

MOTION NO. (511/89) KA 09-01741. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V NATHANIEL PITTMAN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., MARTOCHE, GREEN, AND PINE, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (121/91) KA 09-01579. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL J. HILL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: PERADOTTO, J.P., CARNI, GORSKI, AND PINE, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (832/98) KA 07-02682 -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LAWRENCE JOHNSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, AND GREEN, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (1230/99) KA 98-05449. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EMMANUEL JOHNSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND CENTRA, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (750/01) KA 00-00093. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSEPH LEE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis dismissed. PRESENT: SCUDDER, P.J., HURLBUTT, CENTRA, GREEN, AND PINE, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (702/04) KA 01-02017. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MILTON LEE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, GREEN, AND PINE, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (465/07) KA 04-01132. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLOVERIOUS THOMAS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: MARTOCHE, J.P., CENTRA, GREEN, AND GORSKI, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (7/08) KA 06-00538. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RANDY HALL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, GREEN, AND PINE, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (241/08) KA 07-00049. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLIFFORD K. PICKETT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis granted. Memorandum: Defendant contends that he was denied effective assistance of appellate counsel because counsel failed to raise an issue on direct appeal that would have resulted in reversal, specifically, in failing to argue that County Court erred in ordering restitution inasmuch as it was not part of the plea bargain. Upon our review of the trial court proceedings, we conclude that the issue may have merit. Therefore, the order of March 14, 2008 is vacated and this Court will consider the appeal de novo (*see People v LeFroise*, 151 AD2d 1046).

Defendant is directed to perfect his appeal on or before January 12, 2010.

PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ.

(Filed Nov. 13, 2009.)

MOTION NO. (631/08) KA 07-00224. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LARRY YOUNG, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: HURLBUTT, J.P., MARTOCHE, PERADOTTO, PINE, AND GORSKI, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (990/08) KA 06-02982. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RASHEID K. LOTT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND GORSKI, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (777/09) KA 05-02579. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JASON L. WRIGHT, DEFENDANT-APPELLANT. -- Motion for reargument or reconsideration denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (890/09) CA 08-02611. -- PULVER ROOFING COMPANY, INC., PLAINTIFF-APPELLANT, V SBLM ARCHITECTS, P.C., DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND GREEN, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (952/09) KA 08-00142. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TODD A. KENDALL, DEFENDANT-APPELLANT. -- Motion for reargument and reconsideration denied. PRESENT: MARTOCHE, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Nov. 13, 2009.)

MOTION NO. (992/09) CA 09-00459. -- STEPHEN DIMARCO, PLAINTIFF-APPELLANT, V PATRICK J. BOMBARD, INDIVIDUALLY AND AS A MEMBER OF BOMBARD BUICK PONTIAC GMC TRUCK, LLC, BOMBARD CAR CO., INC., BOMBARD BUICK PONTIAC GMC TRUCK, LLC, AND BOMBARD PONTIAC OLDSMOBILE GMC TRUCK, LLC, DEFENDANTS-RESPONDENTS.

(ACTION NO. 1.) STEPHEN DIMARCO, PLAINTIFF-APPELLANT, V PATRICK J. BOMBARD, INDIVIDUALLY AND AS A MEMBER OF 100 MAIN STREET, LLC, 100 MAIN STREET, LLC, BOMBARD CAR CO., INC., AND BOMBARD BUICK PONTIAC GMC TRUCK, LLC, DEFENDANTS-RESPONDENTS. (ACTION NO. 2.) -- Motion for reargument granted and, upon reargument, the memorandum and order entered October 2, 2009 (___ AD3d ___) is amended by adding the following sentence as the last sentence of the memorandum: "Even assuming, arguendo, that the affidavit of plaintiff's attorney, which purports to outline the terms of the stipulation, constitutes a sufficient record upon which we may review plaintiff's contention that the court erred in vacating the settlement agreement, we would nevertheless affirm." PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Nov. 13, 2009.)

KA 09-00209. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LAFAYETTE MELTON, DEFENDANT-APPELLANT. -- Motion to dismiss appeal granted.

Memorandum: Appeal unanimously dismissed and matter remitted to Erie County Court to vacate the judgment of conviction and dismiss the indictment either sua sponte or on application of either the District Attorney or counsel for defendant (see *People v Matteson*, 75 NY2d 745).

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND CENTRA, JJ. (Filed Nov. 13, 2009.)

KA 08-00838. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BRANDON CAVALIER, 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 Livingston County Court, Dennis S. Cohen, J. - Violation of Probation). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ. (Filed Nov. 13, 2009.)

KAH 08-02377. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. DERICK GRAMLING, PETITIONER-APPELLANT, V NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT-RESPONDENT. -- Order unanimously affirmed without costs. Counsel's motion to be relieved of assignment granted (see *People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Order of Supreme Court, Wyoming County, Mark H. Dadd, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ. (Filed Nov. 13, 2009.)

KA 08-01774. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY LEE, 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 Erie County Court, Michael L.

D'Amico, J. - Attempted Robbery, 1st Degree). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ. (Filed Nov. 13, 2009.)

KA 08-01775. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY LEE, 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 Erie County Court, Michael L. D'Amico, J. - Forgery, 2nd Degree). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ. (Filed Nov. 13, 2009.)

KAH 09-00049. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. KEVIN MARTIN, PETITIONER-APPELLANT, V WILLIAM HULIHAN, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY RESPONDENT-RESPONDENT. -- Appeal dismissed without costs as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Order of Supreme Court, Oneida County, John W. Grow, J. - Habeas Corpus). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ. (Filed Nov. 13, 2009.)

KA 07-00720. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL A. ZAYAS, 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, Joseph D. Valentino, J. - Criminal Possession of a Weapon, 3rd Degree). PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ. (Filed Nov. 13, 2009.)