

MOTION NO. (1845/88) KA 12-01214. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V HUBERT ALLEN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (175/94) KA 10-01955. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KHARYE JARVIS, 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 that would have resulted in reversal, specifically, in failing to argue ineffective assistance of trial counsel. Upon our review of the trial court proceedings, we conclude that the issue may have merit. Therefore, the order of March 11, 1994 is vacated and this Court will consider the appeal de novo (*see People v LeFrois*, 151 AD2d 1046 [1989]). Defendant is directed to file and serve his records and briefs with this Court on or before December 28, 2012. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (843/95) KA 06-00150. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIE IVY, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, CARNI, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NOS. (1546-1547/98) KA 12-01290. -- THE PEOPLE OF THE STATE OF NEW

YORK, RESPONDENT, V FRANKLIN B. BROWN, DEFENDANT-APPELLANT. (APPEAL NO. 1.) KA 12-01291. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FRANKLIN B. BROWN, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1752/00) KA 99-05535. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL SHAW, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (931/02) KA 01-00350. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD DOUYON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (894/06) KA 05-01409. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KENNETH G. JONES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (586/07) KA 03-02060. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SERGIO PONDER, DEFENDANT-APPELLANT. -- Motion for writ of

error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (738/07) KA 03-00814. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT A. GRIFFIN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (804/07) KA 04-02820. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KELVIN ROBINSON, 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 that would have resulted in reversal, specifically, in failing to argue that defendant's guilty plea was involuntary and unknowing because the plea colloquy negated the elements of the crime. Upon our review of the trial court proceedings, we conclude that the issue may have merit. Therefore, the order of June 8, 2007 is vacated and this Court will consider the appeal de novo (*see People v LeFrois*, 151 AD2d 1046 [1989]). Defendant is directed to file and serve his records and briefs with this Court on or before December 28, 2012. PRESENT: SCUDDER, P.J., SMITH, CENTRA, CARNI, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1011/07) KA 06-00940. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V EDUNDABIRA O. OJO, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1513/07) KA 05-01734. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DALE F. LEESON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND PERADOTTO, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (333/08) KA 06-01520. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEYONTAY C. RICKS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: FAHEY, J.P., PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1370/08) KA 05-02072. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVID M. LORET, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (58/09) KA 07-01927. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ERIC D. CARR, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (77/09) KA 07-00590. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES J. CARNCROSS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: FAHEY, J.P., PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1384/09) KA 08-00519. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CODY BACKUS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., FAHEY, CARNI, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (647/10) TP 09-02312. -- IN THE MATTER OF CHARLES K. STODOLKA, PETITIONER, V STARPOINT CENTRAL SCHOOL DISTRICT AND BOARD OF EDUCATION OF STARPOINT CENTRAL SCHOOL DISTRICT, RESPONDENTS. -- Motion for reargument or reconsideration denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1408/10) KA 07-01506. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CARLOS PICHARDO, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (1409/10) KA 10-01349. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V GORDON GROSS, DEFENDANT-APPELLANT. (APPEAL NO. 1.) -- Motion

for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (104/11) KA 08-00201. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BENJAMIN RIVERA, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (320/12) CA 11-02133. -- DEBORAH VOSS, PROP-CO, LLC, CLASSI PEOPLE, INC., DOING BUSINESS AS SERTINO'S CAFÉ AND DREAM PEOPLE, INC., DOING BUSINESS AS SHIVER MODEL, PLAINTIFFS-APPELLANTS, V THE NETHERLANDS INSURANCE COMPANY, ET AL., DEFENDANTS, AND CH INSURANCE BROKERAGE SERVICES, CO., INC., DEFENDANT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (396/12) CA 11-00950. -- ROBERT K. MONETTE AND SHARON M. MONETTE, PLAINTIFFS-RESPONDENTS, V CHRISTINA L. TRUMMER, DAVID LEEDERMAN, JESSE L. BALL, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS. (APPEAL NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (439/12) KA 10-01481. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DUANE COBLE, DEFENDANT-APPELLANT. -- Motion for reargument and reconsideration denied. PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (452/12) CA 11-01968. -- JOHN GISEL, PLAINTIFF-APPELLANT, ET AL., PLAINTIFF, V CLEAR CHANNEL COMMUNICATIONS, INC. AND ROBERT LONSBERRY, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (454/12) CA 09-00404. -- IN THE MATTER OF THE ARBITRATION BETWEEN ADAM BOBAK, PETITIONER-RESPONDENT, AND AIG CLAIMS SERVICES, INC., NEW HAMPSHIRE INSURANCE COMPANY AND AMERICAN INTERNATIONAL GROUP, INC., RESPONDENTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (572.1/12) CA 11-02058. -- IN THE MATTER OF FFT SENIOR COMMUNITIES, INC., PETITIONER-RESPONDENT, V TOWN OF CANANDAIGUA, BOARD OF ASSESSMENT REVIEW FOR TOWN OF CANANDAIGUA AND COUNTY OF ONTARIO, RESPONDENTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, LINDLEY,

SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (587/12) CA 11-02517. -- HUGO RAFAEL RAMIREZ GABRIEL, ALSO KNOWN AS CESAR MENDEZ, ET AL., PLAINTIFFS-APPELLANTS-RESPONDENTS, V JOHNSTON'S L.P. GAS SERVICE, INC., DEFENDANT-RESPONDENT-APPELLANT, ET AL., DEFENDANTS.

