

MOTION NO. (87/02) KA 00-02959. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EVERTON HIBBERT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, CURRAN, NOWAK, AND HANNAH, JJ. (Filed Dec. 20, 2024.)

MOTION NO. (287/02) KA 99-01532. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ELROY HENDRIX, a/k/a ELERO HENDRIX, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis and other relief denied. PRESENT: CURRAN, J.P., BANNISTER, OGDEN, NOWAK, AND KEANE, JJ. (Filed Dec. 20, 2024.)

MOTION NO. (1337/04) KA 02-00993. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES D. WALKER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., BANNISTER, NOWAK, KEANE, AND HANNAH, JJ. (Filed Dec. 20, 2024.)

MOTION NO. (368/15) KA 13-01176. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MATTHEW A. DAVIS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: LINDLEY, J.P., CURRAN, MONTOUR, GREENWOOD, AND NOWAK, JJ. (Filed Dec. 20, 2024.)

MOTION NO. (98/18) KA 14-00955. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DARRELL BOYD, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: BANNISTER, J.P., MONTOUR, GREENWOOD, NOWAK, AND KEANE, JJ. (Filed Dec. 20, 2024.)

**MOTION NO. (835/18) KA 17-00610. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT E. MACLEOD, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, NOWAK AND KEANE JJ. (Filed Dec. 20, 2024.)

**MOTION NO. (855/19) KA 20-01032. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TIMOTHY C. KEANE, DEFENDANT-APPELLANT. (APPEAL NO. 1.)** -- Motion for writ of error coram nobis and other relief denied. PRESENT: SMITH, J.P., BANNISTER, OGDEN, GREENWOOD, AND DELCONTE, JJ. (Filed Dec. 20, 2024.)

**MOTION NO. (856/19) KA 20-01033. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TIMOTHY C. KEANE, DEFENDANT-APPELLANT. (APPEAL NO. 2.)** -- Motion for writ of error coram nobis and other relief denied. PRESENT: SMITH, J.P., BANNISTER, OGDEN, GREENWOOD, AND DELCONTE, JJ. (Filed Dec. 20, 2024.)

**MOTION NO. (1244/19) KA 17-02058. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LATIEF JACKSON, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, CURRAN, BANNISTER, AND DELCONTE, JJ. (Filed Dec. 20, 2024.)

**MOTION NO. (438/24) CA 23-00402. -- JOYCE STORM, AS POWER OF ATTORNEY FOR PAUL JANKOWSKI, PLAINTIFF-RESPONDENT, V KALEIDA HEALTH, DOING BUSINESS AS BUFFALO GENERAL HOSPITAL, DEFENDANT-RESPONDENT, WILLIAMSVILLE SUBURBAN,**

LLC, LEGACY HEALTH CARE, LLC, GOLDEN LIVING CENTERS, LLC, SAFIRE CARE, LLC, SAFIRE REHABILITATION OF AMHERST, LLC, W. RICHARD ZACHER, LAURA OTTERBEIN, WENDY SCHMIDT, SOLOMON ABRAMCZYK, JUDY LANDA, ARYEH RICHARD PLATSCHEK, ROBERT SCHUCK AND MOSHE STEINBERG, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: LINDLEY, J.P., OGDEN, GREENWOOD, AND KEANE, JJ. (Filed Dec. 20, 2024.)

MOTION NO. (455/24) CA 23-01752. -- ADAM GASKILL, PLAINTIFF-RESPONDENT, V CHRISTOPHER M. SHARPE, DEFENDANT-RESPONDENT, CAUSLEY TRUCKING, INC., AND JEFFREY KEITH MADDEN, DEFENDANTS-APPELLANTS. -- Motion for reargument granted to the extent that, upon reargument, the memorandum and order entered July 26, 2024 (229 AD3d 1258 [4th Dept 2024]) is amended by deleting the third sentence of the third paragraph of the memorandum and substituting the following sentence:

"Although defendants established that Sharpe was negligent, a triable issue of fact would exist whether they were also negligent if, as plaintiff alleges, the manner in which the truck was parked at the time contributed to the accident (*cf. Gerrity v Muthana*, 28 AD3d 1063, 1064 [4th Dept 2006], *affd* 7 NY3d 834 [2006]).";

by deleting the fourth sentence of the third paragraph of the memorandum; and by adding the following sentence as the final sentence of the third paragraph of the memorandum:

"The court therefore did not abuse its discretion in denying defendants' summary judgment motion as premature (*see Cardone v Poidamani*, 73 AD3d 828, 828 [2d Dept 2010]; *see generally* CPLR 3212 [f])."

PRESENT: WHALEN, P.J., LINDLEY, DELCONTE, KEANE, AND HANNAH, JJ. (Filed Dec. 20, 2024.)

**MOTION NO. (632/24) TP 24-00456. -- IN THE MATTER OF WILLIE STRONG, PETITIONER, V DANIEL F. MARTUSCELLO, III, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, RESPONDENT. --** Motion for reargument denied. PRESENT: WHALEN, P.J., CURRAN, GREENWOOD, NOWAK, AND KEANE, JJ. (Filed Dec. 20, 2024.)

**KA 18-00251. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DERRICK L. HARLEY, DEFENDANT-APPELLANT. --** Motion to dismiss appeal granted. Matter remitted to Supreme Court, Ontario County, to vacate judgment of conviction and dismiss indictment (*see People v Matteson*, 75 NY2d 745, 747 [1989]). PRESENT: WHALEN, P.J., SMITH, LINDLEY, CURRAN, AND BANNISTER, JJ. (Filed Dec. 20, 2024.)

**KA 23-01511. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DARRYL BRADSHAW, 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 a judgment convicting him of attempted assault in the second degree (Penal Law §§ 110.00, 120.05 [2]) and sentencing him to an indeterminate term of imprisonment of two to four years. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford*

(71 AD2d 38 [4th Dept 1979]). Upon a review of the record we conclude that a nonfrivolous issue exists as to whether the court abused its discretion in denying defense counsel's request for an examination of defendant pursuant to CPL 730.30. 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 Cayuga County Court, Thomas G. Leone, J. - Attempted Assault, 2nd Degree).

PRESENT: LINDLEY, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ.

(Filed Dec. 20, 2024.)

**KA 24-00616. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FELIX SOSA, 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 a judgment convicting him of assault in the second degree (Penal Law § 120.05 [7]) and sentencing him to a determinate term of imprisonment of five years. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38 [4th Dept 1979]). Upon a review of the record we conclude that a nonfrivolous issue exists as to whether defendant entered a guilty plea (*cf. People v Keitz*, 99 AD3d 1254, 1255 [4th Dept 2012], *lv denied* 20 NY3d 1012 [2013], *cert denied* 571 US 993 [2013]). 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 Wyoming County Court, Melissa L. Cianfrini, A.J. - Assault, 2nd Degree). PRESENT:

LINDLEY, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ. (Filed Dec. 20,  
2024.)