

MOTION NO. (277/00) KA 98-05147. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD WALLACE, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND WHALEN, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (432/02) KA 01-01331. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AARON PAIGE, DEFENDANT-APPELLANT. (APPEAL NO. 1.) -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (433/02) KA 01-01276. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AARON PAIGE, DEFENDANT-APPELLANT. (APPEAL NO. 2.) -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (434/02) KA 01-01332. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AARON PAIGE, DEFENDANT-APPELLANT. (APPEAL NO. 3.) -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (435/02) KA 01-00668. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V AARON PAIGE, DEFENDANT-APPELLANT. (APPEAL NO. 4.) -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (971/07) KA 06-00423. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RODNEY MITCHELL, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, LINDLEY, AND VALENTINO, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (126/09) KA 07-02660. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RONALD TAYLOR, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (1412/10) KA 10-00774. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TOBIAS BOYLAND, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (252/12) KA 10-02161. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANDRE L. SCOTT, ALSO KNOWN AS ANDRE SCOTT, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., FAHEY, LINDLEY, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (587/12) KA 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 or reargument of the appeal is granted to the extent that, upon reargument, the opinion and order entered June 15, 2012 (98 AD3d 168) is amended by deleting the ordering paragraph and substituting the following ordering paragraph: "It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the third ordering paragraph and granting those parts of plaintiffs' motion for a protective order permitting the undeposed plaintiffs who have returned to Guatemala to be deposed in Guatemala via video conference and permitting the plaintiffs who have returned to Mexico and Guatemala to testify at trial by video and as modified the order is affirmed without costs." The opinion and order is further amended by inserting the following sentence after the first sentence of section IV: "Nevertheless, we exercise our power to reach that issue (*see generally Bracken v Niagara Frontier Transp. Auth.*, 251 AD2d 1068, 1069), and we conclude that the court erred in determining that those medical examinations must be conducted in the United States inasmuch as no such examinations have been requested (*see generally Murad v Russo*, 74 AD3d 1823, 1824, *lv dismissed* 16 NY3d 732; *Burnett v Columbus McKinnon Corp.*, 69

AD3d 58, 64).” The opinion and order is further amended by inserting the words “of plaintiffs’ contention with respect to the video depositions” after the words “[w]e now turn to the merits” in section IV (A) (2). The opinion and order is further amended by deleting the words “that part of” and “concerning the depositions of plaintiffs” from the sentence in section VI. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND LINDLEY, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (971/12) TP 12-00005. -- IN THE MATTER OF WILLIAM B. JOHNSTON, PETITIONER-RESPONDENT, V GALEN D. KIRKLAND, COMMISSIONER, NEW YORK STATE DIVISION OF HUMAN RIGHTS, RESPONDENT-PETITIONER, SCOTT GEHL, HOUSING OPPORTUNITIES MADE EQUAL, INC., STEPHANIE M. GILLIAM, ERIC T. SCHNEIDERMAN, NEW YORK STATE ATTORNEY GENERAL, MAYOR BYRON W. BROWN AND ERIE COUNTY EXECUTIVE CHRISTOPHER C. COLLINS, RESPONDENTS. -- Motion to reverse denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, AND SCONIERS, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (1104/12) CAF 11-01187. -- IN THE MATTER OF GENA S. GENESEE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; KAREN M., RESPONDENT-APPELLANT. JACQUELINE M. GRASSO, ESQ., ATTORNEY FOR THE CHILD, APPELLANT. (APPEAL NO. 1.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: FAHEY, J.P., PERADOTTO, CARNI, WHALEN, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (1105/12) CAF 11-01188. -- IN THE MATTER OF MISTY S. GENESEE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; KAREN M., RESPONDENT-APPELLANT. (APPEAL NO. 2.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: FAHEY, J.P., PERADOTTO, CARNI, WHALEN, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (1106/12) CAF 11-01189. -- IN THE MATTER OF SHAUNDRA D. GENESEE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; KAREN M., RESPONDENT-APPELLANT. (APPEAL NO. 3.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: FAHEY, J.P., PERADOTTO, CARNI, WHALEN, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (1169/12) CA 12-00850. -- IN THE MATTER OF DEBORAH BURNS AND BRUCE HENRY, PETITIONERS-RESPONDENTS, V CARLOS CARBALLADA, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF NEIGHBORHOOD AND BUSINESS DEVELOPMENT OF CITY OF ROCHESTER, AND CITY OF ROCHESTER, RESPONDENTS-APPELLANTS. -- Motions for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Mar. 15, 2013.)