(ACTION NO. 1.) -- HUGO RAFAEL RAMIREZ GABRIEL, ALSO KNOWN AS CESAR MENDEZ, ET AL., PLAINTIFFS-APPELLANTS, V ANTHONY A. DEMARCO, ANTHONY W. DEMARCO, ANTHONY DEMARCO & SONS, INC., DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS.

(ACTION NO. 2.) -- HUGO RAFAEL RAMIREZ GABRIEL, ALSO KNOWN AS CESAR MENDEZ, ET AL., PLAINTIFFS-APPELLANTS-RESPONDENTS, V RAYTHEON COMPANY, DEFENDANT-RESPONDENT-APPELLANT.

(ACTION NO. 3.) -- Motion for reargument granted to the extent that the parties shall file and serve briefs regarding whether Supreme Court's order entered August 5, 2011, was properly made insofar as it ordered that plaintiffs must return to the United States for independent medical examinations, if requested by defendants 60 days prior to trial, and whether this Court's opinion and order entered June 15, 2012, properly determined that plaintiffs abandoned that issue. Motion and cross motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND LINDLEY, JJ.

(Filed Sept. 28, 2012.)

MOTION NO. (610/12) CA 11-00035. -- IN THE MATTER OF THE JUDICIAL SETTLEMENT OF THE INTERMEDIATE ACCOUNT OF W.A. READ KNOX, SUCCESSOR TRUSTEE, AND JEAN R. KNOX AND HSBC BANK USA, N.A., AS TRUSTEES OF THE TRUST

UNDER ARTICLE SEVENTH OF THE WILL OF SEYMOUR H. KNOX, III, DECEASED, FOR THE BENEFIT OF JEAN R. KNOX (MARITAL TRUST) FOR THE PERIOD JUNE 3, 1996 TO NOVEMBER 3, 2005. HSBC BANK USA, N.A., PETITIONER-APPELLANT; JEAN R. KNOX, W.A. READ KNOX, SEYMOUR H. KNOX, IV, AVERY KNOX AND HELEN KEILHOLTZ, OBJECTANTS-RESPONDENTS. (PROCEEDING NO. 2.) (APPEAL NO. 5.) -- Motion for leave to appeal to the Court of Appeals or, in the alternative, reargument denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (615/12) CA 11-00038. -- IN THE MATTER OF THE JUDICIAL SETTLEMENT OF THE INTERMEDIATE ACCOUNT OF HSBC BANK USA, N.A. AND SEYMOUR H. KNOX, IV, AS TRUSTEES OF THE TRUST UNDER AGREEMENT DATED DECEMBER 23, 1975 AND RESTATED AUGUST 15, 1990 FOR THE BENEFIT OF SEYMOUR H. KNOX, IV, ET AL., SEYMOUR H. KNOX, IV, GRANTOR FOR THE PERIOD DECEMBER 23, 1975 TO NOVEMBER 3, 2005. HSBC BANK USA, N.A., PETITIONER-APPELLANT; SEYMOUR H. KNOX, IV, OBJECTANT-RESPONDENT. (PROCEEDING NO. 3.) (APPEAL NO. 6.) -- Motion for leave to appeal to the Court of Appeals or, in the alternative, reargument denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (618/12) CA 11-02559. -- MICHELLE GALETTA, PLAINTIFF-APPELLANT, V GARY GALETTA, DEFENDANT-RESPONDENT. -- Motion insofar as it sought reargument denied. Motion insofar as it sought leave to appeal to the

