

MOTION NO. (849/00) KA 99-01550. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TIMOTHY MULDROW, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, AND CARNI, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (802/03) KA 01-00914. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHARROWL DAVIS, ALSO KNOWN AS SHARROD DAVIS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND WHALEN, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (286/07) KA 05-02660. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSE A. GOMEZ, 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, specifically, whether the court placed on the record a reasonable basis for restraining defendant before the jury. Upon our review of the motion papers, we conclude that the issue may have merit. Therefore, the order of March 16, 2007 is vacated and this Court will consider the appeal de novo (*see People v LeFrois*, 151 AD2d 1046). Defendant is directed to file and serve his records and briefs with this Court on or before February 13, 2015. PRESENT: SCUDDER, P.J, CENTRA, FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (829/11) KA 09-00514. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL T. CHICHERCHIA, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, CARNI, AND SCONIERS, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (795/12) KA 10-00667. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVID MCCALLUM, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND LINDLEY, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (1239/12) KA 11-02401. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLES G. JAMIESON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND WHALEN, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (1304/13) CA 13-00161. -- ERIC M. FISHER AND DENISE E. FISHER, PLAINTIFFS-RESPONDENTS, V NATHANIEL C. HILL AND MELINDA J. HILL, DEFENDANTS-APPELLANTS. -- Motion for modification denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, SCONIERS, AND WHALEN, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (352/14) CA 13-01387. -- SPOLETA CONSTRUCTION, LLC, PLAINTIFF-APPELLANT, V ASPEN INSURANCE UK LIMITED, C/O ASPEN SPECIALTY INSURANCE MANAGEMENT COMPANY, DEFENDANT-RESPONDENT, 1255 PORTLAND, LLC,

HUB-LANGIE PAVING, INC., AND SHANE VANDERWALL, DEFENDANTS. -- Motion for reargument denied. Motion for leave to appeal to the Court of Appeals granted. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND VALENTINO, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (562/14) KA 12-00893. -- **THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LARRY WILLIAMS, DEFENDANT-APPELLANT.** -- Motion for reargument and leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, WHALEN, AND DEJOSEPH, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (573/14) CA 13-00220. -- **TIMOTHY D. GAY, PLAINTIFF-APPELLANT, V MARIA GAY, DEFENDANT-RESPONDENT. (APPEAL NO. 1.)** -- Motion for reargument, reconsideration or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, SCONIERS, WHALEN, AND DEJOSEPH, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (574/14) CA 13-00909. -- **TIMOTHY D. GAY, PLAINTIFF-APPELLANT, V MARIA GAY, DEFENDANT-RESPONDENT. (APPEAL NO. 2.)** -- Motion for reargument, reconsideration or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, SCONIERS, WHALEN, AND DEJOSEPH, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (575/14) CA 13-00910. -- **TIMOTHY D. GAY, PLAINTIFF-APPELLANT, V MARIA GAY, DEFENDANT-RESPONDENT. (APPEAL NO. 3.)** -- Motion for reargument,

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

PRESENT: SMITH, J.P., PERADOTTO, SCONIERS, WHALEN, AND DEJOSEPH, JJ.

(Filed Nov. 14, 2014.)

MOTION NO. (576/14) CA 13-00911. -- TIMOTHY D. GAY, PLAINTIFF-APPELLANT, V MARIA GAY, DEFENDANT-RESPONDENT. (APPEAL NO. 4.) -- Motion for reargument, reconsideration or leave to appeal to the Court of Appeals denied.

PRESENT: SMITH, J.P., PERADOTTO, SCONIERS, WHALEN, AND DEJOSEPH, JJ.

(Filed Nov. 14, 2014.)

MOTION NO. (577/14) CA 13-00912. -- TIMOTHY D. GAY, PLAINTIFF-APPELLANT, V MARIA GAY, DEFENDANT-RESPONDENT. (APPEAL NO. 5.) -- Motion for reargument, reconsideration or leave to appeal to the Court of Appeals denied.

PRESENT: SMITH, J.P., PERADOTTO, SCONIERS, WHALEN, AND DEJOSEPH, JJ.

(Filed Nov. 14, 2014.)

MOTION NO. (624/14) CA 13-00998. -- KAI LIN, PLAINTIFF-APPELLANT, V DEPARTMENT OF DENTISTRY, UNIVERSITY OF ROCHESTER MEDICAL CENTER, UNIVERSITY DENTAL FACULTY GROUP, DR. CARLO ERCOLI, DR. JANE BREWER, OSBORN, REED & BURKE, LLP, CHRISTIAN C. CASINI, ESQ., DEFENDANTS-RESPONDENTS, ET AL., DEFENDANT. -- Motion for reargument or leave to appeal to the Court of

Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND WHALEN, JJ. (Filed Nov. 14, 2014.)

MOTION NO. (668/14) CA 13-02066. -- IN THE MATTER OF MATTHEW GRAF AND BETH GRAF, PETITIONERS-APPELLANTS, V TOWN OF LIVONIA, FINGER LAKES TIMBER COMPANY, INC., AND TOWN OF LIVONIA JOINT ZONING BOARD OF APPEALS, RESPONDENTS-RESPONDENTS. -- Motion for reargument denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, SCONIERS, AND DEJOSEPH, JJ. (Filed Nov. 14, 2014.)

KA 12-00159. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JONATHAN MERINO, DEFENDANT-APPELLANT. -- Motion to dismiss granted. Memorandum: The matter is remitted to Monroe County Court to vacate the judgment of conviction and dismiss the indictment either sua sponte or on application of either the District Attorney or the counsel for defendant (*see People v Matteson*, 75 NY2d 745). PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Nov. 14, 2014.)

KA 12-00821. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V THOMAS H. SEISER, ALSO KNOWN AS JOHN DOE, DEFENDANT-APPELLANT. -- Motion to dismiss granted. Memorandum: The matter is remitted to Monroe County Court to vacate the judgment of conviction and dismiss the indictment either sua sponte or on application of either the District Attorney or the counsel for defendant (*see People v Matteson*, 75 NY2d 745). PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Nov. 14, 2014.)

KA 11-00311. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEVIN LEE MARTIN, DEFENDANT-APPELLANT. -- Appeal dismissed as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Order of Supreme Court, Monroe County, Joseph D. Valentino, J. - Criminal Sale of a Controlled Substance, 3rd Degree). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Nov. 14, 2014.)

KA 10-00808. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JUAN C. MEDINA, DEFENDANT-APPELLANT. -- 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: Defendant was convicted upon his *Alford* plea of attempted promoting prison contraband in the first degree (Penal Law §§ 110.00, 205.25 [2]). Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38). Our review of the record reveals a nonfrivolous issue concerning the voluntariness of defendant's plea (see *People v Peque*, 22 NY3d 168). We therefore 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 Judgment of Jefferson County Court, Kim Hawn Martusewicz, J. - Attempted Promoting Prison Contraband, 1st Degree). PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Nov. 14, 2014.)