



SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH JUDICIAL DEPARTMENT

DECISIONS FILED

AUGUST 23, 2017

HON. GERALD J. WHALEN, PRESIDING JUSTICE

HON. NANCY E. SMITH

HON. JOHN V. CENTRA

HON. ERIN M. PERADOTTO

HON. EDWARD D. CARNI

HON. STEPHEN K. LINDLEY

HON. BRIAN F. DEJOSEPH

HON. PATRICK H. NEMOYER

HON. JOHN M. CURRAN

HON. SHIRLEY TROUTMAN

HON. JOANNE M. WINSLOW

HON. HENRY J. SCUDDER, ASSOCIATE JUSTICES

FRANCES E. CAFARELL, CLERK

ELECTION LAW CASES

Counsel for any party interested in pursuing an appeal to the Court of Appeals should contact the Court of Appeals immediately upon receipt of this Court's decision.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

145

CA 16-01268

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, TROUTMAN, AND SCUDDER, JJ.

DAVID LOBDELL, PLAINTIFF-RESPONDENT,

V

ORDER

CHARLOTTE A. CAHILL, DEFENDANT-APPELLANT.

SMITH, SOVIK, KENDRICK & SUGNET, P.C., SYRACUSE (KRISTIN L. NORFLEET OF COUNSEL), FOR DEFENDANT-APPELLANT.

STANLEY LAW OFFICES, LLP, SYRACUSE (ANTHONY MARTOCCIA OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (James P. Murphy, J.), entered May 18, 2016. The order, among other things, denied defendant's motion for summary judgment.

Now, upon the stipulation of discontinuance signed by the attorneys for the parties on July 15 and 18, 2017, and filed in the Onondaga County Clerk's Office on July 19, 2017,

It is hereby ORDERED that said appeal is unanimously dismissed without costs upon stipulation.

Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

171

CA 16-00773

PRESENT: SMITH, J.P., CARNI, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

STEVEN NEUMANN, PLAINTIFF-RESPONDENT,

V

ORDER

DHU PRODUCTIONS, LLC, DEFENDANT-APPELLANT.

AUGELLO & MATTELIANO, LLP, BUFFALO (JOSEPH A. MATTELIANO OF COUNSEL),
FOR DEFENDANT-APPELLANT.

LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (RICHARD P. WEISBECK, JR., OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Shirley Troutman, J.), entered January 7, 2016. The order granted plaintiff's motion for partial summary judgment on the issue of liability on the Labor Law § 240 (1) claim and denied the cross motion of defendant for partial summary judgment dismissing the section 240 (1) and 241 (6) claims.

Now, upon the stipulation of discontinuance signed by the attorneys for the parties on April 12, 2017, and filed in the Erie County Clerk's Office on May 11, 2017,

It is hereby ORDERED that said appeal is unanimously dismissed without costs upon stipulation.

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

477

CA 16-01697

PRESENT: WHALEN, P.J., LINDLEY, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

ORTHO-CLINICAL DIAGNOSTICS, INC.,
PLAINTIFF-APPELLANT,

V

ORDER

ASPEN SPECIALTY INSURANCE COMPANY, ASPEN
INSURANCE UK LIMITED, DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANT.

ASPEN INSURANCE UK LIMITED, THIRD-PARTY
PLAINTIFF-RESPONDENT,

V

ELMER W. DAVIS, INC., THIRD-PARTY
DEFENDANT-APPELLANT.

BARCLAY DAMON LLP, ROCHESTER (MARK T. WHITFORD, JR., OF COUNSEL), FOR
PLAINTIFF-APPELLANT AND THIRD-PARTY DEFENDANT-APPELLANT.

LESTER SCHWAB KATZ & DWYER, LLP, NEW YORK CITY (JONATHAN GLASSER OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS AND THIRD-PARTY PLAINTIFF-
RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (William
K. Taylor, J.), entered June 3, 2016. The order, among other things,
granted the motion of defendants Aspen Specialty Insurance Company and
Aspen Insurance UK Limited for summary judgment.

Now, upon reading and filing the stipulation of discontinuance
signed by the attorneys for the parties on July 14, 2017,

It is hereby ORDERED that said appeal is unanimously dismissed
without costs upon stipulation.

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

524

CA 16-01363

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND SCUDDER, JJ.

