

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

D16456
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Submitted - September 4, 2007

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2006-05377

DECISION & ORDER

People of State of New York, respondent,
v Jamel Ferguson, appellant.

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Steven A. Hovani of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Hinrichs, J.), dated May 5, 2006, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C. 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 the appeal.

ORDERED that the motion is granted, and Robert C. Mitchell 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 Arza R. Feldman, 626 EAB Plaza, West Tower-6th Floor, Uniondale, N.Y., 11556, 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 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 on the original papers (including a

October 23, 2007

Page 1.

certified transcript of the proceedings, if any) 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 whether the Supreme Court erred in granting the People's oral application at the Sex Offender Registration Act hearing to amend the risk assessment instrument without prior written notice to the defendant or an adjournment (*see* Corrections Law § 168-n[3]; *People v Brooks*, 308 AD2d 99; *Doe v Pataki*, 3 F Supp 2d 456; *cf. People v Jordan*, 31 AD3d 1196; *People v Inghilleri*, 21 AD3d 404).

SPOLZINO, J.P., RITTER, DILLON and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court