

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

D32804  
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Submitted - October 19, 2011

PETER B. SKELOS, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

2009-04977

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Raymond Rossetti, appellant.

(Ind. No. 20/03)

Yasmin Daley Duncan, Brooklyn, N.Y., for appellant.

Adam B. Levy, District Attorney, Carmel, N.Y. (Mary Jane MacCrae of counsel), for respondent.

Appeal by the defendant from a resentence of the County Court, Putnam County (Reitz, J.), imposed December 2, 2008, upon remittitur from this Court (*see People v Rossetti*, 55 AD3d 637), upon his convictions of assault in the first degree and driving while intoxicated, upon his pleas of guilty. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which she moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion is granted, Yasmin Daley Duncan is relieved as counsel for the appellant, and she is directed to turn over all papers in her possession to new counsel assigned herein; and it is further,

ORDERED that Terry D. Horner, Esq., 329 Main Street, Poughkeepsie, N.Y., 12601, is assigned as counsel to perfect the appeal from the resentence; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days of this decision and order, and the People shall serve and file their brief within 120 days of this decision and order. By prior decision and order on motion of this Court dated February 16, 2010, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal

November 9, 2011

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to be heard on the original papers (including a 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 a nonfrivolous issue exists as to whether the County Court providently exercised its discretion in denying the defendant's request for "an opportunity to withdraw his plea" (*People v Rossetti*, 55 AD3d 637, 637-638). Accordingly, assignment of new counsel is warranted.

SKELOS, J.P., ANGIOLILLO, BELEN, LOTT and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court