

MOTION NO. (1116/99) KA 99-00063. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SAMUEL MCNEAR, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (1580/00) KA 98-05323. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEITH BALKMAN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (750/01) KA 00-00093. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSEPH LEE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (1316/06) KA 04-02937. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CONSTANTINE L. JACKSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (670/08) KA 07-00544. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MELVIN LEE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (1156/08) KA 07-00383. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SAMUEL WYNN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (124/09) KA 06-03044. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CONSTANTINE JACKSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (241/10) KA 08-02677. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RAYMOND CLEMONS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (561/10) KA 08-01383. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL G. MILCZAKOWSKYJ, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (222/11) KA 05-02229. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAVONNE L. SCOTT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, LINDLEY, AND MARTOCHE, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (247/11) KA 99-02223. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY SHERROD, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (464/11) KA 10-00519. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVID L. MAULL, ALSO KNOWN AS POOCHIE, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, AND MARTOCHE, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (1073/11) CA 11-00957. -- CHRISTOPHER M. CHARNEY AND TRINA M. CHARNEY, PLAINTIFFS-APPELLANTS, V LECHASE CONSTRUCTION, FREDERICO WRECKING CO., INC., AND FRIENDS OF FINGER LAKES PERFORMING ARTS CENTER, INC., DEFENDANTS-RESPONDENTS. FREDERICO WRECKING CO., INC., THIRD-PARTY PLAINTIFF-APPELLANT, V CONTOUR ERECTION AND SIDING SYSTEMS, INC., THIRD-PARTY DEFENDANT-RESPONDENT. LECHASE CONSTRUCTION SERVICES, LLC AND FRIENDS OF FINGER LAKES PERFORMING ARTS CENTER, INC., THIRD-PARTY PLAINTIFFS-APPELLANTS, V CONTOUR ERECTION AND SIDING SYSTEMS, INC., THIRD-PARTY DEFENDANT-RESPONDENT. -- Motions for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND PERADOTTO, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (1078/11) CA 11-00958. -- EDWARD CUNNINGHAM, III,

PLAINTIFF-APPELLANT, V LECHASE CONSTRUCTION, FREDERICO WRECKING CO., INC.,
AND FRIENDS OF FINGER LAKES PERFORMING ARTS CENTER, INC.,
DEFENDANTS-RESPONDENTS. FREDERICO WRECKING CO., INC., THIRD-PARTY
PLAINTIFF-APPELLANT, V CONTOUR ERECTION AND SIDING SYSTEMS, INC.,
THIRD-PARTY DEFENDANT-RESPONDENT. LECHASE CONSTRUCTION SERVICES, LLC AND
FRIENDS OF FINGER LAKES PERFORMING ARTS CENTER, INC., THIRD-PARTY
PLAINTIFFS-APPELLANTS, V CONTOUR ERECTION AND SIDING SYSTEMS, INC.,
THIRD-PARTY DEFENDANT-RESPONDENT. -- Motions for leave to appeal to the
Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND
PERADOTTO, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (1413/11) CA 11-01218. -- KAREN STROUP, PLAINTIFF-APPELLANT, V
CHARLES NAZZARO AND SARAH NAZZARO, DEFENDANTS-RESPONDENTS. -- Motion for
leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P.,
FAHEY, CARNI, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (18/12) CA 11-01219. -- IN THE MATTER OF COUNTY OF NIAGARA,
PETITIONER-RESPONDENT, V RICHARD F. DAINES, COMMISSIONER, NEW YORK STATE
DEPARTMENT OF HEALTH AND NEW YORK STATE DEPARTMENT OF HEALTH,
RESPONDENTS-APPELLANTS. -- Motion for leave to appeal to the Court of
Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND LINDLEY, JJ.
(Filed Apr. 20, 2012.)

MOTION NO. (60/12) CAF 10-02409. -- IN THE MATTER OF SUZALYN E. HOFFMEIER, PETITIONER-APPELLANT, V THOMAS BYRNES, RESPONDENT-RESPONDENT. -- Motion for reargument denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (63/12) CA 11-01698. -- PETER E. GREVELDING, JR., AS EXECUTOR OF THE ESTATE OF JASON M. RHOADES, DECEASED, CLAIMANT-APPELLANT, V STATE OF NEW YORK, DEFENDANT-RESPONDENT. (CLAIM NO. 109855.) -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

MOTION NO. (84/12) CAF 11-00032. -- IN THE MATTER OF THE ADOPTION OF COLLIN. ALICIA P., PETITIONER-APPELLANT; ROBIN C. AND JOSEPH C., RESPONDENTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, AND MARTOCHE, JJ. (Filed Apr. 20, 2012.)

KA 09-01249. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FLOYD ALSTON, 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 robbery in the first degree (Penal Law § 160.15 [4]), and was sentenced to a determinate term of imprisonment of eight years and five years postrelease supervision. 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 a nonfrivolous issue exists as to whether defendant's waiver of the right to appeal was valid. Therefore, 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 Supreme Court, Monroe County, Francis A. Affronti, J. - Robbery, 1st Degree). PRESENT: SCUDDER, P.J., SMITH, FAHEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)

KA 10-00076. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DANIEL JONES, 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 appeals from an order that denied his motion pursuant to CPL 440.30 (1-a) for the performance of forensic DNA testing on specified evidence. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38). However, we find that a nonfrivolous issue exists as to whether the People met their burden of establishing with sufficient specificity whether the evidence existed and could be tested (*see People v Pitts*, 4 NY3d 303). Therefore, 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 Order of Supreme Court, Erie County, Penny M. Wolfgang, J. - CPL 440.30 [1-a]). PRESENT: SCUDDER,

P.J., SMITH, FAHEY, AND SCONIERS, JJ. (Filed Apr. 20, 2012.)