

**JUNE 29, 2017**

Order, Supreme Court, New York County (Michael L. Katz, J.), entered February 17, 2016, which, to the extent appealed from as limited by the briefs, granted defendants Ayaz Awan, New York Best Development, Inc. and Malik Ali's (defendants) motion for summary judgment dismissing the first, second, third, and sixth causes of action as against defendant Ali, unanimously reversed, on the law, without costs, and the motion denied.

Plaintiffs purchased a three-family building with the intention of gutting it and renovating it. They retained defendant New York Best Development, Inc. (NYB) as the general contractor for the project. Defendant Ayaz Awan is the owner and president of NYB. His brother, defendant Malik Ali, is, according to Awan, an employee of NYB. According to plaintiffs, Ali's role with NYB, at least as far as concerned their project, was far greater than a mere employee, and they characterize him as a de facto principal.

Plaintiffs filed a complaint alleging that Ali is liable, along with NYB and Awan, for certain misrepresentations made in connection with the project. For example, they claim that Awan and Ali falsely represented that all plumbing and electrical work would be performed to code by licensed professionals; that NYB was staffed with highly qualified, experienced employees; that NYB was highly regarded and had a reputation for excellence in the construction and redevelopment of residential brownstone buildings; and that Awan and Ali would both supervise and manage the entire project and ensure that the work would meet or exceed industry standards. Plaintiffs further allege that defendants promised to begin the work immediately upon the closing of the purchase of the building, and complete it in an expeditious

fashion, but did not intend to, and indeed did not, fulfill that promise. As for the work itself, plaintiffs allege that it resulted in numerous Department of Buildings (DOB) violations, and had defects that seriously affected building-wide systems.

Plaintiffs asserted, *inter alia*, causes of action denominated fraud and deceit, fraud and conspiracy to commit fraud, deceit, and negligence. Defendants moved for summary judgment dismissing all of the claims and cross claims as against Ali, arguing that the fraud-based causes of action failed on the merits and that, in any event, Ali, as a mere employee of NYB, bore no liability. They relied primarily on Ali's deposition, at which Ali stated that his title with NYB was "General Manager" and that his duties were essentially coordinating and corresponding with clients and performing "day-to-day activities." This included providing office support to Awan, the project manager, typing up and sending out change orders, and sometimes coordinating with subcontractors. He testified that he may have purchased materials for NYB projects out of his pocket. Ali denied having any construction duties or experience, and insisted that he did not work on any of the projects physically and was not at the work site all the time. He typically only went to the work sites for client meetings and progress update

meetings, and when the work was being inspected by a representative of the lender. Awan was responsible for project supervision. Ali explained that he was the person who typically prepared the bank draw requests, and estimated that he spent about 80% of his working time in the office.

Ali stated that when he was first hired by NYB, the company had three employees, including himself. He received a base salary that fluctuated depending on the project he was working on, but he could not state whether he was paid weekly, bi-weekly or monthly. Ali could not recall whether his salary was based on a percentage of the income generated by a given project; could not recall if he had any input regarding the amount of his compensation; and could not state his base salary. He could not recall whether he had insurance benefits while he worked for NYB, and could not confirm whether any tax was withheld from his compensation or whether he ever received a 1099 form, but he did state that he received a W-2. Ali insisted that he did not have an ownership interest in NYB and never received a K-1 form.

Ali testified that he met with plaintiffs about three or four times before they signed the agreement, including at the building, but had no recollection of what took place at these meetings. He was also present when they signed the agreement,

but he did not recall participating in any conversations with plaintiffs in which any assurances were given concerning the work. He did state, however, that licensed plumbers and electricians worked on the project and that he was never made aware of complaints by plaintiffs about the quality of the work, although NYB did repair some "minor details" at their request.

In opposition, plaintiffs provided an affidavit by plaintiff Maheras. Maheras recounted that Ali was at the work site on a regular basis, with day laborers whom he represented to plaintiffs as subcontractors in an effort to make them appear to be more skilled than they were. Maheras stated that Ali demanded additional monies for work that was never done, and used the money to order parts and supplies that were used on other NYB projects. Further, Ali was, according to Maheras's affidavit, in constant contact with plaintiffs about the progress of the work, and dealt directly with plaintiffs' lender. In addition, once the construction work began, plaintiffs claimed, defendants began submitting change orders for additional money, which conveniently came very close to the amount held in a contingency fund plaintiffs were required by their construction lender to establish. In fact, plaintiffs asserted, the lender refused to release the money in that fund, and froze additional drawdowns,

until it could be satisfied that defendants would be able to complete the project.

The court granted defendants' motion. It stated that the various allegations against Ali did not constitute fraud, and that Ali was just "doing a job at the company."

As proponents of a motion for summary judgment, defendants had the burden of establishing their entitlement to judgment as a matter of law (see *Crockett v New York City Hous. Auth.*, 189 AD2d 591 [1st Dept 1993]). Further, the facts were to be viewed in a light most favorable to plaintiffs, with all reasonable inferences to be drawn in their favor (see *Asabor v Archdiocese of N.Y.*, 102 AD3d 524, 527 [1st Dept 2013]). In light of those precepts, the court erred in granting summary judgment to defendants.

Plaintiffs' first, second and third causes of action rely on numerous detailed allegations concerning defendants' (including Ali's) representations about NYB's ability to complete the project in a workmanlike and timely manner, including, for example, the promise that all of the various trade contractors employed on the project would be properly licensed. Defendants had the initial burden of establishing that the representations were not false by demonstrating that they had the capacity to

perform in the manner plaintiffs claim they promised. However, they failed to do so. It was error for the court to shift the burden to plaintiffs, for purposes of the motion, to establish the falsity of the representations, including, for example, that the contractors were *not* licensed.

In any event, plaintiffs submitted sufficient evidence to create issues of fact. For example, their own sworn testimony, and reports submitted by their experts, established that defendants failed to retain licensed contractors, and that this and other departures from what had been promised to plaintiffs led to numerous hardships, including building code violations, construction delays, and construction defects. Plaintiffs also submitted proof that defendants, including Ali, conspired to discourage DOB workers from subjecting defendants' work to a thorough inspection, fabricated unnecessary work so as to take advantage of the availability of the construction lender's contingency fund, and otherwise engaged in a scheme by which they purchased materials with plaintiffs' funds, ostensibly for plaintiffs' projects, but used them at other projects being built by NYB and its affiliates. While the second cause of action is denominated "Fraud and Conspiracy to Commit Fraud," it should be upheld, notwithstanding that, as Ali argues, New York does not

recognize a cause of action for conspiracy to commit fraud (see *Hoeffner v Orrick, Herrington & Sutcliffe LLP*, 85 AD3d 457 [1st Dept 2011])). That is because the claim, in alleging the underlying fraud, merely states that defendants conspired to perpetuate the fraud (*id.*).

We reject Ali's argument that, even if defendants committed the fraud alleged by plaintiffs, he cannot be liable because he was not a principal of NYB. Ali simply failed to establish that fact as a matter of law. His own deposition testimony was vague in terms of how he was paid, and, while it made clear that he received a W-2, he could not definitively state whether or not taxes were withheld from his pay, so his testimony could be read to suggest that he was paid in the manner of a person with an ownership stake and not simply as a salaried employee.

We further find that plaintiffs' sixth cause of action, for negligence, should survive summary judgment. There is considerable evidence that the work performed on the building was done in a dramatically shoddy fashion, a point that Ali failed to address. Further, plaintiffs submitted more than enough proof that Ali participated in the commission of this tort to raise an issue of fact as to his personal liability (see *Fletcher v*



*Dakota, Inc.*, 99 AD3d 43, 49 [1st Dept 2012] ["a corporate officer who participates in the commission of a tort may be held individually liable,. . .regardless of whether the corporate veil is pierced"] [internal quotation marks omitted]).

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

ENTERED: JUNE 29, 2017

  
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Friedman, J.P., Richter, Mazzarelli, Gische, JJ.

3705-

Index 650591/11

3706-

3707       Norex Petroleum Limited,  
            Plaintiff-Appellant,

-against-

Leonard Blavatnik, et al.,  
Defendants-Respondents,

Simon Kukes, et al.,  
Defendants.

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Moskowitz & Book, LLP, New York (Derek T. Ho of counsel), for appellant.

Patterson Belknap Webb & Tyler LLP, New York (Henry J. Ricardo of counsel), for Leonard Blavatnik, Victor Vekselberg, Access Industries, Inc., and Renova, Inc., respondents.

Sullivan & Cromwell LLP, New York (Daryl A. Libow of counsel), for BP PLC, respondent.

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Judgment, Supreme Court, New York County (Eileen Bransten, J.), entered September 28, 2015, dismissing the amended complaint with prejudice, unanimously affirmed. Appeal from orders, same court and Justice, entered August 28, 2015, which, insofar appealed from as limited by the briefs, granted the motions of defendants Leonard Blavatnik, Victor Vekselberg, Access Industries, Inc., Renova, Inc., and BP PLC to dismiss the first amended complaint, unanimously dismissed, as subsumed in the

appeal from the judgment.

The court properly gave preclusive effect to a Russian decision (the Know-How case), except as to claims postdating that case (e.g., plaintiff's claim that defendants diverted the profits of nonparty ZAO Yugraneft). Plaintiff's argument that the DHL documents purporting to show service in the Russian case were inadmissible is improperly raised for the first time on appeal (see *DiLeo v Blumberg*, 250 AD2d 364, 366 [1st Dept 1998]). Its "evidence" that the DHL envelopes merely contained blank sheets of paper is its unverified complaint in a federal action, not an affidavit from the Norex employee who received the packages. Its expert's affidavit did not say that Russian law required former defendant OAO Tyumen Oil Company to deliver the Know-How complaint; in addition, defendants submitted a reply affidavit from their expert, saying that a claimant's failure to serve the statement of claim is not a breach of due process.

