

MOTION NOS. (153-154/96) KA 05-01122. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER YOUNG, DEFENDANT-APPELLANT. KA 05-01123. -
- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER YOUNG, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied.
PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND MARTOCHE, JJ. (Filed June 29, 2012.)

MOTION NO. (1116/99) KA 99-00063. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SAMUEL MCNEAR, DEFENDANT-APPELLANT. -- Motion for reargument granted, and upon reargument, the coram nobis motion is denied. PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed June 29, 2012.)

MOTION NO. (2106/00) KA 99-05100. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMAR SULLIVAN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, CARNI, AND LINDLEY, JJ. (Filed June 29, 2012.)

MOTION NO. (1011/07) KA 06-00940. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EDUNDABIRA O. OJO, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed June 29, 2012.)

MOTION NO. (1122/10) KA 07-01855. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD SEMRAU, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed June 29, 2012.)

MOTION NO. (77/11) KA 06-02430. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT A. LYNCH, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed June 29, 2012.)

MOTION NO. (286/12) CAF 11-01896. -- IN THE MATTER OF BARNEY M. MATHEWSON, JR., PETITIONER-RESPONDENT, V ELIZABETH S. SESSLER, RESPONDENT-APPELLANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed June 29, 2012.)

MOTION NO. (319/12) CA 11-01843. -- IN THE MATTER OF THE ARBITRATION BETWEEN STARPOINT CENTRAL SCHOOL DISTRICT, PETITIONER-APPELLANT, AND CSEA, INC., LOCAL 872, STARPOINT CENTRAL SCHOOL DISTRICT BUILDINGS AND GROUNDS UNIT #7698, RESPONDENT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, AND SCONIERS, JJ. (Filed June 29, 2012.)

MOTION NO. (323/12) CA 10-02489. -- IN THE MATTER OF THE STATE OF NEW YORK,

PETITIONER-APPELLANT, V RICHARD LESTER, A PATIENT IN THE CARE AND CUSTODY OF ST. LAWRENCE PSYCHIATRIC CENTER, RESPONDENT-RESPONDENT. -- Motion for reargument, renewal or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, AND SCONIERS, JJ. (Filed June 29, 2012.)

MOTION NO. (405/12) TP 11-01530. -- IN THE MATTER OF RAMON ALVAREZ, PETITIONER, V BRIAN FISCHER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed June 29, 2012.)

MOTION NO. (420/12) CA 11-02212. -- SHAMEL SANDERS, PLAINTIFF-RESPONDENT, V SCOTT PATRICK, KURT ROESNER, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed June 29, 2012.)

MOTION NO. (431/12) TP 11-02330. -- IN THE MATTER OF DEWITT GIBSON, PETITIONER, V BRIAN FISCHER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT. -- Motion for reargument is granted and, upon reargument, the order entered April 20, 2012 (94 AD3d 1418) is amended by deleting the ordering paragraph and substituting the following ordering paragraph, "It is hereby ordered that the determination is unanimously

modified on the law and the petition is granted in part by annulling those parts of the determination finding that petitioner violated inmate rules 102.10 (7 NYCRR 270.2 [b] [3] [i]) and 104.11 (7 NYCRR 270.2 [B] [5] [ii]) and vacating the recommended loss of good time and as modified the determination is confirmed without costs, respondent is directed to expunge from petitioner's institutional record all references to the violation of those inmate rules, and the matter is remitted to respondent for further proceedings," and by adding the following Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, following a Tier III hearing, that petitioner had violated various inmate rules, including inmate rules 102.10 (7 NYCRR 270.2 [B] [3] [i] [threats]) and 104.11 (7 NYCRR 270.2 [B] [5] [ii] [violent conduct]). As respondent correctly concedes, the determination with respect to those two inmate rules is not supported by substantial evidence (*see generally People ex rel. Vega v Smith*, 66 NY2d 130, 139). We therefore modify the determination and grant the petition in part by annulling those parts of the determination finding that petitioner violated those two inmate rules, and we direct respondent to expunge from petitioner's institutional record all references to the violation of those rules. Although we need not remit the matter to respondent for reconsideration of those parts of the penalty already served by petitioner, we note that there was also a recommended loss of good time, and the record does not reflect the relationship between the violations and that recommendation. We therefore further modify the determination by vacating the recommended loss of good time, and we remit the matter to respondent for reconsideration of that recommendation. We

have considered petitioner's remaining contentions and conclude that they are without merit. PRESENT: SMITH, J.P., LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed June 29, 2012.)

