

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzaelli
Richard T. Andrias
David B. Saxe, Justices.

-----X
Peach Parking Corp.,
Plaintiff-Appellant-
Respondent/Appellant,

-against-

M-2950
Index No. 103096/04

346 West 40th Street, LLC, Kinney
System, Inc.,
Defendants-Respondents,

-and-

The Hertz Corporation,
Defendant-Respondent-
Appellant/Respondent.

-----X

Appeals and cross appeals having been taken from the order and judgment of the Supreme Court, New York County, entered on or about December 23, 2009 and from the judgments of said Court, entered on or about January 21, 2010 and March 9, 2010, respectively,

Now, upon reading and filing the stipulations of the parties hereto, filed April 12, 2010, May 14, 2010 and June 2, 2010, respectively, and due deliberation having been had thereon,

It is ordered that the appeals and cross appeals, previously perfected for the June 2010 Term, are withdrawn in accordance with the aforesaid stipulations.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2602
Ind. No. 5864/07

David Andrango,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about April 12, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

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

ENTER:


Clerk:

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2603
Ind. Nos. 2448/08
2682/09

Ramon Berrios,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about April 20, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

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

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2605
Ind. No. 1120/09

Darrin Q. Coaxum,
Defendant-Appellant.
-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about January 20, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2606
Ind. No. 6141/06

Joshue DeJesus, also known as
Joshua DeJesus,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about September 16, 2009, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2607
Ind. No. 4244/08

Jose Guasp,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about September 8, 2009, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2608
Ind. No. 6183/08

Derrick Hill,
Defendant-Appellant.
-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about February 17, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzaelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2609
Ind. No. 3573/07

Lawrence Jones,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about February 2, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2610
Ind. No. 3069/09

Donald M. Lacy,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 4, 2009, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2611
Ind. No. 3643/09

Brandon Lewis,
Defendant-Appellant.
-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about April 23, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2612
Ind. No. 5924/09

David Monakey,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about February 23, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2614
Ind. No. 6242/08

Dewayne Richardson,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 1, 2009, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

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

-against-

M-2615
Ind. No. 1284/09

Argenis Santos,
Defendant-Appellant.

-----x

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about April 26, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Karla Moskowitz
Helen E. Freedman
Rosalyn H. Richter
Nelson S. Román, Justices.

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

-against-

M-2598
Ind. No. 2528/09

William Rosenberg,
Defendant-Appellant.

-----X

Defendant having renewed his motion for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 22, 2009, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon 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 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven M. Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rosalyn H. Richter
Sheila Abdus-Salaam
Nelson S. Román, Justices.

-----X
Christie's, Inc.,
Plaintiff-Respondent,

-against-

M-2553
Index No. 602515/06

Jerry Sherlock, New York Film
Academy LTD. and Gallery Beaux Arts,
LLC,
Defendants-Appellants.

-----X

Defendants-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about July 17, 2009,

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 in which to perfect the appeal to the November 2010 Term.

ENTER:


Clerk.

CORRECTED ORDER – November 18, 2010

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Dianne T. Renwick
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----X
Allen Simon, et al.,
Plaintiffs-Appellants,

-against-

M-2728
Index No. 305788/09

Sol M. Usher, et al.,
Defendants-Respondents.

-----X

Defendants-respondents Sol M. Usher, Sol M. Usher, M.D., P.C., F.A.C.S., Maxwell M. Chait, Hartsdale Medical Group, P.C. and White Plains Hospital Center having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on May 4, 2010 (Appeal No. 2700),

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 this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

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

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

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Peter Tom, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Eugene Nardelli
Sheila Abdus-Salaam, Justices.

-----X
Linda R.,

Plaintiff-Appellant,

-against-

M-1853
Index No. 300415/02

Ari Z.,

Defendant-Respondent.
-----X

Plaintiff-appellant having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 9, 2010 (Appeal Nos. 2313/2313A/2313B/2313C),

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

It is ordered that the motion is denied.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
John W. Sweeny, Jr.
Dianne T. Renwick
Helen E. Freedman
Nelson S. Román, Justices.

-----X
Ben Lichtenstein,
Plaintiff-Appellant,

-against-

Canna Real Estate Holdings, LLC.,
Canna Real Estate Holdings, Inc.,
and Carmine Alessandro,
Defendants,

M-1266
M-1594
Index No. 601753/06

Keith S. Barnett, Douglas Bolton,
Defendants-Respondents.
-----X

Defendants-respondents having moved (M-1266) for dismissal of the appeal taken from the order of the Supreme Court, New York County, entered on or about April 9, 2009 (mot. seq. no. 007),

And plaintiff-appellant having cross-moved (M-1594) for an enlargement of time in which to perfect the aforesaid appeal,

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 motion is granted and the appeal is dismissed (M-1266). The cross-motion is denied (M-1594).

