

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

D23574
O/cb

_____AD3d_____

Submitted - May 12, 2009

REINALDO E. RIVERA, J.P.
HOWARD MILLER
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2007-11337

DECISION & ORDER

The People, etc., respondent,
v LaTonya Dixon, appellant.

(Ind. No. 1585/07)

Martin Geduldig, Garden City, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Andrea M. DiGregorio of
counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Ayres, J.), rendered November 9, 2007, convicting her of assault in the second degree, upon her plea of guilty, and imposing sentence.

ORDERED that the matter is remitted to the Supreme Court, Nassau County, to hear and report on the defendant's motion to withdraw her plea of guilty, on which motion the defendant's appellate counsel shall represent her, and the appeal is held in abeyance in the interim. The Supreme Court, Nassau County, shall file its report with all convenient speed.

On the record presented, the Supreme Court erred in determining the defendant's motion for leave to withdraw her plea of guilty without a hearing after defense counsel adopted a position adverse to the defendant (*see People v Earp*, 7 AD3d 538, 539; *People v Caccavale*, 305 AD2d 695). The defendant's right to counsel was adversely affected when her attorney, in effect, became a witness against her and took a position adverse to her (*see People v Bedoya*, 53 AD3d 621; *People v Bryant*, 22 AD3d 676, 677; *see also People v Hunter*, 35 AD3d 1228; *People v Chaney*, 294 AD2d 931, 932). The Supreme Court should have assigned a different attorney to represent the

June 16, 2009

PEOPLE v DIXON, LaTONYA

Page 1.

defendant before it determined the motion to withdraw the plea (*see People v Bedoya*, 53 AD3d 621). Accordingly, we remit the matter to the Supreme Court, Nassau County, to hear and report on the defendant's motion, on which the defendant is to be represented by the counsel assigned to represent her on this appeal. We hold the appeal in abeyance pending receipt of the Supreme Court's report. We express no opinion as to the merits of the defendant's motion, and we do not pass upon the remaining contention raised by the defendant on appeal.

RIVERA, J.P., MILLER, BALKIN and AUSTIN, 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