Plaintiff did not meet its "high burden" (*Matter of Gotlib v Ratsutsky*, 83 NY2d 696, 700 [1994]) of showing "that the particular . . . decree . . . was the product of individualized fraud" (*id.* at 699-700).

Even though the Know-How judgment is entitled to comity, it is not res judicata as to subsequent events (see *O'Brien v City*

*of Syracuse*, 54 NY2d 353, 358 [1981]; *Indosuez Intl. Fin. v National Reserve Bank*, 304 AD2d 429, 429-430 [1st Dept 2003]). However, the claims postdating the Know-How judgment were properly dismissed based on forum non conveniens. "The application of the doctrine of forum non conveniens is a matter of discretion to be exercised by the trial court (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478 [1984] [italics omitted], *cert denied* 469 US 1108 [1985]). Contrary to plaintiff's argument, "the availability of another suitable forum" is not "a prerequisite for applying the *conveniens* doctrine" (*id.* at 481; *see also id.* at 478-479, 483-484).

Considering all the relevant factors, the motion court providently exercised its discretion in applying the doctrine of forum non conveniens. What is left of the instant New York state complaint after the Know-How case is the claim that plaintiff (a Cypriot corporation with an office in Canada) should have received dividends from Yugraneft (a Russian company that owns an oil field in Siberia). The key events underlying the claim took place in Russia, where the bulk of the witnesses and documents are located. That the individual defendants may have wired funds from New York does not require a contrary result (*see e.g. Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d

129, 137 [2014]; *Bluewaters Communications Holdings, LLC v Ecclestone*, 122 AD3d 426, 428 [1st Dept 2014])). “[O]ur courts should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York” (*Silver v Great Am. Ins. Co.*, 29 NY2d 356, 361 [1972])).

In light of the foregoing, we need not reach plaintiff’s argument that the complaint states causes of action against BP.

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

ENTERED: JUNE 29, 2017

  
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4112-

4112A            In re State of New York,  
                        Petitioner-Respondent,

Index 251370/13

-against-

Howard H.,  
Respondent-Appellant.

Marvin Bernstein, Mental Hygiene Legal Service, New York (Diane Goldstein Temkin of counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York (Philip V. Tisne of counsel), for respondent.

Order, Supreme Court, Bronx County (Michael A. Gross, J.), entered July 11, 2016, which, to the extent appealed from, memorialized the court's finding, after a nonjury trial, that respondent suffers from a mental abnormality within the meaning Mental Hygiene Law § 10.03[i], unanimously reversed, on the law, without costs, and the article 10 petition dismissed. Appeal from order, same court and Justice, entered May 22, 2015, which denied respondent's motion to preclude the State's expert from testifying at trial about unspecified paraphilic disorder (USPD), unanimously dismissed, without costs, as academic.

The State seeks civil commitment of respondent under Mental Hygiene Law article 10 based on a diagnosis of USPD, antisocial

personality disorder, psychopathy, and multiple substance-use disorders (in remission). To qualify as a "mental abnormality" under article 10, respondent's disorders must affect his "emotional, cognitive, or volitional capacity . . . in a manner that predisposes him . . . to the commission of conduct constituting a sex offense and that results in [his] having serious difficulty in controlling such conduct" (Mental Hygiene Law § 10.03[i]). "Thus, it must be shown that the offender's disorder 'results in both a predisposition to commit sex offenses and a serious difficulty controlling the behavior'" (*Matter of State of New York v Floyd Y.*, 135 AD3d 70, 72 [1st Dept 2015], *lv granted* 27 NY3d 902 [2016], quoting *Matter of State of New York v John S.*, 23 NY3d 326, 348 [2014]).

The testimony of the State's experts fell short of the "detailed psychological portrait" necessary to establish, by clear and convincing evidence, that respondent's disorders result in his having serious difficulty controlling sexually-offending conduct (*Matter of State of New York v Donald DD.*, 24 NY3d 174, 188 [2014]). Although respondent's criminal history includes sexual misconduct, the evidence at trial showed that he spent 24 years in prison without any inappropriate sexual behavior, and successfully completed multiple sex offender treatment programs,

including one that he took voluntarily (see *Matter of State of New York v Frank P.*, 126 AD3d 150, 163 [1st Dept 2015] [finding no serious difficulty where the respondent did not engage in any inappropriate sexual behavior during his time in prison, and voluntarily attended anger management and sex offender treatment programs]). The State's experts' conclusory testimony that respondent showed only limited gains from the treatment programs is belied by his sex offender treatment records, which are replete with notes showing that he has good impulse control, takes full responsibility for his crimes, expresses remorse for the harm to his victims, and demonstrates honesty and empathy in disclosing his sex offending behavior.

This case stands in stark contrast to *Matter of State of New York v Floyd Y.* (135 AD3d at 70), where we upheld a jury's verdict that the respondent had serious difficulty controlling his sex offending behavior. Unlike the diagnoses here, *Floyd Y.* involved a diagnosis of pedophilia, which "by definition, involves an element of difficulty in control" (*id.* at 76). Moreover, the respondent in *Floyd Y.* failed to make satisfactory progress in sex offender treatment and did not have a viable relapse prevention plan. Here, in contrast, respondent successfully completed multiple sex treatment programs, and,



according to one of the State's experts, created an "impressive relapse prevention plan."

In light of our conclusion, we need not determine whether USPD is generally accepted as a valid diagnosis in the relevant psychiatric community.

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

ENTERED: JUNE 29, 2017

  
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Renwick, J.P., Richter, Gische, Kahn, JJ.

4174            California Capital Equity, LLC,            Index 652373/15  
                 Plaintiff-Appellant,

-against-

IJKG, LLC,  
                 Defendant-Respondent,

Vivek Garipalli,  
                 Defendant.

- - - - -

IJKG, LLC,  
                 Third-Party Plaintiff-Respondent,

-against-

Abraxis Bioscience, LLC,  
                 Third-Party Defendant-Appellant,

Patrick Soon-Shiong,  
                 Third-Party Defendant.

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Quinn Emanuel Urquhart & Sullivan, LLP, New York (Deborah K. Brown of counsel), for appellants.

K&L Gates LLP, New York (Anthony P. La Rocco of counsel), for respondent.

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Order, Supreme Court, New York County (Charles E. Ramos, J.), entered February 5, 2016, which, to the extent appealed from, denied plaintiff's motion to dismiss defendant IJKG, LLC's counterclaims for tortious interference with contract and unjust enrichment, and denied third-party defendant Abraxis Bioscience, LLC's motion to dismiss the third-party complaint as against it,

unanimously affirmed, with costs.

The doctrine of equitable recoupment, as codified in CPLR 203(d), applies to IJKG's counterclaim for tortious interference with its contractual right of first offer, which otherwise would be barred under the applicable three-year statute of limitations (CPLR 214[4]). The doctrine permits a defendant to seek equitable recoupment in an otherwise untimely defense or counterclaim, if it arises from the transactions, occurrences, or series of transactions or occurrences alleged in the complaint (see *Bloomfield v Bloomfield*, 97 NY2d 188, 192-193 [2001]). The counterclaims or defenses must arise from or relate to the "same" transactions or series of transactions (*Haller v 360 Riverside Owners Corp.*, 273 AD2d 52 [1st Dept 2000]), and some courts have even required a "tight nexus" between the claim and counterclaim (see *Greenspan v Miron*, 130 AD3d 1181, 1183 [3d Dept 2015] [internal quotation marks omitted]).

It is not entirely clear whether the relevant provisions of the Amended Operating Agreement and the Note Agreement must be read together (see *Abed v John Thomas Fin., Inc.*, 107 AD3d 578, 579 [1st Dept 2013]), or whether IJKG was entitled to a right of first offer before third-party defendant Abraxis sold the Note to plaintiff.

At this, the pleading stage, however, we cannot conclude that the counterclaim does not arise out of the same series of transactions that forms the basis of, and is not sufficiently related to, the cause of action for breach of the tax distribution provisions of the Note Agreement (see *Bloomfield*, 97 NY2d at 192-193; *182 Franklin St. Holding Corp. v Franklin Pierrepont Assoc.*, 217 AD2d 508 [1st Dept 1995]). If proved, the counterclaim could be used defensively as a shield for recoupment purposes, but IJKG could not obtain any affirmative relief, such as disgorgement (*DeMille v DeMille*, 5 AD3d 428, 429 [2d Dept 2004]); *Balanoff v Doscher*, 140 AD3d 995, 996 [2d Dept 2016], citing *Carlson v Zimmerman*, 63 AD3d 772 [2d Dept 2009]). Therefore, IJKG can assert its otherwise untimely counterclaim solely to offset any damage award or deficiency judgment that plaintiff may obtain in its favor against IJKG (see *Balanoff v Doscher*, 140 AD3d at 996; *Delta Funding Corp. v Murdaugh*, 6 AD3d 571, 571-572 [2d Dept 2004]).

The six-year statute of limitations applies to IJKG's unjust enrichment counterclaim, since it is based on allegations that

Abraxis breached the Note Agreement (*Maya NY, LLC v Hagler*, 106 AD3d 583, 585 [1st Dept 2013]; CPLR 213[2]).

We have considered the parties' remaining arguments for affirmative relief and find them unavailing.

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

ENTERED: JUNE 29, 2017

  
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4381        The People of the State of New York,        Ind. 4989/14  
                 Respondent,

Maurice Brunner,  
Defendant-Appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Ellen Stanfield Friedman of counsel), for respondent.

