, First Department, entered December 4, 2017, which affirmed a judgment of Civil Court, New York County (Laurie L. Lau, J.), entered April 4, 2016, after a nonjury trial, awarding possession of a rent stabilized apartment to petitioner landlord, and an order, same court and Judge, dated November 21, 2016, which denied respondent tenant's motion for a further stay of execution of the warrant of eviction, unanimously

modified, on the facts and in the exercise of discretion, to grant a 90-day stay of the execution of the warrant of eviction, to direct that respondent and her family vacate the premises within seven days after the date of this order and that petitioner provide alternative suitable accommodations during the period of construction, to enjoin respondent and her family from entering the premises while the construction is ongoing, to direct that the apartment, which is to be repaired in accordance with petitioner's instructions, be left broom-swept clean and free of debris and dust at the conclusion of the construction, and to enjoin respondent from filing complaints with governmental authorities about the construction without first notifying petitioner, and otherwise affirmed, without costs.

Ample evidence supports Civil Court's finding that respondent's continuing and repeated complaints to the New York City Department of Housing Preservation and Development (HPD), followed by her refusal to permit petitioner to correct violations that had the potential to compromise the health and safety of the building's residents, constituted a nuisance (*see Domen Holding Co. v Aranovich*, 1 NY3d 117, 124 [2003]; *12 Broadway Realty, LLC v Levites*, 44 AD3d 372 [1st Dept 2007]).

Respondent admitted that she complained to HPD numerous

times, without prior notice to petitioner of the complained-of conditions, and that she refused to permit petitioner to encapsulate the walls and replace the bathroom floor to correct the conditions. She and her daughter admitted that they had the window guards removed in summer to install air conditioners and that petitioner installed smoke/carbon monoxide detectors in the apartment. Respondent did not dispute that she sometimes denied the exterminator access, and asserted that there was no longer a rodent problem.

Appellate Term found that, in view of the history of her obstinance, respondent's nuisance conduct was not capable of any meaningful cure. Although respondent has had many opportunities to cure, in light of her advanced age, long-term occupancy, and disability, the hardship that eviction would cause her and her family, including her five grandchildren, and her stated willingness to comply with court orders and grant petitioner access to her apartment, we find, pursuant to principles of equity, that she should be afforded another opportunity to do so. This is respondent's final opportunity to comply with court orders. A failure to comply will result in the issuance of a warrant of eviction without the possibility of a stay. Notions of equity notwithstanding, respondent must take responsibility

for her actions.

We have considered respondent's arguments for dismissing the proceeding and find them unavailing.

The parties are directed to bring any issues that arise between them after entry of this order before Civil Court in the first instance.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7529 In re Abdul S., etc., et al., Index 18247/06
Petitioners-Appellants,

-against-

The Motor Vehicle Accident
Indemnification Corporation,
Respondent-Respondent.

_____

Law Office of Michael T. Ridge, Bronx (Allen C. Goodman of counsel), for appellants.

Kornfeld, Rew, Newman & Simeone, Suffern (William S. Badura of counsel), for respondent.

_____

Order, Supreme Court, Bronx County (Norma Ruiz, J.), entered on or about July 10, 2017, which denied petitioners' application for leave to sue respondent Motor Vehicle Accident Indemnification Corp. (MVAIC) under Insurance Law § 5218, unanimously affirmed, without costs.

In 2004, the infant petitioner, then five years old, was struck by a vehicle driven by nonparty Dazon Floyd. After obtaining a default judgment against Floyd, petitioners sought leave to pursue a claim against MVAIC under Insurance Law § 5218, which is entitled "Procedure for 'hit and run' cases," meaning cases in which "the identity of the motor vehicle and of the operator and owner cannot be ascertained." Here, the evidence

submitted by petitioners in support of the application establishes that the accident was not a hit-and-run, and that the vehicle and its operator were identified. Accordingly, the particular procedure invoked is not available (*see* Insurance Law §§ 5209 and 5210).

We have considered petitioners' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7530 In re Iliana S.,
Petitioner-Appellant,

-against-

Richard P.,
Respondent-Respondent,

Maria S. (Deceased),
Respondent.

- - - - -

In re Iliana S.,
Petitioner-Appellant,

-against-

Richard P.,
Respondent-Respondent.

_____

Leslie S. Lowenstein, Woodmere, for appellant.

Kenneth M. Tuccillo, Hastings on Hudson, for respondent.