WILLIAM SCRUTON, PLAINTIFF-RESPONDENT,

V

ORDER

ACRO-FAB LTD., DEFENDANT-APPELLANT,
TIMOTHY JOHN KARKRUFF, DOING BUSINESS AS KARKRUFF
CONSTRUCTION & DESIGN, AND ACTION CRANE, INC.,
DEFENDANTS-RESPONDENTS.

COSTELLO, COONEY & FEARON, PLLC, CAMILLUS (JAMES J. GASCON OF
COUNSEL), FOR DEFENDANT-APPELLANT.

SMITH SOVIK KENDRICK & SUGNET, P.C., SYRACUSE (EDWARD J. SMITH, III,
OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

MARK D. GORIS, CAZENOVIA, FOR DEFENDANT-RESPONDENT TIMOTHY JOHN
KARKRUFF, DOING BUSINESS AS KARKRUFF CONSTRUCTION & DESIGN.

AHMUTY, DEMERS & MCMANUS, HOPEWELL JUNCTION (PATRICK J. PICKETT OF
COUNSEL), FOR DEFENDANT-RESPONDENT ACTION CRANE, INC.

Appeal from an order of the Supreme Court, Oswego County (Norman W. Seiter, Jr., J.), entered December 24, 2015. The order, among other things, granted the motions of defendants Action Crane, Inc., and Timothy John Karkruff, doing business as Karkruff Construction & Design, seeking summary judgment dismissing plaintiff's amended complaint and all cross claims against them.

Now, upon the stipulation of discontinuance signed by the attorneys for the parties on April 10, 17 and 25, 2017, and filed in the Oswego County Clerk's Office on May 18, 2017,

It is hereby ORDERED that said appeal is unanimously dismissed without costs upon stipulation.

Entered: August 23, 2017

Frances E. Cafarell

Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

860

KA 13-01455

PRESENT: CARNI, J.P., CURRAN, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM L. SMITH, DEFENDANT-APPELLANT.

BRIDGET L. FIELD, ROCHESTER, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John L. DeMarco, J.), rendered June 12, 2013. The judgment convicted defendant, upon his plea of guilty, of attempted course of sexual conduct against a child in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of attempted course of sexual conduct against a child in the first degree (Penal Law §§ 110.00, 130.75 [1] [b]). Contrary to defendant's contention, the record establishes that he knowingly, voluntarily, and intelligently waived his right to appeal (*see generally People v Lopez*, 6 NY3d 248, 255-256), and we conclude that the valid waiver encompasses his challenge to the severity of the sentence (*see People v Hidalgo*, 91 NY2d 733, 737).

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

861

KA 12-02299

PRESENT: CARNI, J.P., CURRAN, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER A. CARTER, JR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER, TREVETT CRISTO P.C.
(ERIC M. DOLAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered November 2, 2011. The judgment convicted defendant, upon his plea of guilty, of conspiracy in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of conspiracy in the second degree (Penal Law § 105.15). Contrary to defendant's contention, County Court's plea colloquy and the written waiver of the right to appeal establish that defendant knowingly, voluntarily, and intelligently waived his right to appeal (*see generally People v Bradshaw*, 18 NY3d 257, 264-265; *People v Kesick*, 119 AD3d 1371, 1372), and that valid waiver forecloses any challenge by defendant to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 255-256).

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

924

KA 15-00062

PRESENT: SMITH, J.P., CENTRA, DEJOSEPH, NEMOYER, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENDEL A. JORDAN, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (CARA A. WALDMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

KENDEL A. JORDAN, DEFENDANT-APPELLANT PRO SE.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered October 29, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of two counts of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]), defendant contends in his pro se supplemental brief that the grand jury proceedings were impaired because the prosecutor presented inadmissible evidence. "It is well settled that '[a] guilty plea generally results in a forfeiture of the right to appellate review of any nonjurisdictional defects in the proceedings' " (*People v Granger*, 96 AD3d 1669, 1669, *lv denied* 19 NY3d 1102, quoting *People v Fernandez*, 67 NY2d 686, 688). Therefore, "[b]y pleading guilty, defendant forfeited his present contention that the grand jury proceedings were impaired, inasmuch as the alleged error did not render the accusatory instrument jurisdictionally defective" (*People v Monacelli*, 299 AD2d 916, 916, *lv denied* 99 NY2d 617; see generally *People v Hansen*, 95 NY2d 227, 232; *People v Newkirk*, 133 AD3d 1364, 1365, *lv denied* 26 NY3d 1148). The remaining contentions in defendant's pro se supplemental brief are based on facts outside the record and thus must be raised by way of a motion pursuant to CPL 440.10 (see *People v Miller*, 68 AD3d 1135, 1135, *lv denied* 14 NY3d 803; see also *People v Evans*, 137 AD3d 1683, 1683-1684, *lv denied* 27 NY3d 1131).

