

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

D36194  
G/kmb

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Submitted - September 19, 2012

DANIEL D. ANGIOLILLO, J.P.  
RUTH C. BALKIN  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2011-01435

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Ronald Hubbard, appellant.

(Ind. No. 1823/09)

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Keith O'Halloran, Westhampton Beach, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel),  
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (J. Doyle, J.), rendered January 13, 2011, convicting him of attempted robbery 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 Keith O'Halloran 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 Richard L. Herzfeld, 104 W. 40th Street, 20th Floor, New York, N.Y., 10018, 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 on motion, and the People shall serve and file

October 17, 2012

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their 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 May 9, 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 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 nonfrivolous issues exist, including, but not necessarily limited to, whether the County 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). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638-639).

ANGIOLILLO, J.P., BALKIN, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court