The verdict was not against the weight of the evidence (*People v Danielson*, 9 NY3d 342, 348-349 [2007]). There is no basis for disturbing the jury's credibility determinations. There was ample evidence to support the physical injury element of second-degree robbery and burglary. The jury was entitled to

credit the victim's testimony that he sustained injuries to his tooth, left arm, lower back, and right knee when he fell while attempting to escape from defendant, that he sought medical treatment on the day of the incident, and that pain persisted for months after the incident (*see People v Guidice*, 83 NY2d 630, 636 [1994])).

The court did not deprive defendant of his right to represent himself, because defendant never made a clear and unequivocal request to proceed pro se (*see People v LaValle*, 3 NY3d 88, 106 [2004]; *People v Cornelius*, 132 AD3d 495 [1st Dept 2015], *lv denied* 26 NY3d 1087 [2015]; *People v Kelly*, 14 AD3d 390, 391 [1st Dept 2005], *lv denied* 4 NY3d 832 [2005]), and to the extent he could be viewed as requesting to represent himself, he abandoned the application (*see People v Hirschfeld*, 282 AD2d 337, 338-339 [1st Dept 2001], *lv denied* 96 NY2d 919 [2001], *cert denied* 534 US 1082 [2002])).

The court did not deprive defendant of his statutory right to plead guilty when it refused to allow him to do so while the People were in the process of obtaining a timely superseding indictment adding charges not contained in the original indictment. Under CPL 220.10(2), a defendant "may as a matter of right enter a plea of 'guilty' to the entire indictment."

However, under CPL 200.80, the People may file a superseding indictment "at any time before entry of a plea of guilty to an indictment or commencement of a trial," and a defendant may not exercise his or her right under CPL 220.10(2) in a way that would nullify the People's rights under CPL 200.80 (see *People v Barkin*, 49 NY2d 901 [1980]). The People met the statutory requirements for superseding an indictment, and, contrary to defendant's assertion, they were not also required to show good cause, reasonableness or the absence of prejudice.

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

ENTERED: JUNE 29, 2017

  
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4382           Hector M. Rosada,  
                  Plaintiff-Appellant,

Mendon Truck Rentals, Inc.,  
et al.,  
Defendants-Respondents.

Koster, Brady & Nagler, LLP, New York (Marc R. Wilner of counsel), for respondents.

Defendants established prima facie that they had no actual notice of the alleged defective conditions by submitting deposition testimony and an affidavit by their rental branch manager at the time of the accident, plaintiff's deposition testimony, and service records for the truck at issue. In opposition, plaintiff raised a triable issue of fact whether defendants had constructive notice of the alleged defects by submitting an affidavit by a licensed engineer and motor vehicle inspector who opined that the alleged defects developed over the course of months as a result of wear and tear and improper maintenance. Contrary to defendants' contention, plaintiff's expert's opinions are based on evidence in the record, namely, plaintiff's description of the alleged gap (see *Grace v New York City Tr. Auth.*, 123 AD3d 401, 402 [1st Dept 2014]) and the photographs that he testified accurately depicted the alleged slope at the time of his accident (see *Laccone v Roslyn Chalet*, 128 AD3d 1020, 1023 [2d Dept 2015]), and are not inadmissible merely because the expert examined the truck more than a year after the accident occurred (see *Oboler v City of New York*, 8 NY3d 888, 890 [2007], *affg* 31 AD3d 308 [1st Dept 2006]).

We reject defendants' contention that plaintiff's use of the liftgate despite his knowledge of its alleged defects was the

sole proximate cause of the accident. Defendants offered no evidence that the defects in the liftgate that they allegedly provided to plaintiff were ordinary and obvious hazards of his employment (see *Ercole v Academy Fence Co.*, 256 AD2d 305 [2d Dept 1998]).

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

ENTERED: JUNE 29, 2017

  
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Sweeny, J.P., Renwick, Andrias, Kapnick, Kahn, JJ.

4383           In re Martha V.,  
                  Petitioner-Respondent,

                  -against-

                  Tony R.,  
                  Respondent-Appellant.

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Neal D. Futerfas, White Plains, for appellant.

Law Offices of Susan Barrie, New York (Susan Barrie of counsel),  
for respondent.

Kenneth M. Tuccillo, Hastings on Hudson, attorney for the  
children.

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Order, Family Court, New York County (Gloria Sosa-Lintner,  
J.), entered on or about January 5, 2016, which granted the  
mother's petition to modify a custody order and awarded her sole  
legal and physical custody of the parties' children, subject to  
visitation with respondent father on alternate weekends,  
unanimously affirmed, without costs.

Contrary to the father's contention, the court properly  
determined that a full evidentiary hearing was not necessary  
because it possessed sufficient information to render an informed  
decision on the children's best interests and because the father  
made no offer of proof that would have affected the outcome (see  
*Matter of Tony F. v Stephanie D.*, 146 AD3d 691 [1st Dept 2017];

*Matter of Fayona C. v Christopher T.*, 103 AD3d 424 [1st Dept 2013]; compare *S.L. v. J.R.*, 27 NY3d 558, 564 [2016])). Both parties and the attorney appointed for the children, then ages 12 and 15, were provided ample opportunity to present their positions, and the court made the factual basis for its determination clear on the record.

Furthermore, the court's decision to modify custody based on a change of circumstances and in the best interests of the children, had a sound and substantial basis in the record. The children stated that they wanted to live with their mother for reasons that included verbal abuse by the father, the father's failure to provide them with food and clothing on a consistent basis, and an incident of domestic violence in their presence that led to the police being called (see *Eschbach v Eschbach*, 56 NY2d 167 [1982]; *Matter of Maria A.M. v Dextor N.*, 95 AD3d 578 [1st Dept 2012])).

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

ENTERED: JUNE 29, 2017

  
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Sweeny, J.P., Renwick, Andrias, Kahn, JJ.

4384 David Molner,  
Plaintiff-Respondent,

Index 301261/12

-against-

Naomi Molner,  
Defendant-Appellant.

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Dobrish Michaels Gross LLP, New York (David Elbaum of counsel),  
for appellant.

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Order, Supreme Court, New York County (Michael L. Katz, J.),  
entered August 17, 2016, which, to the extent appealed from as  
limited by the brief, denied defendant wife's motion for a  
judgment on the husband's spousal maintenance and child support  
arrears, and referred the matter to a special referee for a  
hearing on whether there had been a sufficient change of  
circumstances to warrant modification, unanimously affirmed,  
without costs.

The court's order was not dispositive on the relevant  
issues, but referred the matter for a hearing before a special  
referee. Thus, the husband was not required, as the wife  
suggests, to establish "extreme financial hardship" to warrant a  
hearing, but to raise a "genuine question of fact" that this  
might be the case (*Gordon v Gordon*, 82 AD3d 509 [1st Dept 2011];

Sonkin v Sonkin, 137 AD3d 635, 636 [1st Dept 2016])). Given the husband's explanation in the motions below about the massive and complex litigation surrounding his entities, the involuntary bankruptcy of his fund and the massive debts he faced, the court properly determined that there was at least a genuine issue of fact as to whether he was under extreme hardship and unable to sustain the hefty amounts owing under the parties' agreement going forward (*id.*).

We have considered the wife's remaining contentions, and find them unavailing.

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

ENTERED: JUNE 29, 2017

  
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Sweeny, J.P., Renwick, Andrias, Kapnick, Kahn, JJ.

4385	Kenneth Conrey, Plaintiff-Appellant,	Index 300814/15 301377/15 304759/15
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-against-

Anthony J. Tellone,  
Defendant-Respondent,

Carla D. Frazier,  
Defendant-Appellant.

- - - - -

Carla Frazier,  
Plaintiff,

-against-

Anthony J. Tellone,  
Defendant-Respondent,

Kenneth Conrey,  
Defendant-Appellant.

- - - - -

Joann Middleton,  
Plaintiff,

-against-

Anthony J. Tellone,  
Defendant-Respondent,

Carla D. Frazier, et al.,  
Defendants-Appellants.

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Russo & Tambasco, Melville (Yamile R. Al-Sullami of counsel), and Wingate, Russotti, Shapiro & Halperin, LLP, New York (William P. Hepner of counsel), for Kenneth Conrey, appellant.

Keane & Bernheimer, PLLC, Valhalla (Connor W. Fallon of counsel), for Carla D. Frazier, appellant.



Picciano & Scahill, P.C., Bethpage (Keri A. Wehrheim of counsel), for respondent.

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Order, Supreme Court, Bronx County (Kenneth L. Thompson, Jr., J.), entered on or about November 23, 2016, which denied plaintiff/defendant Kenneth Conrey's motion for summary judgment dismissal of the complaints and cross claims in actions 2 and 3 as against him, and denied his motion for summary judgment on the issue of liability as against defendant Antony J. Tellone in action 1, and denied defendant Carla D. Frazier's cross motion for summary judgment dismissal of the complaints and cross claims against her in actions 1 and 3, unanimously modified, on the law, to grant Conrey's motion to dismiss the complaints and cross claims against him in actions 2 and 3, to grant Conrey's motion to the extent of awarding him partial summary judgment on the issue of liability in action 1, and to grant Frazier's cross motion to dismiss the complaints and cross claims against her in actions 1 and 3, and otherwise affirmed, without costs. The Clerk is directed to enter judgment accordingly.

This is a consolidated action for personal injuries arising from a three-car collision that occurred on January 23, 2015. Defendant Anthony J. Tellone was operating his vehicle on the New York Thruway southbound when he collided with a vehicle being

operated by plaintiff/defendant Carla D. Frazier before striking a second vehicle being operated by plaintiff/defendant Kenneth Conrey. Plaintiff Joann Middleton was in the front passenger seat of in Conrey's vehicle when the accident occurred. It is undisputed that Conrey's and Frazier's vehicles never collided with each other.

