

MOTION NO. (225/89) KA 02-00347. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL RHYMES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, CARNI, GREEN, AND PINE, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (690/06) KA 05-01050. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES KIRSCH, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, GREEN, PINE, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1125/07) KA 06-01069. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHAWN E. AKIN, DEFENDANT-APPELLANT. -- Motion for reargument and leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, GREEN, AND PINE, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1330/08) CA 08-00835. -- IN THE MATTER OF LIGHTHOUSE POINTE PROPERTY ASSOCIATES LLC, PETITIONER-RESPONDENT, V NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ALEXANDER B. GRANNIS, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND DALE A. DESNOYERS, DIRECTOR, DIVISION OF ENVIRONMENTAL REMEDIATION, RESPONDENTS-APPELLANTS. -- Motion for reargument denied. Motion for leave to appeal to the Court of Appeals granted. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND GREEN, JJ.

(Filed Apr. 24, 2009.)

MOTION NO. (1359/08) CA 08-01079. -- WESTFIELD FAMILY PHYSICIANS, P.C.,
DRS. DONALD F. BRAUTIGAM, GARY E. EGGLESTON, MARK R. HAGEN, TIMOTHY A.
GORMAN, TIMOTHY M. KITCHEN, KRISTOPHER N. HARTWIG, AND BRUCE A. BARKER, AND
ROBERT BERKE, M.D., DOING BUSINESS AS FAMILY HEALTH SERVICES,
PLAINTIFFS-RESPONDENTS, V HEALTHNOW NEW YORK, INC., DEFENDANT-APPELLANT. --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
SCUDDER, P.J., SMITH, PERADOTTO, AND PINE, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1501/08) TP 08-01491. -- IN THE MATTER OF PAUL HANSON,
PETITIONER, V A. LABRIOLA, DEPUTY SUPERINTENDENT OF SECURITY, ORLEANS
CORRECTIONAL FACILITY, RESPONDENT. (APPEAL NO. 2.) -- Motion for leave to
appeal to the Court of Appeals denied. PRESENT: MARTOCHE, J.P., SMITH,
FAHEY, AND PINE, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1513/08) CA 07-01431. -- IN THE MATTER OF JAMES E. PENNINGTON,
PETITIONER-APPELLANT, V JAMES WOYTASH, MD, DDS, ERIE COUNTY MEDICAL
EXAMINER, RESPONDENT-RESPONDENT. -- Motion for reargument denied. PRESENT:
MARTOCHE, J.P., SMITH, FAHEY, AND PINE, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1523/08) TP 08-01413. -- IN THE MATTER OF NEW YORK STATE
DIVISION OF HUMAN RIGHTS, PETITIONER, V VILLAGE PLAZA FAMILY RESTAURANT,

INC., CHRIS VOTIS, AS AIDER AND ABETTOR, AND CHRIS VOTIS, ALSO KNOWN AS CHRIS VOTSIS, INDIVIDUALLY, RESPONDENTS. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PINE, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1618/08) CA 08-01388. -- PATRICIA KNIERY, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF MICHAEL KNIERY, DECEASED, PLAINTIFF-RESPONDENT, V COTTRELL, INC., DEFENDANT-APPELLANT, ET AL., DEFENDANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, GREEN, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1636/08) CA 08-00955. -- IN THE MATTER OF COUNTRY SIDE SAND & GRAVEL INC., PETITIONER-APPELLANT, V TOWN OF POMFRET ZONING BOARD OF APPEALS AND TOWN OF POMFRET, RESPONDENTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (1658/08) CA 08-01419. -- CATARACT SPORTS & ENTERTAINMENT GROUP, LLC, ET AL., PLAINTIFFS, V ESSEX INSURANCE COMPANY, DEFENDANT-RESPONDENT, FRANK STRANGIO, MERRIE CAROLE STRANGIO, DEFENDANTS-APPELLANTS, ET AL., DEFENDANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: MARTOCHE, J.P., SMITH, CENTRA, GREEN, AND PINE,

JJ. (Filed Apr. 24, 2009.)

MOTION NO. (55/09) KA 06-03548. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GERRI L. BUNNELL, DEFENDANT-APPELLANT. -- Motion for reargument granted to the extent that the appeal should be added to the calendar for the May 2009 Term of Court for counsel to address the question whether County Court erred in delegating its responsibility to conduct the restitution hearing to its court attorney. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, AND GORSKI, JJ. (Filed Apr. 7, 2009.)

MOTION NO. (117/09) CA 08-01401. -- LISA HINCKLEY, INDIVIDUALLY, AND AS WIFE OF JOHN HINCKLEY, DECEASED, AND AS ADMINISTRATRIX OF THE ESTATE OF JOHN HINCKLEY, DECEASED, PLAINTIFF-APPELLANT, V CSX TRANSPORTATION, INC., DEFENDANT-RESPONDENT, ET AL., DEFENDANT. -- Motion for reargument or clarification denied. PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (155/09) CA 08-01631. -- JACK A. CARDINELL, PLAINTIFF-APPELLANT, V CHERUNDOLO, BOTTAR & LEONE, P.C., AND EDWARD S. LEONE, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (162.1/09) TP 08-01484. -- IN THE MATTER OF PAUL HANSON,

PETITIONER, V A. LABRIOLA, DEPUTY SUPERINTENDENT FOR SECURITY, ORLEANS CORRECTIONAL FACILITY, RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Apr. 24, 2009.)

MOTION NO. (193/09) KA 07-00774. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MILTON LEE, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ. (Filed Apr. 24, 2009.)

KA 07-01512. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MURRAY G. BELL, JR., DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Ontario County Court, William F. Kocher, J. - Driving While Intoxicated). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

KA 08-00099. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHELTIERE BROOKS, DEFENDANT-APPELLANT. -- Order unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Monroe County Court, John J. Connell, J. - 2005 Drug Law Reform Act). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

KA 05-02522. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TERTIUS LOVETT, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Supreme Court, Monroe County, Stephen R. Sirkin, A.J. - Criminal Possession Stolen Property, 3rd Degree). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

KA 05-02521. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TERTIUS LOVETT, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Supreme Court, Monroe County, Stephen R. Sirkin, A.J. - Assault, 2nd Degree). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

KAH 08-00682. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. MATTHEW JOHN SPILLMAN, PETITIONER-APPELLANT, V MALCOLM R. CULLY, SUPERINTENDENT, LIVINGSTON CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT. -- Appeal dismissed without costs as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Judgment of Supreme Court, Livingston County, Robert B. Wiggins, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Apr. 24, 2009.)

KA 08-01504. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V HERBERT

L. THOMAS, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed.

Counsel's motion to be relieved of assignment granted (see *People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Wyoming County Court, James R. Griffith, J. - Attempted Promoting Prison Contraband, 1st Degree). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND GORSKI, JJ. (Filed Apr. 24, 2009.)