

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

D33268  
Y/ct

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

Submitted - November 30, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
L. PRISCILLA HALL  
JEFFREY A. COHEN, JJ.

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2009-11647

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Rickey Mack, appellant.

(Ind. No. 08-00778)

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David L. Rich, White Plains, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Robert H. Middlemiss of  
counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Freehill, J.), rendered October 27, 2009, convicting him of attempted criminal possession of a controlled substance in the fourth 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 David L. Rich 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 Thomas T. Keating, 39A Cedar Street, Dobbs Ferry, N.Y., 10522, 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,

December 13, 2011

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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 24, 2010, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal 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 motion to withdraw his plea of guilty (*see People v Peoples*, 24 AD3d 689, 690; *People v Terry*, 169 AD2d 745, 746; *see generally Matter of Giovanni S. [Jasmin A.]*, \_\_\_\_ AD3d \_\_\_\_, 2011 NY Slip Op 07846, \*4 [2d Dept 2011]). Accordingly, assignment of new counsel is warranted.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court