The court had the authority under CPLR 2001 to simply disregard any issues with the filing of either Conrey's or Frazier's motions, because no party alleged or demonstrated that a substantial right had been prejudiced (see CPLR 2001; *Matter of United Servs. Auto. Assn. v Kungel*, 72 AD3d 517, 517-518 [1st Dept 2010]).

We conclude that to the extent Conrey and Frazier sought dismissal of the complaints as against them, their motions should have been granted, as dismissal was unopposed by plaintiffs Conrey, Frazier and Middleton, and it is undisputed that Conrey's and Frazier's vehicles never collided with each other during the accident.

For the same reasons, Conrey's and Frazier's motions to dismiss the cross claims they asserted against each other should also have been granted. Further, Tellone's cross claims against Conrey and Frazier should have been dismissed, because he failed

raise a triable issue as to how their actions caused or contributed to the accident.

We find that Conrey established his entitlement to partial summary judgment as against Tellone. Tellone's testimony that he observed damage to the rear of his vehicle and that the damage did not exist before the accident, does not raise a triable issue. It is uncontroverted that Conrey's vehicle did not strike Tellone's vehicle, and that, rather, it was Tellone's vehicle that rear-ended Conrey's (*Oluwatayo v Dulinayen*, 142 AD3d 113, 119 [1st Dept 2016]).

The only appeal noticed by Frazier concerns the denial of her motion for summary dismissal of the complaints as against her in actions 1 and 3. Moreover, she lacks standing to seek review of the denial of her cross motion for partial summary judgment in action 2, in which she appeared as plaintiff and was represented

by different counsel, who has not been properly substituted (see *Szuldiner v City of New York*, 18 AD2d 897 [1st Dept 1963]).

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

ENTERED: JUNE 29, 2017

  
CLERK

4386           The People of the State of New York,                 Ind. 4248/14  
                        Respondent,

-against-

Tristin Ellis,  
Defendant-Appellant.

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

Cyrus R. Vance, Jr., District Attorney, New York (Alexander Michaels 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 (Edward McLaughlin, J.), rendered March 17, 2015,

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.

ENTERED: JUNE 29, 2017

*Suzanne R.*

CLERK

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

4388           The People of the State of New York,                 Ind. 270N/14  
                Respondent,

Carlos Medina,  
Defendant-Appellant.

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

Defendant made a valid waiver of his right to appeal (see *People v Bryant*, 28 NY3d 1094 [2016]). The court did not conflate the right to appeal with the rights automatically forfeited by pleading guilty; instead, it explained to defendant that as part of his plea bargain, he was agreeing to waive his right to appeal. Furthermore, the oral colloquy was supplemented by a written waiver.

38

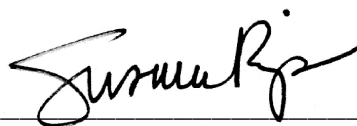
eavesdropping evidence. The warrant application made the type of particularized showing of necessity required by CPL 700.15(4).

The record fails to support defendant's claim that he requested a *Darden* hearing, and defendant forfeited review of any additional suppression claims left unresolved at the time he pleaded guilty.

Aside from the validity or applicability of defendant's appeal waiver, defendant failed to preserve his claim that the court improperly enhanced his sentence based on his alleged failure to satisfy the conditions of this plea, and we decline to review it in the interest of justice. As an alternative holding, we reject it on the merits. We also find that defendant was not deprived of his right to conflict-free counsel at sentencing, and we perceive no basis for reducing the sentence.

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

ENTERED: JUNE 29, 2017

A handwritten signature in black ink, appearing to read "Susan R. [unclear]", is written over a horizontal line.

CLERK

Sweeny, J.P., Renwick, Andrias, Kapnick, Kahn, JJ.

4389        The People of the State of New York,                  Ind. 2869/14  
                 Respondent,

-against-

Sekou Shutsha,  
Defendant-Appellant.

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

Sekou Shutsha, appellant pro se.

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

Appeal from judgment, Supreme Court, New York County (Ronald A. Zweibel, J. at suppression hearing; James M. Burke, J. at jury trial and sentencing), rendered June 10, 2015, convicting defendant of criminal possession of a weapon in the third degree, and sentencing him, as a second felony offender, to a term of 3½ to 7 years, held in abeyance, and the matter is remitted to Supreme Court for a new suppression hearing.

The existing, unexpanded record is sufficient to establish that defendant received ineffective assistance when his trial counsel failed to argue at the suppression hearing that there were no exigent circumstances justifying the warrantless search of defendant's bag incident to his arrest. There was no



reasonable strategic basis for defense counsel's failure to challenge the search of the bag on the ground of lack of exigency, and defendant has presented substantial arguments for suppression on that ground (see *People v Clermont*, 22 NY3d 931 [2013]).

However, we reject defendant's argument that, rather than ordering a new hearing, we should reverse and grant suppression. The issue was plainly unpreserved (see *People v Miranda*, 27 NY3d 931 [2016]), and, owing to the lack of focus on this issue at the hearing, the record is insufficiently developed with regard to the precise circumstances of the search of defendant's bag.

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

ENTERED: JUNE 29, 2017

  
CLERK

Sweeny, J.P., Renwick, Andrias, Kapnick, Kahn, JJ.

4390 Christine O'Sullivan, Index 154536/14  
Plaintiff-Appellant,

-against-

7-Eleven, Inc., et al.,  
Defendants-Respondents.

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Sim & Record, LLP, Bayside (Sang J. Sim of counsel), for  
appellant.

Sobel Pevzner, LLC, Huntington (Nicole Licata-McCord of counsel),  
for respondents.

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Order, Supreme Court, New York County (Donna M. Mills, J.),  
entered on or about May 19, 2016, which granted defendants'  
motion for summary judgment dismissing the complaint, unanimously  
affirmed, without costs.

Summary judgment was properly granted in this action where  
plaintiff was injured when she slipped and fell on an  
accumulation of slush in front of a counter in a 7-Eleven store,  
during an ongoing snowstorm. Defendants were not required to  
provide a constant, ongoing remedy for an alleged slippery  
condition caused by moisture tracked indoors during a storm (see  
*Richardson v S.I.K. Assoc., L.P.*, 102 AD3d 554 [1st Dept 2013]).  
Moreover, defendants demonstrated that they employed reasonable  
maintenance measures to prevent such a condition (see *Pomahac v*

*TrizecHahn 1065 Ave. of Ams., LLC*, 65 AD3d 462, 466 [1st Dept 2009]), by laying out a mat, placing an orange cone on the floor, and regularly mopping the store during the day, including within 15 minutes before plaintiff's accident. These actions were "reasonable measures to remedy a hazardous condition" (*Toner v National R.R. Passenger Corp.*, 71 AD3d 454, 455 [1st Dept 2010]).

The record also shows that defendants did not have constructive notice of the dangerous wet condition. The fact that it was snowing, with water and slush tracked in, does not constitute notice of a particular dangerous situation, warranting more than the laying of floor mats (see *Garcia v Delgado Travel Agency*, 4 AD3d 204 [1st Dept 2004]).

Furthermore, defendant 7-Eleven, Inc. is not liable by virtue of its franchise agreement with defendant Sakong, pursuant to which it relinquished control of the day-to-day operations of

the store, including maintenance, to Sakong (*see Schoenwandt v Jamfro Corp.*, 261 AD2d 117 [1st Dept 1999]).

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

ENTERED: JUNE 29, 2017

  
CLERK



support defendant's claim that "in re[s]ponse to a protest by a party," the issue was "expressly decided" (CPL 470.05[2]; see *People v Turriago*, 90 NY2d 77, 83-84 [1997]; *People v Colon*, 46 AD3d 260, 263-264 [1st Dept 2007]). We decline to review this unpreserved claim in the interest of justice. As an alternative holding, we reject it on the merits. Although the principal police witness could not recall precisely when, how, and by whom the cash was recovered from defendant, the record makes clear that a search was constitutionally authorized at each possible juncture. Thus, the People adequately went forward to show that whether the cash was obtained as part of the initial seizure of the envelopes as the result of a frisk on the scene, or pursuant to a search incident to arrest at the precinct, the search was justified.

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

ENTERED: JUNE 29, 2017

  
CLERK

Sweeny, J.P., Renwick, Andrias, Kapnick, Kahn, JJ.

4392- Index 654422/15

4393 H. & L. Electric Inc.,  
Plaintiff-Respondent-Appellant,

-against-

Midtown Equities LLC, et al.,  
Defendants,

55 Water LLC, et al.,  
Defendants-Appellants-Respondents.

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Sive, Paget & Riesel, P.C., New York (John-Patrick Curran of  
counsel), for 55 Water LLC, appellant-respondent.

Edward B. Safran, New York, for Milagros and Associates LLC,  
H & H Builders, Inc. and Steven Wilkowski, appellants-  
respondents.

Aury Bennett Stollow, P.C., New York (Aury B. Stollow of  
counsel), for respondent-appellant.

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Order, Supreme Court, New York County (Eileen Bransten, J.),  
entered September 29, 2016, which, insofar as appealed from as  
limited by the briefs, granted the motion of defendants Midtown  
Equities LLC, HK Organization LLC, Rockwood Capital, LLC  
(collectively the Midtown defendants) and 55 Water LLC (55 Water)  
to dismiss the fraud claim as based on a nonactionable statement  
of future intent, but denied dismissal of the unjust enrichment,  
quantum meruit, and promissory estoppel claims as to 55 Water;  
and order, same court, Justice, and date of entry, which, insofar

as appealed from, granted the motion of defendants Milagros and Associates LLC, H&H Builders, Inc., and Steven Wilkowski (the Wilkowski defendants) to dismiss the fraud claim, denied their motion to dismiss the unjust enrichment, quantum meruit, and promissory estoppel claims, and denied plaintiff's cross motion for leave to amend the complaint to add Harco Construction, LLC as a defendant to the fraud claim, unanimously affirmed, without costs.

