

**State of New York**  
**Court of Appeals**

**Decisions**

September 14, 2023

**MOTIONS**

3                    Mo. No. 2023-349  
In the Matter of Elizabeth C. Barra,  
                  Appellant,  
                  v.  
Daryl M. Barra,  
                  Respondent.

Motion for leave to appeal denied.

                          Mo. No. 2023-437  
The People &c.,  
                  Respondent,  
                  v.  
Michael Bay,  
                  Appellant.

Motion by The Legal Aid Society for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

4                    Mo. No. 2023-625  
In the Matter of Bowers Development, LLC  
et al.,  
                  Respondents,  
                  v.  
Oneida County Industrial Development  
Agency et al.,  
                  Appellants.

Motion by Iroquois Healthcare Association, Inc. for leave to appear amicus curiae on the appeal herein granted to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

                          Mo. No. 2023-509  
Herman Brettler, &c.,  
                  Appellant,  
                  v.  
Allianz Life Insurance Company of North  
America,  
                  Respondent.

Motion by Life Insurance Council of New York, Inc. et al. for leave to file a brief amici curiae on consideration of the certified question herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

3 Mo. No. 2023-571  
The People &c.,  
Respondent,  
v.  
Jason Brisman,  
Appellant.

Motion for assignment of counsel granted and Clea Weiss, Esq., 10 North Fitzhugh Street, Rochester, NY 14614, assigned as counsel to the appellant on the appeal herein.

3 SSD 35  
In the Matter of the Foreclosure of Tax Liens  
by County of Broome.  
  
County of Broome,  
Respondent;  
John Cadore et al.,  
Appellants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

3 SSD 36  
In the Matter of the Foreclosure of Tax Liens  
by County of Broome.  
  
County of Broome,  
Respondent;  
John Cadore et al.,  
Appellants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

3 Mo. No. 2023-409  
The People &c. ex rel. Thomas C. Bruni,  
Appellant,  
v.  
Craig D. Apple Sr., &c.,  
Respondent.  
(And Two Other Related Proceedings.)

On the Court's own motion, appeal dismissed, without costs, upon the ground that it does not lie. Motion for leave to appeal denied. Motion for poor person relief dismissed as academic.

2 Mo. No. 2023-587  
In the Matter of Joan A.C.  
  
Debra A.C.,  
Respondent;  
Irene R.,  
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2023-373  
In the Matter of Adam M.C.

Monroe County Department of Human  
Services,  
Respondent;  
John C.,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4 Mo. No. 2023-308  
In the Matter of Milo C.

Onondaga County Department of Children  
and Family Services,  
Respondent;  
Daniella C.,  
Appellant,  
et al.,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4 Mo. No. 2023-619  
The People &c.,  
Respondent,  
v.  
Kevin Cleveland,  
Appellant.

Motion for assignment of counsel granted and Julie  
A. Cianca, Esq., Monroe County Public Defender, 10  
N. Fitzhugh Street, Rochester, NY 14614 assigned as  
counsel to the appellant on the appeal herein.

2 Mo. No. 2023-608  
The People &c.,  
Appellant,  
v.  
Nolberto Contreras Vargas,  
Respondent.

Motion for assignment of counsel granted and  
Patricia Pazner, Esq., Appellate Advocates, 111 John  
Street, 9th Floor, New York, NY 10038 assigned as  
counsel to the respondent on the appeal herein.

2 Mo. No. 2023-635  
The People &c.,  
Respondent,  
v.  
Tramel Cuencas,  
Appellant.

Motion by The Legal Aid Society for leave to appear amicus curiae on the appeal herein granted to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 Mo. No. 2023-264  
In the Matter of Franklin Diaz,  
Respondent,  
v.  
Chana Morales,  
Appellant.  
(And Related Proceedings.)

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

2 Mo. No. 2023-566  
The People &c.,  
Respondent,  
v.  
Kerbet Dixon,  
Appellant.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2023-590  
The People &c.,  
Appellant,  
v.  
Jonaiki Martinez Estrella,  
Respondent.

Motion for assignment of counsel granted and Steven N. Feinman, Esq., c/o The Feinman Law Firm, 19 Court Plaza, Suite 201, White Plains, NY 10601, assigned as counsel to the respondent on the appeal herein.

4 Mo. No. 2023-310  
In the Matter of Darnell J. Farney,  
Appellant,  
v.  
Melissa A. Greenwood,  
Respondent.  
(And Another Proceeding.)

Motion for leave to appeal denied.

4 Mo. No. 2023-428  
Glenn Federman,  
Appellant,  
v.  
Town of Lorraine, et al.,  
Respondents.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution. Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. Motion for a stay dismissed as academic.

2 Mo. No. 2023-470  
The People &c.,  
Appellant,  
v.  
Cid C. Franklin,  
Respondent.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the respondent on the appeal herein.

