

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

D16066
X/gts

_____AD3d_____

Submitted - June 19, 2007

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
ANITA R. FLORIO
STEVEN W. FISHER, JJ.

2005-07081

DECISION & ORDER

The People, etc., respondent,
v Alphonso Kirksey, appellant.

(Ind. No. 05-236)

Arza Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant, and appellant pro se.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered July 18, 2005, convicting him of attempted murder in the first degree and assault in the first degree, upon his plea of guilty, and imposing sentence. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738) and moves to be relieved of the assignment to prosecute this appeal.

ORDERED that the motion is granted, Arza Feldman is relieved as counsel for the appellant and is directed to turn over all papers in her possession to new counsel assigned herein; and it is further,

ORDERED that Gary Eisenberg, 10 Esquire Road, Suite 10, New City, N.Y., 10956, is assigned as counsel to perfect the appeal from the judgment of conviction rendered July 18, 2005; and it is further,

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

August 21, 2007

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ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days of the date of this decision and order and the People shall serve and file their brief 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 a certified transcript of the proceedings) and on the briefs of the parties, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

Upon the defendant's supplemental pro se brief and this court's independent review of the record, we conclude that nonfrivolous issues exist, including, but not limited to, whether the defendant's plea was voluntary (*see People v Louree*, 8 NY3d 541; *People v Catu*, 4 NY3d 242). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *People v Vasquez*, 70 NY2d 1, 4).

RIVERA, J.P., RITTER, FLORIO and FISHER, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court