

MOTION NO. (1573/07) KA 05-00983. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES F. CAHILL, III, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, PERADOTTO, LINDLEY, AND CURRAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (959/10) KA 09-01166. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TROY L. KENNEDY, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (221/11) KA 09-01583. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ORLANDO O. OCASIO, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., LINDLEY, NEMOYER, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (336/17) KA 15-00922. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MAURICE R. HOWIE, ALSO KNOWN AS "QUELL", DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, CARNI, LINDLEY, AND NEMOYER, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (733/17) KA 15-00604. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAMONE LEWIS, ALSO KNOWN AS "MONE", ALSO KNOWN AS "D", DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, TROUTMAN, AND WINSLOW, JJ. (Filed

Sept. 28, 2018.)

MOTION NO. (814/17) KA 13-00159. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TIMOTHY D. SAMUEL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (1513/17) CA 17-00786. -- IN THE MATTER OF HAMILTON EQUITY GROUP, LLC, AS ASSIGNEE OF HSBC BANK USA, NATIONAL ASSOCIATION, PETITIONER-RESPONDENT, V SOUTHERN WELLCARE MEDICAL, P.C., RESPONDENT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (1530/17) CA 17-01222. -- DONNA JONES, PLAINTIFF-APPELLANT, V SMOKE TREE FARM, A NEW YORK PARTNERSHIP, ROBERT F. SMITH, INDIVIDUALLY AND AS A PARTNER OF SMOKE TREE FARM AND/OR DOING BUSINESS AS SMOKE TREE FARM, BENEDETTE SMITH, INDIVIDUALLY AND AS A PARTNER OF SMOKE TREE FARM AND/OR DOING BUSINESS AS SMOKE TREE FARM, DIANE VAN PATTEN, INDIVIDUALLY AND AS A PARTNER OF SMOKE TREE FARM AND/OR DOING BUSINESS AS SMOKE TREE FARM, AND DON VAN PATTEN, INDIVIDUALLY AND AS PARTNER OF SMOKE TREE FARM AND/OR DOING BUSINESS AS SMOKE TREE FARM, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT:

SMITH, J.P., DEJOSEPH, NEMOYER, AND CURRAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (221/18) KA 12-02145. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JEFFREY J. TERBORG, DEFENDANT-APPELLANT. -- Motion for reargument and other relief denied. PRESENT: WHALEN, P.J., SMITH, LINDLEY, DEJOSEPH, AND NEMOYER, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (234/18) CA 17-01558. -- NORTHLAND EAST, LLC, NORTHLAND WEST, LLC, DUTTON, LLC, AND MICHAEL W. SWEENEY, PLAINTIFFS-APPELLANTS, V J.R. MILITELLO REALTY, INC., AND NORDEL II, LLC, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., LINDLEY, DEJOSEPH, AND NEMOYER, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (260/18) CA 17-00423. -- CARRIANN RAY, PLAINTIFF-RESPONDENT, V VICTORIA J.G. STOCKTON, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for reargument denied. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, DEJOSEPH, AND CURRAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (329/18) CA 17-01645. -- ABBOTT BROS. II STEAK OUT, INC., PLAINTIFF-RESPONDENT, V ALEXANDROS TSOULIS, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: CENTRA, J.P., CARNI, NEMOYER, CURRAN, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (521/18) CA 17-02093. -- ANDREW G. VANDEE, JERRY PHALEN, JAMES LYNCH, ROGER SLATER, RICHARD THOMAS, ELIJAH CLOSSON, WILLIAM PRINDLE AND SHAWN KIRK, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLANTS-RESPONDENTS, V SUIT-KOTE CORPORATION, DEFENDANT-RESPONDENT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., DEJOSEPH, NEMOYER, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (534/18) KA 16-00005. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DARNELL CREDELL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (539/18) CA 17-01703. -- IN THE MATTER OF PILOT TRAVEL CENTERS, LLC, PETITIONER-APPELLANT, V TOWN BOARD OF TOWN OF BATH, TOWN OF BATH PLANNING BOARD, MICHAEL LUFFRED, IN HIS OFFICIAL CAPACITY AS CODE ENFORCEMENT OFFICER OF TOWN OF BATH, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., RESPONDENTS-RESPONDENTS, ET AL., RESPONDENTS. (APPEAL NO. 1.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (599/18) KA 14-02214. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V ISIAH WILLIAMS, DEFENDANT-APPELLANT. (APPEAL NO. 2.) --
Motion for reargument denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY,
CURRAN, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (604/18) KA 15-02121. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V ISIAH WILLIAMS, DEFENDANT-APPELLANT. (APPEAL NO. 3.) --
Motion for reargument denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY,
CURRAN, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (630/18) CA 17-01005. -- W. JAMES CAMPERLINO,
PLAINTIFF-RESPONDENT, V DAN E. BARGABOS AND KENWOOD HOMES, INC., DOING
BUSINESS AS HERITAGE HOMES, DEFENDANTS-APPELLANTS. (APPEAL NO. 1.) --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
WHALEN, P.J., SMITH, CARNI, LINDLEY, AND WINSLOW, JJ. (Filed Sept. 28,
2018.)

