

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

D31279
W/kmb

_____AD3d_____

Submitted - April 27, 2011

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-04049

DECISION & ORDER ON MOTION

People of State of New York, respondent,
v Bobby Palmer, appellant.

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Kahn, J.), dated March 23, 2010, which, after a hearing pursuant to Correction Law article 6-C, designated him a level three sex offender. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Robert C. Mitchell for leave to withdraw as counsel for the appellant is granted, Robert C. Mitchell is relieved of his assignment to prosecute the appeal on behalf of the appellant, and Robert C. Mitchell is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Arza R. Feldman, Esq., 626 Reckson Plaza, West Tower, 6th Floor, Uniondale, N.Y., 11556, Tel No. 516-522-2828, is assigned as counsel to perfect the appeal from the order dated March 23, 2010; and it is further,

ORDERED that the People are directed to furnish a copy of the stenographic minutes to new counsel; and it is further,

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

August 16, 2011

Page 1.

within 120 days of the date of this decision and order; by prior decision and order on motion of this Court dated July 13, 2010, the defendant was granted leave to prosecute this 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 with respect to whether the defendant was properly assessed 15 points in his risk assessment instrument for a history of alcohol and substance abuse, and whether the County Court providently exercised its discretion in denying the defendant's request for a downward departure from his presumptive risk level (*see People v Mabee*, 61 AD3d 662, 662-663; *People v Freeman*, 34 AD3d 1106).

SKELOS, J.P., DICKERSON, HALL, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court