_____

Order, Family Court, New York County (Monica D. Shulman, Referee), entered on or about October 19, 2017, which, to the extent appealed from as limited by the briefs, dismissed appellant's petition for custody of her nephew, unanimously affirmed, without costs.

Family Court properly found that petitioner, the subject child's maternal aunt, failed to establish the requisite extraordinary circumstances to seek custody of the child (*see*

Matter of Bennett v Jeffreys, 40 NY2d 543, 544 [1976]; Domestic Relations Law § 72[2][a]).

While the child and his mother resided with petitioner and the maternal family for approximately one year prior to the mother's death, there was no prolonged separation of the father and child, during which he voluntarily relinquished care and control of the child, sufficient to disrupt his assertion of custody (*compare Roberta P. v Vanessa J.P.*, 140 AD3d 457 [1st Dept 2016], *lv denied* 28 NY3d 904 [2016]). Respondent father took the child into his custody shortly after the mother's death, and both the father and his wife testified that they have provided for the child's financial and emotional needs since that time.

Nor are there allegations of serious misconduct on the part of the father to constitute the requisite extraordinary circumstances necessary to allow for a further best interest

custodial determination (*compare Matter of Veras v Padilla*, 161 AD3d 989 [2d Dept 2018]).

We have considered petitioner's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7531 In re Angelica Uribe Enriquez, Index 101924/16
Petitioner-Respondent-Appellant,

-against-

New York State Division of Housing
and Community Renewal,
Respondent-Appellant-Respondent.

_____

Mark F. Palomino, New York State Division of Housing and Community Renewal, New York (Eu Ting-Zambuto of counsel), for appellant-respondent.

Northern Manhattan Improvement Corp. Legal Services, New York (Matthew J. Chachère of counsel), for respondent-appellant.

_____

Order and judgment (one paper), Supreme Court, New York County (Arlene P. Bluth, J.), entered August 9, 2017, which granted the petition to annul respondent's (DHCR) final determination, dated September 26, 2016, denying the petition for administrative review of a rent overcharge order, to the extent of vacating the determination and remanding the proceeding brought pursuant to CPLR article 78 for a new determination, unanimously reversed, on the law, without costs, the determination reinstated, the petition denied, and the proceeding dismissed.

DHCR correctly calculated the legal regulated rent by taking the base rent (as of four years before the rent overcharge

petition) and adding thereto all "subsequent lawful increases and adjustments" (Rent Stabilization Code [9 NYCRR] § 2526.1[a][3][i]). Contrary to the court's finding, the subject rent registration statements were "proper" within the meaning of Rent Stabilization Law (RSL) (Administrative Code of City of NY) § 26-517(e). That provision requires landlords to "file a proper and timely initial or annual rent registration statement," which means a statement of the "rent charged on the registration date" (*id.* § 26-517[a]), or "current rent" (*id.* § 26-517[f]), rather than the technically legally collectible rent (*see Dodd v 98 Riverside Dr., LLC*, 2012 NY Slip Op 31653[U], *4 [Sup Ct, NY County 2012]). The rent registration statements recorded the actual amount of rent charged to the tenant and were not the product of fraudulent leases or otherwise legal "nullities" (*see Bradbury v 342 W. 30th St. Corp.*, 84 AD3d 681, 683-684 [1st Dept 2011]; *Jazilek v Abart Holdings, LLC*, 72 AD3d 529, 531 [1st Dept 2010]).

Supreme Court erred in sua sponte directing that, on remand, DHCR could "revisit" its finding of willfulness, because this issue was not raised at the agency level (*see Matter of Hughes v Suffolk County Dept. of Civ. Serv.*, 74 NY2d 833 [1989]). Nor, in any event, did the landlord adduce sufficient evidence before the

agency to rebut the statutory presumption of willfulness (*see* RSL § 26-516[a]; *Draper v Georgia Props.*, 230 AD2d 455, 460 [1st Dept 1997], *affd* 94 NY2d 809 [1999]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7533 The People of the State of New York, Ind. 1070/11
Respondent,

-against-

Rumaldo Delacruz,
Defendant-Appellant.

_____

Barry A. Weinstein, Bronx, for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Michael J. Yetter of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Juan M. Merchan, J.), rendered January 3, 2012, as amended January 17, 2017, convicting defendant, upon his plea of guilty, of criminal sale of a controlled substance in the second degree, and sentencing him to a term of 4½ years, unanimously affirmed.