Plaintiff is an electrical company that bid for work on the restoration and redevelopment of several historic warehouses in Brooklyn. 55 Water is the developer of the project. The Midtown defendants are also alleged to be project developers. The Wilkowski defendants are affiliated with the firm retained by 55 Water as construction manager.

Plaintiff alleges that it performed substantial work to develop a cost-efficient electrical design for the project based on the expectation that it would receive the contract to perform the work, but that the contract was ultimately awarded to another firm. Plaintiff now seeks to recover for the value of the services performed or, alternatively, the amount of the cost-savings achieved by defendants due to incorporation of its designs.



The motion court correctly dismissed the fraud claim, as plaintiff failed to allege facts supporting an inference that defendants had no intention of fulfilling their promise to confer a future benefit at the time it was made (see *627 Acquisition Co., LLC v 627 Greenwich, LLC*, 85 AD3d 645, 647 [1st Dept 2011]; *Braddock v Braddock*, 60 AD3d 84, 89 [1st Dept 2009]).

The motion court also correctly denied the motion to dismiss the quasi-contractual claims. The reasonableness of plaintiff's expectation of compensation for services rendered raises an issue that is not capable of being resolved at this stage (see *Farina v Bastianich*, 116 AD3d 546, 548 [1st Dept 2014]). Contrary to defendants' argument, plaintiff is not seeking expenses based on failed negotiations, which would not provide for recovery in quasi-contract. Rather, and as alleged in the complaint, plaintiff was promised that it would receive compensation, in the form of being awarded the contract for the project, for the consulting services rendered over the course of a year. Additionally, plaintiff alleges that it previously worked with defendants on two separate projects based on the "understanding that Plaintiff would be compensated from the fees earned on the contract." Indeed, plaintiff further alleges that it was in fact awarded the contract in both those instances.

Defendants' argument that plaintiff, which is not a licenced engineering firm, is barred from recovering in quasi-contract because electrical design work requires an engineering license pursuant to Education Law § 7202, is unavailing. Although it is generally true that, "[w]here the company performing the work is not licensed, it is precluded from recovering for the work performed either pursuant to contract or in quantum meruit" (*Charlebois v J.M. Weller Assoc., Inc.*, 72 NY2d 587, 593 [1988]), this is not an absolute rule. Recognizing that "forfeitures by operation of law are strongly disfavored," this Court has embraced a "commonsense approach," making fact-specific determinations as to whether the public policy underlying the Education Law - "to protect the public health and safety" - is furthered by complete avoidance of the contract at issue (*id.* at 592-95). Additionally, parties' "efforts to use that concept as a sword for personal gain rather than a shield for the public good should not be countenanced in the name of the Education Law public policy" (*id.* at 595). Here, although plaintiff is not a licensed engineering firm, plaintiff has

alleged that a professional engineer was sufficiently involved to satisfy the public policy underlying the Education Law and render recovery permissible.

We have considered the remaining arguments and find them unavailing.

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

ENTERED: JUNE 29, 2017

  
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4394 In re French-American Aid for File 2312/15  
Children, Inc., et al.,  
Petitioners-Respondents,  
  
Joerg Klebe,  
Objectant-Appellant,  
  
Eric T. Schneiderman, Attorney General,  
Respondent-Respondent.

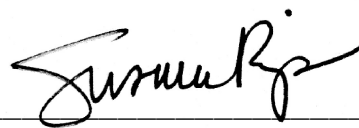
Eric T. Schneiderman, Attorney General, New York (Seth M. Rokosky of counsel), for Attorney General, respondent.

Objectant's contention that petitioner did not properly revoke the trust because it used Estates, Powers and Trusts Law (EPTL) § 7-1.9(a) instead of § 8-1.1.(c)(2) is unavailing. Before 1985, cases held that a charitable trust could use the predecessor of EPTL 7-1.9(a) (see e.g. *Hanover Bank v United Brethren's Church on Staten Is.*, 134 NYS2d 356, 361-362 [Sup Ct, NY County 1954])). In 1985, EPTL 7-1.9 was amended to add

subsection c, which provided that "[a] trust . . . wholly benefitting one or more charitable beneficiaries may be terminated as provided for by" EPTL 8-1.1(c)(2) (emphasis added). Nothing in either the text of EPTL 7-1.9(c) or the legislative history thereof indicates that charitable trusts were restricted to EPTL 8-1.1(c)(2) after 1985 (see generally *Allstate Ins. Co. v Belt Parkway Imaging, P.C.*, 78 AD3d 592 [1st Dept 2010]). Moreover, post-amendment cases indicate that charitable trusts may still use EPTL 7-1.9(a) (see e.g. *Board of Trustees of Museum of Am. Indian, Heye Found. v Board of Trustees of Huntington Free Lib. & Reading Room*, 197 AD2d 64, 85-86 [1st Dept 1994], *lv denied* 86 NY2d 702 [1995]; *Matter of Forester*, NYLJ, Dec. 3, 2001, at 17, col 3 [Sur Ct, NY County 2001]).

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

ENTERED: JUNE 29, 2017

A handwritten signature in black ink, appearing to read "Susan R. Jones", is written over a horizontal line.

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4395-

4396           The People of the State of New York,  
Respondent,

Eldrick Cole,  
Defendant-Appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Jeffrey A. Wojcik of counsel), for respondent.

We conclude that defendant received effective assistance under the state and federal standards (see *People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]). We agree with defendant that his first attorney should

have made a timely motion to suppress the stolen credit cards recovered from defendant's wallet, based on the facts known to the attorney at the time he made his omnibus motion. However, the record, as expanded by way of the CPL 440.10 motion, does not establish any reasonable likelihood that defendant ultimately would have prevailed on the suppression theory he claims should have been advanced by counsel (see e.g. *People v Evans*, 16 NY3d 571, 576 [2011]). An attorney cannot be deemed ineffective for failing to "make a motion or argument that has little or no chance of success" (*People v Stultz*, 2 NY3d 277, 287 [2004]).

While defendant asserts that the cards were removed from the wallet as the result of the search of a closed container without the requisite exigent circumstances (see *People v Jimenez*, 22 NY3d 717 [2014]), the facts set forth in support of defendant's own motion to vacate the judgment actually describe what appears to have been a lawful stationhouse inspection of an arrestee's personal effects (see *People v Perel*, 34 NY2d 462, 465-468 [1974]; see also *Illinois v Lafayette*, 462 US 640 [1983]). Although such a search may be described as an "inventory" search, it is sometimes also described as "incident" to an arrest (see e.g. *People v Greenwald*, 90 AD2d 668, 668 [4th Dept 1982] ["The subsequent search of effects found on the person is then but a

lesser-related intrusion incident to the arrest already effected."]). Thus, we do not find that the People waived this issue by way of any imprecise language in their affirmation in opposition to the 440 motion describing the circumstances of, and justification for, the examination of the contents of defendant's wallet. In any event, had defendant's original trial counsel made a suppression motion, the People would have been free to argue any theory supported by the evidence, and the record before us provides no reason to believe that the motion would have succeeded.

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

ENTERED: JUNE 29, 2017

  
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4397           The People of the State of New York,                 Ind. 3557/14  
                Respondent,

Paris Soto,  
Defendant-Appellant.

Judgment, Supreme Court, New York County (Bonnie Wittner, J.), rendered April 9, 2015, unanimously affirmed.

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: JUNE 29, 2017

  
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CLERK

Sweeny, J.P., Renwick, Andrias, Kapnick, Kahn, JJ.

4399N      Andrew Suckling, etc.,      Index 650050/16  
                Plaintiff-Appellant,

-against-

Christine Iu, et al.,  
                Defendants-Respondents.

- - - - -

Christine Iu,  
                Third-Party Plaintiff-Respondent,

-against-

35 Spring Street, LLC, et al.,  
                Third-Party Defendants-Appellants.

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Blank Rome, LLP, New York (Leslie D. Corwin of counsel), for  
appellants.

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Order, Supreme Court, New York County (Shlomo Hagler, J.),  
entered July 18, 2016, which, to the extent appealed from,  
granted defendants' cross motion to compel arbitration of the  
eighth through tenth, thirteenth through fifteenth, and  
eighteenth causes of action in the amended complaint pursuant to  
the operating agreements governing defendants 52 Reeve LLC and 56  
Edison LLC, unanimously affirmed, without costs.

The dispute resolution clause (section 14.11) of the  
operating agreements for defendants 56 Edison LLC and 52 Reeve  
LLC provides that "the Members *shall* submit [certain] dispute[s]

to an arbitration procedure" (subd [b]; emphasis added). This unambiguous language evinces the parties' "unequivocal intent to arbitrate the relevant dispute" (see *Edelman v Poster*, 72 AD3d 182, 184 [1st Dept 2010]). The arbitration clause is no mere agreement to agree; it is "clear, explicit and unequivocal," and does not depend upon "implication or subtlety" (see *Matter of Waldron [Goddess]*, 61 NY2d 181, 183-184 [1984]). Nor does the lack of a designated arbitration procedure render the clause unenforceable, because CPLR 7504 provides an objective method for supplying that missing term (see *Edelman*, 72 AD3d at 185-186; see also *Matter of 166 Mamaroneck Ave. Corp. v 151 E. Post Rd. Corp.*, 78 NY2d 88, 93 [1991]).

