

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

D33018  
O/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 9, 2011

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

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2008-10600  
2008-10604

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Bryan McClurkin, appellant.

(Ind. Nos. 361/07, 1323/07)

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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.

Appeals by the defendant from two judgments of the County Court, Suffolk County (Gazzillo, J.), both rendered October 27, 2008, convicting him of attempted assault in the first degree under Indictment No. 361/07, and criminal sale of a controlled substance in the third degree under Indictment No. 1323/07, upon his pleas of guilty, and imposing sentences. 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 is granted, 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, 59th Floor, New York, N.Y., 10118, 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

November 22, 2011

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of the proceedings to the new assigned 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 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 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 potentially nonfrivolous issues exist with respect to, inter alia, the denial of the defendant's pro se application to withdraw his pleas of guilty (*see People v Heffelfinger*, 13 AD3d 648, 649). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *Matter of Giovanni S. [Jasmin A.]*, \_\_\_\_\_AD3d\_\_\_\_\_, 2011 NY Slip Op 07846 [2d Dept 2011]).

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court