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
Karla Moskowitz
Rolando T. Acosta
Helen E. Freedman
Rosalyn H. Richter, Justices.

-----x
Richard J. McAllan,
Petitioner-Appellant,

-against-

M-2197
Index No. 115411/05

Michael R. Bloomberg, as Mayor of the City of New York, The City of New York, Hon. Rudolph W. Giuliani, As former Mayor of The City of New York, and the Rudolph W. Giuliani Center for Urban Affairs,
Respondents-Respondents.

-----x

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about August 11, 2006, and said appeal having been perfected,

And respondent-respondent, Rudolph W. Giuliani Center for Urban Affairs, having moved for dismissal of the aforesaid appeal,

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

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

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X

In the Matter of

Carlos G.,

M-1786

Docket No. NN18650/07

A Dependent 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, et al.,
Petitioners-Respondents,

Bernadette M.,
Respondent-Appellant.

Steven Banks, Esq.,
Law Guardian for the Child.

-----X

Respondent-appellant mother having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, Bronx County, entered on or about November 9, 2009, and for assignment of counsel, a free copy of the transcript, and 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, Robin Steinberg, Esq., The Bronx Defenders,

860 Courtlandt Avenue, Bronx, NY 10451, Telephone No. (718) 838-7878, 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 therefor¹ 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 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.

ENTER:


Clerk:

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

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
James M. McGuire
Leland G. DeGrasse
Helen E. Freedman
Rosalyn H. Richter, Justices.

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

-against-

M-2400
Ind. No. 69003/09

Felix Colome,
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, Bronx County, rendered on or about November 30, 2009, 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 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts 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.

Steven Banks, 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.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Karla Moskowitz
Leland G. DeGrasse
Sheila Abdus-Salaam,
Sallie Manzanet-Daniels, Justices.

-----X
John R. Liegey,
Plaintiff-Respondent,

-against-

M-2655
Index No. 111458/04

Diane Gerardi,
Defendant-Appellant,

Carolyn Gerardi and Anthony Gerardi,
Defendants.

-----X

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from the judgment of the Supreme Court, New York County, entered on or about April 8, 2009,

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 in which to perfect the appeal to the November 2010 Term, with no further enlargements to be granted.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Dianne T. Renwick, Justices.

-----X
Grand Manor Health Related Facility,
Inc.,

Plaintiff-Respondent,

-against-

M-2042
Index No. 301880/08

Hamilton Equities Inc., et al.,

Defendants-Appellants.
-----X

Plaintiff-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 11, 2010 (Appeal No. 2353N),

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

It is ordered that the motion is denied.

ENTER:


Clerk..

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

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

-against-

M-2229
Ind. No. 7741/02

Michael Shaw,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on December 10, 2009 (Appeal No. 1730) unanimously affirming the judgment of the Supreme Court, New York County, rendered on or about June 10, 2008,

And defendant having moved for reconsideration of the aforesaid decision and order of this Court,

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 vacating the decision and order of this Court entered on December 10, 2009 (Appeal No. 1730) and reinstating the appeal for hearing in the December 2010 Term of Court. The Clerk is directed to forward to the Warden at the State Correctional Facility where defendant is incarcerated, a transcript of the minutes relating to defendant's appeal, and directing defendant to serve and file 10 copies of said pro se supplemental brief on or before October 4, 2010 for said December 2010 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Angela M. Mazzairelli, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

-----X
Stanley J. Kogan, et al.,
Plaintiffs-Respondents,

-against-

M-2857

M-2858

North Street Community, LLC, et al.,
Defendants,

Index No. 108255/06

Nino Tripicchio & Son Landscaping,
Defendants-Appellants.

-----X
North Street Community, LLC, et al.,
Third-Party Plaintiffs,

-against-

Nino Tripicchio & Son Landscaping,
Third-Party Defendant-Appellant,

Merchants Mutual Insurance Company,
Third-Party Defendant-Appellant.

-----X

Appeals having been taken by the respective appellants from the order of the Supreme Court, New York County, entered on May 11, 2010 (mot. seq. no. 004),

And third-party defendant-appellant, Merchants Mutual Insurance Company, having moved to stay trial(s), pending hearing and determination of the aforesaid appeals (M-2857),

And defendants/third-party defendant-appellant, Nino Tripicchio & Son Landscaping, having moved for the same relief (M-2858),

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

It is ordered that the motions are granted.