Court of Appeals granted. PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (621/12) CA 11-01692. -- IN THE MATTER OF THE JUDICIAL SETTLEMENT OF THE INTERMEDIATE ACCOUNT OF HSBC BANK USA, N.A. AS TRUSTEE OF THE TRUST UNDER AGREEMENT DATED JANUARY 21, 1957, SEYMOUR H. KNOX, GRANTOR, FOR THE BENEFIT OF THE ISSUE OF SEYMOUR H. KNOX, III FOR THE PERIOD JANUARY 21, 1957 TO NOVEMBER 3, 2005. HSBC BANK USA, N.A., PETITIONER-APPELLANT; W.A. READ KNOX, SEYMOUR H. KNOX, IV, AVERY KNOX, HELEN KEILHOLTZ, AND DANIEL C. OLIVERIO, AS GUARDIAN AD LITEM FOR SEYMOUR H. KNOX, V, JOHN CLAYTON KNOX, AND GEORGIA BROWN KNOX, OBJECTANTS-RESPONDENTS. (PROCEEDING NO. 1.) (APPEAL NO. 2.) -- Motion for leave to appeal to the Court of Appeals or, in the alternative, reargument denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (626/12) TP 11-01936. -- IN THE MATTER OF CARLOS ABREU, PETITIONER, V BRIAN FISCHER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENT. -- Motion for reargument or reconsideration denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (642/12) CA 11-02239. -- ERIE COUNTY SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS, PLAINTIFF-APPELLANT, V BETH HOSKINS,

DEFENDANT-RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (659/12) CAF 11-01859. -- **IN THE MATTER OF DANIEL TARRANT, PETITIONER-RESPONDENT, V SHANNON OSTROWSKI, RESPONDENT-APPELLANT.** -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (695/12) CA 11-02579. -- **REGENT FINANCIAL GROUP, LLC, PLAINTIFF-RESPONDENT, V ROSALEE BEDIAN, DEFENDANT-APPELLANT.** -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (715/12) CA 11-02521. -- **JEFFREY CONSTANTINE, M.D., PLAINTIFF-RESPONDENT, V STELLA MARIS INSURANCE COMPANY, LTD., DEFENDANT-APPELLANT, MARY SERIO, NICHOLAS SERIO, AS PARENTS AND NATURAL GUARDIANS OF NICOLE SERIO, A MINOR, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS.** -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, CARNI, AND LINDLEY, JJ. (Filed Sept. 28, 2012.)

MOTION NO. (731/12) CAF 11-01515. -- **IN THE MATTER OF MAURICE REEVES,**

**PETITIONER-APPELLANT, V ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
RESPONDENT-RESPONDENT.** -- Motion for reargument denied. PRESENT: SCUDDER,
P.J., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ. (Filed Sept. 28, 2012.)

**MOTION NO. (818/12) KA 09-02177. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V JOHN KELLY, DEFENDANT-APPELLANT.** -- Motion for reargument and
reconsideration denied. PRESENT: SCUDDER, P.J., CARNI, LINDLEY, SCONIERS,
AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

**MOTION NO. (835/12) KAH 11-01134. -- THE PEOPLE OF THE STATE OF NEW YORK EX
REL. ALBERT WILLIAMS, PETITIONER-APPELLANT, V HAROLD D. GRAHAM,
SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT.** --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Sept. 28,
2012.)

**KAH 11-02328. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL., EDWARD BROWN,
PETITIONER-APPELLANT, V NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES,
RESPONDENT-RESPONDENT.** -- Judgment unanimously affirmed. Counsel's motion
to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38
[1979]). (Appeal from Supreme Court, Wyoming County, Mark H. Dadd, J. -
Habeas Corpus). PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND
PERADOTTO, JJ. (Filed Sept. 28, 2012.)

KA 12-01673. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL IANNETTONI, DEFENDANT-APPELLANT. -- Motion to dismiss granted. Memorandum: Appeal dismissed and the matter is remitted to Onondaga 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 Sept. 28, 2012.)

KA 10-01369. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EDWARD A. JOHNS, DEFENDANT-APPELLANT. -- Motion to dismiss granted. Memorandum: Appeal dismissed and the matter is remitted to Oneida 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 Sept. 28, 2012.)

KA 11-01149. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL J. JUDD, JR., 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 by plea of attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]). County Court found defendant to be a "second felony offender" and sentenced him to a determinate term of imprisonment of five years and five years postrelease supervision. Defendant appealed and his assigned counsel now

moves to be relieved of the assignment, alleging that there are no nonfrivolous grounds for appeal (*see People v Crawford*, 71 AD2d 38). The record reveals that during the plea proceeding, defendant was informed by the court that a five year determinate sentence was "mandatory." Given that the mandatory minimum determinate sentence for a second felony offender convicted of a class D violent felony is three years (Penal Law § 70.06 [6] [c]), we conclude that a nonfrivolous issue exists as to whether defendant's guilty plea was knowing, voluntary and intelligent. 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 Orleans County Court, James P. Punch, J. - Attempted Burglary, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)

KA 11-00968. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V STANLEY POBLOCKI, III, 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 Erie County Court, Michael F. Pietruszka, J. - Attempted Grand Larceny, 4th Degree). PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND MARTOCHE, JJ. (Filed Sept. 28, 2012.)