Defendant has not established that the narrow exception to the preservation requirement applies to his *Peque* claim (*see People v Peque*, 22 NY3d 168, 182-183 [2013], *cert denied Thomas v New York*, 574 US __, 135 S Ct 90 [2014]). Defendant was informed of his potential deportation by a notice of immigration consequences that the People served upon him, in the presence of his attorney, at arraignment, months before his guilty plea, giving him the opportunity to raise the issue, and rendering his

claim unpreserved (*see e.g. People v Barry*, 149 AD3d 494 [1st Dept 2017], *lv denied* 29 NY3d 1123 [2017]; *People v Diakite*, 135 AD3d 533 [1st Dept 2016], *lv denied* 27 NY3d 1131 [2016]). Moreover, the court discussed defendant's deportation at the plea proceeding. We decline to review his claim in the interest of justice.

Defendant claims that his counsel provided him with ineffective assistance regarding the immigration consequences of his plea (*see Padilla v Kentucky*, 559 US 356 [2010]). The record only reflects the fact that the attorney gave him some advice about the immigration consequences, not the content of the advice given (*compare People v Doumbia*, 153 AD3d 1139 [1st Dept 2017][content of actual advice given on the record]). Because this claim involves matters not reflected in, or fully explained by, the record, it is unreviewable without the benefit of a

fuller record generated by way of a CPL 440.10 motion (*see People v Pastor*, 28 NY3d 1089, 1091 [2016]; *Peque*, 22 NY3d at 202-203).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7534 The People of the State of New York, Ind. 5424/11
Respondent,

-against-

Garth Dunning,
Defendant-Appellant.

_____

Seymour W. James, Jr., The Legal Aid Society, New York (Kerry Elgarten of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Luis Morales of counsel), for respondent.

_____

Order, Supreme Court, New York County (Daniel P. Conviser, J.), entered on or about March 3, 2015, which adjudicated defendant a level three sexually violent offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C), unanimously affirmed, without costs.

The court properly assessed 15 points under the risk factor relating to lack of acceptance of responsibility. Although defendant pleaded guilty to the underlying sex crime, he refused to participate in sex offender treatment. The refusal itself was sufficient to demonstrate a lack of genuine acceptance of responsibility (*see People v Quinones*, 157 AD3d 834 [2d Dept 2018], *lv denied* 31 NY3d 903 [2018]; *see also People v Williams*, 96 AD3d 421, 422 [1st Dept 2012], *lv denied* 19 NY3d 813 [2012]).

The court also properly assessed points under the risk factor for contact under clothing, based on clear and convincing evidence that defendant made contact with the victim by reaching under her shirt and touching her breasts, regardless of what other clothing she might have been wearing under her shirt (*see People v Sorias*, 153 AD3d 1188 [1st Dept 2017], *lv denied* 30 NY3d 908 [2017]).

We do not find that there was any overassessment of points, or any other basis for a downward departure (*see generally People v Gillotti*, 23 NY3d 841 [2014]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7535 The People of the State of New York, Ind. 3880/14
Respondent,

-against-

Anthony Ferrer,
Defendant-Appellant.

_____

Robert S. Dean, Center for Appellate Litigation, New York (Jan Hoth of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Lee M. Pollack of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Michael J. Obus, J.), rendered August 16, 2016, convicting defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree, scheme to defraud in the first degree (two counts), grand larceny in the third degree (two counts), forgery in the second degree (13 counts), criminal possession of a forged instrument in the second degree (seven counts), identity theft in the first degree (11 counts), criminal possession of stolen property in the third degree (eight counts), attempted criminal possession of stolen property in the third degree, unlawful possession of personal identification information in the third degree (three counts, offering a false instrument for filing in the first degree (two counts) and criminal possession of forgery devices),

and sentencing him to an aggregate term of 4½ years, unanimously affirmed.

Defendant failed to establish good cause to substitute counsel at the sentencing proceeding. When defendant made an unfounded ethics complaint against counsel, "any conflict was of defendant's own making, and he was not entitled to circumvent the good cause requirement by creating an artificial conflict" (*People v Walton*, 14 AD3d 419, 420 [1st Dept 2015], *lv denied* 5 NY3d 795 [2005]). Furthermore, counsel was not obligated to argue in favor of his client's plea withdrawal motion, which was meritless except to the limited extent the court granted it (*see People v Washington*, 25 NY3d 1091, 1095 [2015]).