ENTER:

A handwritten signature in cursive script, appearing to read "David Apolony". The signature is written in dark ink and is positioned to the right of the word "ENTER:".

Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
David Friedman
Eugene Nardelli
James M. Catterson
Sallie Manzanet-Daniels, Justices.

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

Respondent,

-against-

M-2765A
Ind. No. 8175/90

Giuseppe D'Alessandro,

Defendant-Appellant.
-----X

A decision and order of this Court having been entered on August 22, 1996 (Appeal No. 57185), unanimously affirming a judgment of the Supreme Court, New York County (Jerome Hornblass, J.), rendered on April 20, 1993,

And an order of this Court having been entered on May 11, 2000 (M-5905), denying defendant's original application for a writ of error coram nobis,

And defendant-appellant having renewed the motion 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 granted, as follows:

MAZZARELLI, J.P.

It is a "rare" occasion that a single failing by an appellate lawyer, whose assistance was otherwise effective, warrants the grant of a motion for a writ of error coram nobis (*People v Turner*, 5 NY3d 476, 480-481 [2005]). However, this is such a case where defendant's appellate counsel failed to present this Court with a clearly meritorious speedy trial argument.

Accordingly, we are required to issue the writ and dismiss the indictment.

Defendant was originally indicted in November 1989 for kidnapping in the second degree and related charges. The People alleged that defendant, a restaurant manager, held a restaurant employee hostage in the restaurant's basement for more than 24 hours. On December 4, 1989, defendant made a motion which included a request that the court inspect the grand jury minutes and, upon inspection, dismiss the charges for insufficient evidence. Also requested was an order enjoining the People from seeking a superseding indictment charging him with first-degree kidnapping and related charges. Defendant contended that the proposed new indictment was vindictive because he had rejected a deal offering him probation in exchange for a plea to the second degree kidnapping charge.

On April 23, 1990, the court orally denied defendant's motion for an injunction and granted the inspection/dismissal motion to the extent of ordering the People to produce the grand jury minutes. On June 4, 1990 the court issued a written decision to the same effect. The People assert that they turned over the minutes on or about June 18, 1990, but defendant claims there is no record evidence of this.

In September 1990, defendant moved to dismiss the case on speedy trial grounds. He argued that all of the time from arrest to trial should be charged to the People because they never produced the grand jury minutes. He also sought the inclusion of the time between his arrest and the day he moved to dismiss the original indictment, plus the time between April 23, 1990, when the People were granted oral permission to re-present to the grand jury, and his arraignment on those charges. That time, in aggregate, exceeded the statutory maximum. On January 7, 1991, the court denied the speedy trial motion, finding only 121 days of includable time and excluding the periods specifically discussed in defendant's motion.

The principal witness for the People at the trial was Jaime Abril, who worked at the restaurant managed by defendant. Although he contended that he had no access to the restaurant's cash register, Abril testified that defendant summoned him to the restaurant on a day off and accused him of stealing \$3,000 from the register two days earlier. According to Abril, defendant made this accusation while holding a gun in one hand and a nightstick in the other. Abril further contended that defendant then took him down to the restaurant's basement and handcuffed him to an overhead pipe while he threatened to kill him unless he returned the money. Abril testified that defendant left him in the basement for over 24 hours without food, water or an opportunity to visit the bathroom, all the while threatening his life. Abril's family members testified that defendant called

them and threatened reprisals against them for Abril's alleged theft.

Abril testified that at one point during his confinement a soda deliveryman came down to the basement, but he was too "ashamed" to call out and ask for help. He also testified that, after defendant uncuffed him from the pipe some 24 hours into the confinement, he declined to exit the basement through an alarmed door because he remained hopeful that at some point he would be released without the need to sound the alarm. He also stated that he spoke with two other employees who came down to the basement, one of whom brought him a cup of coffee. Ultimately, Abril testified, he left the restaurant of his own volition, after defendant brought him back upstairs from the basement and again threatened to kill him. Abril testified that he sustained permanent injuries to his arm as a result of the manner in which he had been restrained.

On defendant's case, two of Abril's co-workers, one no longer employed by the restaurant at the time of trial, testified that defendant did summon Abril to the restaurant so he could ask Abril about money which was missing from the cash register. However, they stated that Abril never went down to the basement, but that he just hung around the kitchen while defendant periodically asked him about the missing money. A customer on the day in question testified that he went into the kitchen to ask defendant to keep his voice down, but that defendant was not holding a weapon. Two deliverymen testified that they went down to the basement on the day in question and did not see Abril. Defendant's wife testified that she witnessed defendant and her father (the restaurant's owner) yelling at Abril in the rear area of the restaurant over the course of several hours, and that she saw Abril leave the restaurant at the end of the day. The employee who Abril testified gave him a cup of coffee denied even being in the restaurant on the day in question.

