

**MOTION NO. (1499/05) KA 03-01080. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RONNIE A. DIGGS, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., MARTOCHE, GREEN, AND GORSKI, JJ. (Filed July 2, 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 July 2, 2009.)

**MOTION NO. (1573/07) KA 05-00983. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES F. CAHILL, III, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, AND PINE, JJ. (Filed July 2, 2009.)

**MOTION NO. (1624/07) KA 06-01480. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AARON V., DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, PERADOTTO, AND PINE, JJ. (Filed July 2, 2009.)

**MOTION NO. (147/08) KA 04-02647. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TYRONE DAVIS, DEFENDANT-APPELLANT.** -- Motion for writ of

error coram nobis denied. PRESENT: HURLBUTT, J.P., SMITH, CENTRA, AND FAHEY, JJ. (Filed July 2, 2009.)

MOTION NO. (15/08) CA 07-00075. -- JAMES A. DIETZ, PLAINTIFF-APPELLANT, V COMPASS PROPERTY MANAGEMENT CORPORATION AND EVERGREEN TOWNHOUSES HOMEOWNERS ASSOCIATION, INC., DEFENDANTS-RESPONDENTS. -- Motion for clarification denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, GREEN, AND PINE, JJ. (Filed July 2, 2009.)

MOTION NO. (1685/08) CA 08-01442. -- KIMBERLY HOFMANN, PLAINTIFF-RESPONDENT-APPELLANT, ET AL., PLAINTIFF, V TOWN OF ASHFORD, DUANE FULLER, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS. STATE FARM MUTUAL AUTOMOBILE INS. CO., AS SUBROGEE OF GEORGE K. HOFMANN, PLAINTIFF-RESPONDENT, V TOWN OF ASHFORD AND DUANE FULLER, DEFENDANTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., HURLBUTT, FAHEY, PERADOTTO, AND PINE, JJ. (Filed July 2, 2009.)

MOTION NO. (273/09) CA 08-01089. -- IN THE MATTER OF ARNOLD KAHN, INDIVIDUALLY AND AS PRESIDENT OF PARK LANE CONDOMINIUM, PETITIONER-APPELLANT, V PLANNING BOARD OF CITY OF BUFFALO AND UNILAND DEVELOPMENT COMPANY, RESPONDENTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J.,

HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed July 2, 2009.)

MOTION NO. (436/09) CA 08-02193. -- LEONARD M. ENGLERT AND YVONNE ENGLERT, PLAINTIFFS-RESPONDENTS, V GERALD W. SCHAFFER, JR., ESQ., STEVEN BARNES, ESQ., INDIVIDUALLY AND DOING BUSINESS AS THE BARNES FIRM, AS SUCCESSORS IN INTEREST TO CELLINO & BARNES, AND ROSS CELLINO, INDIVIDUALLY AND AS A PARTNER IN THE LAW FIRM OF CELLINO & BARNES, DEFENDANTS-APPELLANTS. -- Motion for reargument denied. PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, PERADOTTO, AND GORSKI, JJ. (Filed July 2, 2009.)

MOTION NOS. (668-670/09) CA 08-00462. -- FREDERICK R. HAWKES, PLAINTIFF-RESPONDENT, V BONNIE M. HAWKES, DEFENDANT-APPELLANT. (APPEAL NO. 1.) CA 08-01723. -- FREDERICK R. HAWKES, PLAINTIFF-RESPONDENT, V BONNIE M. HAWKES, DEFENDANT-APPELLANT. (APPEAL NO. 2.) CA 08-02076. -- FREDERICK R. HAWKES, PLAINTIFF-RESPONDENT, V BONNIE M. HAWKES, DEFENDANT-APPELLANT. (APPEAL NO. 3.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, PERADOTTO, AND GREEN, JJ. (Filed July 2, 2009.)

MOTION NO. (674/09) CAF 07-02228. -- IN THE MATTER OF DEMARIO J., DESHAWN L., RAKIM S., AND RENIYA S. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; MICHELLE S., RESPONDENT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, PERADOTTO, AND GREEN, JJ. (Filed July 2, 2009.)

**KA 08-00348. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANNETTE BROWN, 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, Erie County, Russell P. Buscaglia, J. - Assault, 2nd Degree.) PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND GREEN, JJ. (Filed July 2, 2009.)

**KAH 08-01509. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. CALVIN POWELL, PETITIONER-APPELLANT, V NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT-RESPONDENT.** -- The case is held, the decision is reserved, the motion to relieve counsel of assignment is granted, and new counsel is to be assigned. Memorandum: In denying relator's habeas corpus petition, Supreme Court held that "[u]pon his release to post-release supervision, the balance of the maximum term on his indeterminate sentence was properly held in abeyance pursuant to Penal Law § 70.45 (5) (a)." However, relator's indeterminate sentence arose from a crime committed in 1997, prior to the effective date of Penal Law § 70.45. Thus, a nonfrivolous issue exists as to whether this provision was properly applied. Therefore, we relieve counsel of his assignment and assign new counsel to brief this issue, as well as any other issues that counsel's review of the record may disclose. (Appeal from Supreme Court, Wyoming County, Mark H. Dadd, J. - Habeas Corpus.) PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND GREEN, JJ. (Filed July 2, 2009.)

KA 08-00140. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL W. WELLS, 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. - Falsifying Business Records, 1st Degree.) PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND GREEN, JJ. (Filed July 2, 2009.)