

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

D35552
W/kmb

_____AD3d_____

Submitted - May 14, 2012

REINALDO E. RIVERA, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2008-06938

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Jan Poznanski, appellant.

(Ind. No. 2672/06)

David A. Blythewood, Mineola, N.Y., for appellant, and appellant pro se.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Ilisa T. Fleischer and Tammy J. Smiley of counsel; Matthew C. Frankel on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Robbins, J.), rendered July 16, 2007, convicting him of burglary in the first degree (two counts), 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 A. Blythewood 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 Steven Feldman, 626 RXR Plaza, West Tower, 6th Floor, Uniondale, N.Y. 11556, is assigned as counsel to perfect the appeal; 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 on motion and the respondent shall serve and file its brief within 30 days after the brief on behalf of the appellant is served and filed. By prior decision and order on motion of this Court dated January 13, 2011, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers, including

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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.

The brief submitted by the appellant's counsel pursuant to *Anders v California* (386 US 738), was deficient because it failed to adequately analyze potential appellate issues or highlight facts in the record that might arguably support the appeal (see *People v Sanders*, 91 AD3d 798, 799; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256; *People v Barger*, 72 AD3d 696, 697). Since the brief does not demonstrate that assigned counsel acted "as an active advocate on behalf of his . . . client" (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 256 [internal quotation marks omitted]), we must assign new counsel to represent the appellant (see *People v Sanders*, 91 AD3d at 799; *People v Foster*, 90 AD3d 1070, 1071; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

In any event, upon this Court's independent review of the record, we conclude that potentially nonfrivolous issues exist, including, but not necessarily limited to, whether the Supreme Court properly imposed restitution where the plea minutes do not indicate that a plea of guilty was negotiated with terms that included restitution as a component of the sentence (see *People v Gibson*, 88 AD3d 1012; *People v Ortega*, 61 AD3d 705, 706; *People v Kegel*, 55 AD3d 625; *People v Henderson*, 44 AD3d 873, 874).

RIVERA, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court