

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

D33033  
N/nl

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Submitted - October 31, 2011

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
SHERI S. ROMAN, JJ.

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2010-00269

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Jose Batista, appellant.

(Ind. No. 09-00074)

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Edward Cigna, Stony Point, N.Y., for appellant, and appellant pro se.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger of counsel;  
Benjamin J. Stanger on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Rockland County (Kelly, J.), rendered December 9, 2009, convicting him of assault 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 for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Edward Cigna for leave to withdraw as counsel for the appellant 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 Gary Eisenberg, 10 Esquire Road, New City, N.Y., 10956, 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,

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

November 29, 2011

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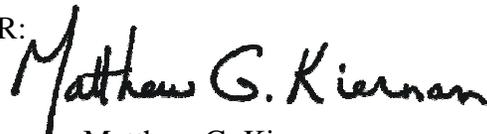
PEOPLE v BATISTA, JOSE

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 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, the validity of the defendant's waiver of his right to appeal and, if such waiver is found to be invalid, whether the sentence imposed was excessive. Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638).

RIVERA, J.P., DICKERSON, ENG and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court