MOTION NO. (1275/12) CA 12-00826. -- IN THE MATTER OF KELIANN ELNISKI, PETITIONER-APPELLANT, V NIAGARA FALLS COACH LINES, INC., RAEANNE ARGY-TYLER AND MICHAEL J. DOWD, RESPONDENTS-RESPONDENTS. (APPEAL NO. 1.) -- Motion for reargument or leave to appeal to the Court of Appeals denied. Cross

motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND WHALEN, JJ. (Filed Mar. 15, 2013.)

**MOTION NO. (1301/12) TP 12-01223. -- IN THE MATTER OF JOHN RICHARD, PETITIONER, V HAROLD GRAHAM, SUPERINTENDENT, RESPONDENT.** -- Motion for vacatur and other relief denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND WHALEN, JJ. (Filed Mar. 15, 2013.)

**MOTION NO. (1325/12) KA 11-01166. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KASIEM WILLIAMS, DEFENDANT-APPELLANT.** -- Motion for reargument denied. PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Mar. 15, 2013.)

**MOTION NO. (1328/12) KA 10-00172. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ISIAH WILLIAMS, DEFENDANT-APPELLANT. (APPEAL NO. 3.)** -- Motion for reargument of the appeal is granted to the extent that, upon reargument, the memorandum and order entered December 28, 2012 (101 AD3d 1734) is amended by deleting the third sentence from the seventh paragraph of the memorandum and substituting the following sentences: "Defendant subsequently proceeded pro se at sentencing at the first trial, i.e, the trial at issue in appeal No. 2. Defendant likewise proceeded pro se at that part of the *Wade* hearing concerning identification testimony relevant to the charges set forth in counts six and 8 through 15 of the indictment

at issue in appeal No. 3. Moreover, defendant proceeded pro se throughout the second trial, i.e., the trial at issue in appeal No. 3." The memorandum and order is further amended by adding the following sentence at the end of the seventh paragraph of the memorandum: "Likewise, we note that the new trial granted with respect to appeal No. 3 should also be preceded by a new suppression hearing with respect to the witnesses who identified defendant at trial in connection with the charges set forth in counts 8 through 15 of the indictment." PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Mar. 15, 2013.)

**MOTION NO. (1337/12) CA 12-01085. -- TIANA SYKES,  
PLAINTIFF-APPELLANT-RESPONDENT, V STAN ROTH,  
DEFENDANT-RESPONDENT-APPELLANT.** -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Mar. 15, 2013.)

**MOTION NO. (1391.1/12) CA 12-00263. -- RICARDO WRIGHT,  
PLAINTIFF-RESPONDENT, V JAMES J. SHAPIRO, JAMES J. SHAPIRO, P.A.,  
DEFENDANTS-APPELLANTS, CHIKOVSKY & ASSOCIATES, P.A., ET AL., DEFENDANTS.** -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, VALENTINO, AND WHALEN, JJ. (Filed Mar. 15, 2013.)

**KA 11-00788. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JEREMY**

**M. CECCE, 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 plea of guilty of aggravated driving while intoxicated as a felony (Vehicle and Traffic Law §§ 1192 [2-a]; 1193 [1] [c] [i]), and driving while intoxicated as a felony (§§ 1192 [3]; 1193 [1] [c] [i]), and was sentenced to concurrent indeterminate terms of imprisonment of 1 2/3 to 5 years. Defendant appealed and his assigned counsel now moves to be relieved of the assignment on the ground that the appeal is frivolous (*see People v Crawford*, 71 AD2d 38). Upon our review of the record, we conclude that a nonfrivolous issue exists as to the legality of the sentence (*see Penal Law § 70.00 [2] [e]*). 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 Ontario County Court, Craig J. Doran, J. - Driving While Intoxicated).  
PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND WHALEN, JJ. (Filed Mar. 15, 2013.)

**KAH 12-00836. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. STANLEY JACKSON, 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). (Appeal from Supreme Court, Wyoming County, Mark H. Dadd, J. - Habeas Corpus). PRESENT: SCUDDER, P.J., PERADOTTO, CARNI,



LINDLEY, AND WHALEN, JJ. (Filed Mar. 15, 2013.)