In his summation, trial counsel for defendant challenged the credibility of the People's witnesses. In response, the prosecutor defended the credibility of the People's witnesses and attacked the credibility of the defense witnesses. She suggested that they were not truthful because they were fearful of meeting the same fate allegedly suffered by Abril and so purposely took defendant's side. The prosecutor also compared defendant to "Dr. Jekyll" and stated that losing the amount of money allegedly missing from the cash register can make someone "a little crazy." She also told the jury that defendant "forgot we were in America," where people are entitled to be formally charged when accused of stealing money. Defense counsel objected approximately 26 times during the People's summation. Seven objections were sustained, five overruled and the remainder were the subject of curative instructions. After the trial court

denied a defense motion for a mistrial based on the prosecutor's summation, the jury found defendant guilty. However, the trial court granted defendant's motion to set aside the verdict based on prosecutorial misconduct during the summation.

The People appealed, and this Court unanimously reversed and reinstated the verdict on the grounds that the majority of defendant's complaints concerning the prosecutor's summation were unpreserved and did not establish errors of law that were properly the subject of a motion to set aside the verdict, and that, in any event, evidence of the defendant's guilt was so overwhelming as to render harmless any error in the prosecutor's summation (184 AD2d 114 [1992], *lv denied* 81 NY2d 884 [1993]). Upon remand, defendant was sentenced to concurrent terms of from 15 years to life, 1½ to 4½ years and 1 to 3 years.

Defendant appealed his conviction to this Court. His counsel filed a brief which raised four distinct issues. First, defendant again argued that the prosecutor's summation deprived him of a fair trial. Second, he asked this Court to reverse in the interests of justice, since, there was grave doubt of his guilt. He specifically cited to comments made by the trial judge at sentencing, who stated that what defendant did or did not do to Abril was "questionable," and who expressed his displeasure with the sentence he was required to impose, because under the circumstances a sentence of "much less" was warranted. Third, defendant argued that the trial court improperly charged the jury on kidnapping in the first degree when it instructed the jurors that they could find defendant guilty if they found him to have committed acts prohibited by subsections of the relevant Penal Law that were not cited in the indictment. Finally, defendant contended that he received ineffective assistance of trial counsel, for a variety of reasons.

This Court affirmed the conviction (230 AD2d 656 [1996], *lv denied* 89 NY2d 863 [1996]). Inasmuch as this Court had previously found, on the first appeal, that the proof of defendant's guilt was overwhelming, the panel again held that any error in the manner in which the trial court treated the People's summation was harmless. This Court also declined to disturb the jury's determinations as to fact and credibility. As to the jury charge on kidnapping in the first degree, this Court found that the objection was not preserved and that, in any event, the charge was not inconsistent with the People's theory of prosecution. Finally, this Court disagreed with defendant's argument that he received ineffective assistance of trial counsel. Defendant has completed his sentence and is presently awaiting deportation.

In or about August 1999, defendant moved pro se (M-5905) for a writ of error coram nobis. Among other perceived errors, the motion asserted that defendant's appellate counsel

failed to address the trial court's disposition of the speedy trial motion. Specifically, defendant asserted that counsel failed to argue that the trial court should have charged all of the time between defendant's arrest and when the People filed a superseding indictment (some 357 days by defendant's count) to the People. On May 11, 2000, this Court denied the coram nobis motion (272 AD2d 1002 [2000]).

Defendant originally brought the instant motion (M-2765), via counsel, on June 27, 2008. The motion was again denominated one for a writ of error coram nobis. The sole issue raised was again speedy trial. However, defendant now focused on two periods of time which were different from the single period of time addressed by the first motion. First, defendant argued that his appellate counsel should have brought to this Court's attention that the People should have been charged with an additional 11 days of time between the filing of the original indictment and the ensuing arraignment. Similarly, he asserted that appellate counsel failed to argue that the 21 days of time which elapsed between the filing of the superseding indictment and the arraignment on the superseding indictment were chargeable to the People. In making this argument, defendant relied on *People v Correa* (77 NY2d 930 [1991]). That decision was rendered before defendant's trial but after the speedy trial motion was decided. *Correa* held that the time between the filing of an indictment and the ensuing arraignment is includable for purposes of speedy trial. It implicitly overruled *People v Rivera* (160 AD2d 234 [1990]), upon which the trial court had relied in deciding the speedy trial motion, and which held that the time between indictment and arraignment is *not* includable.