We perceive no basis for reducing the sentence.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7537 In re Zyaire C.,

A Person Alleged to be
a Juvenile Delinquent,
Appellant.
- - - - -
Presentment Agency

_____

Dawne A. Mitchell, The Legal Aid Society, New York (Raymond E. Rogers of counsel), for appellant.

Zachary W. Carter, Corporation Counsel, New York (Qian Julie Wang of counsel), for presentment agency.

_____

Order of disposition, Family Court, New York County (Stewart H. Weinstein, J.), entered on or about January 5, 2017, which adjudicated appellant a juvenile delinquent upon a fact-finding determination that he committed acts that, if committed by an adult, would constitute attempted robbery in the first degree and criminal possession of a weapon in the fourth degree, and placed him on level three probation a period of 18 months, unanimously affirmed, without costs.

The court's finding was based on legally sufficient evidence and was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342, 348-349 [2007]). There is no basis for disturbing the court's credibility determinations. Appellant's intent to commit robbery could be readily inferred from his acts

of displaying a knife and threatening to cut the victim unless he surrendered his bicycle.

Probation was the least restrictive dispositional alternative consistent with appellant's needs and the community's need for protection (*see Matter of Katherine W.*, 62 NY2d 947 [1984]), in light of the seriousness of the offense, the unfavorable factors in appellant's background, and the very limited period of supervision that would have been provided by an adjournment in contemplation of dismissal.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7540 The People of the State of New York, Ind. 2932/15
Respondent,

-against-

Miguel Morros,
Defendant-Appellant.

_____

Seymour W. James, Jr., The Legal Aid Society, New York (Eve Kessler of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Rebecca Hausner of counsel), for respondent.

_____

An appeal having been taken to this Court by the above-named appellant from a judgment of the Supreme Court, New York County (James Burke, J.), rendered November 22, 2016,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Counsel for appellant is referred to
§ 606.5, Rules of the Appellate
Division, First Department.

Richter, J.P., Manzanet-Daniels, Gische, Tom, JJ.

7541 Monica C. Sager, Index 22768/15E
Plaintiff-Respondent,

-against-

Waldo Gardens, Inc., et al.,
Defendants-Appellants.

_____

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, White Plains (John B. Martin of counsel), for appellants.

Arnold E. DiJoseph, P.C., New York (Arnold E. DiJoseph, III of counsel), for respondent.

_____

Order, Supreme Court, Bronx County (Robert T. Johnson, J.), entered January 11, 2018, which denied defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Defendants failed to establish entitlement to judgment as a matter of law in this action where plaintiff alleges that she slipped on an oily or slippery condition on a wheelchair access ramp located on the basement level of defendants' building. She testified that she could not see the condition before she fell because she was pushing a shopping cart in front of her, but afterwards she saw a small, shiny puddle of oil.

Defendants failed to make a prima facie showing that they lacked constructive notice of the hazardous condition.

Defendants' witness, a building porter, testified that it was another porter's job to clean the ramp daily, but he did not know when the ramp was last inspected, which was insufficient to establish that an inspection and cleaning took place on the day of the accident (*see Gautier v 941 Intervale Realty LLC,* 108 AD3d 481 [1st Dept 2013]; *Ross v Betty G. Reader Revocable Trust*, 86 AD3d 419, 421 [1st Dept 2011]). The porter also testified that he had walked up and down the ramp many times before plaintiff's fall. Although he noticed that it was wet, he did not clean or mop the ramp, and did not state whether he inspected it or whether he observed an oily condition like the one that was visible to plaintiff after she fell.

Since defendants did not meet their prima facie burden, the burden did not shift to plaintiff to raise an issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7542 Core Development Group, LLC, Index 650577/16
Plaintiff,

Royal Renovation Corp.,
Plaintiff-Appellant,

-against-

Alexandra Jackson,
Defendant-Respondent.

_____

Tarter Krinsky & Drogin LLP, New York (Christopher Tumulty of counsel), for appellant.

Schwartz Sladkus Reich Greenberg Atlas LLP, New York (Stephen H. Orel of counsel), for respondent.

_____

Order, Supreme Court, New York County (David B. Cohen, J.), entered July 11, 2017, which granted defendant's motion to dismiss the complaint, unanimously affirmed, without costs.

