

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

D25305
W/kmg

_____AD3d_____

Submitted - October 29, 2009

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2006-02549

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Gerry Haynes, appellant.

(Ind. No. 2809/04)

Daniel Guttman, Smithtown, N.Y., for appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Merri Turk Lasky of counsel; Lorrie A. Zinno and Kerry Carroll on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kron, J.), rendered January 24, 2006, convicting him of attempted robbery 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, Daniel Guttman is relieved as the attorney for the appellant, and he is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Randall D. Unger, 42-20 Bell Boulevard, Bayside, N.Y., 11361, telephone no. 718-279-4500, is assigned as counsel to perfect the appeal; 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,

December 8, 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 decision and order on motion of this Court dated July 28, 2006, the defendant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers (including the 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 necessarily limited to, issues regarding the seizure of the defendant by the police. Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638).

RIVERA, J.P., DICKERSON, HALL and LOTT, 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