

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

D54700
C/hu

_____AD3d_____

Submitted - February 7, 2018

MARK C. DILLON, J.P.
SANDRA L. SGROI
SYLVIA O. HINDS-RADIX
VALERIE BRATHWAITE NELSON
ANGELA G. IANNACCI, JJ.

2015-08012

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Jaquelle James, appellant.

(Ind. No. 14-00152)

Alex Smith, Middletown, NY, for appellant.

David M. Hoovler, District Attorney, Middletown, NY (Elizabeth L. Schulz of
counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Nicholas De Rosa, J.), rendered August 18, 2014, convicting him of murder 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 Alex Smith for leave to withdraw as counsel is granted, and he is directed to turn over all papers in his possession to the appellant's new counsel assigned herein; and it is further,

ORDERED that Kenyon C. Trachte, 372 Fullerton Avenue, Box #19, Newburgh, NY, 12550, is assigned as counsel to prosecute the appeal; and it is further,

ORDERED that the respondent is directed to furnish a copy of the certified transcript of the proceedings to the appellant's new assigned counsel; and it is further,

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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 November 9, 2016, 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 counsel pursuant to *Anders v California* (386 US 738) was deficient. The statement of facts, which is one page long, did not sufficiently describe the plea allocution. In particular, the statement of facts did not review, in any detail, the Supreme Court's advisements to the appellant regarding the rights he was waiving, the inquiries made of the appellant to ensure that the plea was knowingly and voluntarily entered, or the appellant's responses to any of those advisements and inquiries (see *People v Deprosperis*, 126 AD3d 997, 998; *People v Donovan*, 124 AD3d 793, 794; *People v Sedita*, 113 AD3d 638, 639-640). Furthermore, it did not provide any detail regarding the appellant's factual admission as to the crime charged or the colloquy regarding the appellant's purported waiver of his right to appeal (see *People Ferretti*, 148 AD3d 720, 721; *People v Swenson*, 130 AD3d 848, 849; *People v Sedita*, 113 AD3d at 639-640).

In addition, the brief failed to analyze potential appellate issues or highlight facts in the record that might arguably support the appeal (see *People v Deprosperis*, 126 AD3d at 998; *People v Donovan*, 124 AD3d at 794; *People v McNair*, 110 AD3d 742; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256). In this respect, the brief merely states, in conclusory fashion, that counsel has "not been able to find any nonfrivolous issues which could be raised on this appeal." The brief does not discuss the basis, with reference to the facts of the case and legal authority, of counsel's conclusion that the appeal is wholly frivolous (see *Smith v Robbins*, 528 US 259, 278 n 10; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 257). Since the brief did not demonstrate that assigned counsel fulfilled his obligations under *Anders v California*, we must assign new counsel to represent the appellant (see *People v Rivera*, 142 AD3d 512, 513; *People v Parker*, 135 AD3d 966, 968; *People v Sedita*, 113 AD3d at 639-640; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

DILLON, J.P., SGROI, HINDS-RADIX, BRATHWAITE NELSON and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court