

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

D25286
G/kmg

_____AD3d_____

Submitted - November 4, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-10690

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Luis M. Figueroa, a/k/a Louis M. Figueroa, appellant.

(Ind. No. 93/08)

Bruce A. Petito, Poughkeepsie, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered October 30, 2008, convicting him of murder in the second degree, upon his plea of guilty, and imposing sentence. 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, Bruce A. Petito is relieved as the attorney for the defendant and he is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Salvatore Adamo, 350 Fifth Avenue, 55th Floor, New York, N.Y. 11772-2254, 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,

December 15, 2009

Page 1.

PEOPLE v FIGUEROA, LUIS M., a/k/a FIGUEROA, LOUIS M.

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 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 nonfrivolous issues exist, including, but not limited to, whether the sentencing court abided by the sentencing promise made at the time of the entry of the plea of guilty. Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *People v Vasquez*, 70 NY2d 1, 4).

SKELOS, J.P., FLORIO, BALKIN, BELEN 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