

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

D36246  
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Submitted - September 24, 2012

MARK C. DILLON, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2010-01387

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Warren A. Ovale, appellant.

(Ind. No. 3844-07)

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Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), 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 (Hudson, J.), rendered January 7, 2010, 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 Robert C. Mitchell 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 Arza R. 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 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 their brief within 30 days after the brief on behalf of the appellant is served and filed. By prior

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decision and order on motion of this Court dated December 2, 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.

The brief submitted by the appellant's assigned 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 Poznanski*, 97 AD3d 701; *People v Sanders*, 91 AD3d 798, 799; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256). Since the brief does not demonstrate that assigned counsel diligently examined the record, we must assign new counsel to represent the appellant (*see People v Poznanski*, 97 AD3d 701; *People v Sanders*, 91 AD3d at 799; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

DILLON, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court