Contrary to plaintiff's contention, by requiring the parties to engage in an arbitration process, the motion court did not render section 14.11(c) meaningless. Defendant's failure to negotiate with plaintiff after receiving notice of the dispute

did not constitute an intentional waiver of her right to enforce section 14.11(b).

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

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

ENTERED: JUNE 29, 2017

  
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CLERK

Sweeny, J.P., Renwick, Andrias, Kahn, JJ.

4400- Index 653017/13

4401N In re Citigroup Global Markets, Inc.,  
et al.,  
Petitioners-Respondents,

-against-

John Leopoldo Fiorilla, etc.,  
Respondent-Appellant.

---

Law Firm of Alexander D. Tripp, PC, New York (Alexander D. Tripp  
of counsel), for appellant.

Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York (Audra J.  
Soloway of counsel), for respondents.

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Orders, Supreme Court, New York County (Charles E. Ramos,  
J.), entered November 14, 2016, November 25, 2016 and January 18,  
2017, which denied respondent's motion to vacate a judgment,  
inter alia, vacating an arbitration award, and permanently  
enjoined respondent from enforcing the vacated award or opposing  
petitioners' efforts to appeal or vacate an order of a French  
court that recognized the vacated award, unanimously affirmed,  
with costs.

The judgment that respondent seeks to vacate, inter alia,  
vacated an arbitral award and was affirmed by this Court on the  
ground that the arbitrators manifestly disregarded the law in  
failing to enforce a prior settlement agreement between the

parties (127 \_\_ AD3d 491 [1st Dept 2015], *lv denied* 26 NY3d 908 [2015])).

The foregoing notwithstanding, and although this action has no connection to France, respondent commenced an ex parte proceeding in that country to enforce the vacated award, and, on or about March 30, 2016, without notification to petitioners, the French court recognized the vacated award under French law and issued writs for the seizure of property belonging to petitioner Citigroup Global Markets, Inc.'s overseas affiliates and counterparties. It is undisputed that respondent did not inform the French court that the award had been vacated by a New York court.

Respondent then moved Supreme Court to vacate the judgment. Petitioners moved to enjoin respondent from enforcing the vacated award and to direct him to release any seizure or hold on Citigroup's assets purporting to be premised on the award. The court issued a temporary restraining order, and this Court denied respondent's application to vacate it.

Respondent's main arguments in this appeal in support of vacating the judgment are the same as he made in the prior appeal. However, our resolution of the issues in the prior appeal is law of the case, and respondent may not relitigate

those issues. To the extent he raises any new arguments in this appeal, it does not avail him, because he had a full and fair opportunity to raise them in the prior appeal, and he has made no showing of subsequent evidence or change of law (see *Delgado v City of New York*, 144 AD3d 46, 51 [1st Dept 2016]).

The court properly denied the motion to vacate the judgment pursuant to CPLR 5015(a) as not brought within a reasonable time (see *DLJ Mtge. Capital, Inc. v Kontogiannis*, 128 AD3d 606 [1st Dept 2015], *lv dismissed in part, denied in part* 26 NY3d 1135 [2016]). Moreover, “[a] motion to vacate an order pursuant to CPLR 5015 cannot serve as a substitute for an appeal, or remedy an error of law that could have been addressed on a prior appeal” (*Matter of Angela P. v Floyd S.*, 103 AD3d 439, 440 [1st Dept 2013]). Even viewed as a motion to reargue, the motion was untimely (CPLR 2221[d][3]).

The court properly enjoined respondent from enforcing the vacated award, including in France, in the interests of protecting the New York judgment on the merits (see *Indosuez Intl. Fin. v National Reserve Bank*, 304 AD2d 429, 430-431 [1st Dept 2003]). The record demonstrates that respondent commenced the French proceeding in bad faith (see *Sebastian Holdings, Inc. v Deutsche Bank AG.*, 78 AD3d 446, 446-47 [1st Dept 2010]). The



court properly declined to apply the doctrine of comity to the French court's recognition of the vacated award (see *Morgenthau v Avion Resources Ltd.*, 11 NY3d 383, 389-390 [2008]).

We have considered respondent's remaining contentions and find them unavailing.

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

ENTERED: JUNE 29, 2017

  
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CLERK

SUPREME COURT, APPELLATE DIVISION  
FIRST DEPARTMENT

JUNE 29, 2017

THE COURT ANNOUNCES THE FOLLOWING MOTION ORDERS:

Present - Hon. Rolando T. Acosta,	Presiding Justice,
Peter Tom	
David Friedman	
John W. Sweeny, Jr.	
Dianne T. Renwick,	Justices.

-----X  
Ambac Assurance UK Ltd.,  
Plaintiff-Respondent,

-against-

J.P. Morgan Investment Management, Inc.,  
Defendant-Appellant.

M-2807X  
Index No. 650259/09

-----X

Appeals having been taken from an order of the Supreme Court, New York County, entered on or about February 21, 2017,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" May 22, 2017, and due deliberation having been had thereon,

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

ENTERED: June 29, 2017

  
CLERK

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

-----X

In the Matter of the Guardianship of  
the Person and Custody of

Michaellica W.,

A Child Under 18 Years of Age  
Pursuant to § 384-b of the Social  
Services Law of the State of New York

**CONFIDENTIAL**

M-2404

Docket No. B-22661/08

- - - - -

New York Foundling Hospital,  
Petitioner-Respondent,

Michael W.,  
Respondent-Appellant.

- - - - -

Andrew J. Baer, Esq.,  
Attorney for the Child.

-----X

Patricial L. Moreno, Esq., court attorney for the subject  
child, having moved on the child's behalf for leave to respond,  
as a poor person, to the appeal from the order of the Family  
Court, Bronx County, entered on or about February 24, 2017, 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 §1120 of the Family Court Act, Andrew  
J. Baer, Esq., 299 Broadway, Suite #1415, New York, NY 10007,  
Telephone No. 212-233-0318, 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 respondent-appellant and 8 copies thereof are filed with this Court.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

In the Matter of

Heily A.,

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

- - - - -

Administration for Children's Services,  
Petitioner-Respondent,

**CONFIDENTIAL**

M-2392

Docket Nos. NN-41025/15

Flor F.,  
Respondent-Appellant,

Gustavo A.,  
Respondent-Respondent.

-----X

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, New York County, entered on or about February 21, 2017, and for assignment of counsel, a free copy of the transcript(s), 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, Andrew J. Baer, Esq., 299 Broadway, Suite #1415, New York, NY 10601, Telephone No. (212) 233-0318, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City

of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: June 29, 2017

  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

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

-----X

In the Matter of

Romeo J.,

A Person Alleged to Be a Juvenile  
Delinquent,

Respondent-Appellant.

-----X

**CONFIDENTIAL**

**M-2701**

Docket Nos. D-4078/17  
D-3933/17  
D-4270/17

Respondent-appellant having moved for leave to prosecute the appeals taken from six orders of the Family Court, Bronx County, three of which were entered on or about February 17, 2017, and three of which were entered on or about April 19, 2017, as a poor person, for assignment of counsel, a free copy of the transcript(s), 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 Section 35 of the Judiciary Law and Section 1120 of the Family Court Act, Larry S. Bachner, Esq., C/O Bachner & Associates, P.C., 39 Broadway, Suite #1610. New York, NY 10006, Telephone No. (917) 674-9516, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the State of New York

from funds available therefor;<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) directing appellant to perfect this appeal in compliance with Rule 600.11 of the Rules of this Court, **within 60 days of receipt of the transcripts. Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: June 29, 2017

  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent shall include assigned counsel's copy of the transcript.



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

-----X  
In the Matter of

Evanna S.,  
and Bella S.,

**CONFIDENTIAL**  
**M-2709**

Docket Nos. NN-33402-03/15

Children Under 18 Years of Age  
Alleged to be Neglected Under  
Article 10 of the Family Court Act.

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

Santiago D.,  
Respondent-Appellant.

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

-----X  
  
Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, New York County, entered on or about April 5, 2017, 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, Helene Bernstein, Esq., 44 Court  
Street, Suite #905, Brooklyn, NY 11201, Telephone No. (718)  
875-8705, as counsel for purposes of prosecuting the appeal;  
(2) directing the Clerk of said Family Court to have transcribed

the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: June 29, 2017

  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2860

Ind. No. 1975/15

Tarrek Arnold,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about March 29, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Presiding Justice,  
Justices.

Defendant-Appellant.

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 6, 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.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2863

Ind. No. 503/15

Timothy Daugherty,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 28, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK



Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
   Peter Tom  
   David Friedman  
   John W. Sweeny, Jr.  
   Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2868

Ind. No. 759/16

John Rodriguez Gutierrez,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 7, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2769

Ind. No. 6067/10

Laurence K. Harvey,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about May 5, 2017, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2791

Ind. No. 3583/15

Anthony Morris,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about March 1, 2017, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2840

Ind. No. 4178/15

Emil Goding,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about January 11, 2017, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
\_\_\_\_\_  
CLERK



Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
   Peter Tom  
   David Friedman  
   John W. Sweeny, Jr.  
   Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2845

Ind. No. 1040/15

Jarel Moore,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about October 19, 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.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK

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

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

Respondent,

-against-

M-2846  
Ind. No. 2869/15

Jonathan Matthews,

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 August 8, 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.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2847

Ind. No. 3692/15

Pierre Acosta,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 8, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2848

Ind. No. 230/14

Jovanny Paulino,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about August 5, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK



Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2849

Ind. No. 5681/11

Martin Hobbs,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about January 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2850

Ind. No. 10/13

Martin Hobbs,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 28, 2015, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2859

Ind. No. 891/16

Angel Depena,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about January 18, 2017, 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.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK



Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK



Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2869

Ind. No. 5578/11

Arthur L. Harrison,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about May 30, 2012, 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.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2873

Ind. No. 5029/15

Lorenzo Perez,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 14, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-1996

Ind. No. 2979/16

Kadeem Romain,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 6, 2017, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                    Justice Presiding,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                    Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2002

Ind. No. 5501/15

Kadeem Romain,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 6, 2017, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK



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

-----X

The People of the State of New York,

Respondent,

-against-

M-2152

Ind. No. 529/16

Jose Justiniano,

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 December 7, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2312

Ind. No. 5280/16

Jose Sanchez,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 18, 2017, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2326

Ind. No. 5689/14

Amirou Sow,

Defendant-Appellant.