Defendant further argued that his appellate counsel should have focused this Court on the period of time between the date defendant filed the omnibus motion, which sought dismissal of the indictment, and when the People claim they produced the grand jury minutes in response to that element of the motion. Defendant asserted that appellate counsel should have argued that all 196 days of that time were chargeable to the People, and that if they had been, the aggregate time would have exceeded the 184 days available to the People. In making this argument, defendant relied on *People v McKenna* (76 NY2d 59 [1990]), which was decided approximately eight months before the speedy trial motion was decided, but apparently overlooked by the motion court. *McKenna* held that a delay in turning over grand jury minutes to the court in connection with a defendant's motion to dismiss an indictment is chargeable to the People, because "the trial [can] simply not go forward until the...motion [is] decided, [and] the People's dilatory conduct in failing to provide the minutes necessary to that decision [is] a direct, and virtually insurmountable, impediment to the trial's very commencement" (76 NY2d at 64).

This Court denied the motion, in an order which identified the application as one for reargument 2008 NY Slip Op 80474 [u] [2008]. Defendant appealed the order to the Court of Appeals. He argued that the motion was erroneously treated as one for reargument because it did not address any of the issues that were raised in the first motion, but rather asserted an entirely different ground as to why defendant did not receive effective assistance of appellate counsel. Defendant further argued to the Court of Appeals that it should rule on the merits of his coram nobis motion.

On October 27, 2009, the Court of Appeals unanimously reversed (13 NY3d 216 [2009]). The Court stated that, because the specific speedy trial claim made in the instant motion had not been raised in the first coram nobis motion, "[n]o reasonable view of defendant's application supports the Appellate Division's conclusion that it sought relief in the form of reargument" (*id.* at 219). Rejecting the People's position that the motion was properly denied on the basis that defendant could have raised the "new" speedy trial issue in the previous motion, the Court stated that "[e]ven if the Appellate Division had the discretion to decline to review the merits of subsequent coram nobis applications, it would have been an abuse of such discretion to refuse to entertain the second application in this case, which was brought by counsel nine years after the first application and raised different and much more substantial arguments than those previously raised" (*id.* at 221). The Court of Appeals further observed that "although we acknowledge that a significant period of time has passed since defendant's conviction was affirmed on appeal, we should not allow the lengthy passage of time, in itself, to bar review of a defendant's claim" (*id.*) The Court remanded the motion to this Court to pass on its merits.

The People do not challenge defendant's contention that the aggregate 32 days between the indictments and arraignments should have been charged to them. However, including that time, along with the 121 days originally charged to the People by the trial court, there would still be 31 days less than the time allowed by the speedy trial statute (184 days being the six month limit as measured from the filing of the original indictment).

With respect to the 196 additional days which defendant contends are chargeable to the People because they delayed producing the grand jury minutes, the People argue that this period is still excludable because defendant's own actions contributed equally to the delay. Primarily, the People argue that, at the same time as defendant filed his motion asking the court to inspect the grand jury minutes, he moved to enjoin the People from filing the superseding indictment. Thus, they contend that all of the time when both motions were simultaneously pending is excludable. The People acknowledge

that cases interpreting *People v McKenna* (76 NY2d 59 [1990], *supra*) hold that the People are responsible for delay in producing grand jury minutes even though defendant's omnibus motion seeks separate relief unrelated to the minutes. However, they argue that those cases are inapposite because the motion to enjoin here was not the typical relief sought in an omnibus motion, and so defendant should be charged with the time during which it was pending. They further contend that it is logical that the "typical" relief sought in an omnibus motion should not count against a defendant on a speedy trial motion because CPL 255.20 requires that such relief be sought in a single motion, but that such logic does not apply to a different motion such as the motion to enjoin brought by defendant here. Defendant counters by noting the People's failure to cite any authority for their position and by suggesting that any motion made at the same time by defendant as a motion to inspect grand jury minutes does not render the People's failure to produce the minutes excludable, since the motion to inspect is a threshold motion.