MOTION NO. (631/18) CA 17-01006. -- W. JAMES CAMPERLINO,
PLAINTIFF-RESPONDENT, V DAN E. BARGABOS AND KENWOOD HOMES, INC., DOING
BUSINESS AS HERITAGE HOMES, DEFENDANTS-APPELLANTS. (APPEAL NO. 2.) --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
WHALEN, P.J., SMITH, CARNI, LINDLEY, AND WINSLOW, JJ. (Filed Sept. 28,
2018.)

MOTION NO. (632/18) CA 17-01007. -- W. JAMES CAMPERLINO,

PLAINTIFF-RESPONDENT, V DAN E. BARGABOS AND KENWOOD HOMES, INC., DOING BUSINESS AS HERITAGE HOMES, DEFENDANTS-APPELLANTS. (APPEAL NO. 3.) --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
WHALEN, P.J., SMITH, CARNI, LINDLEY, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (633/18) CA 17-01008. -- W. JAMES CAMPERLINO, PLAINTIFF-RESPONDENT-APPELLANT, V DAN E. BARGABOS AND KENWOOD HOMES, INC., DOING BUSINESS AS HERITAGE HOMES, DEFENDANTS-APPELLANTS-RESPONDENTS. (APPEAL NO. 4.) -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., SMITH, CARNI, LINDLEY, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (634/18) CA 17-01837. -- W. JAMES CAMPERLINO, PLAINTIFF-APPELLANT, V DAN E. BARGABOS AND KENWOOD HOMES, INC., DOING BUSINESS AS HERITAGE HOMES, DEFENDANTS-RESPONDENTS. (APPEAL NO. 5.) --
Motion for leave to appeal to the Court of Appeals denied. PRESENT:
WHALEN, P.J., SMITH, CARNI, LINDLEY, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (635/18) CA 17-01934. -- MARY WYZYKOWSKI, CLAIMANT-APPELLANT, V STATE OF NEW YORK, DEFENDANT-RESPONDENT. (CLAIM NO. 125390.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT:
SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND WINSLOW, JJ. (Filed Sept. 28,

2018.)

MOTION NOS. (638-639/18) KA 15-01174. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ALEXANDER KATES, DEFENDANT-APPELLANT. (APPEAL NO. 1.) KA 16-02022. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ALEXANDER KATES, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for reargument denied. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, TROUTMAN, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (654/18) TP 17-02198. -- IN THE MATTER OF BRETT D. BERSANI, PETITIONER, V NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, RESPONDENT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, TROUTMAN, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (657/18) CA 17-00858. -- STEVEN MCGREGOR, PLAINTIFF-RESPONDENT, V PERMCLIP PRODUCTS CORP., DEFENDANT-APPELLANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, TROUTMAN, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (673/18) CA 17-02187. -- WILLIAM LANDAHL AND KIMBERLY LANDAHL, PLAINTIFFS-RESPONDENTS, V DANIEL B. STEIN AND TRUDY STEIN, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER,

AND CURRAN, JJ. (Filed Sept. 28, 2018.)

**MOTION NO. (691/18) CA 17-01682. -- IN THE MATTER OF PATRICIA ANN GOODYEAR,
PETITIONER-RESPONDENT, V NEW YORK STATE DEPARTMENT OF HEALTH,**

RESPONDENT-RESPONDENT, AND JEANENE JUNE DEMARC, RESPONDENT-APPELLANT. --

Motion for reargument or leave to appeal to the Court of Appeals denied.

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

(Filed Sept. 28, 2018.)

**MOTION NO. (696/18) CAF 17-01771. -- IN THE MATTER OF JEANENE JUNE DEMARC,
PETITIONER-APPELLANT, V PATRICIA ANN GOODYEAR, RESPONDENT-RESPONDENT. --**

Motion for reargument or leave to appeal to the Court of Appeals denied.

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

(Filed Sept. 28, 2018.)

