

MOTION NO. (643/13) KA 09-00318. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DESHEQUAN L. NATHAN, 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, specifically, whether Supreme Court failed to determine whether defendant should be afforded youthful offender status. Upon our review of the motion papers and under the circumstances presented here, we conclude that appellate counsel's representation was not constitutionally adequate. "As held by the Court of Appeals in *People v Rudolph* (21 NY3d 497, 501 [2013]), CPL 720.20 (1) requires 'that there be a youthful offender determination in every case where the defendant is eligible, even where the defendant fails to request it, or agrees to forgo it as part of a plea bargain' " (*People v Downing*, 200 AD3d 704, 705 [2d Dept 2021], *lv denied* 38 NY3d 949 [2022]). Here, there is nothing in the record demonstrating that the court considered whether to adjudicate defendant a youthful offender, even though defendant, who was convicted of manslaughter in the first degree (Penal Law § 125.20 [1]) was presumably eligible (*see generally People v Gibson*, 122 AD3d 1331, 1331-1332 [4th Dept 2014]). Although the Court of Appeals decided *Rudolph* after appellate counsel filed the briefs on appeal and shortly before this Court affirmed defendant's judgment on appeal, the standard of meaningful representation required appellate counsel to, after *Rudolph* was decided, seek to file an appropriate motion in this Court in order to raise the argument that *Rudolph* requires that the sentence must be vacated and the matter remitted for determination of defendant's youthful offender status (*see Downing*, 200

AD3d at 705; *People v Slide*, 197 AD3d 1184, 1185 [2d Dept 2021]; see generally *People v Borrell*, 12 NY3d 365, 368-369 [2009]). The order of July 5, 2013 is vacated and this Court will consider the appeal de novo (see *People v Miller*, 169 AD3d 1460 [4th Dept 2019]). Defendant is directed to file and serve his records and brief with this Court on or before January 23, 2023. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, LINDLEY, AND NEMOYER, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (91/16) KA 14-01328. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V VERNON THOMAS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, CENTRA, WINSLOW, AND BANNISTER, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (1013/17) KA 14-01029. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TALARICO YOUNG, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., LINDLEY, NEMOYER, CURRAN, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (849/18) KA 16-01773. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V QUENTIN HILL, ALSO KNOWN AS QUINTON HILL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., LINDLEY, NEMOYER, CURRAN, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (87/22) KA 16-00386. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JERROD L. HUNTER, DEFENDANT-APPELLANT. -- Motion for reargument dismissed as untimely. PRESENT: PERADOTTO, J.P., LINDLEY, CURRAN, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (108/22) CA 21-01074. -- IN THE MATTER OF ELVERNA D. GIDNEY, PETITIONER-APPELLANT, ET AL., PETITIONER, V ZONING BOARD OF APPEALS OF CITY OF BUFFALO, PLANNING BOARD OF CITY OF BUFFALO, SYMPHONY PROPERTY MANAGEMENT LLC AND MICHIGAN-REDEV LLC, RESPONDENTS-RESPONDENTS. -- Motion for reargument is granted in part and, upon reargument, the memorandum and order entered July 1, 2022 (207 AD3d 1025 [4th Dept 2022]) is amended by deleting the second paragraph of the memorandum and substituting the following paragraph:

We reject petitioner's contention that the determination to grant the developers' application for the area variances lacks a rational basis and is not supported by substantial evidence (see generally *Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 613 [2004]). "[T]he determination whether to grant or deny an application for an area variance is committed to the broad discretion of the applicable local zoning board" (*Matter of People, Inc. v City of Tonawanda Zoning Bd. of Appeals*, 126 AD3d 1334, 1335 [4th Dept 2015]). "Where there is substantial evidence in the record to support the rationality of the ZBA's determination, the determination should be affirmed upon judicial review" (*Matter of Buckley v Zoning Bd. of Appeals of City of Geneva*, 189 AD3d 2080, 2081 [4th Dept 2020]; see *Matter of Ifrah v Utschig*, 98 NY2d 304, 308 [2002]). Here, upon our review of the record, we conclude that "the ZBA properly took into account the relevant factors set forth in [General City Law § 81-b (4)] and made detailed findings with respect to those factors, and we conclude that its determination to

grant the variances is not illegal, arbitrary, or an abuse of discretion" (*Matter of Campaign for Buffalo History Architecture & Culture, Inc. v Zoning Bd. of Appeals of City of Buffalo*, 174 AD3d 1304, 1306 [4th Dept 2019], *lv denied* 34 NY3d 912 [2020]; see *Matter of DeGroot v Town of Greece Bd. of Zoning Appeals*, 35 AD3d 1177, 1178 [4th Dept 2006]). Contrary to petitioner's further contention, the ZBA did not intrude upon the authority of the City of Buffalo's Common Council by " 'destroy[ing] the general scheme' of the zoning law" (*Matter of Abrams v City of Buffalo Zoning Bd. of Appeals*, 61 AD3d 1387, 1387 [4th Dept 2009], quoting *Matter of Clark v Board of Zoning Appeals of Town of Hempstead*, 301 NY 86, 91 [1950], *rearg denied* 301 NY 681 [1950], *cert denied* 340 US 933 [1951]; see *Matter of Santora v Town of Poughkeepsie Zoning Bd. of Appeals*, 55 AD3d 741, 743 [2d Dept 2008]).