The People further argue that, the motion to enjoin aside, defendant contributed to the delay in other ways such that the time should not be charged to them. First, they point out that defendant's trial counsel consented, on December 4, 1989, the day defendant made the omnibus motion and the motion to enjoin filing the superseding indictment, to put the case over until January 16, 1990. On that date, the People note that, after there was some confusion as to whether the People had responded to defendant's motions, defendant's counsel indicated that he had "no problem" putting the case over again because he had to prepare for a "major" trial in Florida. The case was adjourned to February 26, 1990. The People further note that on February 26, when the court informed the parties that it had not yet reached decision on the motions, defense counsel¹ asked that the case be put over to April. The court adjourned it to April 23, 1990, on which date the court ordered the People to produce the grand jury minutes. Finally, the People point out that the last adjournment, from April 23, 1990 to June 18, 1990, was granted after defense counsel stated he had to return to Florida the following day for post-conviction proceedings, that he had another trial starting in early May, and that he desired "a control date of a month, month and a half" to "look at the decision."

Defendant counters that none of these adjournments is

¹ The minutes do not identify counsel's name at this appearance. The People, however, suggest that it is substitute counsel seeking a further adjournment so counsel of record can finish up his trial in Florida.

fully excludable. With respect to the time between the filing of the motions on December 4, 1989 to January 16, 1990, he acknowledges that some time should be excludable, but only a reasonable amount of time before the People were required to produce the grand jury minutes. He proposes that the time from December 21, 1989, the date the People submitted their opposition papers, to January 16, 1990 (26 days) be chargeable to the People. Defendant further posits that the time between the January 16, 1990 appearance and the adjourned date of February 26, 1990 is fully chargeable to the People. Defense counsel, he argues, did not explicitly consent to an adjournment but rather, in responding that he had "no problem" putting the case over because of his impending trial in Florida, was reacting to the reality that the motion to dismiss could not be decided because the People had not yet produced the grand jury minutes. Defendant makes a similar argument for the next adjournment. He notes that there is no evidence that his counsel of record was not at the appearance and points out that, even if he was not, his absence was no impediment to charging the time until the next date to the People. As for the next, and final, adjournment, he also states that a new date was required strictly because the People had not yet produced the grand jury minutes.

Each of these arguments must be viewed through the prism of a coram nobis motion. Such a motion can only be successful where it can be shown that appellate counsel's performance, "viewed in totality," failed to afford the defendant with "meaningful representation" (*People v Baldi*, 54 NY2d 137, 147 [1981]). A finding of ineffective assistance where the representation was generally adequate except for one single failing is "rare" and will only be found where the issue was "clear-cut and completely dispositive" (*People v Turner*, 5 NY3d at 480-481).

Here, the record reveals that appellate counsel filed a generally well-reasoned and researched 43-page appellate brief on defendant's behalf. He raised four appellate issues: first, whether defendant was denied a fair trial by prosecutorial misconduct in summation; second, whether the conviction should be reversed in the interest of justice because guilt had not been satisfactorily established; third, whether defendant's conviction for kidnapping in the first degree should be reversed because the trial court erroneously charged the jury as to a theory of guilt not charged in the indictment, and, finally, whether the defendant was denied effective assistance of trial counsel below.

This Court, in deciding the issues raised in defendant's first coram nobis motion, found that he was not deprived of effective assistance of appellate counsel (272 AD2d 1002 [2000], *supra*). Thus, if we were to grant the instant motion, this would indeed be the "rare" case where a defendant was generally

provided with effective assistance except for a single lapse. Nevertheless, we must grant the motion, because the speedy trial issue is "clear-cut" and dispositive. *People v McKenna* should have controlled Supreme Court's analysis of the speedy trial issue, since it unquestionably directs that time in which the People delay turning over grand jury minutes is chargeable to them. Further, Supreme Court would have had to reject any argument posed by the People that the motion to stay representing the charges to the grand jury caused a delay attributable to defendant. That is because a motion to dismiss an indictment is a threshold motion which must be decided before the People can be deemed actually ready for trial. That another motion is pending is no reason not to charge the People with the time they delay producing grand jury minutes (see e.g. *People v Johnson* (42 AD3d 753, 754 [2007]), *lv denied* 9 NY3d 923 [2007], ["Regardless of whether other motions are under consideration by the court, the court's inability to determine the threshold motion to dismiss creates a direct impediment to the commencement of the trial"]). The People present no support for their position that, because an injunction against the filing of a superseding indictment is not the type of relief ordinarily requested in an omnibus motion, the time during which it is pending is excludable.