Finally, contrary to defendant's contention in his main brief,

the sentence is not unduly harsh or severe.

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

932

CAE 17-01459

PRESENT: CENTRA, J.P., NEMOYER, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

IN THE MATTER OF GINO M. NITTI,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM D. "BILL" REILICH, INDIVIDUALLY AND IN HIS CAPACITY AS SUPERVISOR OF TOWN OF GREECE, IN HIS CAPACITY AS VICE-CHAIRMAN OF NEW YORK REPUBLICAN STATE COMMITTEE, AND IN HIS CAPACITY AS CHAIRMAN OF MONROE COUNTY REPUBLICAN COMMITTEE, NEW YORK REPUBLICAN STATE COMMITTEE, MONROE COUNTY REPUBLICAN COMMITTEE, TOWN OF GREECE REPUBLICAN COMMITTEE, BRIAN E. MARIANETTI, INDIVIDUALLY AND IN HIS CAPACITY AS CHAIRMAN OF TOWN OF GREECE REPUBLICAN COMMITTEE, KIRK A. MORRIS, INDIVIDUALLY AND IN HIS CAPACITY AS LEADER OF TOWN OF GREECE REPUBLICAN COMMITTEE, BRETT C. GRANVILLE, RESPONDENTS-APPELLANTS,
THOMAS F. FERRARESE, IN HIS CAPACITY AS COMMISSIONER OF MONROE COUNTY BOARD OF ELECTIONS, DOUGLAS E. FRENCH, IN HIS CAPACITY AS COMMISSIONER OF MONROE COUNTY BOARD OF ELECTIONS, COLLEEN ANDERSON, IN HER CAPACITY AS DEPUTY COMMISSIONER OF MONROE COUNTY BOARD OF ELECTIONS, NANCY LEVEN, IN HER CAPACITY AS DEPUTY COMMISSIONER OF MONROE COUNTY BOARD OF ELECTIONS, AND MONROE COUNTY BOARD OF ELECTIONS, RESPONDENTS-RESPONDENTS.

HARTER SECREST & EMERY LLP, ROCHESTER (PETER H. ABDELLA OF COUNSEL),
FOR RESPONDENTS-APPELLANTS.

CERULLI MASSARE & LEMBKE, ROCHESTER (MATTHEW R. LEMBKE OF COUNSEL),
FOR PETITIONER-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme Court, Monroe County (Mark H. Fandrich, A.J.), entered August 16, 2017 in a proceeding pursuant to Election Law article 16. The order and judgment, insofar as appealed from, denied the motion of respondents-appellants to dismiss, granted in part the petition, invalidated the designating petition and certificates of authorization of respondent Brett C. Granville for Town of Greece Justice, and directed respondent Monroe County Board of Elections to strike Brett C. Granville's name from the certified ballot for the Republican primary election on September 12, 2017.

It is hereby ORDERED that the order and judgment insofar as appealed from is unanimously reversed on the law without costs, the motion is granted, the petition against respondents-appellants is dismissed and the third through fifth and seventh decretal paragraphs are vacated.

Memorandum: Petitioner commenced this proceeding pursuant to Election Law article 16 seeking, inter alia, to invalidate the designating petition and certificates of authorization for respondent Brett C. Granville for the office of Town of Greece Justice. In his petition, petitioner alleges that, at a meeting in April 2017, respondent Town of Greece Republican Committee (Town Committee) endorsed him to be a candidate for the office of Town of Greece Justice, but a designating petition was prepared that named Granville in place of him, despite the fact that Granville had not been endorsed or even nominated for that office at that meeting. Petitioner alleges that the Town Committee violated its own rules and the rules of respondent Monroe County Republican Committee in failing to circulate a designating petition naming him for the office. Supreme Court denied the motion of respondents-appellants (respondents) seeking to dismiss the petition against them and granted the petition in part.

