

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

D35867
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_____AD3d_____

Submitted - June 15, 2012

PETER B. SKELOS, J.P.
RUTH C. BALKIN
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-04637

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Devon Barrett, appellant.

(Ind. No. 1727/10)

Thomas J. Butler, Melville, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Judith R. Sternberg of counsel;
Matthew C. Frankel on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Ayres, J.), rendered April 26, 2011, convicting him of assault in the first degree and criminal possession of a weapon 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 Thomas J. Butler 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 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,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant

August 15, 2012

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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 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 his plea allocution was sufficient (*see People v Batista*, 89 AD3d 1099, 1100; *People v Stone*, 82 AD3d 1272, 1273; *People v Verdile*, 69 AD3d 661, 661; *People v McLoyd*, 288 AD2d 326, 327). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638).

SKELOS, J.P., BALKIN, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court