

**MOTION NO. (55/09) KA 06-03548. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GERRI L. BUNNELL, DEFENDANT-APPELLANT.** -- Upon the Court's own motion, the memorandum and order entered February 6, 2009 (59 AD3d 942, *amended on rearg* \_\_\_ AD3d \_\_\_ [June 5, 2009]) is further amended by deleting "as a matter of discretion in the interest of justice and" from the ordering paragraph and by deleting the fifth sentence of the memorandum and substituting the following sentences: "We reach this issue sua sponte, and we note that preservation is not required inasmuch as the "essential nature" of the right to be sentenced as provided by law' is implicated (*People v Fuller*, 57 NY2d 152, 156). To the extent that *People v Jackson* (23 AD3d 1057, *lv denied* 6 NY3d 814) holds otherwise, it is no longer to be followed." PRESENT: SMITH, J.P., CENTRA, PERADOTTO, AND GORSKI, JJ. (Filed June 19, 2009.)

**MOTION NO. (883/09) KA 07-02578. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RAYMOND E. JOSEPH, III, DEFENDANT-APPELLANT. (APPEAL NO. 2.)** -- Upon the Court's own motion, the memorandum and order entered June 5, 2009 (\_\_\_ AD3d \_\_\_) is amended by deleting "as a matter of discretion in the interest of justice and" from the ordering paragraph and by deleting the penultimate sentence of the memorandum and substituting the following sentence: "We note that, although defendant failed to preserve his contention for our review (see CPL 470.05 [2]), preservation is not required inasmuch as the "essential nature" of the right to be sentenced

as provided by law' is implicated (*People v Fuller*, 57 NY2d 152, 156)."

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND GREEN, JJ. (Filed June 19, 2009.)