Initially, we reject the contention of respondents that petitioner lacked standing to commence this proceeding inasmuch as we conclude that petitioner is an aggrieved candidate within the meaning of Election Law § 16-102. Petitioner, a member of the Republican Party, "had a bona fide claim" to be the Republican Party's candidate for the office in question and has standing to challenge the Party's compliance with its own rules (*Matter of Fehrman v New York State Bd. of Elections*, 10 NY3d 759, 760; see *Matter of Burkwit v Olson*, 87 AD3d 1264, 1265).

We agree with respondents, however, that the court erred in denying their motion and in granting the petition in part. Judicial intervention is warranted only upon " 'a clear showing that a party or its leaders have violated th[e] [Election Law] or the party's own rules adopted in accordance with law, or otherwise violat[ed] the rights of party members or the electorate' " (*Matter of Lehrer v Cavallo*, 43 AD3d 1059, 1061, *lv dismissed in part and denied in part* 9 NY3d 1001; see *Matter of Valin v Adamczyk*, 286 AD2d 566, 566, *lv denied* 96 NY2d 718). Here, petitioner failed to identify any specific provision of the Election Law or rule of the Republican Party that was allegedly violated.

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

933

CAE 17-01474

PRESENT: CENTRA, J.P., NEMOYER, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

IN THE MATTER OF KAREN STRENKOSKI,
PETITIONER-APPELLANT,

V

ORDER

JOSHUA I. RAMOS, JENNIFER FRONCZAK AND LORA ALLEN,
COMMISSIONERS CONSTITUTING NIAGARA COUNTY BOARD
OF ELECTIONS, RESPONDENTS-RESPONDENTS.

VINCENT M. SANDONATO, NIAGARA FALLS, FOR PETITIONER-APPELLANT.

JOSHUA I. RAMOS, NIAGARA FALLS, RESPONDENT-RESPONDENT PRO SE.

Appeal from an order of the Supreme Court, Niagara County (Ralph A. Boniello, III, J.), entered August 10, 2017 in a proceeding pursuant to Election Law article 16. The order, insofar as appealed from, denied those parts of the petition seeking to invalidate the designating petitions of respondent Joshua I. Ramos for the office of Wheatfield Town Justice on the Republican, Democratic, and Independence Party ballots.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (see 22 NYCRR 1000.3 [b]; 1000.4 [a] [1]).

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

934

CAE 17-01476

PRESENT: CENTRA, J.P., NEMOYER, TROUTMAN, AND WINSLOW, JJ.

IN THE MATTER OF PENELOPE J. MARCHIONDA,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

TODD J. CASELLA, CANDIDATE, YATES COUNTY BOARD
OF ELECTIONS, AND ROBERT F. BRECHKO AND AMY J.
DAINES, COMMISSIONERS CONSTITUTING THE BOARD OF
ELECTIONS, RESPONDENTS-RESPONDENTS.
(APPEAL NO. 1.)

SINNREICH, KOSAKOFF & MESSINA LLP, CENTRAL ISLIP (JOHN CIAMPOLI OF
COUNSEL), FOR PETITIONER-APPELLANT.

BOUVIER LAW LLP, BUFFALO (JEFFREY T. BOCHIECHIO OF COUNSEL), FOR
RESPONDENT-RESPONDENT TODD J. CASELLA, CANDIDATE.

Appeal from an order of the Supreme Court, Yates County (John J. Ark, J.), entered August 17, 2017 in a proceeding pursuant to the Election Law. The order denied the petition, validated the designating petition of respondent Todd J. Casella and directed respondent Yates County Board of Elections to place respondent Todd J. Casella's name on the ballot as a candidate for the office of District Attorney of Yates County for the Republican Party primary on September 12, 2017.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is granted, the designating petition is invalidated, and respondent Yates County Board of Elections is directed to remove respondent Todd J. Casella's name from the ballot as a candidate in the Republican Party primary election for the office of District Attorney of Yates County, to be held on September 12, 2017.