-----X

Defendant having renewed the motion for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about May 10, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2388

Ind. No. 4883/15

Andre Brown,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 21, 2017, 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.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, 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.

ENTERED: June 29, 2017

  
CLERK



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

-----X

The People of the State of New York,  
Respondent,

-against-

M-2440  
Ind. No. 3315/14

Luis Alvarez,  
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, Bronx County (Clancy, J.), entered on or about April 19, 2017, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, 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 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 Clerk of the Supreme Court shall expeditiously have made and file with the criminal court (CPL 460.70) one transcript of the stenographic minutes of the SORA hearing and any other proceedings before Justice Clancy as yet not transcribed. The Clerk shall furnish a copy of such transcripts to appellant's counsel, Robert S. Dean, Esq., without charge, the transcripts to be returned to this Court when appellant's brief is filed.

The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
   Peter Tom  
   David Friedman  
   John W. Sweeny, Jr.  
   Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2473

Ind. No. 5272/14

Pablo Martinez-Jimenez,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 21, 2017, 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.

Marianne Karas, Esq., 980 Broadway, Suite 324, Thornwood, NY 10594-1139, Telephone No. 914-434-5935, 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.

ENTERED: June 29, 2017

  
CLERK

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

-----X

The People of the State of New York,

Respondent,

-against-

Matthew Whittington,

M-2518

Ind. Nos. 3890/13

1334/14

2017/14

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about August 30, 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.

Howard D. Simmons, Esq., 225 Broadway, Suite 1700, New York, NY 10007, Telephone No. 212-233-1486, 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.

ENTERED: June 29, 2017

  
CLERK

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

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

Respondent,

-against-

M-2522  
Ind. No. 3538/15

Robert Mays,

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 January 12, 2017, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK



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

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

-against- **M-2525**  
Ind. No. 1831/15

Jamar Ali,  
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal taken from a judgment of the Supreme Court, Bronx County, rendered on or about July 21, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

A handwritten signature in black ink, appearing to read "Susan R. Jones", written over a horizontal line.

CLERK

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

-----X

The People of the State of New York,  
Respondent,

-against-

Devonte Kelley,  
Defendant-Appellant.

-----X

**CONFIDENTIAL**

**M-2682**

Ind. 2190/13

Defendant having moved for leave to prosecute, as a poor person, the appeal taken from the order of the Supreme Court, New York County (Biben, J.), entered on or about May 8, 2017, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, 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 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 Clerk of the Supreme Court shall expeditiously have made and file with the criminal court (CPL 460.70) one transcript of the stenographic minutes of the SORA hearing and any other proceedings before Justice Biben as yet not transcribed. The Clerk shall furnish a copy of such transcripts to appellant's counsel, Robert S. Dean Esq., Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10005, Telephone No. 212-577-2523, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTERED: June 29, 2017

  
CLERK



Rosemary Herbert, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

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

-----X

The People of the State of New York,  
Respondent,

**CONFIDENTIAL**

**M-2683**

-against-

Ind. No. 1831/15

Jamar Ali,  
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal taken from the order of the Supreme Court, Bronx County (Greenberg, J.), entered on or about May 4, 2017, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, 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 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 Clerk of the Supreme Court shall expeditiously have made and file with the criminal court (CPL 460.70) one transcript of the stenographic minutes of the SORA hearing and any other proceedings before Justice Greenberg as yet not transcribed. The Clerk shall furnish a copy of such transcripts to appellant's counsel, Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10005, Telephone No. 212-577-2523, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTERED: June 29, 2017

  
CLERK



Present - Hon. Rolando T. Acosta, Presiding Justice,  
Angela M. Mazzairelli  
Karla Moskowitz  
Judith J. Gische  
Troy K. Webber, Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-834

Ind. No. 5446/10

David Solano,

Defendant-Appellant.

-----X

A decision and order of this Court having been entered on April 14, 2016 (Appeal No. 834), unanimously affirming a judgment of the Supreme Court, New York County (Cassandra Mullen, J.), rendered on November 29, 2010, as amended December 14, 2012,

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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,  
Rosalyn H. Richter  
Sallie Manzanet-Daniels  
Troy K. Webber  
Marcy L. Kahn,

Presiding Justice,  
  
  
  
Justices.

-----x

In the Matter of a Custody/Visitation  
Proceeding Under Article 6 of the  
Family Court Act.

**CONFIDENTIAL**

- - - - -  
Jacquelin M.,  
Petitioner-Appellant,

M-2727  
Docket Nos. V-613-14/10  
V-618-19/10  
IDV No. 203/10

-against-

Joseph M.,  
Respondent-Respondent.

- - - - -  
Janet Neustaetter, Esq.,  
The Children's Law Center,  
Attorney for the Children.

-----x

An appeal having been taken to this Court from the order of the Family Court, Bronx County, entered on or about May 20, 2015, and said appeal having been perfected,

And an order of this Court having been entered on May 11, 2017 (M-2727), inter alia, granting dismissal of the aforesaid appeal unless petitioner-appellant files the full record, including minutes of 35 days of proceedings, in accordance with this Court's orders entered July 21, 2016 (M-1994/M-1995/M-3132/M-3133/M-3187) and October 11, 2016 (M-4660), for the September 2017 Term, and directing that the perfected appeal be maintained on the Court's calendar for the September 2017 Term,

And Janet Neustaetter, Esq., attorney for the subject children, having moved for clarification of the order of this Court entered on May 11, 2017 (M-2727),

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 dismissing the appeal unless petitioner-appellant files the entire record, in accordance with this Court's order entered May 11, 2017 (M-1412) and the prior orders delineated therein, no later than September 15, 2017 for the November 2017 Term, to which Term the appeal is adjourned. Respondent-respondent is directed to file his brief no later than October 4, 2017 for said November 2017 Term.

ENTERED: June 29, 2017

  
CLERK

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

-----X

The People of the State of New York,

Respondent,

-against-

M-2399

Ind. No. 2969/13

Alexis Tatis,

Defendant-Appellant.

-----X

Defendant having renewed his motion for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, Bronx County, rendered on or about May 24, 2017, 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, 28<sup>th</sup> 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rolando T. Acosta,                      Presiding Justice,  
                 Peter Tom  
                 David Friedman  
                 John W. Sweeny, Jr.  
                 Dianne T. Renwick,                      Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-2308

Ind. No. 238N/17

David Carlo,

Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about April 10, 2017, 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present: Hon. Rolando T. Acosta,  
Rosalyn H. Richter  
Troy K. Webber  
Marcy L. Kahn,

Presiding Justice,  
  
Justices.

-----X  
In the Matter of

Aliyah F.,

**CONFIDENTIAL**

**M-2562**

A Person Alleged to Be a Juvenile  
Delinquent,

Docket No. D-48556/15

Respondent-Appellant.  
-----X

An appeal having been taken from an order of the Family Court, New York County, entered on or about October 21, 2016, and said appeal having been perfected,

And, respondent-appellant having moved for a calendar preference, and an order directing the appeal not be adjourned on petitioner-respondent's request,

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.

ENTERED: June 29, 2017

  
CLERK



Present - Hon. Peter Tom,  
John W. Sweeny, Jr.  
Rosalyn H. Richter  
Barbara R. Kapnick  
Troy K. Webber,

Justice Presiding,  
  
Justices.

-----X

The People of the State of New York,  
Respondent,

-against-

M-2198  
Ind. Nos. 2963/13  
4590/14

John Woody,  
Defendant-Appellant.

-----X

An order of this Court having been entered on March 10, 2015 (M-600) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 3, 2014, and assigning Seymour W. James, Jr., Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such 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 the motion is granted to the extent of striking the designation of assigned counsel Seymour W. James, Jr., Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10006, Telephone No. 212-577-2523, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Peter Tom,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Troy K. Webber,

Justice Presiding,  
  
Justices.

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

-against-

M-2033  
Ind. No. 1947/15

Garis Retances,  
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from a judgment of the Supreme Court, New York County, rendered on or about June 22, 2016, for leave to prosecute the appeal as a poor person 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 deeming the moving papers a timely filed notice of appeal and 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. 212-402-4112, 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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Peter Tom,  
Dianne T. Renwick  
Sallie Manzanet-Daniels  
Barbara R. Kapnick,

Justice Presiding,  
  
Justices.

-----X  
Eric L. Veloz,

Plaintiff-Appellant,  
  
-against-

**M-2427**  
Index No. 303235/12

City of New York, and the New York  
City Police Department,

Defendants-Respondents.  
-----X

Plaintiff-appellant having moved for an enlargement of time  
to perfect the appeal taken from an order of the Supreme Court,  
Bronx County, entered on or about July 8, 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 to the extent of  
enlarging the time to perfect the appeal to the October 2017  
Term.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. David Friedman,  
Karla Moskowitz  
Judith J. Gische  
Marcy L. Kahn,

Justice Presiding,  
  
Justices.

