

**MOTION NO. (121/91) KA 09-01579. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL J. HILL, DEFENDANT-APPELLANT.** -- Motion for a writ of error coram nobis denied. PRESENT: PERADOTTO, J.P., CARNI, GREEN, PINE, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (2004/94) KA 10-00882. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY BRITT, DEFENDANT-APPELLANT.** -- Motion for a writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, SCONIERS, AND PINE, JJ. (Filed June 11, 2010.)

**MOTION NO. (189/02) KA 99-05076. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V THOMAS J. GANT, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: MARTOCHE, J.P., SMITH, CENTRA, FAHEY, AND PINE, JJ. (Filed June 11, 2010.)

**MOTION NO. (774/05) KA 04-02232. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FELIPE BURGOS, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., GREEN, PINE, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (1125/07) KA 06-01069. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHAWN E. AKIN, DEFENDANT-APPELLANT.** -- Motion for reargument, or in the alternative, leave to appeal to the Court of Appeals denied.

PRESENT: SCUDDER, P.J., FAHEY, GREEN, AND PINE, JJ. (Filed June 11, 2010.)

MOTION NO. (331/08) KA 06-01222. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RODNEY J. LOWMAN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: MARTOCHE, J.P., FAHEY, PERADOTTO, AND PINE, JJ. (Filed June 11, 2010.)

MOTION NO. (1008/08) KA 04-02863. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLES E. HATHAWAY, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND GORSKI, JJ. (Filed June 11, 2010.)

MOTION NO. (1648/08) KA 99-02082. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V STEVE STROMAN, DEFENDANT-APPELLANT. -- Motion for reconsideration denied. PRESENT: SMITH, J.P., CENTRA, GREEN, AND PINE, JJ. (Filed June 11, 2010.)

MOTION NO. (708/09) KA 06-02790. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL D. SEELER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: MARTOCHE, J.P., SMITH, CENTRA, FAHEY, AND PINE, JJ. (Filed June 11, 2010.)

MOTION NO. (998/09) CA 08-01910. -- STANLEY A. GIZOWSKI, CLAIMANT-RESPONDENT-APPELLANT, V STATE OF NEW YORK, DEFENDANT-APPELLANT-RESPONDENT. (CLAIM NO. 112634.) -- Motion for renewal

of motion for reargument or leave to appeal to the Court of Appeals denied.  
PRESENT: SCUDDER, P.J., PERADOTTO, GREEN, AND GORSKI, JJ. (Filed June 11,  
2010.)

**MOTION NO. (1284/09) CAF 08-01934. -- IN THE MATTER OF MARY LOUISE COAN,  
PETITIONER-RESPONDENT, V THOMAS N. THOMPSON, RESPONDENT-APPELLANT. --**

Motion for reargument granted and, upon reargument, the memorandum and order entered February 11, 2010 (70 AD3d 1426) is amended by deleting from the ordering paragraph the phrase "until June 18, 2006" and by deleting the second paragraph of the memorandum and substituting the following paragraph: "We conclude that the court abused its discretion in calculating the father's child support obligation based on the presumptive amount. The court did not provide any "record articulation" to support its determination that the presumptive amount was necessary to provide for the expenses and the standard of living previously enjoyed by the family (*Matter of Cassano v Cassano*, 85 NY2d 649, 655). Petitioner mother testified at the fact-finding hearing that the household expenses were \$15,000 per month, and the Support Magistrate attributed only \$10,000 per month as expenses for the children. The Support Magistrate's findings are entitled to great deference, and we conclude that the Support Magistrate's calculation of the children's expenses is supported by the record (see generally *Matter of Luther v Luther*, 35 AD3d 473). We therefore modify the order by providing in the seventh ordering paragraph that the father's child support obligation is \$10,000 per month and by vacating the amount of retroactive child support awarded in the eighth ordering paragraph. We remit the matter to Family Court to determine following a further hearing,

if necessary, the amount of retroactive child support for the period of November 17, 2003 through February 28, 2005." and the motion insofar as it sought in the alternative leave to appeal to the Court of Appeals is denied, and the cross motion for reargument is denied. PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, CARNI, AND GREEN, JJ. (Filed June 11, 2010.)

**MOTION NO. (1401/09) KA 07-02521. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLES L. RIVERS, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (1681/09) CA 09-01115. -- RUSSELL BARKER, PLAINTIFF-APPELLANT, V MOBILE PALLET TRUCK, INC., DEFENDANT-RESPONDENT.** -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (1681.5/09) CA 09-00369. -- DAVID RYAN, ET AL., PLAINTIFFS, AND JESSICA RYAN, PLAINTIFF-RESPONDENT, V HECTOR B. SANTANA, M.D., JAMES B. TURCHIK, M.D., DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS.** -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (42/10) CA 09-01825. -- WENDE MARRACINO AND FRANK MARRACINO, PLAINTIFFS-RESPONDENTS, V GARY J. ALEXANDER, D.D.S. AND ORCHARD PARK**

**PROSTHODONTICS, LLP, DEFENDANTS-APPELLANTS.** -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ. (Filed June 11, 2010.)