Memorandum: In appeal No. 1, Penelope J. Marchionda (Marchionda), the petitioner in appeal No. 1 and a respondent in appeal No. 2, appeals from an order that denied her petition, validated the designating petition of Todd J. Casella (Casella), a respondent in appeal No. 1 and the petitioner in appeal No. 2, for the position of District Attorney of Yates County on the Republican Party primary election ballot, and directed the Yates County Board of Elections (Board), a respondent in appeal Nos. 1 and 2, to place Casella's name on the ballot for that position in the Republican Party primary election. In appeal No. 2, Marchionda appeals from an order

that granted Casella's petition seeking to validate his designating petitions for that same position on the primary election ballots of the Independence Party and Reform Party and ordered that the Board place Casella's name on the ballots for that position in the Independence Party and Reform Party primaries.

In appeal No. 1, we conclude that Supreme Court erred in denying the petition, validating the designating petition, and ordering that the Board place Casella's name on the ballot as a candidate for the District Attorney of Yates County in the Republican Party primary election (see *Matter of Eisenberg v Strasser*, 100 NY2d 590, 591; *Matter of Fernandez v Monegro*, 10 AD3d 429, 430). We agree with Marchionda that she established that Casella did not reside at the address that he listed as his residence on his designating petition (see Election Law § 6-132 [1]; *Eisenberg*, 100 NY2d at 591). "As used in the Election Law, the term 'residence' is synonymous with 'domicile' . . . The crucial determination whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent [to reside there], coupled with physical presence 'without any aura of sham' " (*Fernandez*, 10 AD3d at 430; see *Matter of Glickman v Laffin*, 27 NY3d 810, 815). Here, the evidence adduced at the hearing established that Casella had moved from the address listed on his designating petition months prior to the petition's circulation.

In appeal No. 2, we reject Marchionda's contention that Casella's designating petitions for the Independence Party and the Reform Party must be invalidated because he failed to designate himself as either a notary public or commissioner of deeds when he notarized various sheets of those petitions. The failure of Casella to identify himself as such "constituted a mere technical defect, [inasmuch] as [he] stated [his] identification number[] and the expiration date of [his] office[] as notar[y] public" on the designating petitions (*Matter of Hudson v Board of Elections of City of N.Y.*, 207 AD2d 508, 509; see *Matter of Kolken v Mahoney*, 49 AD2d 798, 798, *revd on other grounds* 37 NY2d 787).

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

935

CAE 17-01477

PRESENT: CENTRA, J.P., NEMOYER, TROUTMAN, AND WINSLOW, JJ.

IN THE MATTER OF TODD J. CASELLA,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

YATES COUNTY BOARD OF ELECTIONS, ROBERT F.
BRECHKO AND AMY J. DAINES, COMMISSIONERS
CONSTITUTING THE BOARD OF ELECTIONS,
RESPONDENTS-RESPONDENTS,
AND PENELOPE J. MARCHIONDA, RESPONDENT-APPELLANT.
(APPEAL NO. 2.)

SINNREICH, KOSAKOFF & MESSINA LLP, CENTRAL ISLIP (JOHN CIAMPOLI OF
COUNSEL), FOR RESPONDENT-APPELLANT.

BOUVIER LAW LLP, BUFFALO (JEFFREY T. BOCHIECHIO OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Steuben County (John J. Ark, J.), entered August 17, 2017 in a proceeding pursuant to Election Law article 16. The order granted the petition, validated the designating petitions of petitioner and ordered respondent Yates County Board of Elections to place petitioner's name on the ballot as a candidate for the office of District Attorney of Yates County for the Independence Party and Reform Party primaries on September 12, 2017.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Same memorandum as in *Matter of Marchionda v Casella* ([appeal No. 1] ___ AD3d ___ [Aug. 23, 2017]).

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court

MOTION NO. (521/08) KA 06-02821. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GEORGE E. JOHNSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND SCUDDER, JJ. (Filed Aug. 23, 2017.)

MOTION NO. (412/11) KA 06-01424. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY N. OTT, 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 erred when it failed to comply with CPL 310.30 in its handling of jury notes. Upon our review of the motion papers, we conclude that the issue may have merit. The order of April 29, 2011 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 December 28, 2017. PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND DEJOSEPH, JJ. (Filed Aug. 23, 2017.)