Moreover, the People have failed to sustain their burden of demonstrating that the multiple adjournments granted during the pendency of the motions are excludable because defendant requested them or consented to them. The cases cited by the People (*People v Jones*, 235 AD2d 297 [1997], *lv denied* 89 NY2d 1095 [1997], *People v Taylor*, 217 AD2d 404 [1995], *lv denied* 87 NY2d 851 [1995], *People v Felder*, 182 AD2d 1065 [1992], *lv denied* 80 NY2d 903 [1992]), do stand for the proposition that time which would ordinarily be charged to the People while grand jury minutes are outstanding will not be included where adjournments occur that are otherwise excludable because they are "granted by the court at the request of, or with the consent of, the defendant or his counsel" (CPL 30.30[4][b]). However, here, a review of the minutes for each of the motion return dates reveals that, at best, defendant offered a convenient adjourn date only after it had become apparent that the court could not decide the motion to dismiss the indictment because the People had not yet produced the grand jury minutes. There is no indication that defendant would have requested an adjournment notwithstanding the People's failure to produce the minutes. Because it is "clear-cut" that defendant would have prevailed on the speedy trial issue had his appellate counsel raised it, he is entitled to a writ of error coram nobis.

Further, judicial economy dictates that we dismiss the indictment at this stage. The parties have submitted two sets of

briefs to this Court, one before the Court of Appeals decision and supplemental briefs after. The briefs are thorough in arguing the speedy trial issue and it would be a waste of resources to grant the writ but direct defendant to take up a proper appeal that would result in the same conclusion reached herein (see *cf. People v Rutter*, 202 AD2d 123 [1994]; *People v Turner*, 10 AD3d 458 [2004], *affd* 5 NY3d 476 [2005]).

Accordingly, the application for a writ of error coram nobis is granted, the decision and order of this Court entered on August 22, 1996 (Appeal No. 57185) is hereby recalled and vacated, and the judgment of the Supreme Court, New York County, (Jerome Hornblass, J), rendered April 20, 1993, convicting defendant, after a jury trial, of kidnapping in the first degree, assault in the second degree, coercion in the first degree, attempted robbery in the first degree, and attempted grand larceny in the second degree is reversed, on the law, and the indictment dismissed.

Enter:

A handwritten signature in cursive script that reads "David Apolony". The signature is written in dark ink and is positioned to the right of the word "Enter:".

Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
Eugene Nardelli
James M. Catterson, Justices.

-----X
In the Matter of the Application of

Keith Douglas,
Petitioner-Appellant,

For a Judgment and Order Pursuant to
Article 75 of the CPLR,

-against-

M-2680
Index No. 114745/08

New York City Board/Department of
Education,
Respondent-Respondent.

-----X

Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about August 18, 2009 (mot. seq. no. 001),

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 in which to perfect the appeal to the December 2010 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Dianne T. Renwick
Sheila Abdus-Salaam
Sallie Manzanet-Daniels, Justices.

-----X
John McCarthy, et al.,
Plaintiffs,

-against-

Turner Construction, Inc.,
Defendant,

M-2870

Index Nos. 107959/05
590132/06
590371/06

John Gallin & Son, Inc.,
Defendant-Respondent,

Boston Properties, Inc., et al.,
Defendants-Appellants.

[And Other Actions]

-----X

Defendants-appellants having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on April 20, 2010 (Appeal No. 2579),

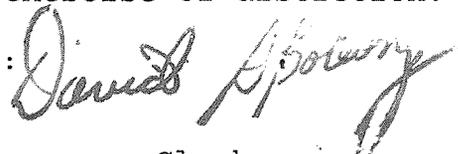
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted, and this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

"Was the order of the Supreme Court, as affirmed by this Court, properly made?"

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

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
Rolando T. Acosta
Dianne T. Renwick, Justices.

-----X
Deborah Phillips,

Plaintiff-Appellant,

-against-

M-2154
Index No. 101127/07

City of New York, et al.,

Defendants-Respondents.
-----X

Defendants-respondents having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 28, 2009 (Appeal No. 55),

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

It is ordered that the motion is denied.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
James M. McGuire
Rolando T. Acosta, Justices.

-----X
Felicitia Sanchez, by her guardian,
Jose Rivera,

Plaintiff-Respondent,

M-2247

Index No. 101869/08

-against-

Kateri Residence, etc., et al.,

Defendants-Appellants.
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about April 16, 2010 (mot. seq. no. 002),

And defendants-appellants having moved to stay enforcement of the aforesaid order, pending hearing and determination of the appeal,

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

Ordered that the motion is granted.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present - Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
James M. McGuire
Rolando T. Acosta, Justices.

-----x
Casa De Meadows Inc. (Cayman Islands),
et al.,
Plaintiffs-Respondents,

-against-

M-3063
Index No. 601685/07

Faith F. Zaman, et al.,
Defendants-Appellants.