MOTION NO. (495/12) CA 11-01286. -- IN THE MATTER OF THE APPLICATION OF PETITIONER/CONDEMNOR NEW YORK STATE URBAN DEVELOPMENT CORPORATION, DOING BUSINESS AS EMPIRE STATE DEVELOPMENT CORPORATION, PETITIONER-RESPONDENT, TO ACQUIRE IN FEE SIMPLE CERTAIN REAL PROPERTY CURRENTLY OWNED BY FALLSITE, LLC, AND KNOWN AS: 232 SIXTH STREET, CITY OF NIAGARA FALLS, 700 RAINBOW BLVD., CITY OF NIAGARA FALLS, 231 SIXTH STREET, CITY OF NIAGARA FALLS, 626 RAINBOW BLVD., CITY OF NIAGARA FALLS, 701 FALLS STREET, CITY OF NIAGARA FALLS, SITUATED IN THE COUNTY OF NIAGARA, STATE OF NEW YORK AND HAVING, RESPECTIVELY; THE FOLLOWING TAX SECTIONS, BLOCKS, AND LOTS:

159.09-2-25.122, 159.09-2-25.112, 159.09-2-25.121, 159.09-2-25.111, 159.09-2-25.211 TOGETHER WITH ALL COMPENSABLE INTERESTS THEREIN CURRENTLY OWNED BY FALLSITE, LLC, FALLSVILLE SPLASH, LLC AND ANY OTHER CONDEMNNEES WHO ARE CURRENTLY UNKNOWN. FALLSITE, LLC AND FALLSVILLE SPLASH, LLC, RESPONDENTS-APPELLANTS. -- Motion for reargument, reconsideration or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed June 29, 2012.)

MOTION NO. (565/12) CA 11-02418. -- GAIL E. PATTERSON, PLAINTIFF-RESPONDENT, V CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY (CNYRTA) AND CENTRO, INC., DEFENDANTS-APPELLANTS. -- Motion for reargument,

reconsideration or leave to appeal to the Court of Appeals denied.

PRESENT: SCUDDER, P.J., CENTRA, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

(Filed June 29, 2012.)

**MOTION NO. (589/12) CA 11-01870. -- JEREMY S. GNADE, PLAINTIFF-RESPONDENT,
V SUNBURST OPTICS, INC., DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion**

for reargument denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND

LINDLEY, JJ. (Filed June 29, 2012.)

**KA 11-02027. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIAM
MORRISON, DEFENDANT-APPELLANT. -- Counsel's motion to be relieved of**

assignment granted and appeal dismissed as abandoned. (Appeal from

Judgment of Wayne County Court, Daniel G. Barrett, J. - Aggravated

Unlicensed Operation of a Motor Vehicle, 1st Degree). PRESENT: SCUDDER,

P.J., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed June 29, 2012.)

**KAH 11-01165. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. HENRY VARGAS,
PETITIONER-APPELLANT, V THE PEOPLE OF THE STATE OF NEW YORK DEPARTMENT OF**

CORRECTIONS, SUPERINTENDENT EKPE D. EKPE, RESPONDENT-RESPONDENT. --

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, Jefferson County, Hugh A. Gilbert, J. -

Habeas Corpus). PRESENT: SCUDDER, P.J., CARNI, LINDLEY, SCONIERS, AND

MARTOCHE, JJ. (Filed June 29, 2012.)

KA 11-00674. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LEON WILLIAMS, 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, M. William Boller, J. - Assault, 1st Degree). PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed June 8, 2012.)