

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

D36857
T/kmb

_____AD3d_____

Submitted - November 7, 2012

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

2012-00583

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Darin W. York, appellant.

(Ind. No. 239/11)

Yasmin Daley Duncan, Brooklyn, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Greller, J.), rendered December 19, 2011, convicting him of operating a vehicle while under the influence of drugs, 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 she moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Yasmin Daley Duncan for leave to withdraw as counsel for the appellant is granted, and she is directed to turn over all papers in her possession to new counsel assigned herein; and it is further,

ORDERED that Gary E. Eisenberg, Esq., 10 Esquire Road, Suite 10, New City, N.Y., 10956, 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 this decision and order, and the People shall serve and file their brief within 120

December 19, 2012

Page 1.

PEOPLE v YORK, DARIN W.

days of this decision and order. By prior decision and order on motion of this Court dated March 14, 2012, 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 there are potentially nonfrivolous issues in this case, including, but not necessarily limited to, the legality of the sentence imposed (*see* Penal Law § 60.01[2][d]). Accordingly, assignment of new counsel is warranted (*see generally* *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 254-261).

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

ENTER:


Aprilanne Agostino
Clerk of the Court