2 Mo. No. 2023-452  
The People &c.,  
Respondent,  
v.  
Kenneth Garcia,  
Appellant.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 SSD 37  
Gibson, Dunn & Crutcher LLP,  
Appellant,  
v.  
George Koukis,  
Respondent,  
et al.,  
Defendants.

Appeal, insofar as taken from that part of the Appellate Division order that affirmed so much of the Supreme Court order granting the motion to quash the subpoenas and denying as premature the cross-motion to permit alternate service of the subpoenas, dismissed without costs, by the Court *sua sponte*, upon the ground that such portion of the order appealed from does not finally determine the action within the meaning of the Constitution. Judge Halligan took no part.

1                    Mo. No. 2023-569  
The People &c.,  
    Respondent,  
    v.  
Fabian Greene,  
    Appellant.

Motion for assignment of counsel granted and Caprice R. Jenerson, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

2                    SSD 34  
In the Matter of Yoel Gruen,  
    Appellant,  
    v.  
Ahuva Gruen,  
    Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

4                    Mo. No. 2023-434  
In the Matter of Ryanna H. et al.  
  
Steuben County Department of Social  
Services,  
    Respondent;  
Monique H.,  
    Appellant.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

1                    SSD 33  
In the Matter of John L. Haverty,  
    Appellant,  
    v.  
City of New York, et al.,  
    Respondents.

Appeal, insofar as taken from the order of an individual Justice of the Appellate Division, dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies from such order (*see* NY Const, art VI, § 3 [b]; CPLR 5601); appeal, insofar as taken from the December 2022 Appellate Division order, dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

3                    Mo. No. 2023-516  
The People &c.,  
    Respondent,  
    v.  
Codie Hayward,  
    Appellant.

Motion for assignment of counsel granted and Kristin A. Bluvas, Esq., Rural Law Center of New York, 22 US Oval, Suite 101, Plattsburgh, NY 12903 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2023-589  
The People &c.,  
    Respondent,  
    v.  
Mitchell Hernandez,  
    Appellant.

Motion for assignment of counsel granted and Caprice R. Jenerson, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

2                    Mo. No. 2023-403  
In the Matter of Clayton J. Hogan,  
    Appellant,  
    v.  
Gavriella C. Max,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2023-363  
HSBC Bank USA, National Association, &c.,  
    Respondent,  
    v.  
Roy S. Whitelock,  
    Appellant,  
et al.,  
    Defendants.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.  
Motion for a stay dismissed as academic.

2 Mo. No. 2023-644  
The People &c.,  
Respondent,  
v.  
Donna Jordan,  
Appellant.

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The People &c.,  
Respondent,  
v.  
Jorge Espinosa,  
Appellant.

4 Mo. No. 2023-611  
The People &c.,  
Appellant,  
v.  
Alvin King,  
Respondent.

2 Mo. No. 2023-324  
In the Matter of William Lubrico,  
Respondent,  
v.  
Jeanne Lubrico,  
Appellant.

Mo. No. 2023-417  
In the Matter of Michael McRae, &c.,  
Respondent;  
Vivian H.,  
Appellant.

4 Mo. No. 2023-467  
The People &c.,  
Respondent,  
v.  
Joshua Messano,  
Appellant.

Motion by The Legal Aid Society for leave to appear amicus curiae on the appeals herein granted to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

Motion for assignment of counsel granted and Philip Rothschild, Esq., Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202 assigned as counsel to the respondent on the appeal herein.

Motion for leave to appeal denied.

Motion for reargument denied.  
Judge Halligan took no part.

Motion for assignment of counsel granted and Philip Rothschild, Esq., Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.



3                    Mo. No. 2023-552  
The People &c.,  
    Respondent,  
    v.  
Giovanni Nadal-Sanchez,  
    Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

                          Mo. No. 2023-565  
Andrew Nitkewicz, &c.,  
    Appellant,  
    v.  
Lincoln Life & Annuity Company of New  
York,  
    Respondent.

Motion by American Council of Life Insurers for leave to file a brief amicus curiae on consideration of the certified question herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

4                    Mo. No. 2023-370  
In the Matter of Amber M. Ohler,  
    Respondent,  
    v.  
Michael Bartkovich,  
    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2023-637  
The People &c.,  
    Respondent,  
    v.  
Yoselyn Ortega,  
    Appellant.

Motion by District Attorneys Association of the State of New York for leave to appear amicus curiae on the appeal herein granted to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

2                    Mo. No. 2023-306  
In the Matter of State of New York,  
    Respondent,  
    v.  
Timothy R.,  
    Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2023-642  
In the Matter of Rochester Police Locust  
Club, Inc., et al.,  
                        Respondents,  
                        v.  
City of Rochester, et al.,  
                        Respondents,  
Council of City of Rochester,  
                        Appellant.

Motion by Albany Community Police Review Board  
for leave to file a brief amicus curiae on the appeal  
herein granted and the proposed brief is accepted as  
filed. The brief must be submitted in digital format  
within seven days.  
Judge Troutman took no part.

