

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

D26932
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Submitted - March 1, 2010

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2008-07777

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Joseph Carlucci, appellant.

(Ind. No. 07-01328)

Rachel J. Filasto, White Plains, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Maria I. Wager, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Zambelli, J.), rendered July 29, 2008, convicting him of burglary in the first degree (two counts), assault in the second degree, and criminal mischief in the fourth degree, upon a jury verdict, and imposing sentence. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which she moves to be relieved of the assignment to prosecute the appeal.

ORDERED that the motion is granted, Rachel J. Filasto is relieved as attorney for the defendant, and she is directed to turn over all papers in her possession to new counsel assigned herein; and it is further,

ORDERED that Del Atwell, 39 5th Street, East Hampton, N.Y., 11937, 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,

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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 of this Court, the defendant was granted leave to prosecute the appeal on the original papers (including the certified transcript of the proceedings) 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 verdict was against the weight of the evidence (*see* CPL 470.15[5]) and whether the sentence imposed was illegal (*see* CPL 400.21[4]). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *People v Vasquez*, 70 NY2d 1; *People v Casiano*, 67 NY2d 906).

SKELOS, J.P., SANTUCCI, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court