

MOTION NOS. (153-154/96) KA 05-01122. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER YOUNG, DEFENDANT-APPELLANT. (APPEAL NO. 1.) KA 05-01123. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER YOUNG, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for summary reversal denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND LINDLEY, JJ. (Filed July 3, 2014.)

MOTION NO. (1648/06) KA 04-02967. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLEOTIS MERCER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY AND WHALEN, JJ. (Filed July 3, 2014.)

MOTION NO. (176/10) KA 08-01386. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TOMMY ESQUERDO, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, WHALEN, AND DEJOSEPH, JJ. (Filed July 3, 2014.)

MOTION NO. (199/10) KA 06-03648. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DEGLOYDE POLES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, WHALEN, AND DEJOSEPH, JJ. (Filed July 3, 2014.)

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, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed July 3, 2014.)

MOTION NO. (1173/13) TP 13-00534. -- IN THE MATTER OF EDDIE ORTIZ, PETITIONER, V CHARLES KELLY, JR., SUPERINTENDENT, MARCY CORRECTIONAL FACILITY AND BRIAN FISCHER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, RESPONDENTS. -- Motion for reargument of the appeal is granted to the extent that, upon reargument, the memorandum and order entered November 15, 2013 (111 AD3d 1411) is amended by deleting the ordering paragraph and substituting the following ordering paragraph: "It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed." The memorandum and order is further amended by deleting the second paragraph of the memorandum and substituting the following paragraph: "We note at the outset that petitioner's contentions concerning the court's dismissal of his declaratory judgment causes of action are not properly before this Court in the context of this transferred proceeding pursuant to CPLR 7804 (g), and petitioner has not perfected an appeal from the order and judgment to bring those contentions properly before us (see CPLR 5525 *et seq.*). We note in addition that, although an appeal from an order and judgment is 'deemed abandoned and dismissed . . . when an appellant has failed to perfect [the] appeal within nine months of service of the notice of appeal' (22 NYCRR 1000.12 [b]), 'a motion to vacate the dismissal may be made within one year of the date of the dismissal' (22 NYCRR 1000.13 [g])."

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND WHALEN, JJ. (Filed July 3, 2014.)

MOTION NO. (36/14) CA 13-00808. -- ACEA MOSEY, AS ADMINISTRATOR OF THE

ESTATE OF LAURA CUMMINGS, DECEASED, PLAINTIFF-APPELLANT, V COUNTY OF ERIE, DEFENDANT-RESPONDENT. (APPEAL NO. 1.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ. (Filed July 3, 2014.)

MOTION NO. (42/14) CA 13-00809. -- ACEA MOSEY, AS ADMINISTRATOR OF THE ESTATE OF LAURA CUMMINGS, DECEASED, PLAINTIFF-APPELLANT, V TIMOTHY B. HOWARD, ERIE COUNTY SHERIFF, DEFENDANT-RESPONDENT. (APPEAL NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ. (Filed July 3, 2014.)

MOTION NO. (199/14) CA 13-01511. -- DANIELLE DOWNIE, PLAINTIFF-RESPONDENT, V SHAWN T. MCDONOUGH, DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND WHALEN, JJ. (Filed July 3, 2014.)

MOTION NO. (262/14) CA 13-01366. -- BRIAN HYATT, PLAINTIFF-APPELLANT, V DANIEL YOUNG, DOING BUSINESS AS CY CONSTRUCTION, DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ. (Filed July 3, 2014.)

MOTION NO. (305/14) CA 13-00761. -- IN THE MATTER OF RICCELLI ENTERPRISES,

INC., ET AL., PETITIONERS-PLAINTIFFS-RESPONDENTS, V STATE OF NEW YORK WORKERS' COMPENSATION BOARD AND ROBERT E. BELOTEN, AS CHAIRMAN OF THE WORKERS' COMPENSATION BOARD, RESPONDENTS-DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND WHALEN, JJ. (Filed July 3, 2014.)

MOTION NO. (372/14) CA 13-01632. -- DAVID SMALLEY AND JUDITH SMALLEY, PLAINTIFFS-APPELLANTS, V HARLEY-DAVIDSON MOTOR COMPANY, INC., AND STAN'S HARLEY-DAVIDSON, INC., DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., FAHEY, LINDLEY, SCONIERS, AND WHALEN, JJ. (Filed July 3, 2014.)

MOTION NO. (405/14) KA 12-00445. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD F. MILLS, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, SCONIERS, AND VALENTINO, JJ. (Filed July 3, 2014.)

MOTION NO. (480/14) CA 13-01415. -- IN RE: EIGHTH JUDICIAL DISTRICT ASBESTOS LITIGATION. LARRY P. LANG AND BARBARA LANG, PLAINTIFFS-RESPONDENTS, V CRANE CO., ROPER PUMP COMPANY, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS. -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND VALENTINO, JJ. (Filed July 3, 2014.)

MOTION NO. (510.1/14) KA 13-00253. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DANIEL JONES, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, SCONIERS, AND VALENTINO, JJ. (Filed July 3, 2014.)

KA 11-02526. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL CRUZ, 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 jury verdict of grand larceny in the third degree (Penal Law § 155.35 [1]). Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38), alleging that no issues are presented that would merit relief on appeal. Upon our review of the record, we find that nonfrivolous issues exist as to the sufficiency of the evidence at trial and as to whether defendant was deprived of the opportunity to testify before the grand jury. We therefore 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 Cattaraugus County Court, Terrence M. Parker, J. - Grand Larceny, 3rd Degree). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed July 3, 2014.)

KA 13-01065. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FRANKLIN LEONARD, ALSO KNOWN AS FRANK BROWN, DEFENDANT-APPELLANT. -- Resentence unanimously affirmed. Counsel's motion to be relieved of assignment

granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Resentence of Supreme Court, Monroe County, Joseph D. Valentino, J. - Robbery, 2nd Degree). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed July 3, 2014.)

KA 11-00096. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOHN ROCKWELL, 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 his guilty plea of aggravated driving while intoxicated as a felony (Vehicle and Traffic Law §§ 1192 [2-a]; 1193 [1] [c] [i]), and was sentenced to an indeterminate term of imprisonment of one to three years and a \$1000 fine, and a consecutive term of five years probation. Defendant's assigned appellate counsel has moved to be relieved of the assignment on the ground that there are no nonfrivolous issues for appeal (*see People v Crawford*, 71 AD2d 38). Upon our review of the record, we conclude that a nonfrivolous issue exists as to whether the court erroneously imposed a more severe sentence than that bargained for without affording defendant the opportunity to withdraw his plea (*see People v Lafferty*, 60 AD3d 1318). We therefore relieve counsel of her 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 Livingston County Court, Dennis S. Cohen, J. - Felony Driving While Intoxicated). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed July 3, 2014.)

KA 13-01478. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AMEER WALKER, 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, Penny M. Wolfgang, J. - Robbery, 1st Degree). PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed July 3, 2014.)