- - - - -
[And a third-party action]

-----x
An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about May 11, 2010,

And defendants/third-party defendants-appellants, Faith F. Zaman and Thomas William Derbyshire, having moved for a stay of further proceedings pending hearing and determination of the aforesaid appeal,

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

It is ordered that the motion is denied.

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Karla Moskowitz
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

Respondent, M-2475
DC #8
-against- Ind. No. 4460C/05

Kevin Davis,

Defendant-Appellant.
-----X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, Bronx County, rendered on or about March 12, 2008,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and counsel for appellant having submitted an affirmation seeking an enlargement of time in which to perfect the appeal,

Now, upon the Court's own motion, it is

Ordered that appellant's time in which to perfect the appeal is enlarged to the December 2010 Term of this Court and counsel is directed to so perfect.

ENTER:



Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Karla Moskowitz
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

Respondent, M-2476
DC #9
-against- Ind. No. 5387/06

Richard Diaz,

Defendant-Appellant.
-----X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, New York County, rendered on or about June 1, 2007,

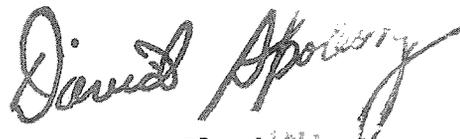
And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and counsel for appellant having submitted an affirmation seeking an enlargement of time in which to perfect the appeal,

Now, upon the Court's own motion, it is

Ordered that appellant's time in which to perfect the appeal is enlarged to the December 2010 Term of this Court and counsel is directed to so perfect.

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Karla Moskowitz
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

Respondent, M-2494
DC #17
-against- Ind. No. 293/06

John Hamlett,

Defendant-Appellant.
-----X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, New York County, rendered on or about January 22, 2008,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and counsel for appellant having submitted an affirmation seeking an enlargement of time in which to perfect the appeal,

Now, upon the Court's own motion, it is

Ordered that appellant's time in which to perfect the appeal is enlarged to the December 2010 Term of this Court and counsel is directed to so perfect.

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Karla Moskowitz
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

Respondent, M-2504
DC #27
-against- Ind. No. 32403C/05

George Melendez,

Defendant-Appellant.
-----X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, Bronx County, rendered on or about July 15, 2008,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and counsel for appellant having submitted an affirmation seeking an enlargement of time in which to perfect the appeal,

Now, upon the Court's own motion, it is

Ordered that appellant's time in which to perfect the appeal is enlarged to the December 2010 Term of this Court and counsel is directed to so perfect.

ENTER:


- Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

Present: Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Karla Moskowitz
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

Respondent,

M-2510

DC #31

-against-

Ind. No. 379/07

Daniel Omolukun,

Defendant-Appellant.
-----X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, New York County, rendered on or about June 25, 2008,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and counsel for appellant having submitted an affirmation seeking an enlargement of time in which to perfect the appeal,

Now, upon the Court's own motion, it is

Ordered that appellant's time in which to perfect the appeal is enlarged to the December 2010 Term of this Court and counsel is directed to so perfect.

ENTER:


- Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
John T. Buckley
James M. Catterson
James M. McGuire, Justices.

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

-against-

M-5493
Ind. No. 1337/02

Woodrow Flemming,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on March 9, 2006 (Appeal No. 8037), unanimously affirming a judgment of the Supreme Court, New York County (Charles Tejada, J.), rendered on September 15, 2003,

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

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

It is ordered that said application is denied.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 29, 2010.

PRESENT: Hon. David Friedman, Justice Presiding,
Karla Moskowitz
Dianne T. Renwick
Helen E. Freedman
Nelson S. Román, Justices.

-----X
MF Global, Inc., et al.,

Petitioners-Appellants,

-against-

M-2548
Index No. 603274/08

Morgan Fuel & Heating Co., Inc.,

Respondent-Respondent.
-----X

Respondent-respondent Morgan Fuel & Heating, Co., Inc., having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 2, 2010 (Appeal No. 2268N),

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

It is ordered that the motion is denied.

ENTER:


Clerk.

PM ORDERS

ENTERED

JUNE 24, 2010

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 24, 2010.

Present - Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
James M. McGuire
Rolando T. Acosta, Justices.

-----x
Luis Garcia,
Plaintiff-Respondent,

-against-

M-2761
Index No. 107425/06

Plaza 400 Owners Corp., et al.,
Defendants,

Rockledge Scaffold Corp.,
Defendant-Appellant.

- - - - -
[And a third-party action]

-----x
An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about April 14, 2010 (mot. seq. no. 004),

And defendant-appellant having moved for a stay of trial pending hearing and determination of the aforesaid appeal,

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

It is ordered that the motion is denied.

ENTER:



Clerk