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

-against-

M-2140  
Ind. No. 2030/15

Alex Krahmalni,  
Defendant-Appellant.

-----X

An order of this Court having been entered on November 17, 2016 (M-4615), inter alia, granting defendant leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, New York County (Carro, J.), rendered on or about August 9, 2016; and a motion having been made to relieve counsel in connection with the aforesaid appeal, 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 striking the designation of assigned counsel Robert S. Dean, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Rosemary Herbert, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York, 10007, Telephone No. 212-402-4112, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

ENTERED: June 29, 2017

  
CLERK

Present: Hon. David Friedman,  
Angela M. Mazzarelli  
Karla Moskowitz  
Judith J. Gische  
Ellen Gesmer,

Justice Presiding,  
  
Justices.

-----X

Madeleine G.,  
Petitioner-Appellant,

**CONFIDENTIAL**

**M-2559**

-against-

Docket No. F-10226-05/14D

Jordan M.,  
Respondent-Respondent.

-----X

An appeal having been taken from an order of the Family Court, New York County, entered on or about March 30, 2017, and said appeal having been perfected,

And, petitioner-appellant having moved for a preference in the hearing of the appeal (CPLR 5521),

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.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. David Friedman,  
Rosalyn H. Richter  
Judith J. Gische  
Ellen Gesmer,

Justice Presiding,  
  
Justices.

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

-against-

M-1478  
Ind. No. 5091/14

Fabian Burns,  
Defendant-Appellant.

-----X

An order of this Court having been entered on October 27, 2015 (M-4479) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about May 7, 2015, and assigning Seymour W. James, Jr., Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such 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 the motion is granted to the extent of striking the designation of assigned counsel Seymour W. James, Jr., Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Rosemary Herbert, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York, 10007, Telephone No. 212-402-4112, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. John W. Sweeny, Jr.,  
Dianne T. Renwick  
Richard T. Andrias  
Barbara R. Kapnick  
Marcy L. Kahn,

Justice Presiding,  
  
  
  
Justices.

-----X

HSBC USA, et al.,  
Plaintiffs-Respondents,

-against-

Laurentino Cambonchi,  
Defendant-Appellant,

Buildings USA LLC, et al.,  
Defendants.

-----X

M-2409  
M-2570  
Index No. 382963/09

Plaintiff-respondent having moved for dismissal of the appeal which is taken from an order to show cause which the Supreme Court, Bronx County, declined to sign, on or about March 6, 2017 (M-2409),

And defendant-appellant having cross-moved for an order granting the order to show cause or modifying the Supreme Court order to do so, or for other relief (M-2570),

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

It is ordered that the cross motion is denied, the motion is granted, and the appeal is dismissed.

ENTERED: June 29, 2017

  
CLERK



Present: Hon. John W. Sweeny, Jr.,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Karla Moskowitz  
Barbara R. Kapnick,

Justice Presiding,  
  
  
  
Justices.

-----X

Trasey Barres,  
Plaintiff-Appellant,

-against-

**M-2015**

Index No. 306865/09

Martina M. Crank and Philip J.  
Crank, Jr.,  
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time to perfect the appeal taken from a judgment of the Supreme Court, Bronx County, entered on or about June 14, 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 to the extent of enlarging the time to perfect the appeal to the October 2017 Term.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. John W. Sweeny, Jr., Justice Presiding,  
Richard T. Andrias  
Marcy L. Kahn  
Ellen Gesmer, Justices.

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

-against-

M-2023  
Ind. No. 1241/14

Michael Dunner,  
Defendant-Appellant.

-----X

An order of this Court having been entered on October 27, 2016 (M-4764) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about January 8, 2016, and assigning Robert S. Dean, Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such 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 the motion is granted to the extent of striking the designation of assigned counsel Robert S. Dean, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Howard D. Simmons, Esq., 225 Broadway, Suite 1700, New York, NY 10007, Telephone No. 212-233-1486, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Dianne T. Renwick,  
Rosalyn H. Richter  
Judith J. Gische  
Marcy L. Kahn,

Justice Presiding,  
  
Justices.

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

-against-

M-2357  
Ind. No. 448/14

Gary Dubois,  
Defendant-Appellant.

-----X

An order of this Court having been entered on January 17, 2017 (M-5919) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about June 21, 2016, and assigning Seymour W. James, Jr., Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such 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 the motion is granted to the extent of striking the designation of assigned counsel Seymour W. James, Jr., Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10006, Telephone No. 212-577-2523, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rosalyn H. Richter,  
Richard T. Andrias  
Karla Moskowitz  
Barbara R. Kapnick,

Justice Presiding,  
  
Justices.

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

-against-

M-1862  
Ind. No. 2605/16

Jamie Pugh,  
Defendant-Appellant.

-----X

An order of this Court having been entered on January 9, 2014 (M-6046) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about October 31, 2016, and assigning Robert S. Dean, Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such 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 the motion is granted to the extent of striking the designation of assigned counsel Robert S. Dean, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Marianne Karas, Esq., 980 Broadway, Suite 324, Thornwood, NY 10594-1139, Telephone No. 914-434-5935, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rosalyn H. Richter,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Karla Moskowitz  
Troy K. Webber,

Justice Presiding,  
  
Justices.

-----x

In the Matter of the Application of  
Regina Metropolitan Co. LLC,  
Petitioner-Appellant,

For a Judgment Pursuant to Article 78  
of the CPLR,

-against-

Action No. 1  
Index No. 101235/15

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

Leslie E. Carr, et al.,  
Intervenors-Respondents.

- - - - -  
Community Housing Improvement Program,  
Inc.,  
Amicus Curiae.

M-3126

- - - - -  
In the Matter of the Application of  
Leslie E. Carr and Harry A. Levy,  
Petitioners-Appellants,

For a Judgment Pursuant to Article 78  
of the CPLR,

-against-

Action No. 2  
Index No. 101236/15

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

Regina Metropolitan Co. LLC,  
Intervenors-Respondents.

-----x

Separate appeals having been taken to this Court from the judgment of the Supreme Court, New York County, entered on or about October 24, 2016, and said appeals having been perfected,

And the Community Housing Improvement Program, Inc. ("CHIP") having moved for leave to submit a brief amicus curiae in connection with Action No. 1 (Index No. 101235/15),

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 movant is directed to file nine copies of its brief amicus curiae within seven days of the date of entry of this order.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rosalyn H. Richter, Justice Presiding,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Karla Moskowitz  
Troy K. Webber, Justices.

-----x

In the Matter of the Application of  
SCE Group, Inc.,  
Petitioner,

For a Review Pursuant to Article 78  
of the CPLR,

M-3004  
Index No. 100620/17

-against-

New York State Liquor Authority,  
Respondent.

-----x

An Article 78 proceeding having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about May 23, 2017,

And petitioner having moved for a stay of the order revoking petitioner's liquor license, pending hearing and determination of the aforesaid proceeding,

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 the order of a Justice of this Court, dated June 6, 2017, is vacated.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rosalyn H. Richter, Justice Presiding,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Karla Moskowitz  
Troy K. Webber, Justices.

-----x

In the Matter of a Family Offense  
Proceeding Under Article 8 of the  
Family Court Act.

- - - - -

Gabriela C.,  
Petitioner-Appellant,

-against-

M-2793

M-3137

Docket No. O-10866/15

Wilfred C.,  
Respondent-Respondent.

-----x

An appeal having been taken to this Court from the order of the Family Court, Bronx County, entered on or about March 3, 2017,

And respondent-respondent having moved for leave to respond to the appeal as a poor person, and for assignment of counsel, a free copy of the transcript, and for related relief (M-2793),

And petitioner-appellant having cross-moved, pursuant to CPLR 5704(a), for modification of an Order of Protection, dated June 12, 2017, which denied her order to show cause seeking an extension of a prior order of protection (M-3137),

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

It is ordered that the cross motion (M-3137) is granted, and the Family Court, Bronx County, is directed to sign petitioner's



order to show cause and hear the petition. Sua sponte, the notice of appeal filed by petitioner is dismissed, and the motion for poor person relief (M-2793) is therefore denied as moot.

ENTERED: June 29, 2017

  
CLERK

Present - Hon. Rosalyn H. Richter, Justice Presiding,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Karla Moskowitz  
Troy K. Webber, Justices.

-----x

Paul Woitovich,  
Plaintiff-Respondent,

-against-

The City of New York,  
Defendant-Appellant,

-and-

M-3164  
Index No. 154599/13

International House of Pancakes, LLC,  
et al.,  
Defendants-Respondents,

-and-

235 East 14<sup>th</sup> Street Realty LLC,  
et al.,  
Defendants.

-----x

Defendant-appellant having moved for a stay of trial  
pending hearing and determination of the appeal taken from  
the order of the Supreme Court, New York County, entered on or  
about October 28, 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.

ENTERED: June 29, 2017

  
CLERK

Tom, J.

M-1407 People v Arroyo, Felipe

Leave to appeal to this Court denied.

Sweeny, J.

M-2324 People v Reynolds, Baasil

Defendant granted leave to file a certificate pursuant to CPL §§ 450.15 and 460.15 within 90 days from the date of entry hereof.

Sweeny, J.

M-2325 People v Miguel Concepcion, also known as Cepeda,  
Anthony, also known as Rodriguez, Antonio

Defendant granted leave to file a certificate pursuant to CPL §§ 450.15 and 460.15 within 90 days from the date of entry hereof.

Friedman, J.P., Sweeny, Renwick, Andrias, Kahn, JJ.

M-680 In the Matter of Stephen R. Krawitz,  
M-917 a disbarred attorney:

Respective law firms directed to pay legal fees earned by respondent to the Receiver, as indicated. No opinion. All concur.