2                    Mo. No. 2023-636  
The People &c.,  
                        Respondent,  
                        v.  
Lance Rodriguez,  
                        Appellant.

Motion by The Legal Aid Society for leave to appear  
amicus curiae on the appeal herein granted to the  
extent that the proposed brief is accepted as filed.  
Two copies of the brief must be served, an original  
and nine copies filed, and the brief submitted in  
digital format within seven days.  
Judge Halligan took no part.

3                    Mo. No. 2023-622  
Roman Catholic Diocese of Albany, et al.,  
                        Appellants,  
                        v.  
Maria T. Vullo, &c. et al.,  
                        Respondents,  
et al.,  
                        Defendants.  
(And Another Related Action.)

Motion by New York State Catholic Conference for  
leave to appear amicus curiae on the appeal herein  
granted to the extent that the proposed brief is  
accepted as filed. Two copies of the brief must be  
served, an original and nine copies filed, and the  
brief submitted in digital format within seven days.

2                    Mo. No. 2023-327  
In the Matter of Cindy Sabatino,  
                        Appellant,  
                        v.  
Anthony Alagona,  
                        Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2023-615  
Michael Sabine,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion by New York State Academy of Trial Lawyers for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. One copy of the brief must be served, an original and two copies filed, and the brief submitted in digital format within seven days.

1 Mo. No. 2022-877  
In the Matter of Owolabi M. Salis, &c.  
  
Attorney Grievance Committee for the First  
Judicial Department,  
Respondent;  
Owolabi M. Salis,  
Appellant.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved.  
Motion for leave to appeal denied.  
Motion for a stay dismissed as academic.

4 Mo. No. 2023-613  
The People &c.,  
Respondent,  
v.  
Eric D. Sharp,  
Appellant.

Motion for assignment of counsel granted and Julie A. Cianca, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2023-605  
The People &c.,  
Respondent,  
v.  
Dominic F. Spirito,  
Appellant.

Motion for assignment of counsel granted and John A. Cirando, Esq., c/o D.J. & J.A. Cirando, PLLC, 250 South Clinton Street, Suite 350, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2023-581  
In the Matter of Terrence Stevens et al.,  
Respondents,  
v.  
New York State Division of Criminal Justice  
Services, et al.,  
Appellants.

Motion by Brendan Parent for leave to file a brief  
amicus curiae on the appeal herein granted and the  
proposed brief is accepted as filed. Two copies of the  
brief must be served, an original and nine copies  
filed, and the brief submitted in digital format within  
seven days.  
Judges Rivera and Halligan took no part.

1 Mo. No. 2023-588  
In the Matter of Terrence Stevens et al.,  
Respondents,  
v.  
New York State Division of Criminal Justice  
Services, et al.,  
Appellants.

Motion by Erin E. Murphy for leave to file a brief  
amicus curiae on the appeal herein granted and the  
proposed brief is accepted as filed. Two copies of the  
brief must be served, an original and nine copies  
filed, and the brief submitted in digital format within  
seven days.  
Judges Rivera and Halligan took no part.

2 Mo. No. 2023-486  
In the Matter of Audrey A. Thomas, &c.  
  
Grievance Committee for the Second,  
Eleventh, and Thirteenth Judicial Districts,  
Respondent;  
Audrey A. Thomas,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2023-342  
In the Matter of Aryanna W. et al., &c.  
  
Precious W.,  
Appellant;  
Good Shepherd Services,  
Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2023-432  
In the Matter of Nushawn W., &c.,  
                  Appellant,  
          v.  
State of New York, et al.,  
                  Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1                    Mo. No. 2023-492  
The People &c.,  
                  Respondent,  
          v.  
Mark Watkins,  
                  Appellant.

Motion for assignment of counsel granted and Jenay Nurse Guilford, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

3                    Mo. No. 2023-606  
The People &c.,  
                  Respondent,  
          v.  
Edward Wheeler,  
                  Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2                    Mo. No. 2023-617  
The People &c.,  
                  Respondent,  
          v.  
Jevaughn Whyte,  
                  Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2                    Mo. No. 2023-397  
The People &c.,  
                  Respondent,  
          v.  
Brandon Williams,  
                  Appellant.

Motion for assignment of counsel granted and Twyla Carter, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2023-594  
The People &c.,  
    Respondent,  
    v.  
Raymond Williams,  
    Appellant.

Motion for assignment of counsel granted and  
Caprice R. Jenerson, Esq., Office of the Appellate  
Defender, 11 Park Place, Suite 1601, New York, NY  
10007 assigned as counsel to the appellant on the  
appeal herein.

3                    Mo. No. 2023-339  
In the Matter of Mario WW.,  
    Appellant,  
    v.  
Kristin XX. et al.,  
    Respondents.

Motion for leave to appeal denied.