PRESENT: PERADOTTO, J.P., LINDLEY, CURRAN, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (121/22) CA 21-00693. -- IN THE MATTER OF SHERBK, INC., PETITIONER-APPELLANT, V CITY OF SYRACUSE BOARD OF ZONING APPEALS, LMP SYRACUSE PROPERTY OWNER, LLC, AND TEMPLE SOCIETY OF CONCORD,

RESPONDENTS-RESPONDENTS. -- Motion for reargument denied. PRESENT:

WHALEN, P.J., SMITH, CENTRA, AND PERADOTTO, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (147/22) CA 21-01188. -- IRENE RICHARDS, EXECUTRIX OF THE ESTATE OF LOREN J. RICHARDS, DECEASED, AND INDIVIDUALLY AND AS SURVIVING SPOUSE OF LOREN J. RICHARDS, PLAINTIFF-RESPONDENT, V HEDMAN RESOURCES LIMITED, DEFENDANT-APPELLANT, ET AL., DEFENDANTS. (ACTION NO. 1.) DAVID D. LAURES AND MADELYN J. LAURES, PLAINTIFFS-RESPONDENTS, V AIR & LIQUID SYSTEMS CORPORATION, ET AL., DEFENDANTS, AND HEDMAN RESOURCES LIMITED, DEFENDANT-APPELLANT. (ACTION NO. 2.) ROGER J. ADAMEK, EXECUTOR OF THE

ESTATE OF ANN M. ADAMEK, DECEASED, AND INDIVIDUALLY AS THE SURVIVING SPOUSE OF ANN M. ADAMEK, PLAINTIFF-RESPONDENT, V HEDMAN RESOURCES LIMITED, DEFENDANT-APPELLANT, ET AL., DEFENDANTS. (ACTION NO. 3.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, NEMOYER, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (189/22) CA 21-00536. -- UTICA MUTUAL INSURANCE COMPANY, PLAINTIFF-RESPONDENT-APPELLANT, V ABELLE GENERAL INSURANCE CO., NOW KNOWN AS 21ST CENTURY NATIONAL INSURANCE CO., ET AL., DEFENDANTS-APPELLANTS-RESPONDENTS, ET AL., DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., SMITH, NEMOYER, WINSLOW, AND BANNISTER, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (267/22) CA 20-00692. -- CARMEN J. FINOCCHI, JR., AND KIM ELAINE FINOCCHI, PLAINTIFFS-APPELLANTS, V LIVE NATION INC., AND CPI TOURING (GENESIS-USA), LLC, DEFENDANTS-RESPONDENTS. (APPEAL NO. 1.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND CURRAN, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (378/22) CA 21-01333. -- VALERIE HOPE, PLAINTIFF-APPELLANT, V BARTLETT, PONTIFF, STEWART & RHODES, P.C., AND JOHN D. WRIGHT, ESQ., AS PRINCIPAL OF BARTLETT, PONTIFF, STEWART & RHODES, P.C., AS COUNSEL OF BARTLETT, PONTIFF, STEWART & RHODES, P.C., AND INDIVIDUALLY, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: PERADOTTO, J.P., LINDLEY, CURRAN, WINSLOW, AND BANNISTER, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (403/22) CA 21-00854. -- MAKEYIA HUNT, PLAINTIFF-APPELLANT, V DOLGENCORP OF NEW YORK, INC., AND 9274 GROUP, INC., DEFENDANTS-RESPONDENTS. -- Motion for reargument denied. PRESENT: WHALEN, P.J., SMITH, CENTRA, LINDLEY, AND CURRAN, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (418/22) CA 21-00692. -- ARLISA MAYS, PLAINTIFF-RESPONDENT, V TYLER LEE GREEN, POWER & CONSTRUCTION GROUP, INC., AND LIVINGSTON ASSOCIATES, LLC, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, NEMOYER, AND BANNISTER, JJ. (Filed Sept. 30, 2022.)

MOTION NO. (512/22) CA 21-00160. -- S.P., PLAINTIFF-APPELLANT, V M.P., DEFENDANT-RESPONDENT. -- Motion for reargument denied. PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)

**MOTION NO. (575/22) CA 22-00200. -- S.P., PLAINTIFF-APPELLANT, V M.P.,
DEFENDANT-RESPONDENT.** -- Motion for reargument denied. PRESENT: SMITH,
J.P., CENTRA, PERADOTTO, CURRAN, AND WINSLOW, JJ. (Filed Sept. 30, 2022.)