**MOTION NO. (107/10) TP 09-01715.** -- **IN THE MATTER OF GUY MCEACHIN, PETITIONER, V BRIAN FISCHER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT.** -- Motion for reargument granted and, upon reargument, the memorandum and order entered March 26, 2010 (71 AD3d 1558) is amended by deleting the ordering paragraph and substituting the following ordering paragraph "that the determination is unanimously confirmed without costs and the petition is dismissed" and by deleting the last paragraph of the memorandum. PRESENT: SCUDDER, P.J., SMITH, FAHEY, AND LINDLEY, JJ. (Filed June 11, 2010.)

**MOTION NO. (258/10) CA 09-00449.** -- **JOHN D. JUSTICE, CLAIMANT-APPELLANT, V STATE OF NEW YORK, DEFENDANT-RESPONDENT. (CLAIM NO. 114445.)** -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (260/10) CA 09-00831.** -- **JANICE BARTON, PLAINTIFF-APPELLANT, V JENNIFER L. KOHLER AND TERRY H. KOHLER, DEFENDANTS-RESPONDENTS.** -- Motion for reargument denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**MOTION NO. (293/10) KA 08-01505.** -- **THE PEOPLE OF THE STATE OF NEW YORK,**

RESPONDENT, V STEPHEN SIMON, ALSO KNOWN AS "LUCK," DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, AND GORSKI, JJ. (Filed June 11, 2010.)

MOTION NO. (301/10) CA 09-02157. -- JOSEPH TUPPER, AS PRESIDENT AND ON BEHALF OF SYRACUSE PROPERTY OWNERS ASSOCIATION, 741 LIVINGSTON AVENUE, LLC, STAMPEDE VI, LLC, HAMR, INC., 867 SUMNER AVE., L.L.C., JAKE AND BUCK, LLC, OCOMSTOCK, LLC, DAVID EADE AND BENJAMIN TUPPER, PLAINTIFFS-RESPONDENTS, V CITY OF SYRACUSE, COMMON COUNCIL OF CITY OF SYRACUSE AND PLANNING COMMISSION OF CITY OF SYRACUSE, DEFENDANTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, AND GORSKI, JJ. (Filed June 11, 2010.)

MOTION NO. (452/10) CA 08-02505. -- IN THE MATTER OF ROMAN KEVILLY, PETITIONER-APPELLANT, V SUSAN CONNELL, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, LINDLEY, SCONIERS, AND PINE, JJ. (Filed June 11, 2010.)

MOTION NO. (553/10) CA 09-01614. -- STEPHEN TURNER, PLAINTIFF-RESPONDENT, V CSX TRANSPORTATION, INC. AND CONSOLIDATED RAIL CORPORATION, DEFENDANTS-APPELLANTS. (APPEAL NO. 5.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND PINE, JJ. (Filed June 11, 2010.)

**CAF 09-00938 -- IN THE MATTER OF THE ADOPTION OF NICOLE J. JOSHUA A.A. AND MICHELLE J.A., PETITIONERS-RESPONDENTS; STEPHEN H.J., RESPONDENT-APPELLANT.**

Motion for clarification denied. PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND PINE, JJ. (Filed May 18, 2010.)

**KA 07-01568. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSEPH MALDONADO, 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, Francis A. Affronti, J. - Criminal Possession of Stolen Property, 4th Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**KA 09-02047. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BRENDAN MCANDREW, 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, Christopher J. Burns, J. - Criminal Possession of Stolen Property, 4th Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**KA 08-02206. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AARON MEE, 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. - Aggravated Unlicensed Operation of a Motor Vehicle, 1st Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**KA 09-01288. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAIME PEREZ, 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 a guilty plea of promoting prison contraband in the first degree (Penal Law § 205.25 [2]). Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38). However, upon our review of the record we conclude that there are nonfrivolous issues meriting this Court's consideration, specifically, whether County Court erred in denying defendant's motion to dismiss the indictment based on preindictment delay and the propriety of the court's ruling following the *Huntley* hearing. Therefore, we relieve counsel of his assignment and assign new counsel to brief these issues, as well as any other issues that counsel's review of the record may disclose. (Appeal from Judgment of Wyoming County Court, Mark H. Dadd, J. - Promoting Prison Contraband, 1st Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)

**KA 09-01364. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FRANK WISNIEWSKI, 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 a guilty plea of criminal sale of a controlled substance in the fifth degree (Penal Law § 220.31), and was sentenced as a second felony drug offender to a determinate term of imprisonment of two and one-half years and two years postrelease supervision. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38), and has submitted an affidavit in which he concludes that there are no nonfrivolous issues meriting this Court's consideration. A review of the sentencing minutes reveals that the court did not ask defendant prior to sentencing whether he wished to controvert the allegations contained in the second felony offender statement as required by CPL § 400.21 (3).

Therefore, a nonfrivolous issue exists as to the legality of the sentence. Accordingly, we 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 Wyoming County Court, Michael F. Griffith, J. - Criminal Sale of a Controlled Substance, 5th Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ. (Filed June 11, 2010.)