

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14069
Y/cb

_____AD3d_____

Submitted - January 12, 2007

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2003-03266

DECISION & ORDER

The People, etc., respondent,
v Chi Fong Chen, appellant.

(Ind. No. 98-00786)

Robert Tendy, Poughkeepsie, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Jennifer Spencer, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a resentencing of the County Court, Westchester County (Zambelli, J.), imposed January 21, 2003, upon his conviction of attempted murder in the second degree. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738) in which he moves to be relieved of the assignment to prosecute this appeal.

ORDERED that the motion is granted, and Robert Tendy is relieved as the attorney for the defendant and is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Robert Miller, 4 Treetop Lane, Dobbs Ferry, N.Y., 10522, is assigned as counsel to perfect the appeal; and it is further,

ORDERED that the People are directed to furnish a copy of the stenographic minutes to the new assigned counsel; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the defendant within 90 days of the date of this decision and order and the People shall serve and file their brief

February 27, 2007

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within 120 days of the date of this decision and order; by prior decision and order on motion of this court, the defendant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers (including the typewritten stenographic minutes) and on the typewritten briefs of the parties, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

Upon this court's independent review of the record, we conclude that potentially nonfrivolous issues exist with respect to the defendant's resentencing, including but not limited to a claim of harshness or excessiveness of the sentence and the omission of an opportunity to make a personal statement at the time of the resentencing (*see* CPL 380.50[1]; *Anders v California*, 386 US 738). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *People v Vasques*, 70 NY2d 1, 4).

SCHMIDT, J.P., CRANE, FISHER and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court