**MOTION NO. (709/18) KA 16-01081. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V RASHAWN C. AUSTIN, DEFENDANT-APPELLANT. --** Motion for

reargument be and the same hereby is granted and, upon reargument, the memorandum and order entered June 8, 2018 (162 AD3d 1574) is amended by adding the following sentence as the last sentence of the memorandum: "We have reviewed the remaining contentions raised by defendant on appeal and conclude that none warrant reversal or modification of the judgment."

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (732/18) KA 15-01997. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TIMOTHY LANKFORD, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND CURRAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (747/18) CA 18-00146. -- DELPHI HOSPITALIST SERVICES LLC, PLAINTIFF-APPELLANT, V EDWARD L. PATRICK, DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND CURRAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (769/18) CA 17-02233. -- ASIA BALL, AS PARENT AND NATURAL GUARDIAN OF INFANT A.K, PLAINTIFF-RESPONDENT, V ORLANDO CAESAR, DEFENDANT, KELLI SMITH AND KELLI'S LITTLE ONE-Z CHILDCARE, INC., DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., CARNI, LINDLEY, DEJOSEPH, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (801/18) KA 12-01622. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSEPH GELLING, DEFENDANT-APPELLANT. -- Motion for reargument be and the same hereby is granted in part and, upon reargument, the memorandum and order entered July 25, 2018 (163 AD3d 1489) is amended by deleting the phrase "second-story" from the second sentence of the ninth

paragraph of the memorandum. PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (806/18) CA 17-01956. -- CAYUGA NATION, BY AND THROUGH ITS LAWFUL GOVERNING BODY, CAYUGA NATION COUNCIL, PLAINTIFF-RESPONDENT, V SAMUEL CAMPBELL, CHESTER ISAAC, JUSTIN BENNETT, KARL HILL, SAMUEL GEORGE, DANIEL HILL, TYLER SENECA, MARTIN LAY, WILLIAM JACOBS, WARREN JOHN, WANDA JOHN, BRENDA BENNETT, PAMELA ISAAC, ET AL., DEFENDANTS-APPELLANTS, AND COUNTY OF SENECA, INTERVENOR. (APPEAL NO. 1.) -- Motion for leave to appeal to the Court of Appeals granted. PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

MOTION NO. (832/18) TP 17-01928. -- IN THE MATTER OF J.C. SMITH, INC., PETITIONER, V NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, ALSO KNOWN AS EMPIRE STATE DEVELOPMENT, HOWARD ZEMSKY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT AND CEO OF EMPIRE STATE DEVELOPMENT, DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT OF NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, AND LOURDES ZAPATA, DIRECTOR, DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT OF NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, TROUTMAN, AND WINSLOW, JJ. (Filed Sept. 28, 2018.)

KA 17-01041. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHAVELO BORDEN, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [4th Dept 1979]). (Appeal from a Judgment of Wyoming County Court, Michael M. Mohun, J. - Attempted Promoting Prison Contraband, 1st Degree).
PRESENT: WHALEN, P.J., CENTRA, LINDLEY, NEMOYER, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

KA 17-00325. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BRIAN J. DEALE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [4th Dept 1979]). (Appeal from a Judgment of Wyoming County Court, Michael M. Mohun, J. - Attempted Promoting Prison Contraband, 1st Degree).
PRESENT: WHALEN, P.J., CENTRA, LINDLEY, NEMOYER, AND TROUTMAN, JJ. (Filed Sept. 28, 2018.)

KA 15-01251. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARC A. DRAKE, DEFENDANT-APPELLANT. Motion to dismiss granted. Memorandum: The matter is remitted to Supreme Court, Monroe County, 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 [1989]). PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ. (Filed Sept. 28, 2018.)

KA 14-00583. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSEPH E. MARTINEZ, ALSO KNOWN AS JOHN DOE, DEFENDANT-APPELLANT. Motion to dismiss granted. Memorandum: The matter is remitted to Supreme Court, Monroe County, 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 [1989]). PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ. (Filed Sept. 28, 2018.)

KA 16-01033. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RAYMOND L. MORGAN, ALSO KNOWN AS JOHN DOE, DEFENDANT-APPELLANT. Motion to dismiss granted. Memorandum: The matter is remitted to Genesee 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 [1989]). PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ. (Filed Sept. 28, 2018.)

KA 16-01811. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JARVIS J. PORTER, ALSO KNOWN AS JOHN DOE, DEFENDANT-APPELLANT. Motion to dismiss granted. Memorandum: The matter is remitted to Monroe 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 [1989]). PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ. (Filed Sept. 28, 2018.)

