

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

D21960
W/hu

_____AD3d_____

Submitted - January 7, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
ANITA R. FLORIO
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2008-04693

DECISION & ORDER

The People, etc., respondent,
v Herbert Rawlison, appellant.

(Ind. No. 08-00073)

Richard L. Herzfeld, New York, N.Y., for appellant.

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 May 15, 2008, convicting him of criminal sale of a controlled substance on or near school grounds, 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, Richard L. Herzfeld, Esq., is relieved as counsel for the appellant, and is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that John Savoca, P.O. Box 531, Yorktown Heights, N.Y., 10598, is assigned as counsel to perfect the appeal from the judgment of conviction rendered May 15, 2008; 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,

January 27, 2009

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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 this court's independent review of the record, we conclude that nonfrivolous issues exist, including, but not limited to, the voluntariness of the defendant's plea (*see People v Louree*, 8 NY3d 541; *People v Catu*, 4 NY3d 242; *People v Kirksey*, 43 AD3d 472). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *People v Vasquez*, 70 NY2d 1, 4).

MASTRO, J.P., FISHER, FLORIO, CARNI and ENG, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court