Core Development Group, LLC (Core), a builder and developer, sued defendant based upon an alleged breach of a contract to renovate her apartment. When it was discovered that Core did not have proper licensure to bring the action, it amended its complaint to add Royal Renovation Corp (Royal), a licensed home improvement contractor, as a named plaintiff. The amended complaint alleged that defendant entered into a contract with both Core and Royal, even though the original complaint made no

mention of Royal.

Dismissal of the amended complaint was warranted as the documentary evidence submitted by defendant contradicted Royal's claim that it had a contractual relationship with defendant (*Jericho Group, Ltd. v Midtown Dev., L.P.*, 32 AD3d 294, 298 [1st Dept 2006], *lv dismissed* 11 NY3d 801 [2008]; *see Bovis Lend Lease LMB Inc v GCT Venture*, 285 AD2d 68, 69 [1st Dept 2001]). Negotiation e-mails regarding the price and scope of the renovation project were solely between defendant's architect and Core's president and CEO. The fact that Royal was copied on those emails is of no moment. Invoices were issued by Core, on its letterhead, and all payments were made payable to Core. Finally, when the dispute arose over final payment, Core was the only entity that filed notices of mechanic's liens against defendant.

Royal's quasi contractual claims were also properly dismissed, as the facts do not support an inference that Royal had a reasonable expectation of compensation from defendant (*Sears Ready Mix, Ltd. v Lighthouse Mar., Inc.*, 127 AD3d 845, 846 [2d Dept 2015]).

We have considered Royal's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7543 The People of the State of New York, Ind. 3212/13
Respondent,

-against-

Norman Croney,
Defendant-Appellant.

_____

Robert S. Dean, Center for Appellate Litigation, New York (Siobhan C. Atkins of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Aaron Zucker of counsel), for respondent.

_____

An appeal having been taken to this Court by the above-named appellant from a judgment of the Supreme Court, New York County (Michael J. Obus, J.), rendered January 19, 2016,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Counsel for appellant is referred to
§ 606.5, Rules of the Appellate
Division, First Department.

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7544 The People of the State of New York, Ind. 4026/14
Respondent,

-against-

Richard Ramlagan,
Defendant-Appellant.

_____

Robert S. Dean, Center for Appellate Litigation, New York (David J. Klem of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Valerie Figueredo of counsel), for respondent.

_____

An appeal having been taken to this Court by the above-named appellant from a judgment of the Supreme Court, New York County (Ruth Pickholz, J.), rendered December 21, 2016,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Counsel for appellant is referred to
§ 606.5, Rules of the Appellate
Division, First Department.

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7545 The People of the State of New York, Ind. 2985/16
Respondent,

-against-

Michael Harris,
Defendant-Appellant.

_____

Seymour W. James, Jr., The Legal Aid Society, New York (Eve Kessler of counsel), for appellant.

_____

Judgment, Supreme Court, New York County (James Burke, J.), rendered November 21, 2016, unanimously affirmed.

Application by defendant's counsel to withdraw as counsel is granted (*see Anders v California*, 386 US 738 [1967]; *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). We have reviewed this record and agree with defendant's assigned counsel that there are no non-frivolous points which could be raised on this appeal.

Pursuant to Criminal Procedure Law § 460.20, defendant may apply for leave to appeal to the Court of Appeals by making application to the Chief Judge of that Court and by submitting such application to the Clerk of that Court or to a Justice of the Appellate Division of the Supreme Court of this Department on reasonable notice to the respondent within thirty (30) days after service of a copy of this order.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK

Renwick, J.P., Richter, Manzanet-Daniels, Gische, Tom, JJ.

7546 The People of the State of New York, Ind. 2276/15
Respondent,

-against-

Brian Gadsen,
Defendant-Appellant.

_____

Seymour W. James, Jr., The Legal Aid Society, New York (Adrienne M. Gantt of counsel), for appellant.

_____

Judgment, Supreme Court, New York County (Ronald A. Zweibel, J.), rendered August 13, 2015, unanimously affirmed.

Application by defendant's counsel to withdraw as counsel is granted (*see Anders v California*, 386 US 738 [1967]; *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). We have reviewed this record and agree with defendant's assigned counsel that there are no non-frivolous points which could be raised on this appeal.

Pursuant to Criminal Procedure Law § 460.20, defendant may apply for leave to appeal to the Court of Appeals by making application to the Chief Judge of that Court and by submitting such application to the Clerk of that Court or to a Justice of the Appellate Division of the Supreme Court of this Department on reasonable notice to the respondent within thirty (30) days after service of a copy of this order.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 1, 2018

CLERK